

JOSEPH BERNARDEZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND AVELINO TOLEAN, RESPONDENTS.

G.R. No. 190382. March 09, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a Petition for Certiorari[1] with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction and/or Status Quo Ante Order, assailing the Order[2] of the Commission on Elections (COMELEC) En Banc, dated November 4, 2009, and the Resolution[3] of the Second Division of the COMELEC dated September 22, 2009, setting aside the Special Order[4] in Election Case No. 1255, dated March 31, 2009, of Branch 36, Regional Trial Court (RTC) of Bontoc, Mountain Province.

The factual background of this case is as follows:

Petitioner Joseph Bernardez and private respondent Avelino Tolean were candidates for Vice-Mayor in the Municipality of Sabangan, Mountain Province during the May 14, 2007 synchronized national and local elections. After the election, petitioner garnered 2,136 votes while private respondent garnered 2,137 votes. The Municipal Board of Canvassers proclaimed private respondent as the duly elected Vice-Mayor after winning by a single vote over the petitioner.

Petitioner filed an election protest on May 24, 2007, docketed as Election Case No. 1255 before the RTC, Branch 36, Bontoc, Mountain Province, contesting the result of the election on the ground of fraud and deceit.

Acting on the said election protest, the RTC promulgated its Decision[5] dated February 25, 2009, finding petitioner as winner by eleven (11) votes during the May 14, 2007 mid-term election. The dispositive portion of the said Decision reads:

Wherefore, in view of all the foregoing findings, judgment is hereby rendered:

- 1) Declaring the proclamation of Avelino Tolean as the Vice Mayor elect of Sabangan, Mountain Province, in the May 14, 2007 national and local elections, null and void; and
- 2) Proclaiming Joseph Bernardez, as the duly elected Vice mayor of Sabangan, Mountain Province, by majority of eleven (11) votes, in said election.[6]

On March 5, 2009, petitioner filed a Motion for Writ of Execution Pending Appeal of the decision of the trial court, which was set for hearing on March 9, 2009. On the same day, private respondent's counsel filed a Manifestation and Motion[7] with the RTC stating that he would not be available on the suggested hearing date due to his previous commitment to appear in his other cases of similar importance. Thus, during the hearing, only the petitioner and his counsel appeared and orally argued on his special reasons for an execution pending appeal. Private respondent, on the other hand, did not appear, but filed his Comment and/or Opposition to the Motion.

Meanwhile, on March 6, 2009, private respondent filed a Notice of Appeal of the decision of the trial court.

Thereafter, the records of the case were forwarded to the Second Division of the COMELEC.

On March 31, 2009, the RTC issued a Special Order[8] granting petitioner's Motion for Execution Pending Appeal, the dispositive portion of which reads:

Wherefore, the Motion for Execution Pending Appeal is hereby granted.

The Branch Clerk of Court, is hereby ordered to issue a Writ of Execution Pending Appeal, after the lapse of twenty (20) working days, to be counted from the time Protestee's counsel receives a copy of this Special Order, if no restraining order or status quo order is issued, pursuant to Sec. 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials. (A.M. No. 07-4-15-SC).[9]

Since no restraining or status quo order was issued pursuant to Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials[10] during the twenty-day allowable period, the Special Order above-mentioned became valid and effective; hence, petitioner assumed the Vice-Mayoralty position of Sabangan, Mountain Province.

It was only on April 20, 2009 that private respondent filed his Petition for Injunction with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order before public respondent COMELEC (Second Division) to enjoin the RTC from implementing the latter's Special Order granting the execution of its Decision on account of the pendency of private respondent's Notice of Appeal.

On June 1, 2009, the Second Division of the COMELEC issued an Order[11] dismissing private respondent's appeal for failure to pay the appeal fees, thus:

It appearing that the appeal fees of three thousand pesos (P3,000.00), bailiff's fees of one hundred fifty pesos (P150.00) and legal research fees of fifty pesos (P50.00) required by COMELEC Rules were paid only on April 03, 2009, or more than fifteen (15) days from the filing of notice of appeal, hence, not in accordance with COMELEC Resolution No. 8486.

x x x x

The Commission (Second Division) resolves to dismiss the instant appeal case.[12]

However, on September 22, 2009, the same division of the COMELEC, which dismissed private respondent's Notice of Appeal, issued the first assailed Resolution[13] reversing the Special Order of the RTC dated March 31, 2009, and granting private respondent's Petition for Injunction and Prayer for the Issuance of a Status Quo Ante Order on the grounds that: (1) private respondent was not furnished a Notice of Hearing as required under Section 11, Rule 14 of the New Rules, as a result of which, he was not properly represented in the hearing without his fault; and (2) the RTC neglected to state that the reasons advanced for granting the Motion for Execution Pending Appeal were "superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal."

On October 6, 2009, petitioner filed a motion for reconsideration of the resolution of the Second Division of the COMELEC before the COMELEC en banc. On November 4, 2009, the COMELEC en banc issued the second assailed Order[14] in this case, denying petitioner's Motion for Reconsideration for failure to pay the required motion fees. Thus:

x x x x

the Commission En Banc hereby resolves to deny the same for movant-private respondent's failure to pay the required motion fees in the amount of P700.00 as provided under Section 7(f), Rule 40, COMELEC Rules of

Procedure, as amended by COMELEC Minute Resolution No. 02-0130 dated September 18, 2002, within the five-day reglementary period for filing motions for reconsideration enjoined under Section 2, Rule 19, same COMELEC Rules.

There being no valid motion for reconsideration to speak of, the provision of Section 13, paragraph (c), Rule 18, Comelec Rules of Procedure, to wit:

"Sec. 13. Finality of Decisions or Resolutions.

x x x x

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation."

applies, hence, the Resolution of the Commission (Second Division) dated September 22, 2009, a copy of which was received by the private respondent on October 1, 2009, per his admission in his Motion for Reconsideration filed on October 6, 2009, had become final and executory as of October 17, 2009.

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department (ECAD), this Commission, is hereby directed to immediately issue an Entry of Judgment in the above-entitled case.

SO ORDERED.[15]

On November 19, 2009, upon private respondent's urgent motion, the COMELEC issued a Writ of Execution[16] of the Resolution of the Second Division of the COMELEC dated September 22, 2009, and the Order of the COMELEC en banc dated November 4, 2009, the pertinent portion of which states, thus:

NOW, THEREFORE, the Provincial Election Supervisor of Mountain Province, Comelec, is hereby directed to immediately implement this Writ of Execution, in coordination with the Department of the Interior and Local Government (DILG) Provincial Operations Officer of Mountain Province and the Provincial Director, PNP, by serving a copy hereof, together with the certified true copies of the Resolution of the Commission (Second Division) dated September 22, 2009 and the Order of the Commission En Banc issued on November 4, 2009, upon private respondent JOSEPH BERNARDEZ (1) ordering him to cease and desist from discharging the powers and functions of Vice-Mayor of Sabangan. Mt. Province, and to relinquish and vacate the same in favor of petitioner Avelino Tolean, (2) to cause the peaceful and smooth turn-over of office to aforesaid petitioner, and 3) make a return of your action within five (5) days from receipt hereof.[17]

Thereafter, pursuant to the above-mentioned Writ of Execution, private respondent took his oath and assumed office as the Vice Mayor elect of the Municipality of Sabangan as per Certification[18] issued by the Sangguniang Bayan of Sabangan, Mountain Province dated November 27, 2009, and the Panunumpa ng Katungkulan[19] dated November 24, 2009.

Hence, this petition.

Petitioner raises the following issues:

I.

That COMELEC (2nd Division) committed grave abuse of discretion when it proceeded to decide the motion for TRO/Status Quo Ante Order without considering the dismissed main appeal of respondent for failure to pay filing fee nine (9) months after the COMELEC clarificatory resolution becomes final and executory.

II.

That COMELEC (2nd Division) erred when it resolved to grant the preliminary injunction and temporary restraining order/Status Quo Order although respondent failed to establish the existence of a clear and unmistakable right that must be protected, as well as the serious damage or irreparable loss that respondent would suffer if the writ is not granted.

III.

That COMELEC (2nd Division) and the Honorable COMELEC COMMISSION En Banc had acted arbitrarily and in manifest grave abuse of discretion amounting to lack or excess of jurisdiction when it deviated from its mandate to reasonably and liberally construe election laws to achieve the purpose which is to safeguard the will of the electorate in the choice of their representative.

IV.

COMELEC committed grave abuse of discretion when it whimsically and capriciously set aside the time-honored due process. There was no prior notice and hearing before implementing the said writ of execution.[20]

The main issue is whether or not public respondent COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Order dated November 4, 2009.

There is grave abuse discretion where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[21]

Petitioner contends that public respondent COMELEC en banc committed grave abuse of discretion when it proceeded to decide and thereby grant private respondent's Petition for Injunction and Prayer for the Issuance of a Status Quo Ante Order, without considering the fact of dismissal of private respondent's Notice of Appeal. Petitioner further avers that the allowance by the COMELEC Second Division of private respondent's Urgent Motion for the Issuance of a Writ of Execution, notwithstanding the dismissal of private respondent's Notice of Appeal, amounted to the reversal of the decision of the RTC via a mere motion and not via an appeal as inscribed in our Constitution. What the law forbids to be done directly was made possible by private respondent indirectly.

A careful review of the antecedent facts bears out the fact that, indeed, the COMELEC Second Division granted private respondent Tolean's petition for injunction without considering that it had already dismissed private respondent's Notice of Appeal. It is undisputed that on April 20, 2009, private respondent filed the subject petition for injunction before the COMELEC Second Division, to enjoin the execution of the Decision of the RTC, citing mainly as ground the fact that the victory of petitioner had not been clearly and sufficiently established due to the pendency of his Notice of Appeal. However, on June 1, 2009, while the petition for injunction was still pending, the COMELEC Second Division dismissed private respondent's Notice of Appeal due to his failure to pay the required appeal fees in violation of COMELEC Resolution No. 8486,[22] which states, thus:

WHEREFORE, in view of the foregoing, the Commission hereby RESOLVES to DIRECT as follows:

1.) That if the appellant had already paid the amount of P1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the Comelec appeal fee of P3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen (15) days from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall

be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

Sec. 9. Grounds for Dismissal of Appeal. - The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a.) Failure of the appellant to pay the correct appeal fee; x x x

2.) That if the appellant failed to pay the P1,000.00 - appeal fee with the lower court within the five (5)-day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforesaid Section 9(a) of Rule 22 of the Comelec Rules of Procedure.

With the dismissal by the COMELEC Second Division of private respondent's Notice of Appeal without any showing that he had appealed the dismissal to the COMELEC en banc, the decision of the RTC proclaiming petitioner as the duly elected Vice-Mayor of Sabangan, Mountain Province becomes final and executory. Thus, the dismissal of private respondent's Notice of Appeal settles absolutely the victory of petitioner and the defeat of private respondent in the vice-mayoralty race.

Considering the foregoing, the COMELEC Second Division gravely abused its discretion when it granted private respondent's petition for injunction on September 22, 2009 after the victory of petitioner Bernardez had already become final. To reiterate, the petition for injunction was filed by private respondent to enjoin the RTC from executing its decision proclaiming petitioner as Vice-Mayor of the Municipality of Sabangan due to the pendency of the Notice of Appeal. Since it has been ruled that the Notice of Appeal was rightfully dismissed and the ruling has become final and executory, it follows then that the right sought to be protected and the irreparable injury sought to be prevented by the private respondent through injunction or prohibition has already been rendered *fait accompli*.

In *Caneland Sugar Corporation v. Alon*,^[23] it was settled that injunctive reliefs are preservative remedies for the protection of substantive rights and interests. Injunction is not a cause of action in itself, but merely a provisional remedy, an adjunct to a main suit. When the act sought to be enjoined has become *fait accompli*, the prayer for provisional remedy should be denied.

In *Go v. Looyuko*,^[24] the Court ruled that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so for the simple reason that nothing more can be done in reference thereto. A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.

Since the COMELEC, Second Division, granted the petition for injunction despite finality of the Decision in the election protest case, petitioner filed with the COMELEC en banc a motion for reconsideration of the Resolution of the COMELEC, Second Division, granting the private respondent's petition for preliminary injunction. The COMELEC en banc was, therefore, challenged to weigh an issue of technicality as against the substance of the motion for reconsideration. In dismissing the motion for reconsideration due to failure to pay appeal fees, the COMELEC en banc gave importance to technicality, which could have been disregarded at its own discretion, and failed to give weight to the fact that petitioner's proclamation as the duly elected Vice-Mayor of the Municipality of Sabangan, Mountain Province by the RTC had become final with the dismissal by the COMELEC, Second Division of private respondent's appeal in the election protest case. Hence, the Commission failed to protect and uphold the will of the electorate in voting petitioner as the Vice-Mayor of their municipality.

Based on the Resolution dated September 22, 2009 of the COMELEC, Second Division and the Order dated

November 4, 2009 of the COMELEC en banc, the Commission issued a writ of execution ordering petitioner to cease and desist from discharging the powers and functions of Vice-Mayor of Sabangan, Mountain Province and to relinquish and vacate the same in favor of private respondent. Again, this issuance was made despite the fact that it was the petitioner who won by a margin of 11 votes over private respondent, and that the decision of the RTC became final with the dismissal of private respondent's notice of appeal by the COMELEC, Second Division on June 1, 2009. An injustice was, therefore, committed by the Commission against petitioner in unseating him from his office and in swearing private respondent into office as Vice-Mayor of Sabangan, Mountain Province, even if he lost to petitioner.

In fine, the Order of the COMELEC en banc dated November 4, 2009 and the Resolution of the COMELEC, Second Division dated September 22, 2009 were issued in grave abuse of discretion and are, therefore, null and void, considering that the RTC Decision dated February 25, 2009 became final and executory with the dismissal of private respondent's appeal by the COMELEC, Second Division on June 1, 2009. The ground for the petition for preliminary injunction, which was the pendency of the notice of appeal, had no more basis with the dismissal of the appeal; hence, that petition should have been denied.

WHEREFORE, the petition is GRANTED. The Order dated November 4, 2009 of the COMELEC en banc and the Resolution dated September 22, 2009, of the Second Division of the COMELEC are ANNULLED and SET ASIDE. The Entry of Judgment issued on November 5, 2009 by the Electoral Contests Adjudication Department, as well as the Writ of Execution issued on November 19, 2009 by the COMELEC are likewise ANNULLED and SET ASIDE. Private respondent Avelino Tolean is hereby ordered (1) to cease and desist from exercising the power and functions of Vice-Mayor of Sabangan, Mountain Province, and to relinquish and vacate the same in favor of petitioner Joseph Bernardez, and (2) to cause the peaceful and smooth turn-over of office to aforesaid petitioner Joseph Bernardez.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

[1] Under Rule 65 in relation to Rule 64 of the Rules of Court.

[2] Annex "A," rollo, pp. 54-55.

[3] Annex "B," id. at 58-64.

[4] Annex "J," id. at 103-105.

[5] Annex "G," id. at 77-93.

[6] Rollo, pp. 92-93.

[7] Annex "H," id. at 94-95.

[8] Annex "J," id. at 103-105.

[9] Id. at 105.

[10] Supreme Court Administrative Order A.M. No. 07-4-15-SC.

[11] Annex "M," rollo, pp. 116-118.

[12] Id.

[13] Annex "B," rollo, pp. 58-64.

[14] Annex "A," id. at 54-55.

[15] Id.

[16] Annex "R," id. 147-148.

[17] Id. at 148.

[18] Annex "S," rollo, p. 149.

[19] Annex "S-1," id. at 150.

[20] Rollo, pp. 28-29.

[21] *Romulo v. Peralta*, G.R. No. 165665, January 31, 2007, 513 SCRA 612.

[22] Entitled "In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases Involving Barangay and Municipal Elective Positions from the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts."

[23] G.R. No. 142896, September 12, 2007, 533 SCRA 28, 37, citing *Philippine National Bank v. Court of Appeals*, 291 SCRA 271 (1998).

[24] G.R. Nos. 147923, 147962, 154035, October 26, 2007, 537 SCRA 445, 479.

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