

CERIACO BULILIS, PETITIONER, VS. VICTORINO NUEZ, HON. PRESIDING JUDGE, 6TH MCTC, UBAY, BOHOL, HON. PRESIDING JUDGE, RTC, BRANCH 52, TALIBON, BOHOL, RESPONDENTS.

G.R. No. 195953. August 09, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On October 25, 2010, petitioner Ceriaco Bulilis (Bulilis) was proclaimed winner of the elections for punong barangay of Barangay Bulilis, Ubay, Bohol. He won over respondent Victorino Nuez (Nuez) by a margin of four (4) votes. On November 2, 2010, Nuez filed an Election Protest^[1] (for judicial recount and annulment of proclamation) with the 6th Municipal Circuit Trial Court (MCTC) of Ubay, Bohol. It was inexplicably docketed as Civil Case No. 134-10.

On November 5, 2010, Bulilis, through counsel, filed an Answer,^[2] denying the allegations in the protest and praying for its dismissal on the ground that the MCTC had no jurisdiction since the protest failed to implead the Chairman and the Members of the Board of Election Inspectors who were purportedly indispensable parties. On the same date, the Clerk of Court of the MCTC issued a notice of "hearing"^[3] for November 9, 2010. However, counsel for Bulilis claimed that he never received said "notice" nor was he in any way informed that the November 9, 2010 hearing was a preliminary conference. He allegedly only learned that there was a hearing set on November 9, 2010 and it was for preliminary conference when he received a copy of respondent Nuez's Preliminary Conference Brief, the day before the scheduled hearing or on November 8, 2010.

At about 1:45 p.m., on November 9, 2010, counsel for Bulilis filed his Preliminary Conference Brief with the Clerk of Court and also furnished Nuez's counsel with a copy. However, when the case was called at 2:10 p.m., counsel for Nuez moved in open court to be allowed to present evidence ex parte. Noting that counsel for Bulilis failed to file his brief and to furnish a copy of the brief on the other party at least one (1) day prior to the preliminary conference as required by Section 4, Rule 9 of A.M. No. 07-4-15-SC, Judge Daniel Jose J. Garces (Judge Garces) granted Nuez's motion to present evidence ex parte.^[4]

Counsel for Bulilis filed a motion for reconsideration on November 10, 2010, asserting the lack of proper notice to him of the preliminary conference. In an Order dated November 15, 2010,^[5] the MCTC denied the motion for reconsideration on the grounds that the notice of hearing dated November 5, 2010 was received by petitioner Bulilis himself on said date and counsel for Bulilis was made aware of the November 9, 2010 preliminary conference when he received the brief for protestant Nuez the day before.

Bulilis filed a petition for certiorari^[6] under Rule 65 of the Rules of Court with the Regional Trial Court (RTC) of Talibon, Bohol. However, in an Order^[7] dated December 22, 2010, the RTC dismissed the petition on the ground that it is the Commission on Elections (COMELEC) that has exclusive appellate jurisdiction over petitions for certiorari in election cases involving municipal and barangay officials.

Bulilis's motion for reconsideration of the RTC Decision was denied in an Order^[8] dated March 9, 2011. Hence,

he filed the present petition for certiorari (under Rule 65) with prayer for writ of preliminary injunction with this Court (the Petition), claiming that he is raising purely questions of law; that the MCTC had no jurisdiction for protestant's failure to implead indispensable parties; that the MCTC committed grave abuse of discretion in ordering reception of protestant's evidence ex parte; and that under the rules relied upon by the RTC, the COMELEC's appellate jurisdiction in election cases is allegedly limited to decisions of election courts and not interlocutory orders.

In a Resolution[9] dated March 29, 2011, this Court required respondent Nuez to comment. In his Comment dated June 13, 2011, Nuez alleged that Bulilis is "guilty of invoking a mistaken Remedy and using a wrong Venue, but also committing the same failure of compliance re filing fees." [10]

The Petition must fail.

It appears from the record that the questioned notice of preliminary conference issued in the instant election protest may have been defective in that (1) the notice issued by the MCTC clerk of court was a generic notice of hearing without any mention that it was for preliminary conference, and (2) it was served on the party himself despite being represented by counsel in contravention of Rule 9, Section 2[11] of A.M. No. 07-4-15-SC.[12] For this reason we disagree with the RTC's finding that impliedly ascribed all fault to petitioner in failing to timely file his preliminary conference brief. We, nonetheless, find that the RTC and even this Court have no jurisdiction to correct any error that may have been committed by MCTC Judge Garces in his order to allow the protestant to present evidence ex parte.

Petitioner contends that the petition for certiorari that he filed with the RTC was "not an election case" (i.e., not relating to elections, returns or qualifications of elective officials), but one imputing grave abuse of discretion on the part of the MCTC judge in his issuance of an interlocutory order. He further claims that the COMELEC's appellate jurisdiction is only limited to "decided barangay election cases." [13]

There is no merit in petitioner's argument that Rule 28, Section 1 of the COMELEC Rules of Procedure limits the COMELEC's jurisdiction over petitions for certiorari in election cases to issues related to elections, returns and qualifications of elective municipal and barangay officials. Said provision, taken together with the succeeding section,[14] undeniably shows that an aggrieved party may file a petition for certiorari with the COMELEC whenever a judge hearing an election case has acted without or in excess of his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

Neither can petitioner take refuge in Rule 14, Section 12 of A.M. No. 07-4-15-SC which provides:

SEC. 12. Jurisdiction of the Commission on Elections in certiorari cases. - The Commission on Elections has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus only in aid of its appellate jurisdiction over decisions of the courts in election cases involving elective municipal and barangay officials. (Emphasis supplied.)

Petitioner relies on the above-quoted provision to claim that the COMELEC only has appellate jurisdiction over decisions of the courts in election cases and not interlocutory orders. As the RTC correctly observed, the Court had in a subsequent issuance, A.M. No. 07-7-12-SC[15] (which amended, among others, Rule 65 of the Rules of Court), clearly provided that:

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Emphases supplied.)

Plainly, from the foregoing, this Court recognizes the COMELEC's appellate jurisdiction over petitions for certiorari against all acts or omissions of courts in election cases. Indeed, in the recent case of *Galang v.*

Geronimo,[16] the Court had the opportunity to rule that a petition for certiorari questioning an interlocutory order of a trial court in an electoral protest was within the appellate jurisdiction of the COMELEC. To quote the relevant portion of that decision:

The question then is, would taking cognizance of a petition for certiorari questioning an interlocutory order of the regional trial court in an electoral protest case be considered in aid of the appellate jurisdiction of the COMELEC? The Court finds in the affirmative.

Interpreting the phrase "in aid of its appellate jurisdiction," the Court held in *J.M. Tuason & Co., Inc. v. Jaramillo, et al.* that if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction. This was reiterated in *De Jesus v. Court of Appeals*, where the Court stated that a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.

Note that Section 8, Rule 14 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials states that:

Sec. 8. Appeal. -- An aggrieved party may appeal the decision to the COMELEC within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.

Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of certiorari in aid of its appellate jurisdiction. Clearly, petitioner erred in invoking this Court's power to issue said extraordinary writ. (Emphasis supplied.)

Although *Galang* involved a petition for certiorari involving an interlocutory order of a regional trial court in a municipal election contest, the rationale for the above ruling applies to an interlocutory order issued by a municipal trial court in a barangay election case. Under Rule 14, Section 8 of A.M. No. 07-4-15-SC, decisions of municipal trial courts in election contests involving barangay officials are appealed to the COMELEC. Following the *Galang* doctrine, it is the COMELEC which has jurisdiction over petitions for certiorari involving acts of the municipal trial courts in such election contests.

In all, the RTC committed no grave abuse of discretion in dismissing the petition for lack of jurisdiction. This being the case, the Court finds it unnecessary to resolve the other issues raised by petitioner.

WHEREFORE, the present Petition is DISMISSED.

SO ORDERED.

Corona, C.J., Velasco, Jr., Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Sereno, JJ., concur.
Carpio, J., no part. close relation to counsel of party.
Mendoza and Abad, JJ., on leave.

[1] Rollo, pp. 18-21.

[2] Id. at 22-23.

[3] Id. at 24.

[4] Id. at 27.

[5] Id. at 28-30.

[6] Id. at 31-38.

[7] Id. at 39-42.

[8] Id. at 43-44.

[9] Id. at 47-48.

[10] Id. at 51.

[11] Rule 9, Section 2 provides that "[t]he notice of preliminary conference shall be served on counsel or on the party who has no counsel. Notice to counsel is notice to the party, as counsel is charged with the duty to notify the party represented."

[12] Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials. Note, however, that in the case of municipal officials, election contests are now governed by A.M. No. 10-4-1-SC or the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials.

[13] Rollo, pp. 12-13.

[14] Rule 28, Sections 1 and 2 of the COMELEC Rules of Procedure provide:

Sec. 1. When Available. - In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective barangay officials, the Commission en banc may hear and decide petitions for certiorari, prohibition or mandamus.

Sec. 2. Petition for Certiorari or Prohibition. - When any court or judge hearing election cases has acted without or in excess of its or his jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a petition for certiorari or prohibition with the Commission alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such court or judge, or commanding it or him to desist from further proceeding with the action or matter specified therein, as the case may be.

The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with all pleadings and documents relevant and pertinent thereto.

[15] Amendments to Rules 41, 45, 58 and 65 of the Rules of Court.

[16] G.R. No. 192793, February 22, 2011.

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