

FRANCISCO C. MOGUEIS, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF SAN FERNANDO, MASBATE, ATTY. RODOLFO DE GUZMAN, AND CESAR AL. BISNA...*G.R. No. 53376. May 26, 1981*

Ponente: MAKASIAR, J.

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This is a petition for certiorari and prohibition with preliminary injunction with prayer for a restraining order filed by petitioner Francisco C. Mogueis, Jr., to review Resolution No. 9449 of the respondent Commission on Elections dated March 6, 1980, as well as Resolution No. 9552 dated March 10, 1980, in Pre-Proclamation Case No. 372 entitled "Cesar Al. Bisnar, petitioner, versus Francisco C. Mogueis, Jr., respondent."

In the January 30, 1980 local elections, petitioner Francisco C. Mogueis, Jr. was the official candidate of the Bicol Saro for mayor of San Fernando, Masbate; while private respondent Cesar Al. Bisnar was a candidate for the same post under the Kilusang Bagong Lipunan (KBL).

In the canvass of votes cast in San Fernando, Masbate, by the respondent San Fernando Municipal Board of Canvassers, petitioner Mogueis obtained 3,291 votes as against 3,289 votes of private respondent Bisnar, or a margin of two (2) votes. On the basis of the aforementioned election results, the respondent Municipal Board of Canvassers of San Fernando, Masbate, proclaimed on January 31, 1980 petitioner Mogueis as the duly elected municipal mayor (Annex F, Petition for Certiorari, p. 31, rec.). Petitioner, in his petition filed before this Court, alleged that he took his oath of office as the duly elected municipal mayor of San Fernando, Masbate, on March 3, 1980 and thereafter discharged the duties and functions of said office. Private respondent Bisnar, however, alleged in his comment to the petition that petitioner Mogueis took his oath before Judge Leodegario A. Belarmino on March 15, 1980 as shown by a copy of the program on the inaugural ceremonies of the newly elected officials of San Fernando, Masbate (p. 45, rec.).

The records reveal that on February 7, 1980, private respondent Bisnar filed an election protest with the Court of First Instance of Masbate, docketed as Special Proceedings No. 2988, alleging that the election returns for voting centers nos. 3-A in Barangay Magsasaka and 4-A in Barangay Bayanihan were tampered with or falsified in the house of a certain Salvacion Cantonjos, a member of the citizens election committee of voting center no. 3-A and who is publicly known in the community as a Bicol Saro leader and a die-hard follower of petitioner Mogueis, protestee therein. He further alleged that there were discrepancies in the election returns and that there was also rampant perpetration of threats, coercion and terrorism by petitioner Mogueis and his followers. One of the reliefs sought by private respondent Bisnar, protestant therein, was that after the hearing, examination and re-appreciation of the ballots, and recounting of the votes cast, and after finding that he garnered more votes than petitioner Mogueis, protestee therein, he be declared as the lawful mayor-elect of San Fernando, Masbate (Annex D, petition, pp. 23-27, rec.).

It appears that on February 8, 1980, private respondent Bisnar, protestant therein, filed a manifestation with the Court of First Instance of Masbate, stating that the filing of his election protest is to be taken and understood as without prejudice to his filing of a petition for the annulment or nullification of the proclamation of petitioner Mogueis, protestee therein, before the Commission on Elections (p. 47, rec.).

On February 11, 1980, private respondent Bisnar filed a petition, which the respondent Commission on Elections docketed as Pre-Proclamation Case No. 372, praying for the annulment of the canvass and the proclamation of petitioner Mogueis, respondent therein, on grounds similar to those alleged in the election protest filed earlier with the Court of First Instance of Masbate (Annex C, Petition, pp. 20-22, rec.).

On February 18, 1980, herein petitioner Mogueis, protestee therein, filed his answer with a counter--protest to the election protest of herein private respondent Bisnar, protestant therein, in Special Proceedings No. 2988 before the Court of First Instance of Masbate (Annex E, petition, pp. 28-30, rec.).

On February 27, 1980, acting on the petition of respondent Bisnar, the respondent Commission on Elections issued Resolution No. 9264 suspending the effects of the proclamation of petitioner Mogueis, respondent therein, and required him to answer the petition filed with it by private respondent Bisnar, petitioner therein, within five (5) days from notice thereof.

Petitioner Mogueis, respondent therein, filed on February 28, 1980 a motion for reconsideration of Resolution No. 9264, alleging that the grounds relied upon by private respondent Bisnar in his aforesaid petition are proper grounds for an election protest and that the setting aside of his proclamation as mayor-elect is violative of the Presidential Decree ordering the proclamation of all candidates-elect despite the pendency of disqualification cases. Acting on said motion, the respondent Commission on Elections adopted on February 28, 1980 Resolution No. 9330 lifting the suspension of the effects of the proclamation of petitioner Mogueis, respondent therein, as earlier ordered in Resolution No. 9264.

On February 29, 1980, private respondent Bisnar, petitioner therein, sought to reconsider Resolution No. 9330 on the ground that said resolution was issued arbitrarily, amounting to abuse of discretion. On March 6, 1980, the respondent Commission on Elections issued Resolution No. 9449, the dispositive portion of which reads as follows:

"Premises considered, the Commission RESOLVED to reconsider its Resolution Item No. 9330, dated February 28, 1980, consequently restoring the effects of the Commission Resolution Item No. 9264, dated February 27, 1980; and to order the Citizens Election Committee to reconvene and count the votes cast in Voting Centers Nos. 3-A and 4-A" (Annex A, Petition, pp. 15-17, rec.).

In order to implement the aforesaid resolution, the respondent Commission on Elections issued on March 10, 1980 Resolution No. 9552, authorizing its Executive Director to direct respondent Atty. Rodolfo de Guzman, COMELEC Senior Attorney, and perform the following:

"1. To conduct a thorough investigation of the petitioner's allegation that the ballot boxes for voting centers nos. 3-A and 4-A were brought to a private house and that the corresponding election returns were prepared therein;

"2. If findings show the affirmative, you shall exclude the two ballot boxes and not order the recount of the ballots therein;

"3. In a contrary sense, you shall reconvene the Citizens Election Committees of Voting Centers Nos. 3-A and 4-A after giving due notice to all parties concerned and order the opening of the ballot boxes if after satisfying yourself and the parties that nothing in the ballot boxes indicates that their identity and integrity have been

violated;

"4. After satisfying your-self and the parties that the integrity of the ballots there-in has been duly preserved you shall order the Election Committees of the said voting centers to recount the votes affected which shall then be used by the Board of Canvassers as basis of the canvass;

"5. If however, you shall find that the identity and integrity of the ballot boxes have been violated and/or the integrity of the ballots therein has not been duly preserved, you shall direct the Citizens Election Committee not to recount the votes of these centers;

"6. You are hereby designated Chairman of the Municipal Board of Canvassers and as Chairman you shall reconvene the Municipal Board of Canvassers and proclaim the duly elected Municipal Mayor of that municipality on the basis of all the election returns counted. If the conditions mentioned in Paragraph (4) above are substantiated and no recount of the votes for voting centers Nos. 3-A and 4-A shall have been made, you shall proceed to canvass only the remaining returns and use the same as basis for the proclamation" (Annex B, Petition, pp. 18-19, rec.).

Hence, petitioner Mogueis filed on March 15, 1980 the present petition with this Court alleging that respondent Commission on Elections has acted with grave abuse of discretion in issuing Resolutions Nos. 9449 and 9552.

Required to comment on the petition, private respondent Bisnar filed one on April 23, 1980, while that of respondent Commission on Elections, represented by the Solicitor General, was filed on May 23, 1980.

The records further reveal that pursuant to the aforesaid Resolution No. 9552, respondent Atty. Rodolfo de Guzman conducted a hearing of PP Case No. 372 from March 13 to 21, 1980 in the municipal building of San Fernando, Masbate. Then on April 22, 1980, the respondent Commission on Elections, acting on the report dated March 28, 1980 of respondent Atty. Rodolfo de Guzman, issued Resolution No. 9704, the dispositive part of which reads as follows:

"x x x After considering the aforesaid report which is hereby made an integral part here-of, the Commission, on motion duly seconded, RESOLVED to adopt the recommendation of Atty. Rodolfo de Guzman, and hereby orders the Board of Canvassers of San Fernando, Masbate, to undertake a new canvass, excluding the election returns pertaining to voting centers nos. 3-A and 4-A, and thereafter, to proclaim the winning candidates thereat" (p. 77, rec.).

On April 28, 1980, the respondent Commission on Elections issued a directive to Atty. Rodolfo de Guzman, through Noli M. Sagadraca, then Executive Director, now Associate Commissioner, in order to implement the aforesaid April 22, 1980 resolution, the pertinent part of which reads:

"1. To reconvene the Municipal Board of Canvassers of San Fernando, Masbate, at the office of the Provincial Election Officer in Masbate, Masbate, and supervise the canvass by said board of the election results of the municipality relative to the January 30, 1980 election, except the election results of Barangay Voting Centers Nos. 3-A and 4-A and, for the Office of Municipal Mayor only; if the said canvass was not yet made, but in a contrary case final canvass shall be made on the basis of the total votes of the candidates already tabulated, excluding therein the election results of the two (2) barangay voting centers herein mentioned; after which, to proclaim the winning candidate.

"2. To designate Atty. Isidro Merillo, Provincial Election Officer of Masbate, to act as Chairman of the Municipal Board of Canvassers above-mentioned and further, to appoint substitute-member or members of the Board in case of non-availability or recalcitrancy of the regular members. x x" (Pp. 78-79, rec.).

It appears that on May 1, 1980, the Court of First Instance of Masbate, acting on an ex-parte motion dated March 31, 1980 of private respondent Bisnar, protestant therein, issued an order commanding the municipal treasurer of

San Fernando, Masbate, to immediately deposit with the clerk of said court the ballot boxes and election returns in Voting Centers Nos. 1, 1-A, 2-A, 3-A, 4-A, 7, 8, 17, 21, 22 and 23, subject of the election protest of private respondent Bisnar, protestant therein, and in Voting Centers Nos. 5, 8-A, 11, 14 and 24, subject of the counter-protest of petitioner Mogueis, protestee therein. In said order of May 1, 1980, the lower court, acting on an ex-parte motion dated April 28, 1980 filed by petitioner Mogueis, protestee therein, also enjoined the municipal treasurer of San Fernando, Masbate, from surrendering and delivering to the municipal board of canvassers of said municipality the ballot boxes and election returns of the aforementioned voting centers, and for the Municipal Board of Canvassers to refrain from conducting a new canvass of the same (p. 80, rec.).

Moreover, it appears that respondent Atty. Rodolfo de Guzman, following the aforesaid April 28, 1980 directive of the respondent Commission on Elections, constituted and convened an entirely new and different Board of Canvassers composed of Atty. Isidro C. Merillo, as chairman, Antonio S. Aribon and Arnulfo C. Valdemoro as members. And on May 2, 1980, private respondent Bisnar was proclaimed by the Board of Canvassers as the elected mayor of San Fernando, Masbate on the basis of the results of its recounting of votes wherein he obtained 3,037 votes as against the 2,881 votes of petitioner Mogueis, thus winning by 156 votes (Exhibit E, Petitioner's Urgent Manifestation, p. 82, rec.). Thereafter, on the same day -- May 2, 1980 -- private respondent Bisnar took his oath of office before Acting Provincial Fiscal Gregorio S. Albao of Masbate. On May 5, 1980, he assumed office as mayor of San Fernando, Masbate and discharged the duties and functions of said office.

On May 30, 1980, petitioner Mogueis filed with this Court an urgent manifestation and reiteration of the prayer for preliminary injunction dated May 26, 1980. Subsequently, on June 5, 1980, this Court issued an order restraining respondents Commission on Elections, Municipal Board of Canvassers of San Fernando, Masbate, and Atty. Rodolfo de Guzman from further acting in Pre-Proclamation Case No. 372 and restraining likewise private respondent Bisnar from assuming the office of mayor of San Fernando, Masbate, pursuant to the aforesaid Exhibit "E" (Certificate of Canvass and Proclamation of private respondent Bisnar) of petitioner's urgent manifestation.

Private respondent Bisnar, filed on July 9, 1980 an urgent motion dated June 24, 1980 to reconsider, set aside, lift or dissolve the temporary restraining order of June 5, 1980, and to strike off from the records of the case the urgent manifestation dated May 26, 1980 of petitioner Mogueis. He alleged that the restraining order had already become moot and academic because the acts sought to be restrained have already been consummated long before June 5, 1980, it appearing, that he was proclaimed and took his oath on May 2, 1980 as well as assumed office on May 5, 1980.

On July 15, 1980, this Court, in a resolution, required herein petitioner to comment on the aforesaid urgent motion of herein private respondent. Petitioner filed on August 7, 1980 his comment to the urgent motion.

On August 8, 1980, petitioner Mogueis filed a motion praying that private respondent Bisnar should be cited for contempt of Court for defying the temporary restraining order of June 5, 1980. It was alleged by herein petitioner that the aforesaid temporary restraining order was transmitted on June 6, 1980 to private respondent Bisnar by way of a telegram sent by Gloria C. Paras, Clerk of Court of the Supreme Court (p. 88, rec.), and that the formal resolution containing the temporary restraining order was received on June 20, 1980 by private respondent through the mails as shown by a certification of the acting postmaster of San Fernando, Masbate, who certified that registered letter No. 58011 addressed to herein private respondent and containing the temporary restraining order was received by him (p. 111, rec.). He further alleged that despite the receipt and knowledge of the aforesaid restraining order, private respondent Bisnar continued to assume the office of mayor and discharged the duties and functions attendant thereto.

In Our resolution of September 4, 1980, We required private respondent Bisnar to comment on the said motion for contempt. On November 28, 1980, private respondent Bisnar filed his comment on petitioner's motion for contempt which was noted in this Court's resolution of December 4, 1980. In said resolution, the Court also considered the aforesaid comment as answer to the petition and this case submitted for decision.

On February 26, 1981, this Court, acting on the telegrams sent by Cpl. Leander Cantonjos, Integrated National Police Command; Rev. Infante, VFP Chaplain; and Manuel Domingo of San Fernando Irrigation Association, all dated February 20, 1981, stating that the aforesaid restraining order was defied and ignored and that violence and tension have already started in San Fernando, Masbate, directed the Court Administrator to check as to the truth of the above allegations.

In a report dated March 27, 1981, Court Administrator Lorenzo Relova, informed this Court that both petitioner Mogueis and respondent Bisnar are holding office in the same building but in separate rooms with PC soldiers detailed as their security; that respondent Bisnar is presently performing the functions of mayor of San Fernando, Masbate, and he does not deny having received the restraining order, although he received it after he had already taken his oath of office on May 2, 1980, thus he claims that the acts sought to be restrained had already been consummated.

Petitioner Mogueis, on one hand, alleges that he was elected mayor by a majority of two (2) votes and was proclaimed on January 31, 1980 and he is awaiting the decision of the case by the Supreme Court; and that while there is confusion in the community and a feeling of tension, there is, however, no violence as reported.

I

The pivotal issue to be resolved in the instant case is whether or not the respondent Commission on Elections acted with grave abuse of discretion, amounting to lack of jurisdiction, in entertaining and proceeding with Pre-Proclamation Case No. 372 and promulgating therein questioned resolutions Nos. 9449 and 9552.

WE hold that under the premises, respondent Commission on Elections committed a grave abuse of discretion.

It is undisputed, as alleged by petitioner Mogueis, that he was duly proclaimed on January 31, 1980 as mayor of San Fernando, Masbate by the Municipal Board of Canvassers. On February 7, 1980, respondent Bisnar filed an election protest against petitioner before the Court of First Instance alleging the tampering of the election returns of Voting Centers Nos. 3-A and 4-A. However, on February 11, 1980, or four (4) days after he filed his election protest with the Court of First Instance of Masbate, private respondent Bisnar filed a petition with the respondent Commission on Elections seeking to nullify the canvass and proclamation of petitioner herein also invoking the same grounds on which his election protest is predicated, which was docketed as Pre-Proclamation Case No. 372.

While it is true that under Section 175 of the 1978 Election Code, the Commission on Elections is the "sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory," the aforesaid case, now subject of the instant petition, cannot be considered a pre-proclamation controversy for the reasons herein below stated.

WE consider the fact that after the proclamation of petitioner Mogueis on January 31, 1980, private respondent Bisnar immediately resorted to the remedy of filing a regular election protest, which he filed on February 7, 1980 with the Court of First Instance of Masbate; consequently, the Court of First Instance of Masbate acquired jurisdiction over the controversy to the exclusion of the Commission on Elections, before which the so-called pre-proclamation petition was filed only four days later -- on February 11, 1980. This is consistent with the established rule that: "Once a court of first instance has acquired jurisdiction by virtue of the filing of an election protest, all questions relative thereto will be decided in the case itself and not in another proceeding before a

different forum" (Filart vs. Comelec, L-35154, Oct. 26, 1973, 53 SCRA 457, 473; Reyes vs. Reyes, L-28476, Jan. 31, 1968, 22 SCRA 485; Acain vs. Board of Canvassers, L-16445, May 23, 1960, 108 Phil. 165). Explaining the rationale of the above doctrine in Reyes vs. Reyes, supra, Mr. Chief Justice Enrique M. Fernando, then Associate Justice, stated that --

"x x x There can be no more appropriate disposition of a dispute of this character than a recognition of the prior competence of a court of justice whenever an election protest has been filed to determine who of the parties is entitled to the position in controversy. It would be conducive to confusion and conflict in authority if under the circumstances, as above disclosed, the Commission on Elections would still be considered as having the residual power to interfere with a pending election protest. Such an undesirable result should be avoided and the Acain holding if referred to, as respondent Commission on Elections did, would serve such purpose."

It is true that private respondent Bisnar subsequently filed on February 8, 1980 (one day after he filed on February 7, 1980 his election protest) a manifestation with the Masbate Court of First Instance wherein he stated that the filing of his election protest is to be taken and understood as without prejudice to his filing of a petition for the annulment of the proclamation of petitioner Mogueis before the Commission on Elections. But, aside from the fact that it was rather belated, the same appears to be an afterthought on the part of private respondent Bisnar that merits no consideration at all.

It may also be added that having availed of an election protest before the Court of First Instance of Masbate, instead of properly raising a pre-proclamation controversy before the Commission on Elections, private respondent Bisnar is deemed estopped from filing a petition with the Commission on Elections. His actuation is not only a recognition of petitioner's proclamation as the duly elected municipal mayor but also that the case is not proper as a pre-proclamation controversy.

Moreover, private respondent's petition was filed only on February 11, 1980 with the Commission on Elections, after the January 30, 1980 local elections and after the proclamation of petitioner Mogueis on January 31, 1980 and after respondent Bisnar filed an electoral protest on February 7, 1980. Under such circumstances, We must adhere to the doctrine that "after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable" (Aguinaldo vs. Comelec, G.R. No. 53953, Feb. 5, 1981; Arcenas vs. Comelec, G.R. No. 54039, Nov. 28, 1980; Singco vs. Comelec, G.R. No. 52830, Nov. 28, 1980).

The foregoing vital facts distinguish the instant petition from the Olfato case (G.R. No. 52749, March 31, 1981), which was a pure -- not a hybrid --- pre-proclamation proceeding, as it was filed on February 2, 1980 by therein respondent Lirio or three (3) days prior to the proclamation on February 5, 1980 of therein petitioner Olfato.

There is no prejudice whatsoever that could be caused to private respondent Bisnar because he could still prove the alleged tampering, alteration and falsification of election returns as well as the existence of discrepancies in the returns in the election protest which he himself had filed on February 7, 1980 with the Court of First Instance of Masbate, and to which petitioner Mogueis had filed on February 18, 1980 an answer with a counter-protest. It is, to Our mind, the appropriate remedy. For, "it would save the time and energy of the litigants as well as respondent Commission, and eventually this Court in view of its appellate jurisdiction, if the matter were passed upon in an election protest or quo warranto petition in the lower court, the office involved being that of municipal mayor" (Arcenas vs. Comelec, supra; Venezuela vs. Comelec, G.R. No. 53532, July 25, 1980).

Again, in the more recent case of Mitmug vs. Comelec (G.R. No. 54082, March 24, 1981), Mr. Chief Justice Fernando, speaking for the Court, declared that "an election protest should settle the matter conclusively once and for all, instead of the parties being caught in the procedural meshes of a pre-proclamation controversy."

II

With respect to the motion for contempt, it appears that respondent Bisnar had already assumed the office of mayor of San Fernando, Masbate before he received the restraining order dated June 5, 1980. Since the said restraining order merely restrained respondent Bisnar "from assuming the office of mayor" and did not require him to vacate the same in case he had already assumed the office, it would seem that he cannot be held in contempt of court.

The alleged contemptuous remark of respondent Bisnar referring to the fact that "if ever there was any restraining order at all it was a mere scrap of toilet paper," which claim of petitioner is supported by the affidavit of 30 residents, is denied by re-spondent Bisnar, whose denial is also supported by 61 residents. Under such a situation, the contempt charge is not tenable.

To repeat, petitioner Francisco C. Mogueis Jr. took his oath of office on March 3 or 15, 1980, after he was duly proclaimed as the duly elected mayor of San Fernando, Masbate on January 31, 1980.

WHEREFORE, THE PETITION IS HEREBY GRANTED, THE QUESTIONED RESOLUTIONS OF RESPONDENT COMMISSION ON ELECTIONS ARE HEREBY SET ASIDE, AND RESPONDENT CESAR AL. BISNAR IS HEREBY ORDERED TO SURRENDER THE OFFICE OF MAYOR OF SAN FERNANDO, MASBATE TO PETITIONER FRANCISCO C. MOGUEIS JR., WITHOUT PREJUDICE TO THE CONTINUANCE OF THE ELECTORAL PROTEST FILED BY RESPOND-ENT BISNAR ON FEBRUARY 7, 1980 WITH THE COURT OF FIRST INSTANCE OF MASBATE. NO COSTS.

THIS DECISION IS IMMEDIATELY EXECUTORY.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Aquino, J., dissents because no grave abuse of discretion was committed by the Comelec in issuing the questioned resolutions.

Concepcion, Jr., and Fernandez, JJ., on leave.

Abad Santos, J., concurs. This is another case where the Commission on Elections issued flip-flopping resolutions within a period of about a week. Resolution No. 9264 of February 27, 1980 suspended the effects of the proclamation of petitioner; Resolution No. 9330 of February 28, 1980 lifted the suspension; and Resolution No. 9449 of March 6, 1980 restored the suspension imposed by the first resolution. Capriciousness is manifest.

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