

**LIBERATO T. BACAYO, PETITIONER, VS. HON. MELECIO A. GENATO,
JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS
OCCIDENTAL, BRANCH III, AND EMIGDIO REGALADO,
RESPONDENTS.**

G.R. No. 56293. April 15, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

In G. R. No. 56293, petitioner Liberato T. Bacayo challenged the jurisdiction of the then respondent Court of First Instance of Misamis Occidental, Branch III, Oroquieta City, in amending its order of February 4, 1981, despite its having given due course to the appeal and having ordered the forwarding of the records to the COMELEC.

In G. R. No. 64924, the same petitioner in G. R. No. 56293 wants Us to set aside the decision, dated March 28, 1983, of the respondent Commission on Election (COMELEC), to grant a reception of expert evidence on the alleged tampered ballots, to declare him as the official candidate of the Kilusang Bagong Lipunan (KBL) for the position of mayor of the municipality of Aloran, Misamis Occidental, and to credit in his favor the votes cast for the KBL on straight party or block voting.

Petitioner Liberato T. Bacayo and private respondent Emigdio S. Regalado were candidates for the office of the mayor in the aforementioned municipality in the January 30, 1980 elections. Both ran under the umbrella of the Kilusang Bagong Lipunan Party. On January 31, 1980, the Municipal Board of Canvassers proclaimed petitioner as the duly elected mayor of Aloran, Misamis Occidental, with 3,982 votes as against 3,890 for private respondent, or with a 92 votes lead.

On February 2, 1980, private respondent filed a petition, docketed as PP Case No. 113, with the COMELEC seeking the annulment of the votes cast in favor of petitioner in voting Centers Nos. 8 to 33 of Aloran on the ground of massive and rampant vote-buying activities allegedly committed by petitioner Bacayo. Said petition was denied on February 26, 1980 for the reason that the issues raised were proper in an election protest.

Thereupon, on March 4, 1980, respondent Regalado filed an election protest with the then Court of First Instance of Misamis Occidental, docketed as Election Case No. 3473. The protested voting centers were reduced to ten (10), namely: Voting Centers Nos. 3, 6, 7, 8, 10, 18, 22, 23, 24 and 36. Grounds of the protest were rampant and massive vote-buying, terrorism and misappreciation of the ballots committed by the Citizen's Election Committee.

Petitioner, instead of filing an answer and/or counter-protest, filed a motion to dismiss upon the grounds that the petition was filed out of time and that the court has no jurisdiction to hear the case. The said motion was denied by the respondent court for lack of merit. Petitioner appealed the order of denial before this Court in G. R. No. 54209 by way of certiorari, prohibition and mandamus with a prayer for issuance of a writ of preliminary injunction. The petition was dismissed for lack of merit on July 17, 1980.

Meanwhile, the respondent court, not having been restrained by this Court, proceeded to hear the election protest.

Despite failure of petitioner to file an answer, the trial court allowed him to present rebuttal evidence.

On January 31, 1981, the respondent court, after hearing, recounting and/or revision of the ballots in the ten (10) protested voting centers, rendered a decision in favor of private respondent declaring him as the elected mayor of Aloran, Misamis Occidental with plurality of 20 votes.

On February 4, 1981, petitioner filed a Notice of Appeal and Appeal Bond of P120.00. On the same date, respondent court gave due course to and approved the appeal of petitioner and directed the Clerk of Court to forward all records and exhibits to the COMELEC in Manila.

On February 5, 1981, private respondent filed a motion for execution of judgment pending appeal and, thereafter, on February 6, 1981, he filed a motion to modify and/or amend the order of February 4, 1981 in the sense that the appeal bond filed by petitioner was not sufficient to answer for the damages and costs and/or expenses incurred by private respondent in protesting his election. Further, private respondent prayed for a writ of execution pending appeal. Petitioner filed his opposition thereto.

On February 9, 1981, respondent court issued its Special Order, requiring petitioner to post a cash bond of P20,000.00, or a property or surety bond in a sum not less than P30,000.00 in favor of private respondent. Likewise, private respondent was ordered to file the same amount of bond in favor of petitioner to answer for damages which may be caused upon the latter by virtue of the execution pending appeal. This Order of February 9, 1981 was elevated to Us in G. R. No. 56293. Despite private respondent's deposit of P20,000.00 cash bond, the writ of execution was never implemented due to the restraining order We issued on March 3, 1981.

On March 28, 1983, respondent COMELEC rendered a decision sustaining the judgment of the herein respondent court declaring private respondent as the duly elected mayor of Aloran, Misamis Occidental.

Hence, these petitions which We find to be devoid of merit.

The Special Order of February 9, 1981 which is the subject matter of G. R. No. 56293 was issued within the period of appeal and, therefore, the trial court could still make unsubstantial amendments in order to protect and preserve the rights of the parties. In this case, the modified order refers only to the increased amount of appeal bond from P120.00, the appeal bond in ordinary cases, to P20,000.00 which will answer for the cost and/or expenses for the protest and for the damages being claimed by private respondent. Further, the order for the issuance of a writ of execution pending appeal was likewise validly entered considering that no supersedeas bond was filed by petitioner to stay execution of judgment pending appeal.

In the determination of the issues raised in G. R. No. 64924, a review of the concrete factual basis is prayed for but which We are not inclined to grant unless there was patent misappreciation of evidence by the trial court or administrative bodies or tribunals, or that the decision of the latter is contrary to the evidence presented, or that the rulings are tainted with grave abuse of discretion amounting to a denial of due process. The findings of facts by the trial court, undisturbed by the COMELEC in its decision of March 28, 1983, that —

"x x x there was no such evidence of tampering, prima facie evidence was absent, instead, these witnesses of Protestee Liberato Bacayo confirmed that there were ballots containing mix-voting (political party, group or aggregation written in the box for party voting and the name of Protestee in the space for mayor). These statements of the witnesses of protestee alone would contradict the contention of the Protestee." (p. 31, Rollo)

deserve full consideration and respect by this Court.

As held in the case of *Garcia vs. Court of Appeals*, 36 SCRA 582, "an election protest involves public interest. So, in an election protest the determination of whether a ballot is valid or invalid should be left exclusively to the

court or electoral tribunal taking cognizance of the election case, either during the trial or on appeal, as the case may be." Thus, in cases of this nature, We are only called upon to act on purely questions of law.

Otherwise stated, the issues raised in G. R. No. 64924 are factual and were already raised and passed upon by both the trial court and the COMELEC, which are in better positions to assess the evidence presented.

ACCORDINGLY, the petitions in G. R. Nos. 56293 and 64924 are hereby Dismissed, for lack of merit.

The temporary restraining order issued by this Court on March 31, 1981 is hereby Lifted.

With costs.

SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Abad Santos, Melencio-Herrera, Plana, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Teehankee, J., no part.

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

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