

JOSE RODRIGUEZ, PETITIONER, VS. THE HON. COMMISSION ON ELECTIONS AND NIEVES GUIANG, RESPONDENTS.

G.R. No. 61545. December 27, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner Jose Rodriguez and private respondent Nieves V. Guiang were the two candidates for the office of municipal mayor of Bugallon, Pangasinan in the January 30, 1980 local elections. Rodriguez was the official candidate of the Nacionalista Party while Guiang ran under the banner of the Kilusang Bagong Lipunan party.

After the counting and canvass of votes cast in all the municipality's voting centers, Rodriguez was credited with 6,626 votes as against Guiang's 6,491 votes. On the basis of the 135 vote majority, the municipal board of canvassers proclaimed Rodriguez the mayor on January 31, 1980.

On February 6, 1980 respondent Guiang filed an election protest with the Court of First Instance of Pangasinan alleging voting irregularities, fraud, terrorism, and vote-buying; inaccuracy and unfair counting and tallying of votes; and misappreciation of ballots.

On December 4, 1981, the court of first instance rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds for the protestant as against the protestee and hereby declares the protestant NIEVES V. GUIANG, the duly elected Municipal Mayor of the Municipality of Bugallon, Province of Pangasinan at the local elections held last January 30, 1980, and qualified to assume and serve the term of office therefor which ends six years from the first Monday of March 1980, as provided in Section 7 of Batas Pambansa Blg. 51, and to enjoy all the privileges and emoluments appurtenant thereto.

"By virtue hereof, NIEVES V. GUIANG has the right to assume the position of Municipal Mayor of Bugallon, Pangasinan, immediately.

"The protestee, JOSE "JOE" RODRIGUEZ, is hereby ordered to immediately deliver and relinquish to the protestant, NIEVES V. GUIANG the functions, prerogatives, privileges and emoluments and all other consequences of the office of municipal mayor of Bugallon, Pangasinan unto the said NIEVES V. GUIANG, under penalty of law.

"The protestee is likewise ordered to pay the protestant the amount of P5,095.00 as incidental expenses, P5,000.00 as attorney's fees and costs.

"Protestee's counter-protest and claim for damages, incidental expenses and other expenses are dismissed for lack of merit.

"The Clerk of Court is hereby ordered to immediately notify his Excellency, President Ferdinand E. Marcos of the Republic of the Philippines of this Decision upon its finality, in accordance with Sec. 198 of the 1978 Election Code."

Petitioner Rodriguez filed his notice of appeal on December 16, 1981. The appeal bond was paid on December

29, 1981 and approved by the court on January 5, 1982.

The records of the case having been transmitted to the Commission on Elections, Rodriguez was notified in a March 5, 1982 letter received by his counsel on March 18, 1982, that he had 30 days from notice to file his appellant's brief.

On April 19, 1982, Rodriguez filed a motion for extension of 30 days within which to file brief. The Commission granted him an extension of 15 days from April 19, 1982 or until May 3, 1982 to file his brief. However, the commission order was received by Rodriguez only on May 5, 1982.

On the same date he received the COMELEC order giving him only up to May 3, 1982 or two days earlier to file brief, Rodriguez moved to reconsider the order and reiterated his earlier request for a 30-day extension.

The COMELEC did not act upon this motion. Instead, the COMELEC Electoral Contests Adjudication Office issued a certification that as of May 5, 1982, no appeal brief had been filed while the COMELEC Cash Division certified that as of May 7, 1982, no appeal fee had been paid.

On May 11, 1982, respondent Guiang filed a "Motion To Dismiss Appeal and to Affirm and Order That CFI Decision To Be (sic) Final and Executory."

On May 18, 1982, Rodriguez filed the appellant's brief in the required number, furnishing the adverse party copies thereof. On May 19, 1982, Rodriguez paid the appeal fee and on May 21, 1982 filed his opposition to the motion to dismiss.

The motion to dismiss and the opposition thereto were set for oral argument on July 29, 1982. Memoranda were filed by the petitioner and the private respondent.

On August 17, 1982, the COMELEC dismissed the appeal. It also resolved the motion for reconsideration for further extension of time to file brief by simultaneously denying it with the appeal.

We are constrained to set aside the order which dismissed the appeal on an exceedingly strict application of a technical rule govern-ing extensions of time.

Section 12 of Resolution No. 1456 provides as one of the grounds for the dismissal of an appeal the failure of the appellant to file copies of his brief within the time provided by COMELEC rules. That this is not a hard and fast rule admitting of no exceptions is evidenced by the Commission on Elections giving the petitioner an extension of time to file his brief in this case.

The petitioner asked for an extension of 30 days to file his brief. The Commission gave him 15 days. The issue, therefore, is not a failure to file brief within the original period provided by the rules but the failure to file brief within an extension of time, cut in half by the Commission from that prayed for by the petitioner. Parenthetically, an extension could very well be for ten days, fifteen days as that granted in this case, twenty days, thirty days or perhaps even longer depending on the facts and circumstances of each particular case. There is no showing in the records of this petition why the extension of time to file brief should be 15 days and only 15 days and why it may not be 30 days as prayed for.

The Commission on Elections is authorized by Section 192 of Presidential Decree No. 1296 to prescribe rules to govern the procedures and other matters relating to election contests. The Election Code calls for rules that would provide a simple and inexpensive procedure for the expeditious disposition of election contests.

We support the concern of the Commission on Elections that election controversies be speedily settled. This was the thrust in the many cases under the 1935 Constitution where this Court interpreted liberally COMELEC powers

to give it broad discretion which in the initial "statistically improbable" case, it felt it did not possess, so that unduly long election contests would not frustrate the expression of the people's will. (See *Lagumbay v. Comelec*, 16 SCRA 175; *Espino v. Zaldivar*, 21 SCRA 1204; *Aquino v. Comelec*, 22 SCRA 288; *Pacis v. Comelec*, 25 SCRA 377; *Abes v. Comelec*, 21 SCRA 1252; *Ong v. Comelec*, 22 SCRA 241; *Balindong v. Comelec*, 27 SCRA 567; *Ligot v. Comelec*, 31 SCRA 45).

However, this concern for the expeditious disposition of election controversies does not free the COMELEC from compliance with established principles of fairness and justice and the adjudication of cases not on technicality but on their substantive merits, principles which this Court has consistently observed and which all appellate tribunals are required to follow.

Section 15, Rule 46 of the Rules of Court governing procedure in the Court of Appeals provides that "(e)xtension of time for filing briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended." In *Rago, et al. v. Court of Appeals, et al* (G.R. No. L-7016, May 30, 1955) where the petitioners vigorously objected to an extension of 45 days to file brief as violative of a Court of Appeals rule allowing only one extension of not more than 30 days to do so, we ruled:

"Under Section 16, Rule 48, extensions of time for the filing of briefs are not generally allowed, except for good and sufficient cause. This rule applies both to the Court of Appeals and the Supreme Court. This rule provides that extensions of time for the filing of briefs may be given for good and sufficient cause, which indicates that the court may grant as many extensions as may be asked if good reasons are shown. While the Court of Appeals adopted as a matter of policy that only one extension of not more than thirty days would be allowed for the filing of briefs, that cannot be considered as mandatory. It being merely directory, its application can be liberalized when circumstances so warrant. As it appears that the Court of Appeals has not made an improper use of its discretion, we hold that the errors assigned are not well taken."

The same thing is true in the payment of appeal fees. A justifiable delay may be condoned where the records of the case show that the merits of the election appeal should be considered and passed upon. In *Lopez v. Court of Appeals* (75 SCRA 401) where the motion for extension of time was filed after the last day to pay docket fee had passed, we ruled that "the payment of appeal docket fee is not a requirement for the protection of the prevailing party and non-compliance therewith within the time prescribed causes no substantial prejudice to anyone." And only recently, in *De Guzman v. Cuevas* (G.R. No. 28717, June 29, 1982) we re-iterated the same exception to the rule. In this case, the petitioner has explained why he filed the appeal fees the day following the filing of the brief within the prayed for extension of time. The petitioner asked that rules on appeal be relaxed "in order that this case may be decided on the merits as to serve public interest, rather than terminate this case on procedural technicalities without knowing, who of the two, the protestee-appellant or the protestant-appellee, is the real choice of the Bugallon electorate." Petitioner cites *Juliano v. Court of Appeals* (20 SCRA 808):

"Well settled is the doctrine that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. And also settled is the rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. (*Gardiner v. Romulo*, 26 Phil. 521; *Galang v. Miranda*, 35 Phil. 269; *Jalandoni v. Sarcon*, G.R. No. L-6496, January 27, 1962; *Macasunding v. Macalañgan*, G.R. No. L-22779, March 31, 1965; *Cauton v. Commission on Elections*, G.R. No. L-25467, April 27, 1967.) In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. (*Ibasco v. Ila*, G.R. No. L-17512, December 29, 1960.) An appeal in an election contest shall proceed as in a criminal case and the appellant court may take notice of every error in fact or in law committed by the lower court. (*Mendoza v. Mendiola*, 53 Phil. 267, 270; *Cababasada v.*

Valmoria, 83 Phil. 112, 114.)

Significantly, the petitioner was led by the respondent Commission itself to pay the appeal fee within an extension of time.

The March 5, 1982 letter of the Manager, Electoral Contests Adjudication Office, which letter was received by the petitioners counsel on March 18, 1982 reads:

"G r e e t i n g s:

"You are hereby notified that the records of the above entitled case are now in this Office and the same are at your disposal for the preparation of your brief for the appellant. Appellant's brief shall be in fifteen (15) legible copies and filed with this Office within THIRTY (30) DAYS from receipt hereof with the ORDER of the lower Court appended thereto and together with PROOF OF SERVICE of THREE (3) copies thereof upon the protestee-appellant. An appeal fee of Two Hundred Fifty (P250.00) Pesos shall be paid upon the filing of the brief.

"Manila, March 5, 1982."

(Emphasis supplied.)

The COMELEC should not dismiss the appeal on the basis of a technicality which was partly, if not primarily, of its own making.

There is no reason why the rule that a reasonable extension of time should be allowed for good and sufficient cause, followed not only by the Court of Appeals but this Court as well, should not also apply whenever the Commission on Elections acts in an appellate judicial capacity.

We went to great lengths in *Pongasi v. Court of Appeals* (71 SCRA 614) to explain why this should be so. We stated:

"Verily, the granting of extension of time for filing briefs is a matter of judicial discretion; however, as stressed by this Court more than once, that discretion is to be exercised soundly and judiciously with an understanding of human limitations and pressing circumstances which warrant a relaxation, nay, even a suspension of the rules.

"In *Cucio vs. Court of Appeals*, (*Cucio vs. Court of Appeals*, L-38020, per Teehankee, J., May 24, 1974, 57 SCRA 64) where respondent Court denied 'for lack of sufficient merit and not having taken advantage of the last chance' an urgent motion for a third and last extension of time (30 days) to submit printed brief for defendant-appellant and ordered the dismissal of the appeal, notwithstanding the plea of (a) advanced age (67 years) of counsel and his recurrent attacks of arthritis, (b) the distance of 150 kilometers required to be travelled from his office in Guimba to Manila for the preparation of the brief, requiring more than the normal three hours because of circuitous and muddy roads due to their being under construction in addition to the pressure of other professional work, and (c) the filing of the brief well within the third and last extension timely sought by appellant, this Court held that the appellate court acted with grave abuse of discretion in denying petitioners' reasonable request based upon good and sufficient cause, citing former Chief Justice Makalintal's admonition in *Limon vs. Candido*, L-22418, April 28, 1969, that the exercise of judicial discretion 'should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby.'

"In the very recent case of *Obut vs. Court of Appeals, et al.* (L-40535, April 30, 1976, per Muñoz Palma, J.) this Court ordered the reinstatement of the appeal of petitioner after considering the attendant circumstances such as (a) the appeal involved three cases the records of which were voluminous, (b) petitioner therein

claimed that the preparation of the consolidated brief involved a comparative study of many exhibits, and (c) two of the cases appealed by petitioner were criminal in nature which carried in each case a penalty of imprisonment from 1 year and 1 day to 3 years, 6 months and 20 days of prison correccional, plus fine of P1,000.00, holding that a 'too-rigid application of the pertinent provisions of the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.'

"In *Barrido vs. Court of Appeals, et al.* (L-38945-47, September 12, 1974, 50 SCRA 168, per Chief Justice Makalintal) appellants, after having been granted an extension of 90 days within which to file their brief, again asked in a formal motion for another extension of 30 days. The appellate court denied the motion and dismissed the appeal, after 'considering that the appellants have already been given a total of 135 days within which to file the brief,' and that the failure to file the brief was due to 'inexcusable negligence.' On appeal, this Court held that

'The particular circumstances obtaining (in this case) call for the relaxation of the rule that the client must bear the adverse consequence of counsel's failure to observe the procedural requirements prescribed by the Rules of Court. Two of the petitioners have been convicted of grave offenses and sentenced to long prison terms. Through no fault of their own their appeal would fail not on the merits but on a procedural lapse of counsel which was not entirely inexcusable. The ends of justice will be better served if their appeal is reinstated.'

Nor has the Court confined this conclusion to appealed cases which are criminal in nature. In *Monticines, et.al. vs. Court of Appeals, et al.* (L-35913, September 4, 1973, 53 SCRA 14, per Fernando, J; See also *Sollorano vs. Court of Appeals*, L-28018, Feb. 25, 1975, 62 SCRA 478; *Ordoveza vs. Raymundo*, L-45155, July 31, 1936, 63 Phil. 275; *Padasas, et al. vs. Court of Appeals, et al.*, L-38071, April 25, 1974, 56 SCRA 619) involving a land controversy, the Court of Appeals likewise dismissed the appeal for failure of appellants to file their brief within the period fixed by it. In their motion for reconsideration and to admit printed brief, appellants' counsel alleged that he had to attend to the properties left by his deceased father in the provinces of Laguna and Quezon to ascertain the extent of the damage caused by the floods, as a consequence of which he suffered from acute rheumatism and slight cardiac trouble necessitating complete physical and mental rest, and that was the cause of his failure to 'finalize, polish and type' in time the draft of the brief he had prepared for his clients. On appeal, this Court ordered the Court of Appeals to allow the appeal to take its due course on the ground that the case 'falls squarely within the concept of *caso fortuito* or *force majeure*.' In the words of Mr. Justice Enrique M. Fernando.

'(t)his is one instance where a failure of this particular litigation being passed upon by an appellate court may be fraught with undesirable consequences. . . What is before the courts is a land controversy. Defendants-appellants rely on long-continued possession. The parcels they occupy may be considered minuscule, but that appears to be all the worldly goods with which they are endowed. x x x One however, is entitled to the full protection of the law, whether at the stage of trial or on appeal. . .'(Italics supplied)"

xxx xxx xxx

"We repeat what We said in *Obut vs. Court of Appeals, et al.*, supra, that 'what should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities.'" (Italics supplied)

"In dispensing justice Our action must reflect a deep insight into the failings of human nature, a capability for making allowances for human error and/or negligence, and the ability to maintain the scales of justice happily well-balanced between these virtues and the application of the law."

Since the early case of *Gardiner v. Romulo* (26 Phil. 521), this Court has made it clear that it frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the

votes in an election but also the correct ascertainment of the results. This bent or disposition continues to the present.

There are other considerations that constrain us to set aside the questioned order of dismissal.

The appellant's brief was filed on May 18, 1982. The order dismissing the appeal was rendered on August 17, 1982. In the three months time it took to decide the appeal on a technicality, the COMELEC could just as easily have decided it on its merits. The twenty-one (21) assignments of errors involving 794 ballots were summarized as follows:

"I - Selective adjudication. The lower Court restrained Protestee-Appellant to object to or contest the invalid ballots of the Protestant on those ballot boxes which were opened and revised but which were not counter protested. (This is unprecedented and a departure to existing rules)

"II - The lower Court restrained Protestee-Appellant to claim valid votes cast for him in protested voting centers, but which were not covered by the counter protest. (Also unprecedented)

"III - Invalidating ballots of the Protestee-Appellant containing accidental or innocent marks such as lines or cross indicating desistance to vote. (164 ballots)"

A perusal of the brief shows that important factual and legal issues are raised. The ninety-nine pages brief was already before the Commission when it deliberated on the dismissal. The respondent Commission could very well appreciate whether or not the appeal was frivolous or interposed for dilatory purposes. As we stated in *Purisima v. Salonga* (15 SCRA 704) election law and rules are to be interpreted and applied in a liberal manner so as to give effect, not to frustrate, the will of the electorate.

WHEREFORE, the petition is hereby granted. The COMELEC resolution dated August 17, 1982 is set aside. The case is remanded to the COMELEC for the adjudication of the appeal on its merits. Our temporary restraining order dated September 2, 1982 insofar as it restrains the implementation and enforcement of the August 17, 1982 resolution in EAC No. 1-82 is made permanent.

SO ORDERED.

Fernando, C.J., Makasiar, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Relova, JJ., concur.

Teehankee, J., concurs, petitioners filed timely his motion for 30-day extension on April 19, 1982, since April 17 and 18 fell on Saturday and Sunday (non-working days) and his brief was also filed timely on May 18, 1982, within the requested 30-day extension falling due on May 19, 1982.

Aquino, J., see dissent.

Concepcion, Jr., J., on official leave.

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DISSENTING OPINION

AQUINO, J.:

I dissent. Jose Rodriguez had thirty days from March 18, 1982 or up to April 17 within which to file his appellant's brief. On April 19, when he asked for a 30-day extension, the period for filing his brief had already expired. It could no longer be extended. As his brief was filed on May 18, 1982, it was filed late. The Comelec

did not err in dismissing his appeal.

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