

RANCISCO MOGUEIS, JR., PETITIONER, VS. HONORABLE COURT OF APPEALS AND CESAR AL BISNAR, RESPONDENTS.*G.R. No. 66547. May 07, 1985*

Ponente: PLANA, J.

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Petitioner Francisco Mogueis, Jr. ran as the official candidate of the Bicol Saro (BS) for Mayor of San Fernando, Masbate in the elections of January 30, 1980. won by a majority of only two votes over his closest rival, herein respondent Cesar Al Bisnar(KBL candidate), and was accordingly proclaimed Mayor-elect. He subsequently assumed office.

Bisnar filed an election protest in the then Court of First Instance of Masbate, contesting the election results in eleven voting centers (Nos. 1, 1-A, 2-A, 3-A, 4-A, 7, 8, 17, 21, 22 and 23) for alleged irregularities, including fraud, not only in the voting process but also in the canvass and counting of votes. (Special Proceedings No. 2988.) In his answer, Mogueis denied the allegations in the protest and, by way of counter-protest, assailed the election results in five voting centers (Nos. 5, 8-A, 11,14 and 24) on the ground of vote-buying, threats, coercion and fraud. Specifically, the allegation of fraud was—

"That in the following precincts: 5, xxx, 8-A, xxx, 11, xxx, 14,xxx, and 24. xxx, block votes or ballots where Bicol Saro or BS were written on the proper places were not credited to Protestee, votes for Protestee were not read or counted for him; or that marked or illegal votes were appreciated and counted for Protestant; and valid votes for Protestee were not appreciated and counted for him xxx;" (Rollo, p. 10.)

In the course of the proceedings, the trial court ordered the parties to present evidence in support of their respective allegations to justify the opening of the ballot boxes. After hearing, it issued an order dated September 24, 1982 directing the opening of the ballot boxes in six of the eleven voting centers subject of Bisnar's protest (Nos. 1-A, 3-A, 4-A, 21, 22 and 23). None of the ballot boxes in the voting centers covered by Mogueis' counter-protest was ordered to be opened. Mogueis sought a reconsideration of the order, but his motion was denied on August 9, 1983.

Imputing grave abuse of discretion to the trial court, and alleging that he had sufficiently established a prima facie case for the opening of the counter-protested ballot boxes, Mogueis elevated the matter to the Intermediate Appellate Court on a petition for certiorari, prohibition and mandamus. However, the petition was dismissed for lack of merit, the Appellate Court being of the opinion that since the questioned order was arrived at by the trial court after conducting a hearing, certiorari would not lie to correct the alleged error which could only be one of judgment and not of jurisdiction.

The dismissal is now the subject of the instant petition which was posted on March 26, 1984 but received in this Court on April 5, 1984.

Petitioner maintains that respondent Intermediate Appellate Court erred in dismissing his petition because the questioned order of the trial court was issued in grave abuse of discretion amounting to lack of jurisdiction as it

denied him the best evidence to prove his allegation of fraud and irregularities in his counter-protest.

We find the petition meritorious.

Under the 1978 Election Code, the Commission on Election shall prescribe the rules to govern the procedure and other matters relating to election contests. (Sec. 192.) Pursuant to this provision, the COMELEC on February 26, 1980 promulgated Resolution No. 1451 prescribing the Rules for Election Contests Involving Elective Municipal and Municipal District Officials. —

"Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Court, the interest of justice so demands, it shall immediately order the xxx ballot boxes xxx ballots and other documents used in the election to be brought before it xxx" (Sec. 9.)

"xxx For the revision of ballots, the court shall appoint a committee composed of a chairman and two members xxx" (Sec. 10.)

The foregoing rules were apparently taken from Section 175 of the Revised Election Code of 1947 which read:

"SEC. 175. Judicial counting of votes in contested elections. — Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but not more than fifteen pesos for every election precinct which they may completely revised and report upon."

Said the Court in *Pareja vs. Narvasa*, 81 Phil. 22 at 26:

"The above-quoted provision (Sec. 175) contemplates two cases in which 'the court shall immediately order xxx that the ballot boxes xxx be produced before it and that the ballots be examined and the votes recounted'; first, 'upon the petition of any interested party,' and second, 'or motu proprio, if the interests of justice so require.'"

"Under the first case, the mere 'petition of any interested party,' of course, in accordance with the pleadings, is by itself enough. The limitations implicit in the pronouncements made by the Supreme Court as to the effect that the allegations of the protest must show the need of counting and examining the ballots have been eliminated by the drafters of the Election Code. Their evident purpose was to cut short all technicalities and controversies on legal niceties standing in the way of a prompt examination and counting of the ballots and early disposal of protests, and to avoid the recurring petitions filed with the Supreme Court."

Even before the *Pareja* case, this Court had repeatedly ruled that where election fraud and other irregularities are alleged in a protest, they constitute sufficient ground for opening the ballot box and examining the questioned ballots. The purpose is minimize delay and ensure prompt disposal of election cases. (*Hontiveros vs. Allavas*, 24 Phil. 632; *Cecilio vs. Belmonte*, 48 Phil. 243; *Cuevas vs. Lesaca*, 56 Phil. 25.) As observed by former Chief Justice Concepcion in the subsequent case of *Astorga vs. Fernandez*, 19 SCRA 331 at 335: "To require parol and other evidence on said alleged irregularity before opening said ballot box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary."

Despite formal changes over the years, the rules have remained substantially the same, geared toward the same end, which is the expeditious disposition of election cases.

In the instant case, the trial court disregarded the law and went through a needless exercise when it conducted a

hearing at which the protestant and counter-protestant were required to prove the necessity of opening the questioned ballot boxes and examining the ballots therein, which has spawned the protracted delay that the law and the principle underlying it precisely intend to forestall. But the fact that the trial court conducted the said hearing has not abated the right of petitioner, as counter-protestant, to insist upon the opening of the ballot boxes and the examination of the ballots he has challenged on the ground of fraud. This is especially so because of his allegation in the petition which reads:

"While it is true that the trial court conducted a hearing, the same was not necessarily 'for and against the opening of particular ballot boxes.' The hearings were conducted to determine the truth or falsity of some other grounds of the protest, viz., existence of Hying voters, tampered election returns, threats, coercion and terrorism which did not require the opening of the ballot boxes involved in the protest. But assuming, arguendo, that the hearings were also for the opening or not of particular ballot boxes, the best evidence to prove the allegations in petitioner's counter-protest was denied him, since clearly the best evidence consists in the identification of the illegal ballots counted for protestant-respondent and the legal ballots for protestee-petitioner not credited to him."

The foregoing allegation has not been denied.

WHEREFORE, the decision of respondent Intermediate Appellate Court dated December 28, 1983 in AC-G.R. NO. SP-01740 is reversed and the orders of the trial court dated September 24, 1982 and August 9, 1983 are set aside. The Regional Trial Court of Masbate where Special Proceedings No. 2988 is pending, is directed to order forthwith the opening of the ballot boxes in the voting centers subject of petitioner's counter-protest for examination and recount of the ballots therein. This decision is immediately executory.

SO ORDERED.

Melencio-Herrera, Relova, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.

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