

LOURDESITO DEFERIA, PETITIONER, VS. HONORABLE EDGARDO L. PARAS, HONORABLE VICENTE V. MENDOZA, HONORABLE LUIS A. JAVELLANA, JUDGE ALFREDO HILARIO, AGUSTIN DESUYO, PAT. VALENCIANO...

G.R. No. 71843. March 12, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari is directed against respondent Appellate Court's Decision (in AC-G.R. Nos. SP-05751-05752) denying due course to the Petition for Certiorari filed by petitioners involving election contests at Barangay Mabini, Cadiz City, Negros Occidental, on the ground that the Certiorari Petition should have been brought before the Regional Trial Court; as well as against the Resolution denying reconsideration of the Decision.

In the election for Barangay officials of Barangay Mabini in Cadiz City, held on May 17, 1982, Antonio Zaldariaga was proclaimed elected as Barangay Captain, and Rodolfo Contrevida, Henry Palma, Samuel Celis, John Monfort, Anecito Dionson and Jesus Deferia were proclaimed elected as Barangay Councilmen. On May 27, 1982, Lourdesito Deferia, defeated candidate for Barangay captain, instituted an election contest/protest in Case No. 686 of the City Court of Cadiz City against Antonio Zaldariaga and others; while Gil Ore and Alexander "Sandy" Gabriel, defeated candidates for councilmen, instituted an election contest/protest in Case No. 687 in the same City Court, against the six proclaimed councilmen and others. The others, included as respondents, were alleged to have participated in irregularities committed during the voting and canvassing. Among such others was Mario Hechanova, a policeman, the allegations in whose respect were:

"5. That the herein petitioner hereby impugns the election of respondent Antonio Zaldariaga (in Case No. 686, and respondents – Barangay councilmen elect, in Case No. 687) on the grounds of massive fraud and irregularities specifically committed as follows:

x x x x

"e) Respondent Pat. Mario Hechanova, while in Police uniform with side arm, entered the premises of Precinct 56 of Brgy. Mabini, Cadiz City, and while the counting of votes were going thereon, ordered the Board of Tellers to stop the counting without any valid nor legal authority to do so.

"f) Respondents, Chairman and members of the Board of Tellers for Precinct No. 56, despite full knowledge of the lack of authority of said Pat. Mario Hechanova to order cessation of counting, actually stopped and placed all the ballots, including those that were already counted, inside the ballot box and allowed the same to be carted away by a Toyota Land Cruiser driven by one of the herein respondents, 'Bondying Zaldariaga', a brother of candidate for Barangay Captain, Antonio Zaldariaga.

"g) Respondent 'Bondying' Zaldariaga carted and drove away with the ballot box for Precinct 56 without the proper nor legal authority to do so."

At the time the election contests were filed, Judge Adelino H. Ledesma was presiding over the City Court of Cadiz City. On May 29, 1982, he inhibited himself for the reason that respondent Mario Hechanova is related to him, although he did not mention the degree of kinship. There-after, Judge Ledesma was appointed to the sole Regional Trial Court in Cadiz City and Judge Alfredo P. Hilario took cognizance of the election contests.

In the election contests, the defeated candidates relied mainly on "the massive fraud and election irregularities which occurred specifically in Precincts 56 and 57".[1] In addition to the irregularities attributed to Pat. Hechanova, they alleged:

"a) Respondent, Gilda Jaranilla, as Chairman of the Board of Tellers for Precinct 57 of Brgy. Mabini, allowed several voters to vote more than once.

"b) Respondent Andong Caceres as member of the Board of Tellers for the same precinct erased something from the ballot of a female voter. The same respondent, likewise, gave another female voter two ballots to fill up. The same respondent after the previous incidents continually gave three (3), four (4), five (5) ballots each to other selected voters.

"c) Respondent Conrado Montelibano as member of the Board of Tellers for the same Precinct 57 gave ten (10) ballots to a certain Docer Camposa.

"d) Respondent Docer Camposa, voter of the same Precinct 57, voted for ten (10) times.

x x x x x x x x"[2]

and prayed for the annulment of the election results in Precincts 56 and 57 of Barangay Mabini.

After two witnesses of theirs had testified, petitioners submitted a Motion for the reopening of the ballot boxes in Precinct 57 for the purpose of presenting the ballots as evidence in support of the allegations in the affidavits and testimonies of witnesses that some voters voted more than once. The Motion was denied on July 18, 1984 with Judge Hilario stating:

"Adduced from the evidence of the petitioner, there is no showing that irregularities in the manner of voting was committed in Voting Center No. 56.

"While there is evidence that voting more than once was allowed in Voting Center No. 57, this cannot be taken outright as election irregularities considering that the Revised Election Code permits voters to assist an illiterate to vote without limit."[3] (paragraphing supplied)

Denying a Motion for Reconsideration on October 26, 1984, Judge Hilario said:

"Adduced from the evidence on record, the petitioner failed to name and identify the person or persons alleged to have voted more than once, this bare assertion of election irregularities by respondent are inadequate if not speculative. And noteworthy, no challenge or protest have been lodged before the Citizen Election Committee as required by the Election Code of 1978."[4]

On December 4, 1984, petitioners elevated their cause on Certiorari before respondent Appellate Court praying that the aforequoted Orders be declared null and void as being in grave abuse of discretion. Petitioners chose to institute the proceedings before respondent Appellate Court because the sole Regional Trial Court in Cadiz City was presided by Judge Ledesma, who could be expected to inhibit himself.

Respondent Appellate Court dismissed the Petition on the ground that recourse should have been addressed to the Regional Trial Court in Cadiz City.

Technically, respondent Appellate Court had basis to refrain from assuming jurisdiction because the Regional

Trial Court was the proper tribunal to which the Petition for Certiorari should have been presented.[5] The Regional Trial Court Judge would then have inhibited himself and this Court could have designated another Judge to take cognizance of the case.

However, since the policy of the law is to abbreviate proceedings in election contests involving Barangay officials, we have resolved to delve into the merits of the Petition and to hold that Municipal Trial Court Judge Alfredo Hilario gravely abused his discretion in denying petitioners' Motion for reopening of the ballot boxes in question.

In an election contest the ballot boxes may be opened.[6] And, to justify their opening the general averment of fraud and irregularities should be substantiated by competent evidence.[7] Before the Municipal Trial Court, petitioners presented two witnesses who testified that a certain Docer Camposa voted ten (10) times or more than once in Voting Center No. 57. The claim seems to be substantiated by oral testimonies of petitioners' witnesses. In fact, the said Court, in its Order, dated July 18, 1984, stated that "there is evidence that voting more than once was allowed in Voting Center No. 57" but it assumed that said voter assisted illiterate voters apparently even without evidence to this effect. The opening of ballot boxes is thus warranted. The absence of a challenge or protest before the Citizens Election Committee should not militate against the opening of ballot boxes in the interest of attaining the broader objective of ascertaining the will of the electorate and protecting the integrity of the elections.

ACCORDINGLY, the Orders, dated July 18, 1984 and October 26, 1984, of respondent Judge Alfredo P. Hilario of the Municipal Trial Court of Cadiz City in Civil Cases Nos. 686 and 687 are hereby SET ASIDE. Petitioners' Motion for the re-opening of the ballot boxes in Voting Center No. 57 at Barangay Mabini, Cadiz City, is granted. The case is hereby remanded to the Municipal Trial Court at Cadiz City for the opening of the ballot boxes in Voting Center No. 57 so that a determination of these election contests can be better had by the proof afforded by the ballots contained therein.[8] Thereafter, the said Municipal Trial Court shall resolve the election contests with deliberate speed. No costs.

SO ORDERED.

Teehankee, Acting C.J., Plana, Gutierrez, Jr., and Patajo, JJ., concur.

[1] Folio 29.

[2] Rollo, pp. 14 & 15.

[3] Folio 31.

[4] Folio 33.

[5] Section 4, Rule 65, Rules of Court.

[6] *Cauton vs. COMELEC*, 19 SCRA 911 (1967).

[7] *Geromo vs. COMELEC*, 118 SCRA 165 (1982).

[8] see *Mandac vs. Samonte*, 49 Phil. 284 (1926).

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