

EMILIO C. MACIAS, II, PETITIONER, VS. HON. COMMISSION ON ELECTIONS AND HERMINIO G. TEVES, RESPONDENTS.*G.R. No. 85642. February 12, 1990*

Ponente: PARAS, J.

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Questioned in this petition for certiorari are the orders of the respondent Commission on Elections (COMELEC), dated September 12, 1988 and October 26, 1988 denying petitioner's (then protestee) motion to dismiss and motion for reconsideration, respectively. Petitioner contends that respondent COMELEC, through its First Division, acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction, in issuing said questioned orders.

Petitioner Emilio Macias II and private respondent Herminio G. Teves both ran for the position of Governor of Negros Oriental during the elections held on January 18, 1988. Petitioner was proclaimed Governor by the Provincial Board of Canvassers. The proclamation was actually held, as found by respondent COMELEC, on January 25, 1988 (p. 82, rollo), although the "Certificate of Canvass and Proclamation" evidencing said proclamation was dated January 24, 1988. (Annex "B-11," p. 30, Rollo)

On January 24, 1988, or the day before the proclamation, private respondent filed a "Pre-Proclamation Protest Appeal" with the COMELEC, docketed as SPC Case No. 88-212. On January 26, 1988, or the day after the proclamation, private respondent also filed with respondent Commission a "Petition to Set Aside, Suspend the Effects of or Annul the Proclamation of [the Petitioner] as Governor of Negros Oriental." The COMELEC dismissed the private respondent's aforesaid protest and petition on January 30, 1988 and denied his Motion for Reconsideration on April 26, 1988.

On February 4, 1988, the private respondent filed a post-election protest with the COMELEC, docketed as Election Protest Case No. 88-14, and paid the docket fee of P200.00, as charged by the Electoral Adjudication Board. On February 12, 1988, the private respondent filed an "Amended Petition-Protest." The petitioner filed his Motion to Dismiss to the Original Petition and Amended Petition on February 23, 1988 and March 3, 1988, respectively. Thereafter, the parties filed their respective memoranda. On September 12, 1988, the COMELEC issued an Order denying the petitioner's motion to dismiss. The COMELEC also denied the petitioner's motion for reconsideration on October 26, 1988.

Hence, this Petition.

In a resolution dated February 28, 1989, the petition was given due course and the parties were required to file simultaneously their respective memoranda.

Petitioner raises the following issues:

"(1)

Whether or not the election protest was seasonably filed; and

"(2)

Whether or not the failure of herein private respondent to allege in his original petition that it was being filed "by a candidate who has duly filed his certificate of candidacy" and to pay the correct filing fee of P300.00 at the time of the filing of the original petition are jurisdictional defects which deprived the COMELEC of jurisdiction over his election protest." (p. 131, Rollo)

Petitioner submits that the COMELEC should not have taken cognizance of the private respondent's election protest since the same was filed on February 4, 1988 or eleven (11) days after the petitioner's proclamation on January 24, 1988. Petitioner anchors his first argument on the following:

(a)

the date typewritten in the "Certificate of Canvass and Proclamation" which is the best evidence is January 24, 1988; and

(b)

that under Sec. 250 of BP 881, the Omnibus Election Code of the Philippines, a sworn petition contesting the election of any regional, provincial or city official, shall be filed within ten (10) days after the proclamation of the results of the election. (*italics ours*)

Petitioner's submission holds no water. As found by respondent COMELEC, the date of proclamation was January 25, 1988. Undeniably, this issue is factual, and as we have held time and again, "where the issues raised are factual, the same is not reviewable by the Supreme Court on certiorari (*Cuerdo v. Commission on Audit*, 166 SCRA 657). And therefore, the election protest filed on February 4, 1988, which is the tenth (10th) day from the date of proclamation, January 25, 1988, was well — within the prescribed period. Assuming however that the date of proclamation was January 24, 1988, the filing of the protest on February 4, 1988 was still within the period since private respondent filed a "Pre-Proclamation Protest Appeal" on January 24, 1988 effectively suspending the running of the period for filing an election protest as provided for in Section 248, Article XX of BP 881:

"Sec. 248. Effect of filing petition to annul or to suspend the proclamation. — The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings."

Anent the second issue, petitioner argues that because private respondent failed to allege in his original petition that he "duly filed a certificate of candidacy," respondent COMELEC did not acquire jurisdiction over the election protest.

Petitioner's argument is untenable. As correctly held by the COMELEC in the assailed Decision:

"The Commission, First Division, notes that the above-mentioned legal provision does not require that a protest must state that it is being filed "by a candidate who has duly filed his certificate of candidacy." Sec. 250 of the Omnibus Election Code only provides that a protest must be filed by a candidate who "has duly filed his certificate of candidacy and has been voted for the same office", without requiring in said section that this matter must be specifically alleged in the protest. The Commission however notes that the original petition and/or protest filed by petitioner on February 4, 1988, pertinently alleges that the petitioner was a candidate for the position of Governor in the Province of Negros Oriental and was voted upon by the electorate during the

election held on January 18, 1988. The Commission rules that this allegation substantially complies with the requirement of Sec. 250 of the Omnibus Election Code. Be that as it may, the defect if any in the preliminary allegations of the original protest pertinent to the requirements of Section 250 of the Omnibus Election Code was cured when protestant filed his amended protest on February 12, 1988, before an answer could be filed by any protestee. Protestee's answer was filed only on February 23, 1988, as disclosed by the records of this Commission. (pp. 3-4, Order; pp. 84-85, Rollo)

Petitioner also contends that because private respondent only paid P200 instead of P300 as required under COMELEC Resolution No. 1996, the Commission should have dismissed the protest. The COMELEC countered that the "blame however, should not be laid on the protestant for failure to pay in full the P300.00 docket fee on February 4, 1988, when the protest was filed considering that the docket clerk of the Electoral Contest Adjudication Department charged the said amount which protestant duly paid. Injustice will result if the instant protest is dismissed for failure of the protestant to pay the full amount of P300.00 docket fee on February 4, 1988, when he filed the original protest considering that it was not protestant's fault that there was underpayment of the docket fee." (p. 84, Rollo) We agree with the contention of the respondent COMELEC.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED for lack of merit and the Temporary Restraining Order issued on December 27, 1988 is LIFTED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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