

GIL C. GALLARDO, PETITIONER, VS. FRANCO F. RIMANDO, RESPONDENT.*G.R. No. 91718. July 13, 1990*

Ponente: GRINO-AQUINO, J.

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The issue in this petition for certiorari is the timeliness of the petitioner's election protest.

Petitioner Gil C. Gallardo and private respondent Franco F. Rimando were rival candidates for the Office of Municipal Mayor of Naguilian, La Union, in the local elections of January 18, 1988. On January 19, 1988, Rimando was proclaimed the winner over Gallardo by a margin of 12 votes.

On January 22, 1988, Gallardo filed in the Commission on Elections (COMELEC) a petition to annul the proclamation of Rimando. On December 8, 1988, the COMELEC dismissed the petition.

On December 12, 1988, Gallardo appealed the COMELEC's final resolution to this Court (Gallardo vs. COMELEC, G.R. No. 85974). On June 23, 1989, he received the Supreme Court's final resolution dated May 30, 1989, dismissing his petition for review. On June 30, 1989, he filed an election protest entitled, "Gil C. Gallardo vs. Franco F. Rimando," Case No. 4-Bg, Municipal Election Protest, in the Regional Trial Court, Branch 33 at Bauang, La Union (p. 17, Rollo).

Rimando filed a motion to dismiss the protest on the ground that it was not filed within ten (10) days after the proclamation of the results of the election fixed in Sec. 51 of the Omnibus Election Code. Judge Avelino Quintos of the Regional Trial Court at Bauang, La Union, denied the motion to dismiss.

Rimando filed a motion for reconsideration of Judge Quintos' order. He insisted that the election protest was late because the COMELEC's decision in the pre-proclamation case had become final and executory under Section 246 of the Omnibus Election Code, which provides:

"SEC. 246. Summary proceedings before the Commission. – All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court." (Underscoring ours, Sec. 55, BP 697.)

He argued that since the COMELEC's decision dated December 8, 1988, dismissing Gallardo's petition to annul the proclamation of Rimando, became final five (5) days later, on December 14, 1988, the filing of the election contest by Gallardo on June 30, 1989, was tardy.

Following Rimando's argument, Judge Quintos issued an order on September 19, 1989 (p. 34, Rollo), setting aside his previous order of August 3, 1989 and dismissing the election protest. On November 24, 1989, he denied Gallardo's motion for reconsideration (Annex H, p. 39, Rollo; Annex K, p. 52, Rollo).

On December 7, 1989, Gallardo filed a notice of appeal (Annex L, p. 57, Rollo) and on December 18, 1989, he

filed this petition for review (p. 58, Rollo).

The question is: Was Gallardo's election protest filed on time? It was.

Section 251 of the Omnibus Election Code provides:

SEC. 251. Election contests for municipal offices. - A sworn petition contesting the election of a municipal officer shall be filed with the proper regional trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election."

(Art. XVIII, Sec. 190, 1978 EC.)

Rimando was proclaimed by the Municipal Board of Canvassers as the duly elected municipal mayor of Naguilian on January 19, 1988. Two (2) days later, or on January 21, 1988, Gallardo filed in the COMELEC a pre-proclamation petition to annul the proclamation. Hence, only eight (8) days of the reglementary period for filing an election protest remained. This period was suspended during the pendency of the pre-proclamation case, i.e., while it was pending in the COMELEC and in the Supreme Court, until Gallardo received on June 23, 1989 the Supreme Court's final resolution dismissing his petition for review of the COMELEC's decision in said case. Section 248 of the Omnibus Election Code provides:

"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."

After June 23, 1989, the eight-day remainder of the reglementary period to file an election protest resumed running. The deadline was July 1, 1989. Gallardo seasonably filed his election protest on the 7th day - June 30, 1989.

In the light of Section 248, the lower court's statement that "the running of the ten-day period to file an election protest is not stopped by protestant's elevation to the Supreme Court of the COMELEC's decision" in the pre-proclamation case, is not correct. The appeal by certiorari to the Supreme Court, which is a right secured to the defeated party under Section 7, Title A, Article IX of the 1987 Constitution, is part of the annulment proceeding. The case is not over until the Supreme Court has given its verdict, hence, the computation of the ten-day-period for filing an election contest does not begin until that verdict has been handed down by the Supreme Court.

Judge Quintos also misinterpreted Section 246 of the Omnibus Election Code which provides that the decision of the COMELEC in a pre-proclamation controversy, etc. "shall be executory after the lapse of five (5) days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court." He erroneously thought that because the Comelec's decision in the pre-proclamation case became final and executory (absent a restraining order from the Supreme Court), the appellant lost his right to file an election protest under Section 251 of the Omnibus Election Code. That is not so.

The right of the prevailing party in a pre-proclamation case to the execution of the COMELEC's decision (i.e., to be proclaimed and to assume office) after the lapse of five (5) days from receipt of said decision by the losing party, unless restrained by the Supreme Court, does not bar the losing party from filing an election contest within the ten-day period fixed in Section 251. The absence of a restraining order from the Supreme Court simply allows the prevailing party to be proclaimed and assume office.

His proclamation and assumption of office does not end the contest for the COMELEC in a pre-proclamation

controversy determines only the following issues:

- (a) The legality of the composition or proceedings of the board of canvassers;
- (b) Whether the canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Section 233, 234, 235 and 236 of this Code;
- (c) Whether the election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) Whether substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. (Sec. 243, Omnibus Election Code.)

Its decision, therefore, is not a bar to the election contest where the task of the regional trial court is to ascertain the results of the election or the true will of the voters by a proper evaluation of the votes cast, and by determining the integrity of the ballots and recounting them.

In "Gallardo vs. COMELEC," G.R. No. 85974, May 30, 1989, the appellant did not ask this Court to restrain the execution of the COMELEC decision for the simple reason that his opponent, Rimando, had already been proclaimed even before the pre-proclamation case was filed by him (Gallardo) in the COMELEC. That circumstance, was precisely the reason why the COMELEC dismissed the pre-proclamation case, for the rule is that after the winning candidate has been proclaimed and assumed office, a pre-proclamation petition does not lie against him (Casimiro, et al. vs. COMELEC, et al., G.R. Nos. 84462-63, March 29, 1989; and Antonio, et al. vs. COMELEC, et al., G.R. Nos. 84678-79, March 29, 1989).

But, although already proclaimed and installed in office, he may still be unseated: (1) when his opponent is adjudged the true winner of the election by a final judgment of the courts in the election contest (Sec. 251, Omnibus Election Code); (2) when the prevailing party is declared ineligible or disqualified by final judgment in a quo warrant case (Sec. 253, Omnibus Election Code); and (3) when the incumbent is removed from office for cause (Sec. 264, Omnibus Election Code, Secs. 8, 9 and 12, Rep. Act No. 3019).

For all the foregoing, we hold that respondent Judge committed a patent error and a grave abuse of discretion in dismissing Gallardo's timely election protest.

WHEREFORE, the petition for review is granted. The orders dated September 19, 1989 (Annex G, p. 34, Rollo) and November 24, 1989 (Annex K, p. 52, Rollo) of the Regional Trial Court, Branch 33, of Bauang, La Union, in Municipal Election Protest No. 4-Bg. are hereby annulled and set aside. Respondent court is ordered to reinstate said election protest and proceed to trial with dispatch. This decision is immediately executory. Costs against the respondent.

SO ORDERED.

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

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