

JEREMIAS F. DAYO, PETITIONER, VS. COMMISSION ON ELECTIONS AND AMADEO M. GAASIS, RESPONDENTS.

G.R. No. 94681. July 18, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

An election protest was filed in the Municipal Court of Mauban, Quezon on February 5, 1988, by Amadeo Gaasis against Jeremias Dayo in connection with the local elections held on January 25, 1988, where they were both candidates for councilor of the Sangguniang Bayan of Sampaloc, Quezon, with Dayo having been proclaimed by the Board of Canvassers as the 8th member of the Sanggunian (Case No. 07-88). A petition for intervention was filed by Ramon D. Dayo, Mercedes D. Barnes and Rosita Valle, all defeated candidates for the same office, not only against Jeremias Dayo but also against four other candidates. Eventually, those petitions for intervention were dismissed.

The grounds of Gaasis' protest were:

(a) that fraud and irregularity tainted the counting of ballots by the Board of Election Inspectors in Precincts Nos. 3, 6, 12, 14, 15, 17, 17-A and 19 (total of eight [8] precincts) for said Boards illegally read, counted and credited respondents with more than 300 ballots which if recounted, including those illegally excluded and not credited to petitioner, the latter would receive more votes than respondent Dayo; and

(b) that 203 voters in precinct 14 were not allowed to vote.

Dayo denied the material allegations of the petition and, as affirmative defenses, averred that Gaasis' watchers never protested the minutes of the board of election inspectors, which they in fact signed, and, during the canvass of the votes, they did not register any protest.

As counter-protest, Dayo alleged that he could have garnered more votes had not his followers been intimidated by Gaasis and his leaders during the campaign and on election day.

The protest of Gaasis against Dayo (Case No. 07- 88) was, by order of the trial court, consolidated with the protest of Rodolfo S. Obnamia against Agnes Devanadera over the mayorship of Sampaloc, Quezon (Case No. 06-88) "because the two (2) cases raise identical issues emanating from the same set of facts" (p. 8, Rollo). Gaasis did not oppose the motion.

On June 15, 1989, the trial court issued a summary judgment dismissing the protests. It held:

"Under the circumstances, this Court must sustain the motion of the respondent. To begin with, the mere fact that there is admission of the fact that the petitioner had watchers in each of the contested precincts and yet did not record any objection in the Minutes of the Voting and Counting of Votes is reason enough to sustain the respondent because it has been held that objections should not only be written but should be made before the votes reflected in the returns are tallied. *Guiao vs. Comelec*, 137 SCRA 356. Then we have the fact that petitioner never did question the genuineness and due execution of the Minutes of Voting and Counting of

Votes. Since the minutes were made in the performance of official duties, the contents therein are sufficient evidence of the facts therein stated (Geromo vs. Comelec, 118 SCRA 165). The foregoing being clear from the records and have arisen from the availment of a discovery device which this Court is ordained to maximize pursuant to Circular Order No. 13 of the Supreme Court dated July 1, 1987, this Court has sufficient basis to render summary judgment against petitioner." (pp. 43-44, Rollo.)

Gaasis appealed to the COMELEC (EAC No. 41-89) which reversed the trial court and reinstated the protest (Case No. 07-88) filed by Gaasis against Dayo. The latter filed this petition for certiorari alleging that the COMELEC gravely abused its discretion and acted in excess of its jurisdiction -

1. in failing to consider the interrogatories in Protest Case No. 07-88 for being violative of due process, and
2. in setting aside the trial court's summary judgment dismissing Gaasis' election protest.

The petition for review has no merit.

The COMELEC did not abuse its discretion in holding that admissions made by Obnamia in his answers to the interrogatories addressed to him by Devanadera in Protest Case No. 06-88 (in which neither Gaasis nor Dayo was a party), could not be used as basis for a summary judgment dismissing Protest Case No. 07-88 filed by Gaasis against Dayo.

The rule on the use of interrogatories is provided in Section 1, Rule 25 of the Rules of Court which reads as follows:

"Section 1. Interrogatories to parties; Service thereof. ? Under the same conditions specified in Section 1 of Rule 24, any party may serve upon any adverse party written interrogatories to be answered by the party served x x x."

Based on the foregoing rule, public respondent correctly observed "that interrogatories may be used only as between parties to a case" (p. 67, Rollo). Agnes T. Devanadera, respondent in Case No. 06-88 and author of the interrogatories, and herein private respondent Gaasis, protestant in Case No. 07-88, were not adverse parties, despite the consolidation of their cases. Moreover, there is no showing in the records that private respondent either agreed to the adoption of, or was given opportunity to answer, Devanadera's interrogatories. The summary dismissal of Gaasis' election protest against Dayo, based merely on interrogatories where both of them had no participation, clearly constitutes a violation of due process.

That an election protest may not be disposed of by summary judgment, is inferable from the following provision of the Election Code.

"Where the allegations in a protest x x x so warrant, or whenever in the opinion of the court the interest of justice so requires, it shall immediately order x x x that the ballots be examined and the votes counted." (Sec. 255, Omnibus Election Code.)

Summary judgment applies only to ordinary civil actions for the recovery of money claims (Remedial Law Compendium by Regalado, Vol. I, 1986 Edition, p. 209, citing the case of Roque vs. Encarnacion, et al., 50 O.G. 4193). The rules on summary judgment have no application to election protests for "beyond the narrow personal stakes of the opposing candidates, the rights of the electorate, or the people, are involved" (Ong vs. Comelec, 22 SCRA 241; Vda. de Mesa vs. Mencias, 18 SCRA 533; De Leon vs. Guadiz, 104 SCRA 591). Expediency is not an excuse for not pursuing to the maximum the efforts necessary in the ascertainment of the real and actual winner in the election, by examining the best evidence available - the ballots. By rendering a summary judgment, the trial court denied itself the chance to directly scrutinize and appreciate the primary evidence of the true will of the voters - the ballots. Hence, in an election protest, the trial court may not make a finding that there is no

genuine issue to be resolved until and unless it shall have given the protestant a chance to substantiate his protest.

When fraud and irregularities are alleged in the protest and the court believes the interest of justice so requires, it should order that the ballots be examined and the votes counted (Sec. 255 Omnibus Election Code). If the court is not satisfied that the allegations of the protest are sufficient, it should give the protestant an opportunity to prove his allegations, instead of dismissing the protest on the basis of interrogatories taken in another case involving other parties. Allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots (*Moguis Jr. vs. CA & Bisnar*, G.R. No. 66547, May 7, 1985). Evidence of irregularities is not necessary to justify the revision of ballots (*Jaguros vs. Villamor*, 134 SCRA 553). To require parole and other evidence on the alleged irregularities before opening the ballot box, would only give the protestee time and opportunity to delay the settlement of the controversy through lengthy presentation of testimonial evidence and cross-examination (*Astorga vs. Fernandez*, 19 SCRA 331). The trial court committed grave abuse of discretion when it declared, based only on the interrogatories in the companion case (Protest Case No. 06-88) that there is no evidence of fraud or irregularities committed. As wryly observed by the Solicitor General in his Comments on the petition: "there was precisely no evidence of fraud and irregularities on record because the trial court did not give private respondent (the protestant) a chance to substantiate his allegations."

WHEREFORE, finding no grave abuse of discretion in the decision of the COMELEC in Case No. 07-88, the petition for certiorari is dismissed for lack of merit, and the assailed decision is affirmed. Costs against the petitioner..

SO ORDERED.

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

Gutierrez, Jr., J., concurs because of Sec. 2(2), Article IX-C of the Constitution.

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