

ATTY. RAMON J. VELORIA, ENGR. RENATO J. ESPEJO, JESUS O. BANDOLIN, SEGUNDO D. BILLOTE, GERONIMO B. ENRIQUEZ, RODOLFO C. MADRIAGA, AND SOFRONIO L. MANGONON, AND HON. ROMULO E. AB...

G.R. No. 94771. July 29, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This petition for certiorari seeks the nullification of the (1) resolution[1] of the Commission on Elections dated August 2, 1990, and (2) resolution[2] dated March 7, 1990 issued by Judge Santiago Estrella dismissing the election protest filed by the petitioners against the private respondents, Atty. Pedro N. Sales. Engr. Wilfredo E. Soriano, Erlinda C. Tambaoan, Engr. Emilio M. Angeles, Jr., Eleuterio C. Sison, Manuel Ferrer and Santos Sibayan.

The seven (7) petitioners, Ramon Veloria, Renato Espejo, Jesus Bandolin, Segundo Billote, Geronimo Enriquez, Rodolfo Madriaga, and Sofronio Mangonon, as well as the seven (7) private respondents. Pedro Sales, Wilfredo Soriano, Erlinda Tambaoan, Emilio Angeles, Jr., Eleuterio Sison, Manuel Ferrer and Santos Sibayan were candidates for municipal mayor (Veloria and Sales), vice-mayor (Espejo and Soriano) and members of the Sangguniang Bayan of Manaoag, Pangasinan, in the local elections of January 18, 1988.

After the canvass of the election returns on January 31, 1988, the private respondents were proclaimed duly elected to the positions they ran for.

Dissatisfied, the petitioners filed Election Protest No. U-4659 which was raffled to Branch 48 of the Regional Trial Court of Urdaneta, Pangasinan, then presided over by the late Hon. Alfredo de Vera.

Several proceedings were had, and some issues were brought up to the Court of Appeals and this Court for determination.

Finally, the revision of ballots was set on February 26, 1990 by Judge Santiago Estrella, Presiding Judge of Branch 49, Regional Trial Court of Urdaneta, Pangasinan, where the Election Protest No. U-4659 was re-assigned by raffle after Judge Vera's untimely death.

On February 26, 1990, during the scheduled initial revision of the ballots in Precinct No. 22, Barangay Licsi, the private respondents, as protestees, filed a "Motion to Dismiss" on the ground that the RTC had not acquired jurisdiction over the election protest on account of the following:

- (1) that the election protest involves the contests over three (3) different Municipal Offices joined together in one (1) single petition namely: the Office of Municipal Mayor, the Office of Vice Mayor, and the Offices of the Sangguniang Bayan, in wanton violation and clear disregard of the specific and mandatory provisions of Section 2, Rule 35, Part VI of the COMELEC RULES OF PROCEDURE, and/or Section 2, Rule II of Comelec Resolution No. 1451 (Procedural Rules for Election Contests);

(2) that the Election Protest was verified by only four (4) of the seven (7) protestants in violation of Section 6, Rule 35, Part VI of the COMELEC RULES OF PROCEDURE, and/or Section 3, Rule II of Comelec Resolution No. 1451; and

(3) that there is no showing that the protestants paid the requisite filing fees and legal research fees for each interest, also in violation of Section 9, Rule 35, Part VI of the COMELEC RULES OF PROCEDURE, and/or Section 6, Rule IV of the Procedural Rules for Election Contests.

On March 5, 1990, the private respondents filed a Supplemental Motion to Dismiss, alleging as additional ground for the dismissal of the protest that:

(4) the seven (7) protestants representing seven (7) interests or seven (7) election contests or protests failed to make the necessary cash deposit within the period required by this Honorable Court in clear violation of Section 10, subparagraph (b) of Rule 35, Part VI of the COMELEC RULES OF PROCEDURE.

The petitioners-protestants opposed the Motion to Dismiss. On March 7, 1990, Judge Santiago Estrella dismissed the election protest (p. 27, Rollo).

The petitioners received a copy of the court's Resolution on March 15, 1990. However, instead of perfecting an appeal within five (5) days as provided by law, the petitioners filed a Motion for Reconsideration on March 20, 1990.

The protestees opposed the Motion for Reconsideration, and the petitioners filed a Rejoinder.

In the meantime, Judge Romulo E. Abasolo, presiding judge of Branch 47, RTC of Urdaneta, Pangasinan, was assigned to take charge of the cases in Branch 49 in view of Judge Santiago Estrella's detail in Branch 69, Regional Trial Court of Pasig, Metro Manila, by order of this Court.

On March 29, 1990, Judge Abasolo denied petitioners' Motion for Reconsideration. On April 3, 1990, the petitioners (as protestants) filed a Notice of Appeal.

On April 10, 1990, the private respondents filed a "Motion to Dismiss Notice of Appeal" on the grounds, that:

1. the Notice of Appeal was filed out of time in violation of Section 256, Art. XXI of the Omnibus Election code of the Philippines (BP Blg. 881) and/or Section 22, Rule 35, Part VI of the COMELEC Rules of Procedure.
2. the Resolution of the trial court dated March 7, 1990 dismissing the election protest had already become final and executory.

On May 10, 1990, Judge Abasolo gave due course to petitioners' Notice of Appeal.

The private respondents (as protestees) sought recourse in the Commission on Elections (COMELEC) by a petition for Certiorari and Prohibition with a Prayer for a Writ of Preliminary Injunction or Restraining Order (SPR No. 8-90) to annul Judge Abasolo's order giving due course to the appeal.

On May 30, 1990, the Commission en banc issued a Temporary Restraining Order enjoining Judge Abasolo from implementing his Order of May 10, 1990.

On June 14, 1990, the Commission en banc issued the following Order defining the issues:

"After a thorough discussion of the issues, the following crystallized as the only issues to be presented for resolution by the Commission, namely: (1) the issue of whether or not a Motion for Reconsideration in electoral cases is a prohibited pleading; and (2) the parties agreed that in case the answer to the first issue is 'yes,' the notice of appeal was filed out of time and in case the answer is 'no,' the notice of appeal was filed

on time.

"Having agreed on these issues, the parties also agreed to submit the same for resolution on the basis thereof."
(p. 20, Rollo.)

On August 2, 1990, the COMELEC granted the petition for certiorari. The dispositive portion of its resolution reads:

"WHEREFORE, premises considered, the Commission En Banc RESOLVES, as it hereby RESOLVES, to:

"1. GRANT the petition for Certiorari;

"2. Permanently ENJOIN Public Respondent from implementing the order of May 10, 1990; and

"3. ORDER the Court a quo to proceed with the disposition of Election Protest Case No. U-4659 in accordance with the Resolution of March 7, 1990 dismissing the election protest against herein Petitioners." (pp. 22-23, Rollo.)

Hence, this special civil action of Certiorari and Prohibition with prayer for a writ of preliminary injunction and/or temporary restraining order, filed on August 31, 1990 by the petitioners (protestants below), pursuant to Rule 39, Section 1, COMELEC RULES OF PROCEDURE (on Review of decisions of the COMELEC) attacking:

1. the Resolution of the COMELEC En Banc dated August 2, 1990; and
2. the Resolution of Judge Santiago Estrella dated March 7, 1990 dismissing the election protest of the petitioners.

Without giving due course to the petition, we required the respondents to comment.

After the latter had filed their Comments (pp. 37-63, 110-124, Rollo), the petitioners asked for extensions of time to reply (which the Court granted but they did not file the promised pleading).

As grounds of this petition, the petitioners allege that the questioned resolutions are not only erroneous but were issued by the COMELEC "with grave abuse of discretion tantamount to lack of jurisdiction."

There is no merit in this petition for review for the COMELEC correctly found that the petitioners' appeal from the court's order dismissing their election protest was indeed tardy. It was tardy because their motion for reconsideration did not suspend their period to appeal. The petitioners' reliance on Section 4, Rule 19 of the COMELEC RULES OF PROCEDURE which provides:

"Sec. 4. Effect of motion for reconsideration on period to appeal. - A motion to reconsider a decision, resolution, order, or ruling when not pro-forma, suspends the running of the period to elevate the matter to the Supreme Court."

is misplaced. The "motion for reconsideration" referred to above is a motion for reconsideration filed in the COMELEC, not in the trial court where a motion for reconsideration is not entertained.

The rule applicable to decisions or orders of the court in election protests is Section 20, Rule 35 of the COMELEC RULES OF PROCEDURE which provides:

"Sec. 20. Promulgation and Finality of Decision. - The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained." (Emphasis supplied.)

The above COMELEC rule implements Section 256 of the Omnibus Election Code quoted below:

"Sec. 256. Appeals. - Appeals from any decision rendered by the regional trial court under Section 251 and

paragraph two, Section 253 hereof with respect to quo-warranto petitions filed in election contests affecting municipal officers, the aggrieved party may appeal to the Intermediate Appellate Court [now Commission on Elections] within five days after receipt of a copy of the decision. No motion for reconsideration shall be entertained by the Court. The appeal shall be decided within sixty days after the case has been submitted for decision." (Underlining ours.)

Petitioners admitted receipt of the resolution of the trial court dated March 7, 1990 on March 15, 1990 but they filed a notice of appeal on April 3, 1990 only, instead of on or before March 20, 1990 (five days from receipt of the trial court's decision), because they filed a motion for reconsideration which, as previously stated, is prohibited by Section 256 of the Omnibus Election Code and Section 20, Rule 35 of the COMELEC RULES OF PROCEDURE.

The COMELEC, therefore, correctly ruled that the motion for reconsideration filed by the petitioners in the trial court on March 20, 1990 did not suspend the period to appeal since a "motion for reconsideration" is prohibited under Section 256 of the Omnibus Election Code.

Since the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege that must be exercised in the manner and according to procedures laid down by law (*Borre vs. Court of Appeals*, 158 SCRA 560), and its timely perfection within the statutory period is mandatory and jurisdictional (*Delgado vs. Republic*, 164 SCRA 347; *Sembrano vs. Ramirez*, 166 SCRA 30; *PCI Bank vs. Ortiz*, 150 SCRA 380; *Quiqui vs. Boncaros*, 151 SCRA 416), Judge Abasolo gravely abused his discretion when he gave due course to the petitioners' tardy appeal from his predecessor's (Judge Santiago Estrella's) resolution of March 7, 1990 dismissing the petitioners' election protest. Said resolution had become final and unappealable.

Nevertheless, we must grant this petition for certiorari for the COMELEC does not possess jurisdiction to grant the private respondents' petition for certiorari. This Court, through Mme. Justice Ameurfina A. Melencio-Herrera, in the consolidated cases of "*Garcia, et al. vs. COMELEC, et al.*" (G.R. No. 88158) and "*Tobon Uy vs. COMELEC and Neyra*" (G.R. Nos. 97108-09) promulgated on March 4, 1992, ruled that the COMELEC has not been given, by the Constitution nor by law, jurisdiction to issue writs of certiorari, prohibition and mandamus:

"In the Philippine setting, the authority to issue Writs of Certiorari, Prohibition and Mandamus involves the exercise of original jurisdiction. Thus, such authority has always been expressly conferred, either by the Constitution or by law. As a matter of fact, the well-settled rule is that jurisdiction is conferred only by the Constitution or by law. (*Orosa, Jr. vs. Court of Appeals*, G.R. Nos. 76828-32, 28 January 1991; *Bacalso vs. Ramolete*, G.R. No. L-22488, 26 October 1967, 21 SCRA 519). It is never derived by implication. Indeed, 'while the power to issue the writ of certiorari is in some instance conferred on all courts by constitutional or statutory provisions, ordinarily, the particular courts which have such power are expressly designated' (*J. Aquino's Concurring Opinion in Pimentel*, supra, citing 14 C.J.S. 202; *Underscoring ours*).

"Thus, our Courts exercise the power to issue Writs of Certiorari, Prohibition and Mandamus by virtue of express constitutional grant or legislative enactments. To enumerate:

"(1) Section 5[1], Article VIII of the 1987 Constitution conferred upon this Court such jurisdiction;

"(2) Section 9[1] of Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, to the Court of Appeals (then Intermediate Appellate Court);

"(3) Section 21[1] of the said Act, to Regional Trial Courts;

"(4) Section 5[1] of Republic Act No. 6734, or the Organic Act for the Autonomous Region in Muslim Mindanao, to the newly created Shari' ah Appellate Court; and

"(5) Article 143[e], Chapter I, Title I, Book IV of Presidential Decree No. 1083, or the Code of Muslim Personal Law, to Shari' a District Courts.

"Significantly, what the Constitution granted the COMELEC was appellate jurisdiction. The Constitution makes no mention of any power given the COMELEC to exercise original jurisdiction over Petitions for Certiorari, Prohibition and Mandamus unlike in the case of the Supreme Court which was specifically conferred such authority (Art. VIII, Sec. 5[1]. The immutable doctrine being that jurisdiction is fixed by law, the power to issue such Writs can not be implied from the mere existence of appellate jurisdiction. Just as implied repeal of statutes are frowned upon, so also should the grant of original jurisdiction by mere implication to a quasi-judicial body be tabooed. If appellate jurisdiction has to be statutorily granted, how much more the original jurisdiction to issue the prerogative Writs?"

In view of this pronouncement, an original special civil action of certiorari, prohibition or mandamus against a regional trial court in an election contest may be filed only in the Court of Appeals or in this Court, being the only courts given such original jurisdiction under the Constitution and the law.

WHEREFORE, the petition for certiorari is GRANTED. The Resolution dated August 2, 1990, of the COMELEC en banc is annulled for lack of jurisdiction. The Resolution dated March 7, 1990 of RTC Judge Santiago Estrella, dismissing the election protest of the petitioners is AFFIRMED and declared final and executory. Costs against the petitioners.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., in the result.

Paras, J.,- retired.

Feliciano, J., in the result, on the basis of Bidin, J.'s dissent in the Garcia-Tobon Uy cases.

Bidin, J., in the results, consistent with my dissent in the Garcia-Tobon Uy cases, I submit the Comelec has certiorari jurisdiction over decisions of the RTC in election cases.

[1] En Banc Resolution dated August 2, 1990 in SPR No. 8-90 with Commissioner Dario C. Rama as Ponente and Commissioners Haydee B. Yorac, Alfredo Abueg, Leopoldo Africa, Andres R. Flores and Magdara Dimaampao, Concurring (pp. 18-23, Rollo).

[2] Resolution in Election Protest No. U-4659 before the Regional Trial Court, Branch 49, Urdaneta, Pangasinan, with Santiago Estrella as Presiding Judge.

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