

**CONRADO C. LINDO, PETITIONER, VS. COMMISSION ON ELECTIONS,
OCTAVIO D. VELASCO AND THE HON. ENRIQUE ALMARIO,
PRESIDING JUDGE, RTC, BRANCH XV, TRECE MARTIRES CITY,
RESPONDENTS.**

G.R. No. 95016. February 11, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari with a prayer for a temporary restraining order assails the decision dated June 6, 1990 of the Commission on Elections (COMELEC), First Division, in EAC No. 6-90 entitled "Octavio D. Velasco, Protestant versus Conrado C. Lindo, Protestee, reversing the decision of the trial court and declaring private respondent Octavio D. Velasco the duly elected mayor of the municipality of Ternate, Cavite; and the resolution dated August 23, 1990 of the COMELEC, En Banc denying petitioner's motion for reconsideration.

Petitioner Conrado Lindo and private respondent Octavio D. Velasco were candidates for the position of municipal mayor of Ternate, Cavite, in the January 18, 1988 local elections. After canvass, the Municipal Board of Canvassers of Ternate proclaimed petitioner Lindo as the elected mayor of Ternate on January 19, 1988.

On March 22, 1988, Velasco filed an election protest with the Regional Trial Court, Branch XV, with station at Trece Martires City, which was docketed as EPC No. NC-1 entitled, "Octavio D. Velasco, Protestant, versus Conrado C. Lindo, Protestee." Velasco protested the results of the election in seventeen (17) of the twenty two (22) precincts in the municipality. On April 18, 1988, Lindo filed his answer to the protest. His answer did not interpose any counter-protest (p. 40, Rollo)

A physical examination of the ballots and a recount of the votes from Precincts Nos. 1, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5, 6, 8-A and 10-A were conducted before the trial court without any controversy. On August 2, 1988, the ballot boxes from precincts nos. 6--A and 8 were presented to the court for examination and recounting. It was observed that the ballot boxes from these precincts did not have self-locking metal seals and the envelopes containing the valid ballots were partially opened. As the ballots were examined, Lindo objected to thirty-three (33) ballots from precinct No. 6-A and fifty-seven (57) ballots from precinct No. 8, alleging that these ballots were spurious. The contested ballots were sent to the NBI for examination. (p. 95, Rollo of G.R. 88337).

In its report dated October 12, 1988, the NBI found 32 contested ballots from precinct No. 6-A and 50 contested ballots from precinct No. 8, to be valid ballots.

The ballot boxes from precincts Nos. 9, 9-A, 10 and 11 were also found in the same condition as the ballot boxes from precincts Nos. 6-A and 8. Lindo likewise objected to the recounting of votes from these precincts and the ballots objected to were sent to the NBI for examination. Recounting of the votes from these precincts were withheld by order of the trial court pending examination of the ballots by the NBI. The record does not disclose the findings of the NBI on the validity of the ballots from these precincts.

On November 7, 1988, Lindo through counsel, moved in open court to exclude the ballots from the four (4) precincts (Precincts No. 9, 9-A, 10 and 11) above-mentioned. The chairmen of these precincts, when subpoenaed by the court, testified that the ballot boxes did not have self-locking metal seals and the envelopes containing the ballots were tampered (pp. 59-63, Rollo). After hearing the testimonies of the respective chairmen of the four controverted precincts, the trial court issued an order on November 11, 1988 excluding the ballots from these precincts from the revision. Velasco filed a motion for reconsideration of the order which was denied on December 9, 1988.

On appeal by Velasco, the COMELEC, En Banc, set aside the order of the trial court on the ground that examination of the ballots and the recounting of the votes from contested precincts are mandatory under the circumstances pursuant to Section 255 of BP 881 (Omnibus Election Code). It likewise directed the trial court to proceed with the revision of the ballots from these four (4) controverted precincts.

A petition for certiorari was later filed before this Court by Lindo impugning the order of the COMELEC and docketed as G.R. No. 88337. On October 17, 1989, We dismissed the petition and affirmed the decision of the COMELEC.

Revision of the ballots from precincts No. 9, 9-A, 10 and 11 was scheduled by the trial court on January 26, 1990. Upon the resumption of the revision, Lindo moved for its suspension until such time that a new Committee on Revision was formed, alleging that he (petitioner) had no representative in the existing revision committee. This motion was denied by the trial court and no further action was taken by Lindo. The revision resumed and was terminated on January 30, 1990.

On February 6, 1990, the trial court rendered a decision proclaiming Lindo the winner with a plurality of twenty-nine (29) votes. The dispositive portion of the trial court's decision reads:

"Out of the seventeen (17) electoral precincts in the above-entitled election contest, the sum total number of valid votes received by:

"Protestant Velasco is 1,157 votes while Protestee Conrado Linda got 1,186 votes.

"WHEREFORE, the winner of this contest is candidate Conrado Lindo by 29 votes margin over candidate Octavio Velasco."

"x x x" (p. 37, Rollo).

On February 12, 1990, counsel for Lindo, Atty. Amado Montajo, was served a copy of the decision while attending the hearing of another case. Velasco's counsel was also served a copy of the decision by mail which he received on February 16, 1990.

Velasco filed a Notice of Appeal to the COMELEC on February 17, 1990. His main argument was that the winner in an election protest case should be determined not only on the basis of the results obtained from the contested precincts but from the results of both the contested and uncontested precincts. Lindo, on the other hand, filed a Notice of Appeal on February 26, 1990, claiming that he knew of the decision only on February 22, 1990.

On February 26, 1990, the trial court gave due course to the appeal of Velasco and denied due course to Linda's appeal on the ground that it was filed out of time. It likewise directed its clerk to forward the records of the case to the COMELEC.

On March 26, 1990, a month after the trial court denied due course to his notice of appeal, Lindo, filed a motion with the COMELEC praying that respondent trial court's order denying due course to his notice of appeal be set aside (p. 8, Rollo). Velasco's appeal and Lindo's motion were consolidated in one case and docketed as EAC No.

6-90 of the COMELEC.

On June 6, 1990, after hearing the arguments of the parties and after the parties submitted their respective memoranda, the COMELEC (First Division) rendered its decision on Velasco's appeal and Lindo's motion, the dispositive portion of which, reads:

"ACCORDINGLY, the decision appealed from declaring as 'winner of this contest, candidate Conrado Lindo by 29 votes (sic) margin over candidate Octavio D. Velasco' is hereby reversed. Protestant Octavio Velasco is hereby declared the duly elected mayor of the Municipality of Ternate, Cavite in the elections held on January 18, 1988 by a plurality of 154 votes over Protestee Conrado C. Lindo, who immediately upon the finality of this decision is directed to vacate the said Office of Mayor of Ternate, Cavite and to turnover the same to Protestant Octavio D. Velasco.'

"With cost against Protestee."

"SO ORDERED." (p. 47, Rollo of G.R. No. 95016)

Lindo's motion for reconsideration was heard on July 12, 1990. Thereafter, the parties were required to submit their respective memoranda which they complied. On August 23, 1990, respondent COMELEC En Banc promulgated a resolution affirming in toto the decision of the COMELEC, (First Division).

On September 14, 1990, Lindo filed this petition for certiorari with a prayer for a temporary restraining order raising the following issues:

ISSUES

"1. WHETHER OR NOT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING ITS OWN RULE 32, SEC. 3 AND RULE 35, SECS. 20 AND 22; AND

"2. WHETHER OR NOT PETITIONER WAS EFFECTIVELY DENIED DUE PROCESS WHEN HIS NOTICE OF APPEAL WAS CONSIDERED 'FILED OUT OF TIME,' AND THEREFORE 'HAS LOST HIS STANDING TO QUESTION A DECISION WHICH, AS TO HIM, HAD BECOME FINAL AND BEYOND THE REMEDY OF APPEAL,' NOTWITHSTANDING THAT, THE PETITIONER HAS FILED HIS NOTICE OF APPEAL EVEN BEFORE ANY 'PROMULGATION' WAS EVER MADE AS REQUIRED BY THE COMELEC RULES." (p. 13, Rollo)

On September 18, 1990, We required the respondents to file their comments. Meanwhile, on October 24, 1990, petitioner filed an urgent motion for the issuance of a temporary restraining order. On October 25, 1990, We issued a temporary restraining order enjoining respondent COMELEC, or any of its duly authorized representatives or agents, from enforcing its (COMELEC) resolution promulgated on August 23, 1990 in EAC No. 6-90.

Petitioner imputes grave abuse of discretion on the part of respondent COMELEC for disregarding its own rules regarding promulgation of a decision in election protest cases. The rule referred to is Section 20 of 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."

It is the contention of petitioner Lindo that the act of merely furnishing the parties with a copy of the decision, as was done in the trial court, violated COMELEC rules and did not constitute a valid promulgation. Since there was no valid promulgation, the five (5) day period within which the decision should be appealed to the COMELEC

did not commence to run.

This contention is untenable. Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel. (*Neria v. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (*Araneta v. Dinglasan*, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (*Sumbing v. Davide, G. R. Nos. 86850-51*, July 20, 1989, En Banc Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner himself. Another copy was sent to private respondent.

What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor of the promulgation of said decision.

A procedural lapse or error should be distinguished from lack of jurisdiction. In the former, the proceedings are null and void if and when the error is shown to have caused harm while in the latter, the proceedings are null and void unconditionally (In the matter of the petition of *Joson and Joson v. Nable, et al.*, G.R. No. L-3450, September, 1950, XVILJ No. 1, p. 35, cited in *Francisco, Vicente, J., Revised Rules of Court in the Philippines*, 2nd edition, p. 112). There is a great difference in the results which follows the failure to give the necessary notice to confer on the court jurisdiction over the person and the subject matter of the action, and that which follows a failure to give notice of a step taken after the court has obtained such jurisdiction and is proceeding with the action. Failure to give notice of the action by the service of a summons for example, is a jurisdictional defect and the court acquires no jurisdiction over the person of the defendant. x x x. When, however, the court, by the service of proper notice has obtained jurisdiction of the person and the subject matter, then the failure to give notice of a subsequent step in the action or proceeding is not jurisdictional and does not render an order made without notice void (*So Chu and Limpangco v. Nepomuceno and Reis*, 29 Phil. 208, also cited in *Francisco, Vicente, J., Revised Rules of Court*, 2nd edition, p. 112).

In the case of *Pimping v. COMELEC*, Nos. 69765-67, Nov. 19, 1985, 140 SCRA 192, citing *Macabingkil v. Yatco*, 21 SCRA 150, We held:

"The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. Petitioners anchor their argument on an alleged denial to them (of) due process to the deviation by the Comelec from its own made rules. However, the essence of due process is that, the parties in the case were afforded an opportunity to be heard. As long as the parties were given the opportunity to be heard, before judgment was rendered, the demands of due process were sufficiently met.

Petitioner's protestations of denial of due process when his notice of appeal was denied for having been filed out of time must also fail. The records show that petitioner's counsel of record, Atty. Amador Montajo, received a copy of the decision on February 12, 1990. The five-day period for petitioner to file his appeal from the decision of the trial court commenced to run from such date. Petitioner's notice of appeal was filed with the trial court only on February 26, 1990, fourteen (14) days after his counsel was served a copy of the decision. Clearly, his notice

was filed out of time. In denying the notice of appeal, respondent COMELEC (First Division), held:

"On February 26, 1990, a certain Atty. Antonio Jose F. Cortes, representing himself as co-counsel for Protestee Lindo in this case, filed a "NOTICE OF APPEAL" with the trial court. In an order issued on the same date -- February 26, 1990 -- the court below denied due course to the notice of appeal filed by Atty. Cortes as follows:

"x x x

"The notice of appeal, however, filed by the protestee thru Atty. Antonio S. Cortes, who is not the counsel on record, being beyond the reglementary period of five (5) days from receipt of a copy of the Court's judgment, is hereby denied. It should be noted that the five (5) day period shall commence from February 12, 1990 since Atty. Amador Mostajo, counsel on record received the decision of this court on February 12, 1990." (pp. 44-45, Rollo)

The failure of petitioner's counsel to give due attention to the decision coming from the court which heard the case is binding on the petitioner. This failure was the reason for the loss of his standing in court. The blame cannot be passed on to the trial court for its alleged failure to conduct a valid promulgation. The COMELEC did not abuse its discretion when it affirmed the order of the trial court denying due course to petitioner's notice of appeal for having been filed beyond the reglementary period.

This case had been pending with respondent trial court for almost two (2) years where the herein petitioner had all the opportunities to be heard and was in fact heard. Election protests are supposed to be summary in nature. That is why the law (Art. 258 of BP 881) and the rules (Sec. 18, Rule 35, Comelec Rules of Procedure) require that every case, election protests shall be decided within six (6) months after its filing. The proceedings should not be allowed to drag on during the term of the contested position with the result that the elected would be deprived of his right to the office and the defeated would discharge the office which he was not entitled to.

Finally, even if We were to concede that petitioner did not lose his right to appeal, it would still be dismissed. In his motion for reconsideration (pp. 48-74, Rollo) of the COMELEC's (First Division) decision of June 6, 1990, and his memorandum (pp. 126-140, Rollo) filed before the COMELEC En Banc, he does not question the results of the election in thirteen (13) contested precincts, to wit: Precinct Nos. 1, 1-A, 2, 2-A, 3, 4, 4-A, 5, 6, 6-A, 8, 8-A, and 10-A out of a total of seventeen (17) contested precincts. He has limited his objection to the inclusion of the revised results of election in precincts No. 9, 9-A, 10 and 11 on the ground that the ballot boxes and envelopes containing the ballots for these four (4) precincts were tampered. This is the same objection interposed in G.R. No. 88337 and the decision therein had already become final and unappealable.

ACCORDINGLY, the petition is DISMISSED. The temporary restraining order dated October 25, 1990 is hereby LIFTED.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Griño-Aquino, JJ., concur.

Melencio-Herrera, J., concurrence in the result.

Sarmiento, J., no part, petitioner's lawyers in the Comelec and in the previous case before this Court were my associate attorneys in my law firm.

Regalado, J., no part, petitioner's counsel were associate attorneys in my former law firm.

CONCURRING IN THE RESULT

MELENCIO-HERRERA, J.:

I concur in the result.

Rule 35, Section 20 of the COMELEC Rules of Procedure "Governing Election Contests x x x Before Trial Courts" provides that the decision of the Court trying an election protest "shall be promulgated on a date set by it of which due notice must be given the parties." In other words, the promulgation shall be on a date previously fixed with advance notice served on the parties or their counsel so that they may be present. This is the procedure prescribed in the COMELEC (Rule 18, Sec. 5, COMELEC Rules of Procedure); in election cases before the Trial Courts (Rule 35, Sec. 20, *ibid.*; Rule 36, Sec. 12, *ibid.*; Rule 37, Sec. 19, *ibid.*; Rule 38, Sec. 12, *ibid.*), and in the House of Representatives Electoral Tribunal (Sec. 27 of its Rules). The procedure prescribed is akin to that in criminal cases where judgment is promulgated by reading the same in the presence of an accused and giving notice to the latter personally or through his counsel requiring him to be present at the promulgation of the decision (Rule 120, Sec. 6).

Notice in advance of promulgation is, thus, to my mind, part of the process of promulgation when it is required and should not be disregarded. The mere filing of, the judgment with the Clerk of Court with notice to the parties or their counsel, which is the normal procedure, would not suffice in the face of a specific mandate. However, non-compliance with the letter of the requirement is not a reversible error nor does it invalidate the promulgation. For, strictly speaking, as stated in the decision, promulgation is the process by which a decision is officially announced, made known to the public or delivered to the Clerk of Court for filing, coupled with notice to the parties or their counsel (*Neria v. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 806). Copies of the subject decision having been sent to the parties and/or their counsel, and officially announced, the essence of promulgation has been achieved.

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