

PERFECTO V. GALIDO, PETITIONER, VS. COMMISSION ON ELECTIONS AND SATURNINO R. GALEON, RESPONDENTS.

G.R. No. 95346. January 18, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

This is a special civil action for certiorari and preli-minary injunction with prayer for a temporary restraining order, to prohibit respondent Commission on Elections from implementing its questioned decision dated 14 December 1989 and resolution dated 20 September 1990, and private respon-dent Saturnino R. Galeon from assuming office as Mayor of Garcia-Hernandez, Province of Bohol.

Petitioner and private respondent were candidates during the 18 January 1988 local elections for the position of mayor in the Municipality of Garcia-Hernandez, Province of Bohol. Petitioner was proclaimed duly-elected Mayor of Garcia-Hernandez, by the Municipal Board of Canvassers.

On 25 January 1988, private respondent Saturnino R. Galeon filed an election protest before the Regional Trial Court of Bohol, 7th Judicial Region, Branch I, Tagbilaran City. After hearing, the said court upheld the proclamation of petitioner as the duly-elected Mayor of Garcia-Hernandez, by a majority of eleven (11) votes.

Private respondent appealed the RTC decision to the Commission on Elections (COMELEC). Through its First Division, the COMELEC reversed the trial court's decision and declared private respondent the duly-elected mayor by a plurality of five (5) votes. Petitioner's motion for reconsideration was denied by the COMELEC in its en banc reso-lution of 20 September 1990 which affirmed the decision of its First Division. The COMELEC held that the fifteen (15) ballots in the same precinct containing the initial "C" after the name "Galido" were marked ballots and, therefore, invalid. The COMELEC said:

"On the argument relied upon by the appellee that the case of *Inguito vs. Court of Appeals* is not the case in point but the cases of *Bisnar vs. Lapasa* and *Katigbak vs. Mendoza*, supra should be the applicable jurisprudence, the settled rule and which is controlling is where a word or a letter recurs in a pattern or system to mark and identify ballots, the ballots containing the same should be rejected as marked ballots (*Silverio vs. Castro*, supra; *Inguito vs. Court of Appeals*, 21 SCRA 1015), and the introduction of evidence aliunde is not necessary when the repetition of a word or letter in several ballots in the same precinct constitutes a clear and convincing proof of a design to identify the voters." (P. 38. Rollo of G.R. No. 95346)

On 25 September 1990, petitioner filed before this Court a petition for certiorari and injunction, which was docketed as G.R. No. 95135.

On 27 September 1990, we resolved to dismiss the said petition for failure of petitioner to comply with paragraph 4 of the Court's Circular No. 1-88 which requires that a petition shall contain a verified statement of the date when notice of the questioned judgment, order or resolution, was received and the date of receipt of the denial of the motion for reconsideration, if any was filed. Petitioner filed a motion for reconsideration which we denied with finality in the resolution of 4 October 1990.

Undaunted, petitioner filed on 6 October 1990 the present petition for certiorari and injunction with prayer for a restraining order (G.R. No. 95346) which contains the same allegations and legal issues contained in G.R. No. 95135.

On 11 October 1990, we issued the temporary restraining order prayed for by petitioner and required respondents to file comment on the petition.

In his Comment, private respondent Saturnino R. Galeon moves for the dismissal of the present petition, for the following three (3) main reasons:

1. Final decisions, orders or rulings of the Commission on Elections (COMELEC) in election contests involving elective municipal offices are final and executory, and not appealable. Private respondent cites Article IX (C), Section 2 (2), paragraph 2 of the 1987 Constitution, which reads as follows:

“Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.”

The above constitutional provision is implemented in the Rules of Procedure promulgated by the COMELEC, particularly Part VII, Rule 39, Section 2 thereof, which reads:

"Section 2. Non-reviewable decisions. – Decisions in appeals from courts of general or limited jurisdiction in election cases relating to the elections, returns, and qualifications of municipal and barangay officials are not appeal-able."

According to private respondent, since appeals of COMELEC decisions in election contests involving municipal and barangay officials are not allowed by the Constitution, it follows that the COMELEC decision in the case at bar should be executed or implemented.

2. The petition involves pure questions of fact as they relate to appreciation of evidence (ballots) which is beyond the power of review of this Court. The COMELEC found that this writing of the letter "C" after the word "Galido" in the fifteen (15) ballots of Precinct 14 is a clear and convincing proof of a pattern or design to identify the ballots and/or voters. This finding should be conclusive on the Court.

3. Exactly the same petition - involving identical allegations, grounds and legal issues - was dismissed with finality by this Court in G.R. No. 95135. The inadvertent issuance of a temporary restraining order by the Court in this case has wreaked havoc and chaos in the municipality of Garcia-Hernandez where private respondent has already assumed his position as the duly-elected mayor.

In his Reply to the Comment, petitioner avers -

1. Article IX (A), Section 7 of the 1987 Constitution provides:

"Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

Since under the same Constitution (Article VIII, Section 1), judicial power is vested in one Supreme Court, the present petition can still be brought to the Supreme Court by certiorari. Petitioner contends that this petition is not an ordinary appeal contemplated by the Rules of Court or by provision of the Constitution.

2. The petition involves pure questions of law. The correct interpretation of Section 211, No. 10 of Batas Pam-bansa Blg. 881 is definitely a question of law. It states:

"10.

The erroneous initial of the first name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct first name of the candidate, or the erroneous middle initial of the candidate shall not annul the vote in favor of the latter."

In several cases decided by this Court, according to petitioner, it was held that in the appreciation of ballots where there is no evidence aliunde of a purpose to identify the ballots, the same should not be invalidated as marked ballots. The COMELEC thus committed grave abuse of discretion when it disregarded the cited decisions of this Court and declared that the suffix "C" after the name Galido was in reality a countersign and not a mere erroneous initial.

3. The dismissal with finality of G.R. No. 95135 (the first petition) did not refer to the merits of the petition. The said dismissal was due to the failure of petitioner to submit requisite papers duly certified. That is why upon petitioner's submission of the requirements in his second (the present) petition, this Court granted the request for the issuance of a temporary restraining order.

The Court finds the petition to be without sufficient merit.

The Commission on Elections (COMELEC) has exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials and has appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction or involving elective barangay officials decided by trial courts of limited jurisdiction. (Article IX (C), Section 2 (2), paragraph 1 of the 1987 Constitution).

In the present case, after a review of the trial court's decision, the respondent COMELEC found that fifteen (15) ballots in the same precinct containing the letter "C" after the name "Galido" are clearly marked ballots. May this COMELEC decision be brought to this Court by a petition for certiorari by the aggrieved party (the herein petitioner)?

Under Article IX (A), Section 7 of the Constitution, which petitioner cites in support of this petition, it is stated: "(U)nless otherwise provided by this Constitution or by law, any decision, order, or ruling of each (Consti-tutional) Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

On the other hand, private respondent relies on Article IX, (C), Section 2 (2), paragraph 2 of the Constitution which provides that decisions, final orders, or rulings of the Commission on Elections in contests involving elective municipal and barangay offices shall be final, executory, and not appealable. (Emphasis supplied)

We resolve this issue in favor of the petitioner. The fact that decisions, final orders or rulings of the Commission on Elections in contests involving elective municipal and barangay offices are final, executory and not appealable, does not preclude a recourse to this Court by way of a special civil action of certiorari. The proceedings in the Constitutional Commission on this matter are enlightening. Thus -

"MR. FOZ. So, the amendment is to delete the word 'inappealable.'

MR. REGALADO. Before that, on page 26, line 26, we should have a transposition because decisions are always final, as distinguished from interlocutory orders. So, it should read: 'How-ever, decisions, final orders or rulings,' to distinguish them from interlocutory orders, '... of the Commission on Elections on municipal and

barangay officials shall be final and IMMEDIATELY executory.'

That would be my proposed amendment.

MR. FOZ. Accepted, Mr. Presiding Officer.

MR. REGALADO. It is understood, however, that while these decisions with respect to barangay and municipal officials are final and immediately executory and, therefore, not appealable, that does not rule out the possibility of an original special civil action for certiorari, prohibition, or mandamus, as the case may be, under Rule 65 of the Rules of Court.

MR. FOZ. That is understood, Mr. Presiding Officer.

MR. REGALADO. At least it is on record.

Thank you, Mr. Presiding Officer."^[1]

We do not, however, believe that the respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the questioned decision. It is settled that the function of a writ of certiorari is to keep an inferior court or tribunal within the bounds of its jurisdiction or to prevent it from committing a grave abuse of discretion amounting to lack or excess of jurisdiction.

As correctly argued by public respondent COMELEC, it has the inherent power to decide an election contest on physical evidence, equity, law and justice, and apply established jurisprudence in support of its findings and conclusions; and that the extent to which such precedents apply rests on its discretion, the exercise of which should not be controlled unless such discretion has been abused to the prejudice of either party. (Rollo, p. 107)

Finally, the records disclose that private respondent had already assumed the position of Mayor of Garcia-Hernandez as the duly-elected mayor of the municipality by virtue of the COMELEC decision. The main purpose of prohibition is to suspend all action and prevent the further performance of the act complained of. In this light, the petition at bar has become moot and academic. (G.R. No. 81383, Atty. Felimon, et al. vs. Atty. Belena, et al, Apr. 5, 1988 resolution.)

ACCORDINGLY, the petition is DISMISSED. The temporary restraining order earlier issued by the Court is LIFTED.

SO ORDERED.

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

[1] Record of the Constitutional Commission, Vol. I, p. 562

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