

MAYOR ABRAHAM N. TOLENTINO, PETITIONER, VS. COMMISSION ON ELECTIONS, JOCELYN RICARDO, ARNEL TARUC, MARLENE D. CATAN, MARIA THERESA MENDOZA COSTA, FIDELA ROFOLS CASTILLO, DOMINAD...*G.R. Nos. 183806-08. September 16, 2008*

Ponente: BRION, J.

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We resolve the Petition for Certiorari filed by proclaimed Tagaytay City Mayor Abraham N. Tolentino (petitioner Tolentino) under Rule 64, in relation with Rule 65, of the Revised Rules of Court. The petition seeks to set aside and annul the Orders dated June 12, 2008 and July 21, 2008 by the Second Division of the Commission on Elections (COMELEC) in EPC Nos. 2007-07, 2007-08, and 2007-09, and prayed for the issuance of a Temporary Restraining Order (TRO) to restrain the COMELEC from enforcing the assailed orders.

EPC Nos. 2007-07, 2007-08, and 2007-09 are the election protests filed by the presumably losing candidates (private respondents herein) in the May 2007 election for the local city officials of Tagaytay City. EPC No. 2007-07 involves the protest filed by Jocelyn Ricardo against the proclaimed mayor (petitioner Tolentino). EPC No. 2007-08, on the other hand, relates to the protest of Arnel Taruc against the proclaimed vice mayor. Finally, EPC No. 2007-09 involves the protest of Marlene Catan, Maria Theresa Mendoza Costa, Fidela Rafols Castillo, Dominador Bassi, Roberto Malabanan Hernandez, Nerissa Manzano, Leonidez Maglabe Hernandez, Tagumpay Reyes, Maria Corazon Marquiacias, and Elino Fajardo against the proclaimed city councilors or members of the Sangguniang Panlungsod of Tagaytay City.

On June 12, 2007, roughly a month after the May elections, COMELEC Commissioner Florentino Tuason, Jr. directed Alicia Timbol, OIC-Election Officer for Tagaytay City (Timbol) - via a Memorandum-letter - to seal, within twenty-four (24) hours from receipt of the Memorandum, all the election documents and paraphernalia involved in the protested election in the presence of the representative of all parties concerned, taking all precautionary measures in protecting the integrity of the documents and forthwith deliver the documents to the Commission. Three days later and after information from Timbol that the parties were already notified of the scheduled sealing of the documents, Commissioner Tuason reiterated his June 12, 2007 directive.

On June 15, 2007, counsel for Doroteo Marasigan, Jr., one of the proclaimed councilors, reacting to the Tuason directive, wrote the COMELEC a letter, essentially questioning, among other things: (1) the authority of Commissioner Tuason to issue the directive; and (2) the alleged lack of prescribed precautionary measures or safeguards in going through the document-sealing process; counsel also asserted the right of all concerned parties, including his client, to be notified of, and to participate in, the process. He asked for the provisional cancellation of the June 12, 2007 directive and for an order directing Timbol to desist from pursuing the scheduled proceedings.

Timbol decided to reset the scheduled June 15, 2007 hearing to June 19, 2007 to allow all the concerned parties to

be properly notified. At the June 19, 2007 sealing, Atty. Juanito Ravanzo, Jr., Election Supervisor, granted petitioner Tolentino's party's request for the photocopying of the book of voters, Election Day Computerized Voters' List (EDCVL) and Posted Computerized Voters' List (PCVL), and the signing by all the representatives of the parties, as well as the Election Officer, of the photocopied documents upon verification that these represent the reproduced original documents. Atty. Ravanzo asked the private respondents whether they would also avail themselves of these processes; they answered in the affirmative. Atty. Ravanzo informed the parties, though, that the expenses for photocopying, as well as the provision of the materials, shall be borne by the requesting party/ies. At one o'clock in the afternoon (1:00 p.m.), the sealing process (including the photocopying and verification of photocopied documents) commenced. At three o'clock in the afternoon (3:00 p.m.), the photocopying machine of petitioner Tolentino's political party bogged down; at that point, the parties agreed that the private respondents' party will just finish the photocopying of the Book of Voters and all the documents including the original and photocopies would be temporarily sealed and then reopened upon resumption of the proceedings. At five o'clock, the temporary sealing of the unfinished documents for the first precinct was done in the presence of all the party representatives. The proceeding adjourned for the day to continue the next day at nine o'clock in the morning.

Two and a half months after the sealing process commenced or on September 7, 2007, the COMELEC issued an Order finding the protests sufficient in form and substance and issued the following orders and directives:

In view of the foregoing disquisition, the COMELEC (Second Division) hereby:

x x x

2. ORDERS the City Treasurer of Tagaytay City, Cavite to make an inventory of the aforesaid 116 protested ballot boxes, the list of which are hereto attached and forming an integral part of this Order, within ten (10) days from receipt hereof with prior notice to herein parties who may wish to send their respective duly authorized representatives to observe the same;

Immediately thereafter, the said ballot boxes together with the copy of the CEF No. 14 (Certificate of Receipt of Official Ballots, other Forms and Supplies by the BEIs) shall be turned over to the Election Officer of Tagaytay City, Cavite for delivery and submission to the Electoral Contests Adjudication Department (ECAD), Comelec Main Office, Intramuros, Manila;

3. DIRECTS the Election Officer of Tagaytay City, Cavite to gather and collect the subject contested ballot boxes containing ballots, their keys from the City Treasurer after the inventory thereof and to deliver the same to ECAD, Comelec, Intramuros, Manila, within ten (10) days from receipt of the said ballot boxes from the City Treasurer and likewise with prior notice to herein parties who may wish to send their respective duly authorized representatives to accompany the same, observing strict measures to protect their safety and integrity such as sealing of the lid of each ballot box with masking tapes [sic, should be tapes] with the parties or their representatives affixing their initials on said masking tapes.

The Election Officer, however, shall not cause the transmittal of the subject ballot boxes unless the protestant has paid the above-required cash deposits. x x x

The said transmittal shall be done simultaneously with those involved in EPC No. 2007-08 and EPC 2007-09.

x x x

[We shall refer to this order as the September 7, 2007 Order. Based on private respondents' submissions, the COMELEC en banc upheld this order when petitioner Tolentino moved for its reconsideration.]

On September 21, 2007, the photocopying and verification process was discontinued after the representatives of the private respondents' party no longer attended the proceedings.

On March 3, 2008 or almost six (6) months since private respondents' representatives started absenting themselves from the proceedings, counsel for petitioner Tolentino asked Timbol to take immediate action on the discontinued sealing proceedings. His counsel called Timbol's attention to the agreement that the authentication of photocopied documents shall be done by all the representative of the parties.

Meanwhile or on March 6, 2008, the COMELEC ordered the City Treasurer and the Election Officer of Tagaytay City (Timbol) to implement the September 7, 2007 Order directing the inventory, retrieval, and collection of the contested ballot boxes within the period therein given.

On March 14, 2008, Timbol notified the parties that the sealing proceedings shall resume on March 26, 2007. On March 19, 2008, however, the private respondents notified Timbol of their decision to drop the approval of the continuation of the photocopying process, given that it was long and tedious and that they now opted to follow the COMELEC's decision on the matter [obviously referring to the September 7, 2007 Order].

Thus, the private respondents did not attend the scheduled resumption of the photocopying process on March 26, 2007. Timbol at the proceedings informed petitioner Tolentino's party that she already called, via a letter, the private respondents' attention to the fact that the photocopying and verification process was agreed upon by the parties. In the meantime, Timbol suggested that the proceedings be suspended until the private respondents' shall have replied to her letter. The next setting was on April 3, 2008.

On April 1, 2008, petitioner Tolentino filed with the COMELEC a motion to defer the implementation of the September 7, 2007 Order. A similar motion was filed by one of the proclaimed councilors.

On April 3, 2008, no representative of the private respondents again came to the scheduled sealing proceedings, prompting petitioner Tolentino's counsel to move for the continuation of the photocopying and verification process; Timbol however said that it would be best if a representative from either the NAMFREL[1] or the PPCRV,[2] in lieu of private respondents' representative, would be present to authenticate the photocopied documents. The proceeding was reset anew to April 14, 2008.

Asked to comment on the motion to defer filed by petitioner Tolentino and a similar motion of one of the proclaimed councilors, the private respondents jointly opposed the motion to defer - stating that it would result only in delay - and asked the COMELEC to direct the City Treasurer and the Election Officer to comply with the earlier directive to immediately transmit the ballot boxes and election paraphernalia to the COMELEC head office.

On May 6, 2008, the COMELEC granted petitioner Tolentino's motion to defer (effectively acting also on one of the proclaimed councilor's similar motion) for a period of twenty (20) days to allow the completion of the authentication of the photocopied documents.

Not satisfied, petitioner Tolentino filed anew, on June 6, 2008, a motion for additional time (60 to 80 days) to reproduce and authenticate documents and/or to defer the implementation of the September 7, 2007 Order until completion of the photocopying and authentication of documents. The COMELEC granted in an Order dated June 21, 2008 petitioner Tolentino's motion, but only for a period of thirty (30) days. This June 21 Order is the first order assailed in the present petition.

Undaunted, petitioner Tolentino filed a motion for reconsideration of the June 21, 2008 Order, which the COMELEC denied - in the second order now assailed in this petition - for lack of merit, as the parties were already given more than enough time to complete the requested undertaking. Hence, the present petition on the following GROUNDS:

I.

WHETHER OR NOT PUBLIC RESPONDENT THE HONORABLE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDERS WHICH UNDULY, UNLAWFULLY, AND ILLEGALLY LIMITED THE RIGHT OF PETITIONER TOLENTINO TO PRESERVE THE INTEGRITY OF THE SUBJECT DOCUMENTS.

II.

WHETHER OR NOT PUBLIC RESPONDENT, THE HONORABLE COMMISSION ON ELECTIONS, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDERS WHICH UNDULY, UNLAWFULLY, AND ILLEGALLY LIMITED HIS RIGHT TO FINISH AND COMPLETE THE REPRODUCTION AND AUTHENTICATION OF THE SUBJECT DOCUMENTS FOR ONLY THIRTY WORKING DAYS FROM RECEIPT OF THE 12 JUNE 2008 ORDER.

In support of these grounds, the petitioner contends that the non-extendible period of thirty (30) working days for the parties to effectively complete the requested photocopying and verification, unduly, unlawfully, and illegally deprived him of his right to safeguard, secure, and preserve the integrity of the subject election documents and his vested right under the agreement which were freely and voluntarily agreed upon by the parties on June 19, 2007.

First, the COMELEC arbitrarily and whimsically failed to consider the circumstances that justified the requested extension for the reproduction and authentication of the subject documents - there was an agreement for the reproduction and authentication of the documents as integral processes of the sealing proceedings freely and voluntarily agreed upon by the parties; and the respondents unilaterally withdrew their participation in the proceedings without informing all the parties, leading to the suspension and disruption of the proceedings; the disruption is thus clearly imputable to the respondents. The petitioner cites as proof of the COMELEC's disregard of these important circumstances the order denying the motion for reconsideration which merely cited as ground for denial the motion's lack of merit.

Second, the COMELEC, whimsically and arbitrarily, did not consider the fact that the reproduction and photocopying processes would not violate in any case the right of private respondents to the immediate implementation of the September 7, 2007 Order as there are cases already scheduled for revision, then and now. Given, too, the total number of ballot boxes/precincts involved in the protest, the additional time the petitioner asks is but reasonable and would not cause any delay.

Third, the COMELEC set aside the fact that processes of reproduction and authentication of the subject documents are tedious, complicated and lengthy, and that petitioner Tolentino exhausted and is still exhausting all means to complete the same within the period previously given him; and

Fourth, the COMELEC unlawfully and illegally denied the right of petitioner Tolentino under the agreement entered into by the parties on 19 June 2007.

On August 12, 2008, we issued the TRO prayed for, for a limited period of 15 days expiring on August 27, 2008, and required the private respondents to comment. The private respondents complied by filing their comment on August 22, 2008. The petitioner, on the other hand, filed a Motion to Extend the Fifteen-Day Period of the Temporary Restraining Order issued on August 12, 2008 and Motion to File a Reply, dated August 22, 2008. For its part, the Office of the Solicitor General asked to be excused from filing a Comment for the public respondents. Our ruling below will effectively resolve these motions.

THE COURT'S RULING

We find the petition devoid of merit.

As the present petition is for a writ of certiorari under Rule 65 of the Revised Rules of Court, our review of the petition and the assailed orders is limited to the determination of whether they were issued with lack or excess of jurisdiction or were tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In the present case, petitioner Tolentino imputes grave abuse of discretion to the COMELEC's issuance of the assailed orders. Grave abuse of discretion means such capricious and whimsical exercise of judgment amounting to excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of personal hostility.[3]

The petitioner asserts a right - allegedly derived from the parties' agreement - to have the election documents relevant to the protest reproduced and authenticated prior to transmittal to the COMELEC main office. This is the right that petitioner Tolentino claims to have been arbitrarily limited and restricted by the issuance of the assailed orders.

We find that the parties' alleged agreement is not founded on any specific provision or requirement under our election laws or COMELEC rules and regulations. If any such agreement was entered into with the concurrence of the local COMELEC officials, the continued effectiveness of this agreement had been overridden by the September 7, 2007 Order of the COMELEC which directed in clear and unequivocal terms that the records pertinent to the protest cases be forwarded to Manila. Further, if any such agreement had been entered, it had long been repudiated by the private respondents.

To be sure, the petitioner has no clear specific legal right to have the election documents subject of the protest reproduced and authenticated prior to transmittal to the COMELEC main office. Petitioner Tolentino in fact did not cite any specific provision of any election law, or election rules for that matter, establishing the right he now claims to have been unduly restricted by the COMELEC. If in fact a right to the photocopying and verification processes exists, this right immediately imposes upon the COMELEC the correlative duty, a ministerial one in fact, to respect the right. In such a case, the proper remedy is a petition for mandamus, and not certiorari, under Rule 65.[4]

What exist in fact in our laws are provisions that point to the immediate need to resolve election protests while at the same time safeguarding the integrity of the records and the process. Sections 254 and 255 of the Omnibus Election Code provide that:

SECTION 254. Procedure in election contests. -- The Commission shall prescribe the rules to govern the procedure and other matters relating to election contests pertaining to all national, regional, provincial, and city offices not later than thirty days before such elections. Such rules shall provide a simple and inexpensive procedure for the expeditious disposition of election contests and shall be published in at least two newspapers of general circulation. (Art. XVIII, Sec. 192, 1978 EC; Art. XIV, Sec. 62, BP 697)

SECTION 255. Judicial counting of votes in election contest. -- Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted. (Sec. 221, 1971 EC)

Pursuant to and in the spirit of the above authority, Section 6 of Rule 20 of the Rules of the COMELEC has been promulgated and it reads:

SECTION 6. Revision of Ballots. -- When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots.

Thus, the COMELEC's order that the relevant materials be brought to Manila is grounded on express legal authority. On the other hand, the photocopying and authentication processes that Atty. Ravanzo, the Election Supervisor, granted are - at best - mere accommodations, made in the exercise of his discretion, but which both the law and the election rules do not specifically provide. To reiterate, what the law demands is immediate action on the transmittal of pertinent election documents for revision and/or recount, not the delay that has attended this case. To be exact, the election took place 15 months ago and the protest was filed soon after, while the COMELEC's order to transmit the material documents for purposes of revision was dated September 7, 2007 or almost a year ago counted from the date of this Resolution. Given the local effective officials' three-year term, the one-year delay that has attended the election protest is impermissible and one that the COMELEC has the obligation to address through its assailed orders; this is a delay that this Court is likewise mandated not to allow.[5]

We believe and hold too that the photocopying and authentication processes are not at all necessary under the circumstances of the present case for the preservation and protection of the integrity of the election documents and paraphernalia. The local election officers, who are presumed to be in the regular performance of their functions,[6] are under strict orders or directives to maintain the integrity of these documents. Petitioner Tolentino has not pointed to any evidence or indicator that the integrity of the documents and the paraphernalia have been compromised in any manner. The September 7, 2007 Order amply provides the protection petitioner Tolentino seeks in asking us to affirm his claimed right to the photocopying and verification processes.

For want of a valid right to the photocopying and authentication processes, the issue boils down to one of discretion - i.e., the authority of the COMELEC, before whom the election contest is pending, to control as it sees fit the processes or incidents of the protest. This discretion is of course derived from the COMELEC's power to hear and decide election contests. To be sure, petitioner Tolentino impliedly recognized this, as he filed a petition for certiorari and imputed grave abuse of discretion to the COMELEC.

We hold - on the basis of the petition, the private respondents' comment, and their annexes - that the COMELEC did not abuse its discretion when it granted a period for the completion of the photocopying and authentication of the relevant documents lesser than what petitioner Tolentino requested. In fact, the COMELEC properly acted in its September 7, 2007 Order to transmit the material records of the protest cases to Manila and continued to so act when it issued the assailed orders.

We fully agree with the COMELEC that petitioner Tolentino was given more than enough time to complete the photocopying and authentication processes - the accommodation initially given by the election officers of Tagaytay City. This accommodation was given on June 19, 2007 and we find no credible reason or justification why - for a period of three [3] months (from June 19, 2007 to September 21, 2007) - the photocopying and authentication processes were not completed. Likewise inexplicable is petitioner Tolentino's inaction on the disruption of the proceedings; he did not lift a finger, for a long period of six (6) months, to have the proceedings continued. As the private respondents had openly manifested disinterest in the photocopying and authentication processes through their non-appearance, Tolentino could have immediately moved, within this long hiatus, for the continuation of the proceedings, with or without private respondents' participation. For six (6) months, he slept on an alleged right he now asks us, interestingly enough, to affirm. To our mind, the aggregate period of nine (9)

months is more than enough to complete the photocopying and authentication processes. All these indicate that the COMELEC, especially the local election officers, have been more than lenient to petitioner Tolentino. To be sure, there are many unasked and unanswered questions on what transpired at the local COMELEC level (as the private respondents strongly implied in their Comment), but these of course need not be asked or answered in detail for purposes of the present petition. What is important is that we understand that they all point to one sure consequence - past and even future delay in the protest cases that underlie the present petition unless the concerned authorities act. We find that the COMELEC has properly acted to address this concern through its assailed orders and we solidly stand behind its action.

As our final point, we see no merit too in petitioner Tolentino's argument that there is no resulting prejudice to the private respondents if the September 7, 2007 Order will not immediately be implemented, given that the COMELEC has calendared more than enough cases for revision, and private respondents' protests may not actually be calendared soonest. What has actually prevented the inclusion of private respondents' election protests in the schedule of cases for revision is the non-implementation of the September 7, 2007 Order, at the instance of petitioner Tolentino and his party mates. Significantly, a day's delay in the resolution of the election contest unduly prejudices the private respondents' right to occupy the office - given the short three-year term - and does violence to the electorate's will, if indeed the protests are meritorious; similarly, any such delay unduly burdens petitioner Tolentino's rightful claim to the office and affects the legitimacy of his administration, if indeed he won the election and is the electorate's choice. These are concerns that the immediate revision or recount required by law seek to address and, to our mind, are the unspoken considerations in the assailed COMELEC orders. We expressly reiterate them here as they are considerations that should not be lost, forgotten, or left unsaid.

WHEREFORE, we DISMISS the petition for lack of merit. Consistent with this dismissal, we likewise DENY the request for extension of the Temporary Restraining Order of August 12, 2008 which, by its own terms, expired on August 27, 2008. We declare that there is no further legal bar to the full implementation of the COMELEC's September 7, 2007 Order and the assailed orders.

SO ORDERED.

Puno, C.J., Quisumbing, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.

Ynares-Santiago, Carpio, Austria-Martinez and Azcuna, JJ., on official leave.

[1] National Movement for Free Elections.

[2] Parish Pastoral Council for Responsible Voting.

[3] See: *Flaminiano v. Hon. Adriano, et al.*, G.R. No. 165258, Feb. 4, 2008; *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, G.R. No. 72424, February 13, 1989, 170 SCRA 246; *Lalican v. Vergara*, G.R. No. 108619, July 31, 1997, 276 SCRA 518.

[4] Section 3, Rule 65 of the Revised Rules of Court provides:

Section 3. Petition for mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be

rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

[5] See: Section 258 of the Omnibus Election Code, B.P. 881, as amended, which provides: Preferential disposition of contests in courts. -- The courts, in their respective cases, shall give preference to election contests over all other cases, except those of habeas corpus, and shall without delay, hear and, within thirty days from the date of their submission for decision, but in every case within six months after filing, decide the same.

[6] Section 3 [m] of Rule 131 of the Revised Rules of Court provides:

Section 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed;

x x x x

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