

MARIANO J. PIMENTEL, BENJAMIN R. RAMOS, AMANDO AMBULAN, SABINO ANCHETA, JOSE APOLONIO, EDNA CABANILLA, GAUDENCIO CARIÑO, ESMENIO TACADENA, ROSALINDA SAMOY AND DELFIN VAGUILAR, J...

G.R. Nos. 53581-83. December 19, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The vital issue to be resolved in this petition for certiorari and prohibition with preliminary mandatory injunction is whether or not the Commission on Elections had jurisdiction to issue Re-solution No. 9592, dated March 25, 1980, which - (1) required the herein petitioners to answer the petition for certiorari and prohibition with preliminary injunction filed by the herein private respondents, thereby taking cognizance of such special civil action which questioned the validity of an interlocutory order, dated March 20, 1980, issued by the Court of First Instance of Quirino in Election Cases Nos. 8, 9 and 10, involving the offices of Mayor, Vice Mayor and Members of the Sangguniang Bayan of the Municipality of Diffun, Quirino Province; and (2) temporarily restrained said Court of First Instance of Quirino from enforcing said order of March 20, 1980, which denied herein private respondents' motion seeking to prevent the trial court from re-examining the ballots and to limit the counting of votes cast in favor of petitioners-contestants to those reflected in the election returns.

The herein petitioners are the contestants while herein private respondents are the contestees in Election Cases Nos. 8, 9 and 10 which are pending before the Court of First Instance of Quirino. Petitioners-contestants allege in their election protests that they were duly certified candidates for mayor, vice-mayor and members of the Sangguniang Bayan of the Municipality of Diffun, Quirino Province, in the general elections held last January 30, 1980, as shown in the resolution of the Comelec dated February 4, 1980 (attached to the election protests as Annex "A") but that they were not considered as such by the Municipal Board of Canvassers who, consequently, did not count the votes cast in their favor (having considered the same as stray votes) and proceeded to proclaim the contestees as the duly elected officials of Diffun. Petitioners-contestants contend that had it not been for the said error in the appreciation of the votes cast in their favor, they would have certainly emerged as the winners in said election. They therefore pray of said Court of First Instance of Quirino - (1) to fix the bond to be filed by them; (2) to cause to be brought to the court the registration list, the unused ballots and the documents used in all of the precincts of the municipality of Diffun; (3) to order the examination of the ballots, using the necessary officers with emoluments to be fixed by said court; (4) to order the votes cast in favor of contestants to be counted in their favor; and (5) to annul the proclamation of the contestees and to declare the contestants as the duly elected officials of Diffun.

In their answers to the election protests, the contestees deny that contestants are duly certified candidates and allege that during the voting and the counting of votes in the voting centers, the contestants were not bona fide candidates and it was for this reason that the votes cast in their favor were not counted. They further allege that even assuming the authenticity of the corrected certified list of candidates found in Annex "A" of the election

protests, the same does not include the names of contestants Edna Cabanilla, Gervacio Cariño, Esmenio Tacadena and Rosalinda Samoy, and that as to them, therefore, the protests should be summarily dismissed. By way of counter-contest, the contestees allege that the ballots with votes in favor of KBL which should have been counted in favor of the contestees (except contestees Jose Cabanero and Reynaldo Dupa) as KBL official candidates were not so counted in their favor.

During the hearing of said protests, the contestees filed with the CFI of Quirino a pleading dated March 10, 1980, and entitled: "Joint Motion to Limit Reception of Evidence Pursuant to Material Allegations in the Protests." Alleging that the election protests do not question the proceedings in the Citizens Election Committees but only those before the Municipal Board of Canvassers, the contestees pray that only the election returns should be considered in the counting of the votes in favor of the contestants and that the ballots should not be re-examined for that purpose.

On March 20, 1980, the CFI of Quirino issued an order denying the motion of the contestees. On that same day, the counsel for the contestees orally moved for reconsideration of said order; but the court denied said motion for reconsideration in an order of even date. Accordingly, the court ordered the opening of the ballot boxes and the counting of the votes as reflected in the ballots and not in the election returns.

On March 22, 1980, the contestees filed with the Commission on Elections a petition for certiorari and prohibition with preliminary injunction seeking to restrain the CFI of Quirino from enforcing its orders of March 20, 1980. Acting on said petition, the COMELEC issued on March 25, 1980 Resolution No. 9592 which reads as follows:

"9592. In the matter of the PETITION FOR CERTIORARI AND PROHIBITION WITH PRELIMINARY INJUNCTION filed by Petitioners-Contestees' Counsel in EAC No. 1-80 (Pascua, et al. vs. The Honorable Presiding Judge, Court of First Instance of Quirino, et al): the Commission RESOLVED (1) to require the Respondents-Contestants to file an answer, not a motion to dismiss, within ten (10) days from date of notice hereof, and (2) in the meantime to restrain respondent Presiding Judge from enforcing his order of March 20, 1980."

In view of such resolution of the COMELEC, the CFI of Quirino issued on April 1, 1980, an order postponing the hearing of Election Cases Nos. 8, 9 and 10 "until such time that a superior Court orders otherwise or after the petition for certiorari, etc., filed by contestees with the Commission on Elections has been resolved." Contestants moved for a reconsideration of said order but the CFI of Quirino denied the same.

Thus, on April 10, 1980, the contestants filed with this Court the present petition for certiorari and prohibition with preliminary mandatory injunction seeking to annul Resolution No. 9592 of the Commission on Elections; to prohibit the enforcement of said resolution; and to compel the Court of First Instance of Quirino to proceed with the hearing of the election cases. Petitioners allege, among others, that the Commission on Elections has no jurisdiction to take cognizance of the petition for certiorari and prohibition filed by the herein private respondents questioning an interlocutory order issued by the Court of First Instance of Quirino, much less to restrain said court from enforcing said order.

On April 15, 1980, We required the respondents to file an answer to the petition. On that same day, We issued an order temporarily restraining the Commission on Elections from enforcing the questioned resolution to enable the Court of First Instance of Quirino to proceed with Election Cases Nos. 8, 9 and 10.

On May 2, 1980, the private respondents filed their answer to the petition. They contend that since election cases cognizable by Courts of First Instance are appealable to the Commission on Elections under Sec. 196 of the 1978 Election Code, said Commission, therefore, has jurisdiction to take cognizance of petitions for certiorari, prohibition or mandamus involving said cases in aid of its appellate jurisdiction over the same. Touching on the

merit of their petition with the COMELEC, the herein private respondents allege that since the members of the Board of Canvassers were impleaded as contestees in Election Cases Nos. 8, 9 and 10, said cases should be limited to a recounting of the votes as reflected in the election returns. To recount the votes through the ballots is, according to them, "not in-keeping with the rules of evidence and jurisprudence." Private respondents further allege that petitioners Edna Cabanilla, Gaudencio Cariño, Esmenio Tacadena and Rosalinda Samoy were not certified as candidates in the last election, as per Annex "A" (resolution of the COMELEC dated February 4, 1980) of the election protests, and, therefore, have no personality in the present petition.

Respondent Commission on Elections filed its answer to the petition on May 16, 1980, alleging, among others, that it had jurisdiction to issue Resolution No. 9592 and that being interlocutory in nature, said resolution cannot be challenged in the present petition for certiorari since there is no showing of grave abuse of discretion committed in its issuance.

On July 3, 1980, We issued a resolution requiring the parties to submit memoranda principally on the question as to whether or not the Commission on Elections had the power to issue Resolution No. 9592.

Private respondents and respondent Commission on Elections filed their memoranda on August 13, 1980, and September 6, 1980, respectively. Petitioners failed to file their memorandum. Nonetheless, on December 2, 1980, We resolved to consider the case submitted for decision.

In support of the contention that the Commission on Elections has jurisdiction over petitions for certiorari, prohibition and mandamus involving election cases filed with the Court of First Instance by candidates for municipal offices, the respondents argue as follow: That Section 192 of the 1978 Election Code (P.D. No. 1296) grants the Commission on Elections the power to "prescribe the rules to govern the procedure and other matters relating to election contests"; that, accordingly, the COMELEC issued Resolution No. 1451 prescribing the procedural rules for election contests in the Court of First Instance involving elective municipal and municipal district offices; that Section 19 of said Rules provides that the Rules of Court of the Philippines "shall serve as supplementary rules in election contests filed with the Court of First Instance"; that under Section 4, Rule 65 of the Rules of Court of the Philippines, petitions for certiorari, prohibition and mandamus "may also be filed with the Court of Appeals if it is in aid of its appellate jurisdiction"; that since the COMELEC exercises appellate jurisdiction over election cases filed with the Court of First Instance involving municipal offices, pursuant to Section 196 of the 1978 Election Code, said Commission is, thus, vested with jurisdiction over petitions for certiorari, prohibition and mandamus involving said election cases, applying by analogy the quoted provision of Sec. 4, Rule 65 of the Rules of Court of the Philippines.

The fallacy of the foregoing arguments of the respondents lies in the erroneous interpretation of the aforequoted portion of Sec. 4, Rule 65 of the Rules of Court of the Philippines, as a grant of jurisdiction to the Court of Appeals and, by analogy, to the Commission on Elections, to take cognizance of petitions for certiorari, prohibition or mandamus involving cases over which said court or commission exercises appellate jurisdiction.

Settled is the rule that jurisdiction is conferred only by the Constitution or the law. (*Bacalso vs. Ramolete*, October 26, 1967, 21 SCRA 519, 523.) Thus, it cannot be conferred by the Rules of Court which are neither constitutional provisions nor legislative enactments but mere procedural rules promulgated by this Court in the exercise of its power to prescribe "rules concerning pleading, practice and procedure in all courts" (Sec. 5 (5), Art. X, 1973 Constitution; Sec. 13, Art. VIII, 1935 Constitution).

Accordingly, the aforequoted provision of Sec. 4, Rule 65 of the Rules of Court, cannot be construed as a grant of jurisdiction to the Court of Appeals over petitions for certiorari, prohibition or mandamus involving cases appealable to it. Much less can such provision be interpreted, by analogy, as a grant to the Commission on

Elections of jurisdiction over petitions for certiorari, prohibition or mandamus involving election cases cognizable by the Court of First Instance and appealable to said commission under Sec. 196 of the Revised Election Code.

While it is true that the Court of Appeals has jurisdiction over petitions for certiorari, prohibition or mandamus involving cases appealable to it, the grant of jurisdiction is not by virtue of the aforequoted provision of Sec. 4, Rule 65 of the Rules of Court, but by express legislative fiat, namely, Sec. 30 of the Judiciary Act (R. A. No. 296), to wit:

"SEC. 30. ORIGINAL JURISDICTION OF THE COURT OF APPEALS. - The Court of Appeals shall have original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and process in aid of its appellate jurisdiction."

No such legislative grant of jurisdiction exists in the case of the Commission on Elections. Consequently, respondents' contention that the Commission on Elections has jurisdiction over petitions for certiorari, prohibition or mandamus involving election cases cognizable by the Courts of First Instance and appealable to said Commission cannot be sustained. It results, therefore, that Resolution No. 9592 was issued by the COMELEC without authority to do so.

WHEREFORE, the petition for certiorari and prohibition is hereby granted. Resolution No. 9592, issued by the Commission on Elections in EAC No. 1-80 is hereby declared null and void and said Commission is permanently enjoined from taking any further action on said case except to dismiss the same for lack of jurisdiction. Costs against private respondents.

SO ORDERED.

Makasiar, Concepcion, Jr., Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Fernando, C.J., concurs in the main opinion and the opinion of Justice Aquino.
Teehankee, J., files a brief concurrence.
Aquino, J., see concurring opinion.
Barredo, J., concurs in the dissent of Justice De Castro.

CONCURRING OPINION TEEHANKEE, J.:

I concur. I only wish to add that even assuming that the Comelec had jurisdiction to issue the prerogative writ of certiorari in the pending election contest before the court of first instance because of its appellate jurisdiction, its challenged order restraining the court of first instance from opening the ballot boxes and examining the ballots and recounting the votes and limiting the counting of votes cast in favor of petitioners-protestants to those reflected in the election returns, as sought by respondents-protestees, must be set aside as a grave abuse of discretion. An election protest conducted under such a strait-jacket would be but an absurd and farcical exercise in futility.

CONCURRING OPINION

AQUINO, J.:

I concur. The novel issue in this case is whether the appellate jurisdiction of the Commission on Elections over the decision of the Court of First Instance in an election pro-test implies that it has certiorari jurisdiction over the interlocutory incidents in that case during its pendency in court.

In my opinion, the Comelec has no such certiorari jurisdiction because no law expressly confers such jurisdiction upon it and because it is not a regular court of justice. As a rule, jurisdiction cannot be conferred upon a court of justice by implication.

In the instant case, the ten petitioners were candidates for mayor, vice-mayor and members of the Sangguniang Bayan of Diffun, Quirino Province in the elections held on January 30, 1980.

However, the municipal board of canvassers did not recognize their candidacies, did not count the votes in their favor and regarded those votes as stray votes. The board proclaimed the ten private respondents as the duly elected officials of Diffun.

The petitioners filed an election protest in the Court of First Instance of Quirino. They prayed that the ballots be examined and that the votes cast in their favor be counted, that the proclamation of the protestees be cancelled and that the petitioners, as the winning candidates, be proclaimed as the duly elected officials of Diffun.

The protestees in their answers denied that the protestants were bona fide candidates. They filed a motion pray-ing that in counting the votes only the election returns should be considered and that the ballots should not be examined.

The court in its order of March 20, 1980 denied that motion and ordered the opening of the ballot boxes so that the votes can be counted.

The petitioners assailed that order by filing with the Comelec a petition for certiorari and prohibition against the Court of First Instance and the protestees. The Comelec entertained that petition.

In its resolution of March 25, 1980, it issued a restraining order enjoining the court from enforcing its order for the opening of the ballot boxes.

In turn, the protestants filed with this Court this petition for certiorari to set aside that resolution of the Comelec on the ground of lack of jurisdiction. This Court issued on April 15, 1980 an order restraining the Comelec from enforcing its questioned resolution.

The Solicitor General contends that the Comelec has jurisdiction to entertain the petition for certiorari because it has appellate jurisdiction over the election protest and, like the Court of Appeals, it issued the restraining order in aid of its appellate jurisdiction.

I agree with the opinion of Justice Abad Santos that that contention is untenable. The Comelec is not a court of justice. It has not been vested with the prerogative to issue the writ of certiorari. Hence, it has no jurisdiction to issue that writ.

Under the 1935 Constitution, the Comelec had "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections" and exercised "all other functions which may be conferred upon it by law". It could decide "all administrative questions, affecting elections", except questions "involving the right to vote". (Sec. 2, Arti-cle X.) Its functions were essentially executive and administrative (*Ututalum vs. Commission on Elections*, L-25349, December 3, 1965, 15 SCRA 465).

Hence, under the 1935 Constitution, it was held that the Comelec was simply an independent administrative body.

It could not be classified as a court of justice although it exercised quasi-judicial functions in controversies coming within its jurisdiction. In the exercise of its ministerial powers, it had no power to punish for contempt because that power is inherently judicial in nature (*Guevara vs. Commission on Elections*, 104 Phil. 268; *Masangay vs. Comelec*, 116 Phil. 355).

On the other hand, the 1973 Constitution enlarged the powers of the Comelec. In addition to its executive and administrative functions, it is "the sole judge of all contests relating to the elections, returns, and qualifications of all members of the National Assembly and elective provincial and city officials" (Sec. 2, Art. XII [C]).

It is "the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory" (Sec. 175, 1978 Election Code).

It has original jurisdiction in quo warranto cases based on the ground of ineligibility or of disloyalty of an elected official. It may adjudicate moral and exemplary damages in election contests and quo warranto proceedings. It has appellate jurisdiction over election contests for municipal and municipal district offices decided by the Court of First Instance. (Secs. 189, 194 and 196, 1978 Election Code).

In my view, although the Comelec now exercises judicial functions, still it has no certiorari jurisdiction to review the interlocutory orders of the Court of First Instance in election contests involving the election of municipal officials.

"Certiorari is a writ issued from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case" (14 C.J.S. 121).

Its effect is the removal of the record and the case from a lower to a higher court. "It is a common-law revisory, remedial, and prerogative writ." It "is an extraordinary writ offering a limited form of review, its principal function being to keep inferior tribunals within their jurisdiction" (14 C.J.S. 121-122).

"While the power to issue the writ of certiorari is in some instances conferred on all courts by constitutional or statutory provisions, ordinarily the particular courts which have such power are expressly designated" (14 C.J.S. 202).

Sections 17, 30 and 44 of the Judiciary Law expressly empower the Supreme Court, Court of Appeals and Court of First Instance to issue the writ of certiorari.

Since there is no law expressly authorizing the Comelec to issue the writ of certiorari, and the Comelec is not a court of justice, it is powerless to issue that writ.

SEPARATE DISSENTING OPINION

DE CASTRO, J.:

While I am in agreement with the rejection of the argument of private respondents in support of their view that COMELEC has jurisdiction to entertain the petition filed by them because it would trace the said jurisdiction to the Rules of Court, not to a law or the Constitution which alone can confer jurisdiction, I believe that when the law conferred appellate jurisdiction on COMELEC (Section 196, Revised Election Code 1978) in election cases originally tried and decided by the Court of First Instance, which jurisdiction used to pertain to the Court of Appeals, the law, at least impliedly, transferred along with such appellate jurisdiction the competence to issue writs of certiorari, prohibition, mandamus, etc. For any appellate court, such as the COMELEC in election contests appealed to it from the Court of First Instance, in order to effectively exercise its appellate jurisdiction,

must have at least the authority to issue such writs in the same manner that such is conferred upon the Court of Appeals in aid of its appellate jurisdiction. In transferring jurisdiction over appealed election contests to the COMELEC, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, "in aid of the appellate jurisdiction" conferred on the COMELEC. There is no reason perceivable why the transfer is only partial, not total, for as stated in 11 Corpus Juris, p. 139, the jurisdiction to issue the writs may be expressly or impliedly conferred by constitutional or statutory provision. From this legal approach, the source of the power or jurisdiction of COMELEC over petitions such as the petition in question, is the law, the Revised Election Code of 1978, not the Rules of Court.

To hold that COMELEC has no jurisdiction to entertain the petition for certiorari etc. would be to leave no other court to which recourse may be had than the Supreme Court. But from the provision of the Revised Election Code of 1978 giving the appellate jurisdiction over election cases decided originally by the Courts of First Instance to the COMELEC, and the provision of the Constitution limiting the power of the Supreme Court to exercising only certiorari jurisdiction over decisions, orders and resolutions of the COMELEC, I am unable to say that the intention of the 1978 Election Code is to disperse or divide the authority over an election case filed in the Court of First Instance by giving to the Supreme Court jurisdiction to issue writs of certiorari, prohibition and mandamus against orders of the Court of First Instance but giving to the COMELEC the jurisdiction over the ultimate appeal from the decision of said court in the very same election case. It is more easy to say, with full legal rationality, that the grant of appellate jurisdiction over election cases filed in and decided by the Court of First Instance, carries with it the power to issue writs of certiorari, prohibition and mandamus when necessary in aid of its appellate jurisdiction, as indeed, it cannot be denied that, if it was such aid with the Court of Appeals, it must be so in the same way with the COMELEC.

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