

EN BANC

[G.R. No. 138969, December 17, 1999]

SALIPONGAN DAGLOC, PETITIONER, VS. THE COMMISSION ON ELECTIONS, HON. EMMANUEL BADOY, AND SALAMBAI AMBOLODITO, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for *certiorari* seeking to set aside the resolution,^[1] dated June 29, 1999, of the Commission on Elections *en banc* upholding the denial by the Regional Trial Court, Branch 14, Cotabato City of petitioner's motion to dismiss the election protest filed by private respondent and directing the continuance of the proceedings.

The antecedent facts are:

Private respondent Salambai Ambolodto and Sukarno Samad were mayoralty candidates in the local elections held on May 11, 1998 in Kabuntalan, Maguindanao. Samad was declared winner. He and herein petitioner Salipongan Dagloc, who was elected vice-mayor, were proclaimed on May 14, 1998.

On May 23, 1998, private respondent filed a petition in the COMELEC entitled petition to declare a failure of election and/ or annul the election results in the municipality of kabuntalan, first district of maguindanao,^[2] docketed as SPA No. 98-356. In addition, on June 19, 1998, she filed an election protest *ex abundanti cautela*,^[3] docketed as Election Protest No. 38-98, in the RTC, Branch 14, Cotabato City.

On July 6, 1998, private respondent moved to withdraw SPA No. 98-356 in the COMELEC in order to prosecute Election Protest No. 38-98 in the RTC.^[4] The COMELEC granted her motion in its order dated February 4, 1999.^[5]

Meanwhile, Samad filed his answer in Election Protest No. 38-98 in which he sought the dismissal of the protest on the ground that it was filed more than 10 days from the date of proclamation on May 14, 1998. He reiterated his motion to dismiss^[6] in a subsequent pleading, and, in addition, asked that it be resolved before private respondent's motion for technical examination of C.E. Forms 1 and 2. In an order, dated August 18, 1998, the trial court denied the motion to dismiss.

Samad then filed a petition for *certiorari* (SPR No. 37-98) in the COMELEC, assailing the order of the RTC denying his motion to dismiss. While the case was pending, Samad died, and herein petitioner, who had succeeded him as mayor of Kabuntalan, was substituted in his place in the pending cases before the COMELEC (SPR No. 37-98) and the RTC (Election Protest No. 38-98).

On June 29, 1999, the COMELEC *en banc* dismissed SPR No. 37-98 for lack of merit. It held that while SPA No. 98-356 filed by Samad was denominated as petition to declare a failure of election and/or to annul the election results in the municipality of kabuntalan, first district of maguindanao, the case was actually a petition for annulment of proclamation which, under §248 of the Omnibus Election Code, suspended the running of the period for filing an election protest. Consequently, the filing of Election Protest No. 38-98 in the RTC on June 19, 1998 was timely as SPA No. 98-356, filed one day before the lapse of the period for filing an election protest, prevented the expiration of said period.

Hence, this petition. On August 10, 1999, we issued a temporary restraining order enjoining the COMELEC from implementing its questioned resolution in SPR No. 37-98 and the RTC from taking further action in Election Protest No. 38-98.

Petitioner contends that the COMELEC committed grave abuse of discretion in holding that the filing of private respondent's petition for a declaration of a failure of election and for the annulment of election results suspended the running of the reglementary period for filing an election protest. He maintains that what is contemplated in §248 of the Election Code is the filing of a pre-proclamation controversy praying for annulment or suspension of proclamation. In addition, petitioner questions the authority of COMELEC Commissioner Abdul Gani M. Marohombsar who signed the COMELEC resolution in question on June 29, 1999, when his term had already expired on June 4, 1999.

Private respondent, on the other hand, contends that §248 of the Election Code is not limited to the filing of a pre-proclamation controversy but includes as well a petition for a declaration of the failure of election. She argues that "[f]or so long as there is a prayer for the annulment of a proclamation in a petition filed with the COMELEC and within the COMELEC's jurisdiction, the filing thereof suspends the running of the 10-day period to file an election protest or *quo warranto* proceedings. . . . Even the filing of a petition for disqualification praying for the annulment of proclamation on the ground of ineligibility would suspend the running of the period to file an electoral protest." She also claims that the petition in SPR No. 37-98 filed by petitioner's predecessor should have been dismissed by the COMELEC since it is actually based on the denial by the RTC of a motion to dismiss an election protest, which motion is a prohibited pleading under Rule 13, §1 of the COMELEC Rules of Procedure.

The primary issue in this case is whether §248 of the Election Code applies only to the filing of a pre-proclamation controversy. On the resolution of this issue hinges the question of whether private respondent's election protest was timely filed.

Sec. 248 reads:

Effect of filing petition to annul or to suspend the proclamation. —
The filing with the Commission [on Elections] of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or *quo warranto* proceedings.

There is no question that the above provision covers the filing of pre-proclamation controversies. This is clear from §242 of the Election Code which reads:

Commission's exclusive jurisdiction of all pre-proclamation controversies.
— The Commission [on Elections] shall have exclusive jurisdiction of all pre-proclamation controversies. It may *motu proprio* or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding sections.

The reason for this is that unless the proclamation of a winning candidate is suspended or, if it has been held, set aside, the policy behind the allowance of pre-proclamation controversies, *i.e.*, to prevent losing candidates from grabbing the proclamation and delaying the resolution of the electoral contest, will be defeated. Thus, in *Esquivel v. Commission on Elections*,^[7] it was held that the 10-day period for filing an election protest under §289 of the former Election Code was suspended by the filing of a petition for annulment of proclamation. This Court said:

The suspension of the 10-day statutory period for the filing of an election protest until such time as the Commission on Elections has finally decided the pending pre-proclamation controversy is but logical and just, since if the protestant prevails in the pre-proclamation controversy, there would be no further need for him to file a regular election protest. . . .

This Court has since the case of Benjamin S. Abalos vs. Ernesto S. Domingo [G.R. No. 52665, Resolution of February 29, 1980] deemed suspended the 10-day statutory period for the filing of an election protest during the pendency of a pre-proclamation controversy and in all subsequent cases, the latest of which is its decision of July 25, 1980 [G.R. No. 53532, Noli M. Valenzuela v. Comelec] wherein the losing party in the pre-proclamation controversy was granted "a period of ten ^[10] days from receipt of this Resolution [of dismissal] to file before the proper court a quo warranto suit or election protest."^[8]

The filing of pre-proclamation controversies under §248 of the Omnibus Election Code, however, is not the only ground for the suspension of proclamation. Two other instances are provided in R.A. No. 6646, known as "The Electoral Reforms Law of 1987," *viz.*: (1) Under §6 of the statute, the COMELEC may, upon motion of the complainant in an action for disqualification, suspend the proclamation of the winning candidate if the evidence of his guilt is strong, and (2) under §7 thereof, the COMELEC may likewise suspend the proclamation of the winning candidate if there is ground for denying or canceling his certificate of candidacy. Thus, §6 of R.A. No. 6646 provides:

Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the