

EN BANC

[G.R. No. 190382, March 09, 2010]

JOSEPH BERNARDEZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND AVELINO TOLEAN, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a Petition for *Certiorari*^[1] with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction and/or *Status Quo Ante* Order, assailing the Order^[2] of the Commission on Elections (COMELEC) *En Banc*, dated November 4, 2009, and the Resolution^[3] of the Second Division of the COMELEC dated September 22, 2009, setting aside the Special Order^[4] in Election Case No. 1255, dated March 31, 2009, of Branch 36, Regional Trial Court (RTC) of Bontoc, Mountain Province.

The factual background of this case is as follows:

Petitioner Joseph Bernardez and private respondent Avelino Tolean were candidates for Vice-Mayor in the Municipality of Sabangan, Mountain Province during the May 14, 2007 synchronized national and local elections. After the election, petitioner garnered 2,136 votes while private respondent garnered 2,137 votes. The Municipal Board of Canvassers proclaimed private respondent as the duly elected Vice-Mayor after winning by a single vote over the petitioner.

Petitioner filed an election protest on May 24, 2007, docketed as Election Case No. 1255 before the RTC, Branch 36, Bontoc, Mountain Province, contesting the result of the election on the ground of fraud and deceit.

Acting on the said election protest, the RTC promulgated its Decision^[5] dated February 25, 2009, finding petitioner as winner by eleven (11) votes during the May 14, 2007 mid-term election. The dispositive portion of the said Decision reads:

Wherefore, in view of all the foregoing findings, judgment is hereby rendered:

1) Declaring the proclamation of Avelino Tolean as the Vice Mayor elect of Sabangan, Mountain Province, in the May 14, 2007 national and local elections, null and void; and

2) Proclaiming Joseph Bernardez, as the duly elected Vice mayor of Sabangan, Mountain Province, by majority of eleven (11) votes, in said election.^[6]

On March 5, 2009, petitioner filed a Motion for Writ of Execution Pending Appeal of the decision of the trial court, which was set for hearing on March 9, 2009. On the same day, private respondent's counsel filed a Manifestation and Motion^[7] with the RTC stating that he would not be available on the suggested hearing date due to his previous commitment to appear in his other cases of similar importance. Thus, during the hearing, only the petitioner and his counsel appeared and orally argued on his special reasons for an execution pending appeal. Private respondent, on the other hand, did not appear, but filed his Comment and/or Opposition to the Motion.

Meanwhile, on March 6, 2009, private respondent filed a Notice of Appeal of the decision of the trial court. Thereafter, the records of the case were forwarded to the Second Division of the COMELEC.

On March 31, 2009, the RTC issued a Special Order^[8] granting petitioner's Motion for Execution Pending Appeal, the dispositive portion of which reads:

Wherefore, the Motion for Execution Pending Appeal is hereby granted.

The Branch Clerk of Court, is hereby ordered to issue a Writ of Execution Pending Appeal, after the lapse of twenty (20) working days, to be counted from the time Protestee's counsel receives a copy of this Special Order, *if no restraining order or status quo order is issued*, pursuant to Sec. 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials. (A.M. No. 07-4-15-SC).^[9]

Since no restraining or *status quo* order was issued pursuant to Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and *Barangay* Officials^[10] during the twenty-day allowable period, the Special Order above-mentioned became valid and effective; hence, petitioner assumed the Vice-Mayoralty position of Sabangan, Mountain Province.

It was only on April 20, 2009 that private respondent filed his *Petition for Injunction with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order* before public respondent COMELEC (Second Division) to enjoin the RTC from implementing the latter's Special Order granting the execution of its Decision on account of the pendency of private respondent's Notice of Appeal.

On June 1, 2009, the Second Division of the COMELEC issued an Order^[11] dismissing private respondent's appeal for failure to pay the appeal fees, thus:

It appearing that the appeal fees of three thousand pesos (P3,000.00), bailiff's fees of one hundred fifty pesos (P150.00) and legal research fees of fifty pesos (P50.00) required by COMELEC Rules were paid only on April 03, 2009, or more than fifteen (15) days from the filing of notice of appeal, hence, not in accordance with COMELEC Resolution No. 8486.

x x x x

The Commission (Second Division) resolves to dismiss the instant appeal case.^[12]

However, on September 22, 2009, the same division of the COMELEC, which dismissed private respondent's Notice of Appeal, issued the first assailed Resolution^[13] reversing the Special Order of the RTC dated March 31, 2009, and granting private respondent's *Petition for Injunction and Prayer for the Issuance of a Status Quo Ante Order* on the grounds that: (1) private respondent was not furnished a Notice of Hearing as required under Section 11, Rule 14 of the New Rules, as a result of which, he was not properly represented in the hearing without his fault; and (2) the RTC neglected to state that the reasons advanced for granting the Motion for Execution Pending Appeal were "superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal."

On October 6, 2009, petitioner filed a motion for reconsideration of the resolution of the Second Division of the COMELEC before the COMELEC *en banc*. On November 4, 2009, the COMELEC *en banc* issued the second assailed Order^[14] in this case, denying petitioner's Motion for Reconsideration for failure to pay the required motion fees. Thus:

x x x x

the Commission En Banc hereby resolves to deny the same for movant-private respondent's failure to pay the required motion fees in the amount of P700.00 as provided under Section 7(f), Rule 40, COMELEC Rules of Procedure, as amended by COMELEC Minute Resolution No. 02-0130 dated September 18, 2002, within the five-day reglementary period for filing motions for reconsideration enjoined under Section 2, Rule19, same COMELEC Rules.

There being no valid motion for reconsideration to speak of, the provision of Section 13, paragraph (c), Rule 18, Comelec Rules of Procedure, to wit:

"Sec. 13. Finality of Decisions or Resolutions.

x x x x

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation."

applies, hence, the Resolution of the Commission (Second Division) dated

September 22, 2009, a copy of which was received by the private respondent on October 1, 2009, per his admission in his Motion for Reconsideration filed on October 6, 2009, had become final and executory as of October 17, 2009.

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department (ECAD), this Commission, is hereby directed to immediately issue an Entry of Judgment in the above-entitled case.

SO ORDERED.^[15]

On November 19, 2009, upon private respondent's urgent motion, the COMELEC issued a Writ of Execution^[16] of the Resolution of the Second Division of the COMELEC dated September 22, 2009, and the Order of the COMELEC *en banc* dated November 4, 2009, the pertinent portion of which states, thus:

NOW, THEREFORE, the Provincial Election Supervisor of Mountain Province, Comelec, is hereby directed to immediately implement this Writ of Execution, in coordination with the Department of the Interior and Local Government (DILG) Provincial Operations Officer of Mountain Province and the Provincial Director, PNP, by serving a copy hereof, together with the certified true copies of the Resolution of the Commission (Second Division) dated September 22, 2009 and the Order of the Commission En Banc issued on November 4, 2009, upon private respondent JOSEPH BERNARDEZ (1) ordering him to cease and desist from discharging the powers and functions of Vice-Mayor of Sabangan, Mt. Province, and to relinquish and vacate the same in favor of petitioner Avelino Tolean, (2) to cause the peaceful and smooth turn-over of office to aforesaid petitioner, and 3) make a return of your action within five (5) days from receipt hereof.^[17]

Thereafter, pursuant to the above-mentioned Writ of Execution, private respondent took his oath and assumed office as the Vice Mayor elect of the Municipality of Sabangan as per Certification^[18] issued by the *Sangguniang Bayan* of Sabangan, Mountain Province dated November 27, 2009, and the *Panunumpa ng Katungkulan*^[19] dated November 24, 2009.

Hence, this petition.

Petitioner raises the following issues:

I.

That COMELEC (2nd Division) committed grave abuse of discretion when it proceeded to decide the motion for TRO/Status Quo Ante Order without considering the dismissed main appeal of respondent for failure to pay filing fee nine (9) months after the COMELEC clarificatory resolution