

EN BANC

[G.R. NO. 169865, July 21, 2006]

VIRGINIO VILLAMOR, PETITIONER, VS. COMMISSION ON ELECTIONS AND AMYTIS* DE DIOS-BATAO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the April 11, 2005 Resolution^[1] of the Second Division of the Commission on Elections (COMELEC) in EAC No. A-11-2004 as well as the Order of the COMELEC En Banc dated August 5, 2005. The assailed resolution affirmed the Order^[2] dated July 23, 2004 of the Regional Trial Court of Danao City, Branch 25 in Case No. EP-2004-02 which reconsidered its Order^[3] dated June 24, 2004 dismissing the election protest filed by respondent Amytis De Dios-Batao.

The antecedent facts are as follows:

On May 13, 2004, petitioner Virginio Villamor was proclaimed as mayor of Carmen, Cebu, by the Municipal Board of Canvassers (MBC) in the elections held on May 10, 2004 over his opponent, respondent Amytis De Dios-Batao. On May 17, 2004, respondent filed a petition to annul the proclamation of petitioner alleging as grounds the illegal composition of the MBC and its proceedings. The case was docketed as SPC No. 04-083 and raffled to the COMELEC Second Division.^[4]

Subsequently, or on May 24, 2004, respondent filed an election protest with the Regional Trial Court of Danao City which was docketed as Case No. EP-2004-02 and raffled to Branch 25 thereof. Petitioner filed his Answer to the Petition with Counter Protest on June 7, 2004.^[5] However, in its Order^[6] dated June 24, 2004, the trial court dismissed the election protest for lack of jurisdiction because it was filed one-day late.

Under Section 3, Rule 35 of the COMELEC Rules of Procedure, an election protest should be filed within 10 days from the date of proclamation of the results of the election. Since petitioner was proclaimed on May 13, 2004, respondent had until May 23, 2004 to file an election protest. However, respondent filed the same only on May 24, 2004, thus, it was dismissed by the trial court in an Order dated June 24, 2004.^[7]

A Motion for Reconsideration was filed by the respondent which was granted by the trial court in an Order dated July 23, 2004 because it found that the election protest was actually filed on time. Since the last day to file the protest fell on May 23, 2004 which was a Sunday, thus, under Section 1, Rule 22 of the Rules of Court, the time should not run until the next working day which was May 24, 2004. Section 5, Rule

135 of the Rules of Court gives the courts inherent power to amend and control its processes and orders to conform with law and justice.^[8]

Petitioner appealed the Order granting respondent's motion for reconsideration to the COMELEC and was docketed as EAC No. A-11-2004 and was raffled to its Second Division. In the assailed Resolution dated April 11, 2005, the Second Division of the COMELEC dismissed the appeal for lack of merit. On August 5, 2005, the COMELEC En Banc denied petitioner's motion for reconsideration.

In the meantime, the Second Division of the COMELEC issued on May 9, 2005 a Resolution^[9] in SPC No. 04-083 which is the petition to annul the proclamation of petitioner, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Petition To Declare Null And Void Proclamation dated 17 May 2004 filed by petitioners Amythis De Dios Batao, et al., is hereby DISMISSED for lack of merit.

SO ORDERED.^[10]

Hence, this petition raising the following issues:

1. MAY A REGULAR COURT, IN AN ELECTION PROTEST, ACT ON A MOTION FOR RECONSIDERATION FROM AN ORDER OF DISMISSAL OF THE ELECTION PROTEST CONSIDERING THAT A MOTION FOR RECONSIDERATION IS A PROHIBITED PLEADING?
2. MAY A REGULAR COURT ADMIT AN ELECTION PROTEST PREMATURELY CONSIDERING THAT THE PROTESTANT HAS STILL A PENDING PETITION FOR PRE-PROCLAMATION CONTROVERSY IN THE ANNULMENT OF THE PROCLAMATION OF THE PROTESTEE IN THE COMELEC AND IF IT DOES SO, MAY THE PERIOD FOR THE FILING OF THE COUNTER-PROTEST BE COUNTED FROM THE RECEIPT OF THE RESOLUTION OF THE COMELEC DENYING THE PETITION FOR THE ANNULMENT OF THE PROCLAMATION?^[11]

The core issues for resolution are as follows: (1) whether the trial court can act on a motion for reconsideration in an election protest; and (2) whether the trial court prematurely admitted respondent's election protest pending a pre-proclamation controversy.

We shall first discuss the second issue. As a general rule, the proper remedy after the proclamation of the winning candidate for the position contested would be to file a regular election protest or a petition for quo warranto.^[12] The filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation.^[13] The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for *quo warranto*, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority.^[14]

Moreover, not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for *quo warranto*.^[15] For it is not the relief prayed for which distinguishes actions under § 248^[16] from an election protest or *quo warranto* proceedings, but the grounds on which they are based.^[17]

In the case at bar, respondent's petition to annul the proclamation rested mainly on the alleged illegal composition of the municipal board of canvassers^[18] and its proceedings which is an issue that may be properly raised in a pre-proclamation controversy.^[19] Under paragraph (b) of Section 5 of Rule 27 of the COMELEC Rules of Procedure, if the petition involves the illegal composition of the board of canvassers, it must be filed immediately when the board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the board, or immediately at the point where the proceedings are or begin to be illegal. Thus, we held in *Laodenio v. Commission on Elections*^[20] that when the issue involves the illegal composition of the Board, the same cannot be questioned after the proclamation of the winner, to wit:

Although Sec. 17 of R.A. 7166 and Sec. 5 par. (a)(1) (not Sec. 4 as erroneously cited by petitioner), of Rule 27 of the COMELEC Rules of Procedure also allow filing of a petition directly with respondent COMELEC when the issue involves the illegal composition of the Board, Sec. 5, par. (b), of the same Rule requires that it must be filed immediately when the Board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the Board, or immediately at the point where the proceedings are or begin to be illegal. In the present case, the petition was filed five (5) days after respondent Longcop had been proclaimed by the Board. At any rate, the real issue appears to be - not what it appears to petitioner - whether he can still dispute the composition of the Board after having actively participated in the proceedings therein. In this regard, we sustain respondent COMELEC.^[21]

In the instant case, respondent's petition to annul petitioner's proclamation based on the alleged illegal composition of the board of canvassers is a pre-proclamation controversy which should have been filed prior to petitioner's proclamation. However, respondent filed the petition on May 17, 2004 only or four days after petitioner's proclamation. As such, the filing of the petition to annul the proclamation of petitioner did not suspend the running of the reglementary period within which to file an election protest and inevitably, it did not suspend the latter's period to file an *Answer with Counter Protest*. Accordingly, the subsequent filing of the election protest on May 24, 2004 by respondent amounted to the abandonment of the pre-proclamation controversy earlier filed.

Anent the first issue, petitioner asserts that a motion for reconsideration of the election protest filed by respondent was a prohibited pleading thus its filing did not toll the running of the period to appeal. Consequently, when the latter failed to appeal within five days from the June 24, 2004 Order of the trial court, the dismissal of the election protest became final.