

EN BANC

[G.R. No. 157687, February 26, 2004]

FERNANDO U. BATUL, PETITIONER, VS. LUCILO BAYRON AND COMMISSION ON ELECTIONS (FIRST DIVISION), RESPONDENTS.

G.R. NO. 158959.

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D E C I S I O N

CARPIO, J.:

The Case

Before us are two (2) consolidated petitions for certiorari^[1] with prayers for temporary restraining order or preliminary injunction. In G.R. No. 157687, petitioner Fernando U. Batul ("Batul") assails the Orders dated 12 February 2003 and 21 March 2003 of the Commission on Elections ("COMELEC") First Division^[2] in Election Protest Case No. 2001-19 ("EPC No. 2001-19"). In G.R. No. 158959, Batul challenges the Order and Writ of Execution dated 21 July 2003 also issued by the COMELEC First Division in the same case.

The Antecedents

Batul and respondent Lucilo R. Bayron ("Bayron") were candidates for vice-mayor of Puerto Princesa City, Palawan in the 14 May 2001 elections. The Board of Canvassers of Puerto Princesa City credited Batul with 18,095 votes and Bayron with 15,810 votes. The Board of Canvassers thus proclaimed Batul vice-mayor of Puerto Princesa City on 21 May 2001.

On 29 May 2001, Bayron filed an election protest with the COMELEC docketed as EPC No. 2001-19. Bayron protested the election results in the 392 precincts of Puerto Princesa City, claiming that anomalies and irregularities marred the conduct of the elections. Batul filed an Answer with Counter-Protest and Counterclaim denying all the material allegations in Bayron's protest. Batul claimed that it was Bayron who committed fraud and other irregularities in the protested precincts.

In an Order dated 14 September 2001, the COMELEC First Division considered the issues joined, directed Bayron to pay the deposit for the revision of ballots; and ordered both parties to submit their respective pool of revisors. The COMELEC First Division also directed Palawan's provincial election supervisor to coordinate with Puerto Princesa's city treasurer in the inventory of the ballot boxes subject of the protest and counter-protest. The COMELEC First Division further instructed the

provincial election supervisor to insure the safety and security of the ballot boxes prior to their delivery to the COMELEC office in Manila.

On 12 November 2001, the COMELEC First Division constituted four (4) Revision Committees to conduct the revision of ballots of all the protested precincts. After termination of the revision proceedings on 12 December 2001, the Revision Committees submitted their respective reports to the COMELEC First Division on 30 April 2002.

Bayron filed his formal Offer of Evidence which included the Final Reports of the 4 Revision Committees and a summary tabulation showing him with 17,248 votes against Batul's 16,581 votes or a winning margin of 667 votes. Batul filed his Comment/Opposition to respondent Bayron's Offer of Evidence. On 10 June 2002, the COMELEC First Division admitted Bayron's exhibits.

The COMELEC First Division directed Batul to present his evidence on 29 July 2002. On this date, Batul presented as his first witness, Board of Election Inspectors ("BEI") chairperson Brenda Landicho ("Landicho"). Landicho testified that some ballots do not bear her signature as BEI chairperson. Batul filed a motion to allow him to present 49 more BEI chairpersons to testify on the genuineness of the signatures of the BEI chairpersons on the revised ballots.

On 12 February 2003, the COMELEC First Division issued the first assailed order ("First Order") denying Batul's motion to allow fifty (50) BEI chairpersons to testify on the signatures appearing at the back of the ballots from the precincts where "reversals" were found during revision. The First Order disposed as follows:

WHEREFORE, premises considered, the Protestee's presentation of the testimonies of the fifty (50) BEI Chairpersons is hereby DENIED for the reasons discussed above, it appearing that the Protestee has no other evidence to present other than the above-mentioned fifty (50) BEI Chairpersons, he is directed to file his Formal Offer of Evidence within five (5) days from receipt hereof. Protestant shall file his "*Comment*" on Protestee's Formal Offer of Evidence within three (3) days from receipt thereof. Thereafter, the Commission (First Division) shall issue a Ruling on Protestee's Formal Offer of Evidence and both parties shall have a non-extendible period of fifteen (15) days from receipt of the Ruling to file their respective Memorandum. After the lapse of the given period, with or without the Memoranda, the instant case shall be deemed submitted for Resolution.

SO ORDERED.^[3]

On 19 February 2002, Batul filed a motion to reconsider the First Order. The COMELEC First Division issued the second assailed order dated 21 March 2003 denying petitioner Batul's motion for reconsideration ("Second Order").^[4]

Batul filed his formal Offer of Evidence with Tender of Excluded Evidence on 31 March 2003. Batul pointed out that the 50 BEI chairpersons would have testified on the genuineness of the signatures appearing at the back of the revised ballots where "there were discrepancies between the election returns and the tally sheets on one hand, and the physical count of the ballots during revision on the other." Bayron

filed his Comment/Objections to Batul's Offer of Evidence. On 11 April 2003, the COMELEC First Division admitted Batul's exhibits.

The COMELEC First Division deemed the case submitted for resolution after Bayron filed his memorandum on 29 April 2003 and Batul filed his memorandum on 30 April 2003.

On 11 April 2003, Batul filed the first Petition for Certiorari assailing the validity of the Orders dated 12 February 2003 and 21 March 2003 issued by the COMELEC First Division in EPC No. 2001-19, docketed as G.R. No. 157687. Batul contends it was grave abuse of discretion for the COMELEC First Division to deny his right to present the 50 BEI chairpersons as witnesses.

During the pendency of G.R. No. 157687, the COMELEC First Division decided the merits of EPC No. 2001-19 in its Resolution dated 2 July 2003, the dispositive portion of which reads:

WHEREFORE, premises considered, the Commission (First Division) **RESOLVED** as it hereby **RESOLVES** to **ANNUL** and **SET ASIDE** the 21 May 2001 proclamation of FERNANDO U. BATUL as Vice-Mayor of Puerto Princesa City, Palawan.

ACCORDINGLY, the Commission (First Division) hereby **ORDERS**:

- a. Protestee Vice-Mayor Fernando U. Batul to vacate the Office of the Vice-Mayor, Puerto Princesa City, Palawan, and to **cease and desist** from performing the functions of said office.
- b. The Deputy Executive Director of the Commission to implement this Resolution and to furnish a copy thereof to the Office of the President of the Philippines, the Secretary of the Department of Interior and Local Government, the Office of the Governor, Palawan, and to the Office of the Secretary of the local Sangguniang Panglungsod, Palawan.

No pronouncement as to costs.^[5]

Batul filed a motion to reconsider the 2 July 2003 Resolution. In the meantime, Bayron filed a motion for immediate execution of judgment on 3 July 2003 which Batul opposed. The motion was heard on 14 July 2003. The COMELEC First Division issued the Order dated 21 July 2003 granting immediate execution of judgment. The Order reads:

WHEREFORE, there being merits in the Motion, the same is GRANTED. In order to implement the Resolution of the Commission in the above-entitled case, the Clerk of the Commission (**Director IV, ECAD**) is hereby **DIRECTED** to immediately issue a **WRIT OF EXECUTION** ordering FERNANDO U. BATUL to CEASE and DESIST from discharging the powers and duties of the Office of Vice-Mayor of Puerto Princesa City and to relinquish the same to and in favor of LUCILO BAYRON who was declared duly elected to the post in the Resolution pending the final disposition of the Motion for Reconsideration filed by Protestee in the

above-entitled case. Protestant however is ordered to post a bond in the amount of FIFTY THOUSAND PESOS which shall answer for whatever damage protestee will sustain by reason of this execution if the final resolution of the protest would decide that the protestant is not entitled thereto. This Order is immediately executory.^[6]

The COMELEC First Division issued a writ of execution on the same date. Hence, Bayron took his oath and assumed the position of vice-mayor of Puerto Princesa City on 22 July 2003.

On 25 July 2003, Batul filed the second Petition for Certiorari, assailing this time the 2 July 2003 Order and the writ of execution ("Execution Orders") issued by the COMELEC First Division, docketed as G.R. No. 158959.

The Court resolved to consolidate G.R. Nos. 157687 and 158959 on 5 August 2003.

The COMELEC's Ruling

The COMELEC First Division disallowed the presentation of the testimonies of the BEI chairpersons for the following reasons:

It cannot be denied that Rule 17, Section 2 of the COMELEC Rules of Procedure explicitly provides that Protestee be given opportunity to present evidence in support of his defense.

However, our Rules of Court mandate that the purpose/s for which testimony of any witnesses (sic) is being offered must be relevant to the specific allegation in the answer and or counter protest of the Protestee and that the presentation of the intended evidence can be directly or indirectly covered. Indeed, no such issue which would warrant the presentation of the testimony of the said fifty (50) Chairpersons was raised in the Protestee's pleading.

The rule in an election protest is that the Protestant or counter-Protestant must stand or fall upon the issues he had raised in his original or amended pleadings filed prior to the lapse of the statutory period for filing protest or counter-protest.

In the case of Arroyo vs. HRET et al., 246 SCRA 384-385 it was held:

"a party is bound by the theory he adopts and by the cause he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. This is in essence putting private respondent i[n] estoppel to question the revision."

In this connection, let it be stressed that per records, the Protestee never protested or assailed on record the signatures of the BEI Chairman in all the precincts where there is reversal of ballots in favor of Protestant. Neither had the three (3) counsels of Protestee or their representatives assailed or protested in writing the signatures of any BEI Chairman during the revision and/or directly before this Honorable

Commission.

It is therefore evident that Protestee is now barred or estopped in questioning the final report of the Committees on Revision on a matter of theory not alleged in his answer.

Hence, the following jurisprudence is applicable as held in the case of Huerta Alba Resort, Inc. vs. Court of Appeals, 39 SCRA 531, 555:

"The failure of petitioner to seasonably assert its alleged right under Section 78 of R.A. No. 337 precludes it from doing at this late stage of the case. Estoppel may be successfully invoked if the party fails to raise the question in the early stages of the proceedings."^[7]

In denying Batul's motion for reconsideration, the COMELEC First Division ruled:

xxx "in an election contest where the correctness of the number of votes is involved, the best evidence and the most conclusive evidence are the ballots themselves." There is no need to present evidence aliunde particularly in this case where the protestee's main arguments in filing his Motion are the alleged "multiple substitution" of ballots and "that the contents of the ballot box had been tampered with and compromised." These matters can be determined by the Commission itself by conducting an examination of the ballots. In Punzalan vs. Comelec, the Supreme Court ruled that "it is axiomatic that the COMELEC need not conduct an adversarial proceeding or a hearing to determine the authenticity of ballots or the handwriting found thereon, and neither does it need to solicit the help of handwriting experts in examining or comparing the handwriting."^[8]

The COMELEC First Division granted Bayron's motion for immediate execution of judgment applying Section 2, Rule 39 of the Rules of Court which allows discretionary execution of judgment upon good reasons stated in the order. The COMELEC First Division found that the requirements for valid execution pending appeal as set forth in *Ramas v. COMELEC*^[9] were complied with in the case, namely: (1) the will of the electorate is involved; (2) the shortness of the remaining portion of the term of the contested office; and (3) the length of time that the election contest has been pending.

The Issues

In **G.R. No. 157687**, Batul contends that the COMELEC First Division acted with grave abuse of discretion amounting to lack or excess of jurisdiction in (1) issuing the 12 February 2003 and 21 March 2003 Orders denying Batul's right to present evidence on his behalf; and (2) considering the case submitted for resolution without giving Batul the opportunity to present testimonial (and other evidence) on his behalf, in violation of his right to due process.

In **G.R. No. 158959**, Batul contends that the COMELEC First Division issued the 21 July 2003 Order executing its Decision despite his pending motion for reconsideration in violation of COMELEC Rules of Procedure and contrary to