

EN BANC

[G.R. No. 161418, April 28, 2004]

NOEL Y. REPOL, PETITIONER, VS. COMMISSION ON ELECTIONS AND VIOLETO CERACAS, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Petitioner Noel Y. Repol ("Repol") filed this Petition for Certiorari^[1] on 21 January 2004 alleging that the Commission on Elections ("COMELEC") First Division^[2] committed grave abuse of discretion in issuing the Order dated 12 January 2004 ("Order") in SPR Case No. 1-2004. The Order directed "the parties to maintain the **STATUS QUO ANTE**, which is the condition prevailing before the issuance and implementation of the questioned Order of the court *a quo* dated January 5, 2004 in Election Case No. T-001 entitled, 'Noel Y. Repol versus Violeto Ceracas.'"

The Facts

Repol and private respondent Violeto Ceracas ("Ceracas") were candidates for Municipal Mayor of Pagsanghan, Samar in the 14 May 2001 elections. On 16 May 2001, Ceracas was proclaimed as the duly elected mayor with 66 votes more than Repol.

On 23 May 2001, Repol filed an election protest before the Regional Trial Court of Tarangnan, Samar, Branch 40 ("trial court"), docketed as Election Case No. T-001. Claiming that fraud and other irregularities marred the elections in Precincts 3A, 5A and 71, Repol prayed for revision of the ballots in these precincts. Judge Francisco Mazo dismissed the election protest on 28 August 2001. On certiorari, the COMELEC First Division reversed the dismissal order of Judge Mazo in a Resolution dated 22 May 2002 "for being issued with grave abuse of discretion tantamount to lack of jurisdiction." The COMELEC First Division directed the trial court "to reinstate the subject election protest, conduct the revision of ballots from the protested precincts and render its Decision with immediate dispatch." On 18 September 2003, the COMELEC *en banc* denied Ceracas's motion to reconsider the Resolution dated 22 May 2002. The COMELEC *en banc* affirmed *in toto* the reinstatement of Repol's election protest. This time around, trial and revision of the ballots ensued with Judge Roberto A. Navidad presiding.

On 30 December 2003, the trial court declared Ceracas's proclamation void and proclaimed Repol the duly elected mayor of Pagsanghan, Samar. The trial court explained thus:

After a very careful study and meticulous and painstaking appraisal of the contested ballots, the Court finds and so holds that the cheating and commission of various frauds and irregularities in these three contested precincts was massive, used many people to fill up the ballots – including the voters, connivance with those perpetrating the fraud and the members of the Board of Election Inspectors, the perpetrators of the fraud enjoyed the luxury of time to perpetrate the fraud and filling the ballots, that filling up of some of the ballots was done outside of the voting booth and it is not difficult to finally find the answers to the questions of the Protestant as to wherever and whatever happened to the 24 excess ballots it noted in precinct 3A (Barangay Canlapwas) and 21 excess ballots in precinct 5A (Brgy. Sto. Ninio).

From the foregoing peculiar facts and circumstances it is clearly evident that the electoral fraud was perpetrated by the use of some ballots as shuttles [lanzadera], by which device, the ballots of the voters who are not skilled in the act of writing or whose fidelity to party is in doubt is illegally written out for them by others.

It is likewise not hard to find the answers why the sisters in law of the Protestee were illegally at the table of the BEI Chairman controlling the voting process and even angrily and at the top of their voices demanding that some voters be allowed to vote as illiterates even though there were no proper identifications and indications that indeed they were illiterates. Or why the Minutes of Voting in precinct 5A is not the printed one. It only means that there was something to hide.

After a very careful study, meticulous and painstaking appraisal of the ballots the Court finds that the handwriting of one person in some of the ballots in one precinct are also found in the other two precincts.

Thus, the handwriting in the ballots in Exhibits 1, 12, 24, 27, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 51, 53 all in Precinct 3A (Canlapwas) is the same handwriting as in the ballots in Exhs. 3, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 40, 56, 57, 58, 59 all in Precinct 5A (Sto. Ninio) and is also the same handwriting in the ballots in Exhs. 3, 12, 13, 14, 25, 30, 36, 38, 41, 44, 49, 51, 52 all in Precinct 7A (Buenos Aires).

The handwriting in the ballots in Exhs. 3, 6, 8, 9, 10, 13, 16, 19, 21, 22, 23, 26 all of Precinct 3A (Canlapwas) is the same handwriting in the ballots in Exhs. 12, 34, 35, 37, 43, 44, 45, 49, 50, 51, 52, 53, 54, 55, 60, 61, 64, 65, 68, 69, 70, 71 all precinct 5A (Sto. Ninio) is the same handwriting in the ballots in Exhs. 10, 26, 27, 28, 29, 36, 61, 62, 65, 66, 67 all of precinct 7A (Buenos Aires).

Likewise, the other handwriting in the ballots in Exhs. 4, 48, 60, 61, 64 and 65 all in precinct 3A (Canlapwas) is the same handwriting in the ballots in Exhs. 14, 15, 16, 17, 18, 19, 20, 21, 22 all in precinct 5A (Sto. Ninio) is the same handwriting in the ballots in Exhs. 40, and 47 all in precinct 7A (Buenos Aires).

Likewise, the handwriting in the ballots in Exhs. 11, 8, 20, 30 all of

Precinct 3A (Canlapwas) is the same handwriting in the ballots in Exhs. 46, 47, 48, 63 all in precinct 5A (Sto. Ninio).

In like manner, the handwriting in the ballots in Exhs. 2, 7, 14, 35, 36 all in precinct 3A (Canlapwas) is the same handwriting in the ballots in Exhs. 6, 7, 36, all in precinct 5A (Sto. Ninio).

All these ballots should not be counted in favor of the Protestee.

Further, the following ballots are marked for their being written with or unnecessary decorations serving to easily identify his vote. Accordingly, they should not be counted in favor of the protestee. These ballots are:

1. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 all of Precinct 5A (Sto. Ninio) and
2. Exhs. 1, 2 and 3 all of precinct 7A (Buenos Aires).

Clearly, the will of the electorate was fraudulently substituted by the will of the perpetrators of the fraud.

All in all a total of 142 votes had been illegally counted in favor of the Protestee. Deducting 66 from 142 we get a total of 76. In other words, the Protestant garnered a majority of 76 votes over that of the protestee.

[3]

In light of these findings, the trial court rendered judgment as follows:

WHEREFORE, and in view of the foregoing, judgment is hereby rendered DECLARING as null and void the proclamation of the Protestee and instead hereby PROCLAIM AND DECLARE, NOEL Y. REPOL, the duly elected Mayor of Pagsanghan, Samar in the May 2001 elections with a majority of 77 votes.[4]

Repol filed before the trial court a motion for execution pending appeal. On 5 January 2004, the trial court granted Repol's motion and issued a writ of execution. Meanwhile, Ceracas appealed the trial court's judgment to the COMELEC.

On 6 January 2004, Repol took his oath of office as the duly elected mayor of Pagsanghan, Samar. On the same date, Ceracas filed before the trial court an omnibus motion to reconsider, set aside and quash the writ of execution.

During the pendency of Ceracas's appeal with the COMELEC and without waiting for the trial court to resolve his omnibus motion, Ceracas filed with the COMELEC a Petition for Certiorari (with prayer for temporary restraining order, writ of preliminary injunction and/or status quo ante) assailing the writ of execution, docketed as SPR No. 1-2004.[5] On 12 January 2004, the COMELEC First Division issued the assailed Order directing the parties to maintain the *status quo ante*. The Order reads in part:

Acting on the Petition for Certiorari with Prayer for the issuance of Temporary Restraining Order, Writ of Preliminary Injunction and/or Status Quo Ante Order filed by Petitioner Violeto Ceracas through counsel on

January 8, 2004, the Commission (First Division) hereby directs respondents to file their Answer within ten (10) days from receipt hereof.

The application for the Writ of Preliminary Injunction shall be heard on January 29, 2004 at ten o'clock in the morning at the Comelec Session Hall, Intramuros, Manila.

In the interest of justice and so as not to render the issues moot and academic, the Comelec (First Division) hereby directs the parties to maintain the ***STATUS QUO ANTE***, which is the condition prevailing before the issuance and implementation of the questioned Order of the court *a quo* dated January 5, 2004 in Election Case No. T-001, entitled, "Noel Y. Repol versus Violeto Ceracas".

Accordingly, effective immediately, private respondent Noel Repol, is hereby ordered to cease and desist from assuming the duties and functions of Municipal Mayor of Pagsanghan, Western Samar until further orders from this Commission. In the meantime, petitioner Violeto Ceracas shall assume the post of Municipal Mayor of Pagsanghan, Western Samar.

The Provincial Election Supervisor of Samar and the Provincial Director of the Philippine National Police (PNP), Catbalogan, Samar, are hereby directed to immediately implement this Order and make a return of service within five (5) days from the implementation thereof.

The Clerk of Commission is hereby directed to serve a copy of this Order together with a copy of the Petition to each of the respondents.^[6]
(Emphasis supplied)

At the scheduled hearing on 29 January 2004, the COMELEC First Division issued an order which reads in full:

In today's hearing of the application for a Writ of Preliminary Injunction prayed for in the above entitled petition, Atty. Sixto S. Brillantes appeared for the petitioner, while Attys. Baltazar Y. Repol and Farah D. Repol appeared for the private respondent.

Both parties argued on their respective legal positions.

In view of the pendency of the petition for certiorari filed by private respondent with the Supreme Court questioning the status quo ante issued on January 12, 2004, both parties are hereby given five (5) days from today or until February 3, 2004 to file their respective memoranda on the issue of whether this Commission can resolve on the Application for a Writ of Preliminary Injunction despite the pendency of the said petition. Parties may likewise include in their memoranda authorities and arguments on the life span of a status quo ante Order issued by the Commission. Thereafter, with or without the said memoranda, the said issue shall be deemed submitted for resolution.

SO ORDERED.

Hence, the instant petition.

The Issues

Repol raises the sole issue of –

WHETHER THE COMELEC IS EMPOWERED UNDER ANY STATUTE, RULE, OR JURISPRUDENCE TO ISSUE A *STATUS QUO ANTE* IN EFFECT OVERTURNING THE EFFECTIVE ENFORCEMENT OF THE WRIT OF EXECUTION ISSUED BY THE TRIAL COURT AND SUSPENDING INDEFINITELY, WITHOUT PRIOR NOTICE AND HEARING, THE IMPLEMENTATION OF SUCH WRIT.^[7]

Repol argues that the COMELEC First Division acted with grave abuse of discretion in issuing the *status quo ante* Order which indefinitely suspended and effectively nullified the trial court's writ of execution. Repol contends that the COMELEC First Division has no authority to issue the Order after the trial court found the election in the protested precincts marred by fraud and after the trial court considered meritorious the grounds cited by Repol in his motion for execution pending appeal. According to Repol, the law, rule and jurisprudence limit the COMELEC's power to issue temporary restraining orders to a non-extendible period of 20 days from the date of issuance.

Ceracas agrees with Repol that the rules do not expressly grant to the COMELEC the power to issue *status quo ante* orders. However, Ceracas argues that the COMELEC's power to issue temporary restraining orders and preliminary injunctions necessarily includes the power to issue *status quo ante* orders.

On the other hand, the Office of the Solicitor General (OSG) appearing on behalf of the COMELEC, prays that the Court dismiss the instant petition. The OSG asserts that Repol cannot challenge before this Court by way of a petition for certiorari an interlocutory order issued by a COMELEC Division without first filing a motion for reconsideration with the COMELEC *en banc*.

The Court's Ruling

The petition is meritorious.

Remedy to Assail Interlocutory Orders of the COMELEC in Division

Where the COMELEC in division allegedly committed grave abuse of discretion or acted without or in excess of jurisdiction in issuing an interlocutory order, the applicable rule is Section 5(c), Rule 3 of the 1993 COMELEC Rules of Procedure, which states–

Section 5. **Quorum; Votes Required.** –

(a) x x x.

(b) x x x.

(c) Any motion to reconsider a decision, resolution, order or ruling of a