406 Phil. 292

EN BANC

[G.R. No. 140884, March 06, 2001]

GELACIO P. GEMENTIZA, PETITIONER, VS. COMMISSION ON ELECTIONS (SECOND DIVISION) AND VICTORIO R. SUAYBAGUIO, JR., RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Procedural rules in election cases are designed to achieve not only a correct but also an **expeditious** determination of the popular will of the electorate. Unfortunately, the divergent interpretation of said rules by the contending parties has, until now, prolonged the termination of such cases, thus failing to attain the desired result. Such is the situation in the present case.

The antecedent facts are:

Petitioner Gelacio P. Gementiza and private respondent Victorio R. Suaybaguio, Jr. were candidates for Vice-Governor in the Province of Davao del Norte during the May 11, 1998 national and local elections.

On May 18, 1998, the provincial board of canvassers proclaimed petitioner the winner, with a total of 109,985 votes as against private respondent's 108,862, or a margin of 1,123 votes.

Claiming that fraud and irregularities were committed against him during the voting and counting of votes, private respondent promptly filed on May 28, 1998 an election protest[1] with the Commission on Elections (COMELEC) in Manila. The case, docketed as EPC No. 98-58, was later assigned to public respondent COMELEC (Second Division).

Private respondent's protest is anchored on the following grounds: (a) several members of the Board of Election Inspectors (BEI) padded more than 1,000 votes, committed deliberate errors in the reading of ballots, and made erroneous recording of votes in the election returns intended to favor herein petitioner; (b) strangers, in connivance with the BEI, voted in behalf of those who were not able to vote, and the watchers were intimidated, threatened and forced to leave the polling places; (c) the BEI incorrectly interpreted the rules on the appreciation of ballots numbering more than 1,000 votes cast in favor of private respondent and were either invalidated or considered stray votes; and (d) more than 1,000 marked ballots cast in favor of petitioner were considered valid and counted in his favor.

These allegations were denied by petitioner in his answer[2] filed on June 22, 1998.

Thereafter, upon order by public respondent, a revision of the contested ballots from

624 protested precincts was conducted in the COMELEC central office in Manila.

After the revision proceeding was completed, and during the hearing on August 5, 1999 for the initial presentation of evidence in support of his election protest, private respondent waived the presentation of testimonial evidence and rested his case solely on the basis of documentary evidence consisting of the revision reports and other election-related documents. On the same day, he formally offered these documentary evidence. Forthwith, petitioner filed his comment thereon.

On September 6, 1999, petitioner filed a demurrer to evidence (denominated as "Motion To Direct The Protestant Victorio R. Suaybaguio, Jr. To Show Cause Why His Protest Should Not Be Dismissed And/Or Demurrer To The Protestant's Evidence").[3] Petitioner alleged therein that private respondent's allegations of "fraud and irregularities" in his protest were **"negated by the Minutes of Voting of the protested precincts which the protestant has also adopted as his evidence," hence "his protest has no more leg to stand on",**[4] **and "this Protest has no more reason to continue, nor is there any legal justification to require the protestee to present his evidence".**[5] Petitioner thus prayed that private respondent's protest be dismissed.[6]

In an order dated October 11, 1999,[7] public respondent denied petitioner's demurrer to evidence.

In denying petitioner's demurrer to evidence, public respondent held that it could already ascertain the true choice of the electorate through an examination of the revision of votes, the appreciation of the ballots and the results of the voting in the uncontested precincts - all of which are now before the COMELEC. Moreover, following the ruling of the Supreme Court in ***Demetrio vs. Lopez*** (50 Phil. 45 [1927]) and ***Jardiel vs. COMELEC*** (124 SCRA 650 [1983]), the protestee in an election protest who demurs to the evidence presented by the protestant after the latter has rested his case, **impliedly waives** the presentation of his evidence. Thus, public respondent considered the case submitted for resolution after the parties shall have filed, if they so desire, their respective memoranda on or before November 18, 1999.

Petitioner filed a motion for reconsideration[8] of the October 11, 1999 order, contending that it is premature and contrary to law and the due process clause of the Constitution considering that under Section 1, Rule 33 of the 1997 Rules of Civil Procedure, as amended, he has the right to present his evidence even if his demurrer was denied. Moreover, the cases cited by public respondent are inapplicable in the instant case. Thus, he prayed that he be allowed to present his evidence.

Petitioner further prayed that his motion for reconsideration be certified and elevated to the COMELEC *en banc* pursuant to the provisions of Section 5, Rule 19 of the COMELEC Rules of Procedure of February 15, 1993, which provides that "(u)pon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*."

Public respondent, in an order dated November 29, 1999,[9] denied petitioner's motion for reconsideration for lack of merit, citing ***Calabig vs. Villanueva*** (135 SCRA 300 [1985]) and ***Enojas, Jr. vs. Commission on Elections*** (283 SCRA 229 [1997]), reiterating the ruling in ***Demetrio*** (*supra*) and ***Jardiel*** (*supra*).

In denying petitioner's prayer that his motion for reconsideration be certified and elevated to the COMELEC *en banc,* public respondent held that the assailed October 11, 1999 order is interlocutory in character considering that respondent's protest has yet to be resolved.

Petitioner elevated the matter to this Court via the instant petition for certiorari seeking the nullification of public respondent's orders dated October 11, 1999 and November 29, 1999.

In an *en banc* resolution dated January 18, 2000,[10] this Court dismissed the petition for having been prematurely filed. The Constitution, in its Section 7, Article IX-A in relation to Section 3, Article IX-C, and Rule 37 of the COMELEC Rules of Procedure mandate that only final orders, rulings and decisions of the COMELEC *en banc* can be challenged before the Supreme Court on certiorari.[11]

Petitioner filed a motion for reconsideration[12] of this Court's order, contending that public respondent's unjustified denial of his prayer to elevate to the COMELEC *en banc* his motion to reconsider the October 11, 1999 order left him with no other recourse but to come directly to us for relief. In the same motion, petitioner also prayed for the issuance of a temporary restraining order to enjoin public respondent from further hearing the protest case until his motion to reconsider the order of October 11, 1999 has been passed upon by the Commission *en banc*.[13]

In order not to render moot the issues raised in the instant petition, this Court issued a temporary restraining order dated February 10, 2000,[14] effective immediately, directing the COMELEC (Second Division) to cease and desist from further proceeding with the election protest until further orders from the Court.

On February 15, 2000, this Court, in an *en banc* resolution,[15] granted petitioner's motion for reconsideration, reinstated the instant petition and required the respondents to comment thereon.

Both private respondent and public respondent (represented by the Solicitor General) filed their separate comments[16] on the petition, to which petitioner submitted a reply. Thereafter, the parties filed their respective memoranda. On February 15, 2000, this Court gave due course to the petition.[17]

In his petition, petitioner maintains:

1. That the filing of a demurrer to evidence does **not** carry with it an **implied waiver** of private respondent's right to present evidence; and

2. That the October 11, 1999 order of public respondent denying the demurrer to evidence is **not** interlocutory in character but a **final**

order; hence, his motion to reconsider the said order should be elevated to the COMELEC *en banc* for resolution.

We rule against petitioner.

In support of his position that he does not lose his right to present evidence after the denial of his demurrer to evidence by the public respondent, petitioner invokes Section 1, Rule 33 of the 1997 Rules of Civil Procedure, as amended, which reads:

> "Section 1. *Demurrer to Evidence*. - After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. **If his motion is denied, he shall have the right to present evidence**. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived his right to present evidence." (underscoring ours)

The petitioner urges us to apply the above-quoted rule to his case and to reiterate our decision in ***Northwest Airlines vs. Court of Appeals***[18] which sets a guideline on demurrer to evidence in civil cases, as follows:

> "We agree with the Court of Appeals in its holding that the trial court erred in deciding the entire case on its merit. Indeed, as to the demurrer to evidence, the trial court should have been solely guided by the procedure laid down in the above- mentioned rule on demurrer to evidence. It had no choice other than to grant or to deny the demurrer. It could not, without committing grave abuse of discretion amounting to excess of jurisdiction, deny the motion and then forthwith grant TORRES' claims on a finding that TORRES has established a preponderance of evidence in support of such claims. In the instant case, the trial court did just that insofar as moral damages, attorney's fees, and expenses of litigation were concerned. **What it should have done was to merely deny the demurrer and set a date for the reception of NORTHWEST's evidence in chief."**[19] (underscoring ours)

What petitioner is saying is that the rule on demurrer to evidence in civil cases is applicable to election cases.

That is not so.

Section 4, Rule 1 of the 1997 Rules of Civil Procedure, as amended, provides that **" (t)hese Rules shall not apply to election cases**, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, **except by analogy or in a suppletory character and whenever practicable and convenient."**

In the same vein, under Section 1, Rule 41 of the COMELEC Rules of Procedure, the Rules of Civil Procedure apply **only** "by analogy or in a suppletory character and effect."

The COMELEC Rules of Procedure is silent on the subject of demurrer to evidence. This question now arises: Can we apply by analogy or in a suppletory character and whenever practicable and convenient Section 1, Rule 33 of the 1997 Rules of Civil

Procedure, as amended, on a demurrer to evidence in an election protest?

We answer in the negative.

It should be underscored that the **nature** of an election protest case differs from an ordinary civil action. Because of this difference, the Rules of Civil Procedure on demurrer to evidence cannot apply to election cases even "by analogy or in a suppletory character," especially because the application of said Rules would **not** be "**practicable and convenient**."

Our decision in ***Estrada vs. Sto. Domingo***[20] emphasizes the "special" and "expeditious" nature of election cases, **the early resolution of which should not be hampered by any unnecessary observance of procedural rules**. There we held:

> "2. We face the problem ahead with an eye to the nature of election contest proceedings.
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> "The statutory scheme clearly mapped out in the Revised Election Code is that **proceedings in election protests are special and expeditious**. The periods for filing pleadings are short. Trials are swift. Decisions in municipal election contests are to be handed down in six months after the protest is presented. The time to file a notice of appeal is cut short to five days from notice of the decision. Appeal is to be decided within three months after the case is filed with the clerk of the court to which appeal is taken. Preferential disposition of election contests except as to habeas corpus proceedings is set forth in the law. **Even the rules of court make it abundantly clear that election cases enjoy preferential status. The proceedings should not be encumbered by delays. All of these are because the term of elective office is likewise short.** There is the personal stake of the contestants which generates feuds and discords. **Above all is the public interest. Title to public elective office must not be left long under cloud. Efficiency of public administration should not be impaired. It is thus understandable that pitfalls which may retard the determination of election contests should be avoided. Courts should heed the imperative need for dispatch. Obstacles and technicalities which fetter the people's will should not stand in the way of a prompt termination of election contests.**
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> "Since 1966, when this Court in *Lagumbay vs. Climaco* (16 SCRA 175) projected the pressing need to strike a blow at the `pernicious grab-the-proclamation-prolong-the-protest slogan of some candidates or parties', **we observe, to our dismay, that courts of justice still have to cope with oft-recurring cases which come about in utter disregard of this rule.**
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> **"These are the desiderata which should be uppermost in the mind of courts of justice, if only to give substance to the constitutional precept that "[s]overeignty resides in the people and all government authority emanates from them."**[21] (underscoring ours)