

## EN BANC

[ G.R. No. 144678, March 01, 2001 ]

### JAVIER E. ZACATE, PETITIONER, VS. COMMISSION ON ELECTIONS AND THELMA C. BALDADO, RESPONDENTS.

#### D E C I S I O N

##### GONZAGA-REYES, J.:

Before us is a petition for certiorari filed pursuant to Section 3, Rule 64 of the 1997 Rules of Court in relation to Section 13 (a) of COMELEC Rule 18.

The antecedents are:

Petitioner Javier E. Zacate (petitioner) and private respondent Thelma C. Baldado (private respondent) were candidates for the position of Mayor in the Municipality of Sulat, Eastern Samar, in the May, 1998 elections.

The Municipal Board of Canvassers proclaimed private respondent as the duly elected mayor having garnered two thousand nine hundred fifty-eight (2,958) votes as against the two thousand seven hundred nineteen (2,719) votes of petitioner, private respondent winning by two hundred thirty-nine (239) votes.

Dissatisfied with the outcome, petitioner filed an election protest before the Regional Trial Court of Borongan, Samar docketed as Election Protest No. 01-98.

On August 13, 1999, the trial court promulgated its Decision<sup>[1]</sup> dated August 3, 1999 declaring petitioner as the duly elected Mayor with 2,638 votes over the 2637 votes of private respondent, or with one vote as his winning margin.<sup>[2]</sup>

On the same date that the decision was promulgated, August 13, 1999, private respondent filed a notice of appeal. The following day, August 14, 1999, petitioner filed a Motion for Immediate Execution of Judgment Pending Appeal which private respondent opposed on the ground that she had already perfected her appeal.

On August 24, 1999, private respondent filed an Urgent Motion for Clarificatory Judgment contending that a clarificatory judgment should be made before ruling on any previous motion affecting the appealed decision since she and petitioner allegedly obtained equal number of votes of 2,637.

On August 27, 1999, petitioner filed a Supplemental Memorandum claiming that in the final computation of the votes in Precincts 4A and 15A1, the valid votes in his favor were omitted such that he should have won by 21 votes and not merely by one (1) vote.

On the same date, August 27, 1999, the trial court rendered its Supplemental

Decision<sup>[3]</sup> that modified its original Decision dated August 3, 1999 by correcting the winning margin of petitioner to two (2) votes instead of one (1) vote.<sup>[4]</sup> The Supplemental Decision also denied the motion for execution of judgment pending appeal filed by petitioner on the ground of lack of jurisdiction because private respondent had already perfected her appeal.<sup>[5]</sup> The same Supplemental Decision further ordered the transmission of the complete records of the protest case to the Comelec.

On September 7, 1999 or six (6) days after petitioner received a copy of the Supplemental Decision, he filed a Motion for Partial Reconsideration (of the Supplemental Decision)<sup>[6]</sup> to reverse the denial of his motion for execution pending appeal. Petitioner contested the denial of his motion for execution pending appeal on two grounds. First, that the trial court did not lose jurisdiction over the case simply because private respondent had already perfected her appeal on August 13, 1999<sup>[7]</sup> and second, that good and valid grounds exist for the immediate execution of the judgment.<sup>[8]</sup>

After hearing, the trial court issued a Resolution<sup>[9]</sup> dated October 11, 1999 reversing its Supplemental Decision dated August 27, 1999. The Resolution ruled that the trial court still had jurisdiction over the motion for execution pending appeal<sup>[10]</sup>, that there are good and valid reasons for granting execution pending appeal<sup>[11]</sup> and that the motion is not a prohibited pleading. In support of its ruling, the trial court cited the case of *Asmala vs. COMELEC*.<sup>[12]</sup>

On October 25, 1999, the trial court issued a Writ of Execution to enforce the judgment in Election Protest No. 01-98.

On October 26, 1999, private respondent filed a motion to cancel and rescind the order granting execution pending appeal but this was denied by the trial court on November 9, 1999.

On November 11, 1999, private respondent filed with the Comelec a petition for certiorari to annul the order granting execution pending appeal.

On March 21, 2000, the Comelec Second Division issued its now assailed Resolution<sup>[13]</sup> that granted the petition of private respondent and set aside the Resolution of the trial court dated October 11, 1999 and Writ of Execution dated October 25, 1999. In granting the petition, the Comelec ruled that the trial court had no more jurisdiction over the election case when it granted the motion for execution pending appeal of petitioner through its questioned Resolution dated October 11, 1999.<sup>[14]</sup> The Comelec pointed out that the trial court was no longer in possession of the original records of the case when petitioner filed his Motion for Partial Reconsideration since said court in its Supplemental Decision dated August 27, 1999 had already ordered the transmission of the records of the case to the Comelec.<sup>[15]</sup> The Comelec also noted that the trial court should not have entertained petitioner's Motion for Partial Reconsideration of the Supplemental Decision<sup>[16]</sup>, the same being prohibited by the COMELEC Rules of Procedure (Rule 35, Section 19).<sup>[17]</sup>

On September 12, 2000, the *Comelec En Banc*<sup>[18]</sup> promulgated its Resolution denying the Motion for Reconsideration of petitioner of said March 21, 2000 Resolution of the Second Division.

In this petition, petitioner raises this sole issue:

"WHETHER OR NOT RESPONDENT COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION BY ERRONEOUSLY RULING, WITHOUT ANY FACTUAL AND LEGAL BASIS, THAT THE TRIAL COURT HAD 'COMPLETELY LOST ITS JURISDICTION' OVER ZACATE'S 'MOTION FOR IMMEDIATE EXECUTION OF JUDGMENT PENDING APPEAL' WHICH WAS TIMELY FILED DURING THE PERIOD OF APPEAL AND WAS GRANTED SUBSEQUENTLY THEREAFTER."<sup>[19]</sup>

Petitioner asserts that in issuing the Resolution eventually granting the motion for immediate execution, the trial court was merely correcting the mistake it had previously committed in its Supplemental Decision wherein it denied the same motion. In said Supplemental Decision, the trial court justified the denial of the motion for execution pending appeal on the ground that the court had completely lost jurisdiction over the case upon the perfection of the appeal of private respondent. Petitioner argues that the denial of his motion for immediate execution was erroneous because the trial court retained jurisdiction over the case since petitioner still had the right to appeal and it was during this period to appeal that he filed the motion for execution pending appeal. Petitioner then rationalizes that consequently, the order of the court to elevate the records of the case to the Comelec, a directive also embodied in the Supplemental Decision, is likewise erroneous.

In reversing the trial court, the Comelec focused on the fact that the trial court was no longer in possession of the records of the case when it issued the Resolution granting discretionary execution. The Comelec pointed out that prior to the issuance of the Resolution, the trial court in its Supplemental Decision had previously directed the elevation of the records of the case to the Comelec. The Comelec also noted that petitioner's motion for partial reconsideration of the Supplemental Decision was filed out of time since petitioner filed it six (6) days after receipt of the Supplemental Decision when the period to appeal under COMELEC Rules is five days. The Comelec Decision further declared that the motion for partial reconsideration of the Supplemental Decision filed by petitioner is prohibited under Section 19, COMELEC Rule 35 which states that the "decision of the trial court shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained."

Petitioner counters that the mere transmittal of the records to the Comelec did not divest the court of jurisdiction since the records pertain to and are needed only in the appeal, but not in the separate motion for immediate execution. Petitioner further contends that granting that the trial court was deprived of the actual possession of the records of the case, the alleged baseless denial of his motion for immediate execution in the Supplemental Decision did not gain finality when he allegedly timely filed his motion for partial reconsideration. Petitioner also objects to the ruling of the Comelec that his motion for partial reconsideration of the Supplemental Decision is prohibited by the COMELEC Rules. The prohibition on the filing of a motion for reconsideration allegedly refers to the final decision of the main election protest, not to the partial or separate motion to execute said decision.

According to petitioner, even assuming that the Supplemental Decision had become final, the trial court was not deprived of its jurisdiction to correct clerical errors, mistakes, or omissions as by amendment *nunc pro tunc*. Petitioner claims that with more reason should the trial court partially correct its Supplemental Decision denying his motion for execution pending appeal when it did not clearly and distinctly express the factual and legal basis for its denial.

On December 6, 2000, petitioner filed an Urgent Manifestation/Motion calling the attention of this Court to the Resolution dated November 24, 2000 issued by the Comelec First Division on the appeal filed by private respondent. The Resolution affirmed the decision of the regional trial court that declared petitioner as winner, this time with a winning margin of one hundred eight (108) votes. Petitioner believes that with the resolution of the Comelec affirming his victory, the issue on the motion for execution pending appeal has become moot and academic.

The Office of the Solicitor General (OSG) agrees with petitioner that he timely filed his motion for execution pending appeal and that the trial court committed an error when it denied said motion in its Supplemental Decision. Based on this premise, the OSG opines that the Resolution eventually issued by the trial court granting petitioner's motion for partial reconsideration and issuing a writ of execution pending appeal in favor of petitioner was validly issued, as it merely corrected its previous error. The OSG also cites the recent resolution of the Comelec declaring petitioner as the winner in the mayoralty election in Sulat, Samar.

On the other hand, private respondent defends the ruling of the Comelec. Private respondent maintains that the jurisdiction of the trial court over the motion for execution pending appeal ended when it denied said motion in its Supplemental Decision. Private respondent further points out that the trial court should not have acted on the motion for partial reconsideration of the Supplemental Decision filed by petitioner because it was filed out of time. Private respondent also reiterates the ruling of the Comelec that the motion for partial reconsideration of petitioner is prohibited by the COMELEC Rules of Procedure since said rule bars any kind of motion for reconsideration.

Notwithstanding the Resolution dated November 24, 2000 of the Comelec First Division confirming the victory of petitioner, a decision which is still subject to the pending appeal of private respondent, we resolve to address the matter at hand.

Without doubt, the Supplemental Decision of the trial court denying petitioner's motion for execution pending appeal on the ground of lack of jurisdiction was incorrect because the denial was solely based on the fact that private respondent had already perfected her appeal. Even the Comelec and private respondent concede that the trial court still had jurisdiction to rule on petitioner's motion for execution pending appeal in view of the fact that petitioner's period to appeal had not yet lapsed.

Section 2, Rule 39 of the Rules of Court, the provision governing execution of judgments pending appeal in election cases, provides:

"SEC. 2. Discretionary execution.--

(a) *Execution of a judgment or a final order pending appeal.*--On motion