

FIRST DIVISION

[G.R. No. 134932, February 18, 2000]

VITO BESO, PETITIONER, VS. RITA ABALLE AND HON. ROBERTO A. NAVIDAD, ACTING PRESIDING JUDGE, BRANCH 31, REGIONAL TRIAL COURT OF CALBAYOG CITY, RESPONDENTS.

D E C I S I O N

DAVIDE JR., C.J.:

On 15 December 1999 we resolved to give due course to this petition for *certiorari* and to decide it on the basis of the pleadings filed by the parties.

The antecedents are not disputed.

Petitioner Vito Beso (hereafter BESO) and private respondent Rita Aballe (hereafter ABALLE) were candidates for the position of Barangay Captain of Barangay Carayman, Calbayog City, in the barangay elections of 12 May 1997.

In the canvass of the returns of the four precincts of Barangay Carayman, BESO was credited with four hundred ninety-five (495) votes, while ABALLE obtained four hundred ninety-six (496) votes. The latter was thus proclaimed the winning candidate.

BESO seasonably filed a protest with the Municipal Trial Court of Calbayog City (hereafter MTCC). The case was docketed as Election Protest No. 130.

After due proceedings, the MTCC, per Judge Filemon A. Tandico, Jr., promulgated on 20 January 1998 a decision (rollo, 28), dated 13 January 1998, in favor of BESO. The decretal portion thereof reads as follows:

ACCORDINGLY, the proclamation made by the Board of Canvassers concerned should be, as it is hereby, reversed and another entered declaring Protestant VITO A. BESO, the duly elected Punong Barangay of Brgy. Carayman, Calbayog City, in the elections of 12 May 1997, with the right to assume office as soon as judgment becomes final. No pronouncement as to costs.

After this decision becomes final, let a copy thereof be furnished the Commission on Elections, the Department of Interior and Local Government and the Commission on Audit.

SO ORDERED (*id.*, 39).

On 20 January 1998 ABALLE filed a Notice of Appeal (*id.*, 40) manifesting therein that she is appealing from the decision "to the Regional Trial Court, Calbayog City." It likewise appears that on 22 January 1998, ABALLE filed a Notice of Appeal (*id.*,

41), indicating therein that she was appealing from the decision "to the COMMISSION ON ELECTIONS, MANILA." On the same date ABALLE purchased postal money orders in the amounts of P500 and P20 in payment of the appeal fees and filed them with the MTCC, which the latter transmitted to the Commission on Elections. However, in the letter of 4 September 1998 (*id.*, 146), Records Officer IV Miguel T. Varquez, Jr. of the Electoral Contests Adjudication Department of the Commission on Elections returned these money orders for having become stale and directed ABALLE to replace them within three days.

On 26 January 1998, BESO filed with the MTCC a motion for execution pending appeal dated 23 January 1998 (*id.*, 45).

ABALLE sought to inhibit judge Filemon A. Tandinco, Jr. of MTCC (*id.*, 48); however, the motion was denied in the order of 2 March 1998 (*id.*, 67).

On 5 March 1998, the MTCC, handed down a Resolution (*id.*, 69) granting the motion for execution pending appeal and decreeing as follows:

WHEREFORE and by the foregoing applicable Laws, Rules and Jurisprudence hereby upholds and approve the Motion for Execution pending appeal. Further, finding good reasons hereof directs and orders immediate execution of the Decision of this Court promulgated on January 20, 1998, and as prayed for install Vito Beso as the duly elected Chairman of Barangay Carayman, Calbayog City, to take his oath of Oath of Office assume as such Chairman after he shall have filed a bond in the amount of ONE HUNDRED THOUSAND (P100,000.00) in such sufficient sureties subject to approval by this Court.

Furnish copy of this Resolution: The City Mayor, Calbayog City, The Secretary, Department of Interior and Local Government, Metro Manila, The Commission on Elections, Manila and Calbayog City, Atty. Eduardo Tibo and Atty. Artemio Apostol.

ABALLE filed a motion to reconsider (*id.*, 77) the Resolution, which the MTCC denied in its Resolution of 21 April 1998 (*id.*, 87).

On 24 April 1998, ABALLE filed with the Regional Trial Court of Calbayog City (hereafter RTC) a special civil action for *certiorari* and prohibition, with an urgent prayer for the issuance of a temporary restraining order or writ of preliminary injunction (*id.*, 91) against MTCC Judge Tandinco, Jr. to set aside and annul the latter's order of 2 March 1998 denying the motion for inhibition; resolution of 5 March 1998 granting the motion for execution pending appeal; and the resolution of 21 April 1998 denying the motion to reconsider the resolution of 5 March 1998. BESO was impleaded as co-respondent. The case was assigned to Branch 31 of the RTC, presided over by public respondent Judge Roberto A. Navidad, and was docketed as Special Civil Action No. 98-040.

On 28 April 1998, Judge Navidad issued a Temporary Restraining Order (*id.*, 104) restraining respondent Judge Tandinco, Jr. and all persons acting in his behalf "from enforcing the Writ of Execution Pending Appeal." The temporary restraining order was "effective within 72 hours only from its issuance."