

EN BANC

[G.R. No. 125752, December 22, 1997]

**IRENEO A. MANAHAN PETITIONER VS. HON JUDGE ARTURO M. BERNARDO, PRESIDING JUDGE, RTC, BRANCH 36, GAPAN, NUEVA ECIJA, AND ABUNDIA L. GARCIA, RESPONDENTS.
R E S O L U T I O N**

KAPUNAN, J.:

Petitioner Ireneo A. Manahan and private respondent Abundia L. Garcia were candidates for the mayoralty of the Municipality of Cabiao, Nueva Ecija during the May 8, 1995 elections.

On May 11, 1995, private respondent filed a petition with the Commission on Elections (COMELEC), docketed as SPA No. 95-180, to suspend the canvass of the election returns on account of the alleged irregularities committed by petitioner during the elections like snatching and burning of ballot boxes and preventing watchers of petitioner from taking close watch of the proceedings in the precincts.

[1]

On the same day, however, after completion of the canvass, petitioner was proclaimed the winning candidate for mayor of the said municipality.

On May 12, 1995, private respondent filed another petition with the COMELEC, docketed as SPC No. 95-058, to declare the proclamation of petitioner null and void.

[2]

On May 16, 1995, private respondent filed an appeal to the COMELEC praying for the exclusion of the election returns from eighteen (18) precincts and for the declaration as null and void of the proclamation of petitioner as mayor of Cabiao.

Said appeal was docketed as SPC No. 95-089. [3]

On May 24, 1995, the COMELEC dismissed private respondent's appeal in SPC No. 95-089. [4] The COMELEC ruled that private respondent's complaint regarding the alleged snatching and taking away of ballot boxes, the exclusion of her watchers from the precincts through threats and intimidation and the delay in the delivery of some ballot boxes to the Municipal Building, are proper grounds for an election protest and not a pre-proclamation controversy. The COMELEC further reasoned out that the presence of threats and intimidation in the preparation of the election returns was not substantiated; that formal defects regarding election returns do not affect their genuineness or authenticity; and that a conclusion that an election return is manufactured or false should be approached with extreme caution and needs the most convincing proof. Finally, the COMELEC expounded that petitioner's proclamation had been rendered moot and academic by private respondent's appeal, without prejudice to the seasonable filing in the proper forum of an election protest.

On May 26, 1995, the COMELEC dismissed private respondent's petition in SPC No. 95-058 for lack of merit, stating that the latter's remedy was an election protest before the regular courts. [5]

On June 29, 1995, the COMELEC, likewise, dismissed private respondent's petition in SPA No. 95-180 citing substantially the same reasons given in the two (2) preceding resolutions. [6]

Meanwhile, on June 5, 1995, private respondent as protestant filed a Petition Ad Cautelum [7] before the Regional Trial Court of Gapan, Nueva Ecija, Branch 34, docketed as Election Protest No. 95-04, praying for the following reliefs, viz:

WHEREFORE, it is respectfully prayed of this Honorable Court that:

1. Upon filing of this contest, an Order be issued directing that the list of voters, the documents used in the election, ballots, ballot boxes and their keys and other relevant items be kept and held secure in the offices of the Honorable Court, in the care and custody of the Clerk of Court under the authority of the Presiding Judge.
2. After hearing, a judgment be rendered:
 - a. Ordering a recount and/or revision of the ballots in Precincts Nos. 01, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5-M, 5-A, 10-M, 12, 13-A, 20, 20-A, 21-M, 21-M-1, 21-A, 21-A-1, 22, 22-A, 23, 23-A, 24, 24-A, 36, 36-A, 37, 37-A, 38, 39, 40, 41, 41-A, 42, 42-A, 43, 43-A, 44, 44-A, 46, 48, 48-A, 49-M, 49-M-1, 49-A, 51, 51-A, 53, 53-A, 55, 55-A, 56, 56-A, 57, 57-A, 58, 58-A, 59, 59-A, 63, 63-A, 64 and 64-A of the Municipality of Cabiao, Nueva Ecija, insofar as the votes for Mayor are concerned;
 - b. Declaring the Certificate of Canvass of Votes and Proclamation of the Winning Candidates dated 11 May 1995 proclaiming the protestee, IRENEO MANAHAN, as the duly elected Mayor of the Municipality of Cabiao, Nueva Ecija as null and void;
 - c. Declaring, after recounting and/or revision, the protestant as the duly elected Mayor of the Municipality of Cabiao, Nueva Ecija;
 - d. Ordering protestee to pay protestant moral damages in the amount of One Million Pesos (P1,000,000.00); and
 - e. Ordering protestee to pay protestant attorney's fees in the amount of One Million Pesos (P1,000,000.00) plus cost of suit and revision.

The protestant further prays for other relief just and equitable. [8]

Thereafter, petitioner filed three (3) motions with the trial court, to wit: Motion to Dismiss, [9] Supplemental Motion to Dismiss [10] and Motion (to declare petition ad cautelum automatically dismissed), [11] all alleging that the petition ad cautelum was filed beyond the 10-day reglementary period for filing an election protest, that

it states no cause of action and that private respondent is not entitled to a judicial recount. All three motions were opposed by private respondent.

Before the foregoing motions could be resolved, petitioner sought the inhibition of Judge Rogelio de Guzman to whom the case was raffled for resolution. Said judge, though not finding any compelling reason for his inhibition, nonetheless inhibited himself from hearing the case. Consequently, the case was assigned to respondent judge.

Petitioner again sought the inhibition of respondent judge but the latter denied the motion.

Petitioner then brought the matter to the Court of Appeals via a petition for certiorari, docketed as CA-G.R. SP. No. 39492, raising the issue of the denial of his motion to inhibit respondent judge. On March 29, 1996, the Court of Appeals denied the petition.

Aggrieved by the ruling, petitioner filed a petition for certiorari before this Court, docketed as G. R. No. 124423, alleging grave abuse of discretion on the part of the Court of Appeals in denying his petition. On May 28, 1996, this Court dismissed said petition on the ground that the same was not the proper remedy; and even if the petition was treated as one under Rule 45, it would still be denied as there was no reversible error committed by the public respondent.

In the meantime, respondent judge resolved all the pending incidents of the case and issued an Order dated April 23, 1996, which dispositively reads:

WHEREFORE, the motion to dismiss and the supplemental motion thereto as well as the motion to declare the petition automatically dismissed are denied for lack of merit. The revision or recounting of the ballot in Precinct Nos. 01, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5-M, 5-A, 10-M, 12, 13-A, 20, 20-A, 21-M, 21-M-1, 21-A, 21-A-1, 22, 22-A, 23, 23-A, 24, 24-A, 36, 36-A, 37, 37-A, 38, 39, 40, 41, 41-A, 42, 42-A, 43, 43-A, 44, 44-A, 46, 48, 48-A, 49-M, 49-M-1, 49-A, 51, 51-A, 53, 53-A, 55, 55-A, 56, 56-A, 57, 57-A, 58, 58-A, 59, 59-A, 63, 63-A, 64 and 64-A is ordered.

In this connection, the protestant is directed to make a cash deposit of P300.00 for every ballot box.

SO ORDERED. ^[12]

Petitioner's motion for reconsideration was denied in an Order of respondent judge dated May 15, 1996. ^[13]

Petitioner filed a second motion for reconsideration but the same was, likewise, denied in an Order dated July 19, 1996. ^[14]

Hence, the instant petition raising the same issues brought before the trial court, that is, whether or not (1) the election case was filed within the 10-day reglementary period for filing election protests under Section 251 of the Omnibus Election Code and (2) private respondent is entitled to a judicial recount of the