

EN BANC

[G.R. No. 120905, March 07, 1996]

RENATO U. REYES, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ROGELIO DE CASTRO, RESPONDENTS.

[G.R. NO. 120940. MARCH 7, 1996]

JULIUS O. GARCIA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND RENATO U. REYES, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

For resolution are special civil actions of certiorari. The petition in **G.R. No. 120905** seeks to annul the resolution dated May 9, 1995 of the Second Division of the Commission on Elections, declaring petitioner Renato U. Reyes disqualified from running for local office and cancelling his certificate of candidacy, and the resolution dated July 3, 1995 of the Commission en banc, denying petitioner's motion for reconsideration. On the other hand, the petition in **G.R. No. 120940**, filed by Julius O. Garcia, has for its purpose the annulment of the aforesaid resolution of July 3, 1995 of the Commission en banc insofar as it denies his motion to be proclaimed the elected mayor of Bongabong, Oriental Mindoro, in view of the disqualification of Renato U. Reyes.

On August 1, 1995, the Court issued a temporary restraining order directing the Commission on Elections en banc to cease and desist from implementing its resolution of July 3, 1995. It also ordered the two cases to be consolidated, inasmuch as they involved the same resolutions of the COMELEC.

The facts are as follows:

Petitioner Renato U. Reyes was the incumbent mayor of the municipality of Bongabong, Oriental Mindoro, having been elected to that office on May 11, 1992. On October 26, 1994, an administrative complaint was filed against him with the Sangguniang Panlalawigan by Dr. Ernesto Manalo. It was alleged, among other things, that petitioner exacted and collected P50,000.00 from each market stall holder in the Bongabong Public Market; that certain checks issued to him by the National Reconciliation and Development Program of the Department of Interior and Local government were never received by the Municipal Treasurer nor reflected in the books of accounts of the same officer; and that he took twenty-seven (27) heads of cattle from beneficiaries of a cattle dispersal program after the latter had reared and fattened the cattle for seven months.

In its decision, dated February 6, 1995, the Sangguniang Panlalawigan found petitioner guilty of the charges and ordered his removal from office.

It appears that earlier, after learning that the Sanggunian had terminated the proceedings in the case and was about to render judgment, petitioner filed a petition for certiorari, prohibition and injunction with the Regional Trial Court of Oriental Mindoro, Branch 42, alleging that the proceedings had been terminated without giving him a chance to be heard. A temporary restraining order was issued by the court on February 7, 1995, enjoining the Sangguniang Panlalawigan from proceeding with the case. As a result, the decision of the Sangguniang Panlalawigan could not served upon Reyes. But on March 3, 1995, following the expiration of the temporary restraining order and without any injunction being issued by the Regional Trial Court, an attempt was made to serve the decision upon petitioner's counsel in Manila. However, the latter refused to accept the decision. Subsequent attempts to serve the decision upon petitioner himself also failed, as he also refused to accept the decision.

On March 23, 1995, the Presiding Officer of the Sangguniang Panlalawigan, Vice Governor Pedrito A. Reyes, issued an order for petitioner to vacate the position of mayor and peacefully turn over the office to the incumbent vice mayor. But service of the order upon petitioner was also refused.

Meanwhile, on March 20, 1995, petitioner filed a certificate of candidacy with the Office of the Election Officer of the COMELEC in Bongabong.

On March 24, 1995, private respondent Rogelio de Castro, as registered voter of Bongabong, sought the disqualification of petitioner as candidate for mayor, citing the Local Government Code of 1991 (R.A. No. 7160) which states:

§ 40. *Disqualification.* - The following persons are disqualified from running for any elective local position:

.....

(b) Those removed from office as a result of an administrative case.

Nonetheless, because of the absence of any contrary order from the COMELEC, petitioner Reyes was voted for in the elections held on May 8, 1995.

On May 9, 1995, the COMELEC's Second Division issued the questioned resolution, the dispositive portion of which reads as follows:

WHEREFORE, respondent having been removed from office by virtue of Administrative Case 006-94, he is hereby DISQUALIFIED from running for public office, in conformity with Section 40, paragraph (b) of the 1991 Local Government Code. The respondent's Certificate of Candidacy is CANCELLED in conformity with this resolution. The Election Officer of Bongabong, Oriental Mindoro is ordered to amend the official list of candidates in Bongabong to reflect the respondent's disqualification and to IMMEDIATELY circulate the amendment to the different Boards of Election Inspectors in Bongabong upon the receipt of this decision.

On May 10, 1995, the Municipal Board of Canvassers of Bongabong, apparently unaware of the disqualification of Reyes by the COMELEC, proclaimed him the duly-elected mayor.

On July 3, 1995, petitioner filed a motion for reconsideration of the resolution of the COMELEC's Second Division, but his motion was denied. The COMELEC en banc declared him to have been validly disqualified as candidate and, consequently, set aside his proclamation as municipal mayor of Bongabong. Hence the petition in **G.R. No. 120905**, which was filed on July 20, 1995, alleging grave abuse of discretion by the COMELEC on the ground that the decision in the administrative case against petitioner Reyes was not yet final and executory and therefore could not be used as basis for his disqualification. It is contended that the charges against him were rendered moot and academic by the expiration of the term during which the acts complained of had allegedly been committed. Invoking the ruling in the case of *Aguinaldo v. Santos*,^[1] petitioner argues that his election on May 8, 1995 is a bar to his disqualification.

On the other hand, it appears that petitioner Julius M. Garcia, who obtained the second highest number of votes next to petitioner Reyes in the same elections of May 8, 1995, intervened in the COMELEC on June 13, 1995 (after the main decision disqualifying Renato Reyes was promulgated), contending that because Reyes was disqualified, he (Garcia) was entitled to be proclaimed mayor of Bongabong, Oriental Mindoro.

In its resolution of July 3, 1995, the COMELEC en banc denied Garcia's prayer, citing the ruling in *Republic v. De la Rosa*^[2] that a candidate who obtains the second highest number of votes in an election cannot be declared winner. Hence the petition in **G.R. No. 120940**. Petitioner contends that (1) the COMELEC en banc should have decided his petition at least 15 days before the May 8, 1995 elections as provided in § 78 of the Omnibus Elections Code, and that because it failed to do so, many votes were invalidated which could have been for him had the voters been told earlier who were qualified to be candidates; (2) that the decision of the Sangguniang Panlalawigan was final and executory and resulted in the automatic disqualification of petitioner, and the COMELEC did not need much time to decide the case for disqualification against Reyes since the latter did not appeal the decision in the administrative case ordering his removal; (3) that the COMELEC should have considered the votes cast for Reyes as stray votes.

After deliberating on the petitions filed in these cases, the Court resolved to dismiss them for lack of showing that the COMELEC committed grave abuse of discretion in issuing the resolutions in question.

G.R. No. 120905

First. Petitioner Reyes claims that the decision of the Sangguniang Panlalawigan, ordering him removed from office, is not yet final because he has not been served a copy thereof.

It appears, however, that the failure of the Sangguniang Panlalawigan to deliver a copy of its decision was due to the refusal of petitioner and his counsel to receive the decision. As the secretary to the Sangguniang Panlalawigan, Mario Manzo, stated in his certification, repeated attempts had been made to serve the decision on Reyes personally and by registered mail, but Reyes refused to receive the decision. Manzo's certification states:

On March 3, 1995, Mr. Marcelino B. Macatangay went to Manila to furnish a copy of the decision to the Counsel for Respondent, Atty. Rogelio V. Garcia, which said counsel refused to accept.

On March 23, 1995, Mr. Mario I. C. Manzo, Secretary to the Sangguniang Panlalawigan with Mr. Marcelino B. Macatangay again went to the office of the Mayor of Bongabong to serve the decision. Mayor Renato U. Reyes, himself present, refused to accept the ORDER enforcing the decision citing particularly the pending case filed in the Sala of Judge Manuel A. Roman as the basis of his refusal.

On [sic] 4:40 p.m., of the same date, the Secretary to the Sangguniang Panlalawigan, unable to serve the ORDER, mailed the same (registered mail receipt No. 432) on the Bongabong Post Office to forward the ORDER to the Office of Mayor Renato U. Reyes.

On March 28, 1995 said registered mail was returned to the Sangguniang Panlalawigan with the following inscriptions on the back by the Postmaster:

- 1) 1st attempt - addressee out of town-9:15 a.m., 3-23-95
- 2) 2nd attempt - addressee cannot be contacted, out of town, 8:50 a.m., 3-24-95
- 3) 3rd attempt - addressee not contacted-out of town, 8:15 a.m., 3-24-95
- 4) 4th attempt - addressee refused to accept 8:15 a.m., 3-27-95

On March 24, 1995, Mr. Marcelino B. Macatangay, again went to Bongabong to serve the same ORDER enforcing the decision. Mayor Renato U. Reyes was not present so the copy was left on the Mayor's Office with comments from the employees that they would not accept the same.^[3]

Rule 13, §§ 3 and 7 of the Rules of Court provide for the service of final orders and judgments either personally or by mail. Personal service is completed upon actual or constructive delivery, which may be made by delivering a copy personally to the party or his attorney, or by leaving it in his office with a person having charge thereof, or at his residence, if his office is not known.^[4] Hence service was completed when the decision was served upon petitioner's counsel in his office in Manila on March 3, 1995. In addition, as the secretary of the Sangguniang Panlalawigan certified, service by registered mail was also made on petitioner Reyes. Although the mail containing the decision was not claimed by him, service was deemed completed five days after the last notice to him on March 27, 1995.^[5]

If a judgment or decision is not delivered to a party for reasons attributable to him, service is deemed completed and the judgment or decision will be considered validly served as long as it can be shown that the attempt to deliver it to him would be

valid were it not for his or his counsel's refusal to receive it.

Indeed that petitioner's counsel knew that a decision in the administrative case had been rendered is evident in his effort to bargain with the counsel for the Sangguniang Panlalawigan not to have the decision served upon him and his client while their petition for certiorari in the Regional Trial Court was pending.^[6] His refusal to receive the decision may, therefore, be construed as a waiver on his part to have a copy of the decision.

The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests, i.e., enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.

In practice, service means the delivery or communication of a pleading, notice or other papers in a case to the opposite party so as to charge him with receipt of it, and subject him to its legal effect.^[7]

In the case at bar, petitioner was given sufficient notice of the decision. Prudence required that, rather than resist the service, he should have received the decision and taken an appeal to the Office of the President in accordance with R.A. No. 7160, § 67.^[8] But petitioner did not do so. Accordingly, the decision became final on April 2, 1995, 30 days after the first service upon petitioner.

The net result is that when the elections were held on May 8, 1995, the decision of the Sangguniang Panlalawigan had already become final and executory. The filing of a petition for certiorari with the Regional Trial Court did not prevent the administrative decision from attaining finality. An original action of certiorari is an independent action and does not interrupt the course of the principal action nor the running of the reglementary period involved in the proceeding.^[9]

Consequently, to arrest the course of the principal action during the pendency of the certiorari proceedings, there must be a restraining order or a writ of preliminary injunction from the appellate court directed to the lower court.^[10]

In the case at bar, although a temporary restraining order was issued by the Regional Trial Court, no preliminary injunction was subsequently issued. The temporary restraining order issued expired after 20 days. From that moment on, there was no more legal barrier to the service of the decision upon petitioner.

Petitioner claims that the decision cannot be served upon him because at the hearing held on February 15, 1995 of the case which he filed in the RTC, the counsel of the Sangguniang Panlalawigan, Atty. Nestor Atienza, agreed not to effect service of the decision of the Sangguniang Panlalawigan pending final resolution of the petition for certiorari.

The alleged agreement between the counsels of Reyes and the Sangguniang Panlalawigan cannot bind the Sangguniang Panlalawigan. It was illegal. And it would have been no less illegal for the Sangguniang Panlalawigan to have carried it out because R.A. No. 7160, § 66(a) makes it mandatory that "[c]opies of the decision [of the Sangguniang Panlalawigan] shall immediately be furnished to