

## EN BANC

[ G.R. No. 181528, October 02, 2009 ]

**HECTOR T. HIPE, PETITIONER, VS. COMMISSION ON ELECTIONS  
AND MA. CRISTINA L. VICENCIO, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

Before us is a Petition for Certiorari and Prohibition under Rule 64, in relation to Rule 65, of the Rules of Court seeking to nullify and enjoin the implementation of the January 30, 2008 Resolution<sup>[1]</sup> issued by the Commission on Elections (COMELEC) *En Banc*, which affirmed the July 11, 2007 Resolution<sup>[2]</sup> issued by its Second Division.

#### The Facts

Petitioner Hector T. Hipe and respondent Ma. Cristina L. Vicencio were candidates for the mayoralty post in Catubig, Northern Samar in the May 14, 2007 elections. During the canvass proceedings of the Municipal Board of Canvassers of Catubig, Northern Samar (MBOC), Vicencio petitioned for the exclusion of seven election returns of Precinct Nos. 0037B, 0052A, 0053A, 0058A, 0080A, 0081A and 0082A on the grounds that they were prepared under duress, threats, intimidation or coercion; and that the election was marred by massive vote buying, widespread coercion, terrorism, threats, and intimidation, preventing voters from voting, so that the said returns did not reflect the will of the electorate.<sup>[3]</sup> In support of the said petition for exclusion, Vicencio presented affidavits of some of the members of the Board of Election Inspectors, a sample ballot and an ISO Assessment.<sup>[4]</sup>

On May 19, 2007, the MBOC ruled in favor of Vicencio and excluded the seven election returns adverted to. On the same day, petitioner Hipe filed a notice of appeal. Thereafter, on May 29, 2007, petitioner Hipe filed his Verified Appeal with the COMELEC, docketed as SPC No. 07-206 entitled "In the Matter of the Petitions to Exclude Election Returns, Hector T. Hipe vs. Ma. Cristina L. Vicencio," arguing that the written petition to exclude the election returns was filed out of time, and that the grounds used to exclude the questioned returns were not proper for a pre-proclamation controversy, were not supported by credible evidence, and were beyond the jurisdiction of the MBOC.<sup>[5]</sup>

In a July 11, 2007 Resolution,<sup>[6]</sup> the Second Division of COMELEC dismissed the appeal for being filed out of time. As stated in the dispositive portion of the said Resolution:

**WHEREFORE**, premises considered, the instant Verified Appeal is hereby dismissed for being filed out of time.

**SO ORDERED.**<sup>[7]</sup>

Subsequently, on July 17, 2007, petitioner Hipe filed a Motion for Reconsideration.<sup>[8]</sup> On even date, respondent Vicencio was proclaimed as the mayor.<sup>[9]</sup> On January 30, 2008, the COMELEC *En Banc* resolved to deny petitioner Hipe's Motion for Reconsideration.<sup>[10]</sup>

In the challenged Resolution,<sup>[11]</sup> the COMELEC *En Banc* held that the ruling of the MBOC had already attained finality considering that the filing of the Verified Appeal with the COMELEC was five days late. It stated that the filing of the Verified Appeal should have been made within the inextendible period of five days from the filing of the written and verified notice of appeal with the MBOC, with which petitioner Hipe failed to comply. Further, the COMELEC *En Banc* held that it was already deprived of proper jurisdiction to entertain the instant case since the case should no longer be considered as a pre-proclamation controversy, but should rather be ventilated in an election protest. In addition, the COMELEC *En Banc* stated that the ruling of the MBOC was amply supported by the affidavits of the Members of the Board of Election Inspectors, and that the MBOC retained sufficient discretion to avail itself of all available means to ascertain the results of the elections through witnesses, as well as through an examination of the election returns themselves.

The dispositive portion of the January 30, 2008 Resolution reads:

**WHEREFORE**, premises considered, the Commission (En Banc) RESOLVED as it hereby RESOLVES, to deny the instant Motion for Reconsideration filed by Appellant-Movant Hector Hipe. The questioned Resolution dated July 11, 2007, issued by the Second Division of the Commission on Elections for the exclusion of seven (7) election returns in favor of the appellee, Maria Cristina L. Vicencio, therefore, stands and remains valid.

**SO ORDERED.**<sup>[12]</sup>

Aggrieved, Hipe filed this petition.

### **The Issue**

Whether or not the COMELEC En Banc acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its challenged Resolution dated January 30, 2008, which affirmed the Resolution dated July 11, 2007 issued by its Second Division dismissing petitioner Hipe's appeal for being filed out of time.

### **Our Ruling**

The petition is partly meritorious.

### **Appeal Should Be Given Due Course**

In its *En Banc* Resolution, the COMELEC held that the ruling of the MBOC had already become final and executory; and thus, its Second Division had not acquired appellate jurisdiction to act on Hipe's verified appeal. In support of its ruling, the COMELEC *En Banc* relied on the Certification issued by Renato I. Madronio, Acting Election Officer II, Catubig, Northern Samar, attesting that hard or printed copies of the MBOC's ruling to exclude the seven contested election returns were received by Atty. V.B. Desales, counsel for the KAMPI-Liberal Party Coalition, at 10:37 p.m. on May 19, 2007 at the provincial Election Supervisor's Office.<sup>[13]</sup> On this basis, the COMELEC *En Banc* opined that when petitioner Hipe filed the Verified Appeal on May 29, 2009, said filing was already five days late and should no longer be entertained.

We disagree. Indeed, there is a disputable presumption that official duty has been regularly performed;<sup>[14]</sup> and that, corollary thereto, it is presumed that in its disposition of the contested election returns, the MBOC has regularly performed its official duty of issuing a written ruling on the prescribed form, authenticated by the signatures of its members as required under Section 20(d) of Republic Act No. 7166.<sup>[15]</sup> In fact, the alleged issuance and service upon the supposed counsel of petitioner Hipe of the written ruling of MBOC was even supported by the aforementioned Certification of the Chairperson of the MBOC.

The records would, however, reveal that Atty. Venerando B. Desales, the counsel who was supposedly furnished the alleged written ruling of the MBOC, has denied under oath that he ever received a copy of the alleged written ruling.<sup>[16]</sup> He even categorically denied in his Affidavit that he was the counsel of petitioner Hipe.<sup>[17]</sup>

Notably, nothing in the Status of Canvass Report<sup>[18]</sup> or in the Minutes of the Proceedings of the MBOC on May 19, 2007<sup>[19]</sup> showed that a written ruling on the petition for exclusion has been rendered by the MBOC or received by petitioner Hipe.

On the contrary, a perusal of the Minutes of the Proceedings of the MBOC on May 19, 2007 would reveal that Election Officer Madronio even notified the counsels of petitioner Hipe that, as of that time, the Municipal COMELEC Office still did not have the prescribed form of the ruling, and that they would still have to get the prescribed forms in Catarman.<sup>[20]</sup> This militates against Madronio's statement in his Certification that hard or printed copies of the ruling of the MBOC were furnished to Atty. Desales on that same day.

When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.<sup>[21]</sup>

In the case at bar, petitioner Hipe asserted the negative fact, that is, that no copy of the written ruling of the MBOC was sent to him or his counsel. Thus, petitioner Hipe has the burden of proof to show that he was not furnished with a copy of the written

ruling of the MBOC, which he was able to successfully prove in the instant case. Be that as it may, it then becomes incumbent upon respondent Vicencio to prove otherwise. This is because the burden of evidence is shifted if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim.<sup>[22]</sup>

Significantly, other than Madronio's statement in his Certification that hard or printed copies of the ruling of the MBOC were furnished to Atty. Desales on May 19, 2007, no other evidence was adduced by respondent Vicencio to support her claim. If indeed such written ruling exists and was indeed furnished to petitioner Hipe or his alleged counsel, it would have been very easy for respondent Vicencio to produce a copy of the written ruling with the signature of petitioner Hipe or his counsel, which she failed to do in the instant case.

Furthermore, the COMELEC has the discretion to construe its rules liberally and, at the same time, suspend the rules or any of their portions in the interest of justice.<sup>[23]</sup> As aptly stated by Commissioner Rene V. Sarmiento in his Dissenting Opinion:<sup>[24]</sup>

It is well settled that election laws should be reasonably and liberally construed to achieve their purpose - to effectuate and safeguard the will of the electorate in the choice of their representatives. The courts frown upon any interpretation that would hinder in any way not only the free and intelligent casting of votes in any election but also the correct ascertainment of the results thereof.

Disputes in the outcome of elections involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technicalities. Hence, it is submitted that there is a need to suspend the procedural rules and resolve the merits of the case to promote justice and safeguard the will of the electorate of Catubig, Northern Samar.

Accordingly, the COMELEC should have not dismissed the appeal filed by petitioner Hipe on the ground of belated filing.

### **The Exclusion of the Seven Election Returns Was Amply Supported by Evidence**

Nevertheless, even if we entertain petitioner Hipe's appeal from the decision of the MBOC on the questioned election returns, the Court still rules in favor of respondent Vicencio.

Petitioner Hipe claims that no proof was presented nor was there any showing that the seven election returns in question were defective.<sup>[25]</sup> Such contention is not persuasive.