

## EN BANC

**[ G.R. No. 126977, September 12, 1997 ]**

**ELVIRA B. NAZARENO, PETITIONER, VS. COMMISSION ON ELECTIONS AND EDWINA P. MENDOZA, RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

In this special civil action for certiorari under Rule 65 of the Rules of Court, petitioner urges us to nullify, for having been issued with grave abuse of discretion, the Order and Writ of Preliminary Injunction issued on 7 November 1996 and 8 November 1996, respectively, by public respondent Commission on Elections (COMELEC) which directed petitioner Elvira B. Nazareno (hereafter, NAZARENO) to cease and desist from performing the duties and functions of the Office of the Mayor of Naic, Cavite.

The facts are not disputed.

NAZARENO and private respondent Edwina P. Mendoza (hereafter, MENDOZA) were two of the candidates for the Office of Mayor of the Municipality of Naic, Province of Cavite, in the local elections of 8 May 1995. In the canvass of the votes, the Municipal Board of Canvassers of Naic credited NAZARENO with 12,624 votes and MENDOZA with 13,896 votes. In light of MENDOZA's winning margin of 1,272 votes, the Board proclaimed MENDOZA as the elected Mayor of Naic.

In due time, NAZARENO filed an election protest against MENDOZA with the Regional Trial Court (RTC) of Cavite, Branch 15, sitting in Naic, Cavite, contesting the results of the election in forty-four (44) precincts. The case was docketed as EPC No. NC-7. In her Answer with Counter-Protest, MENDOZA questioned the results in twenty-nine (29) precincts.

In a decision<sup>[1]</sup> rendered on 19 July 1996, then Assisting Judge Emerito M. Agcaoili of Branch 15 of the RTC of Cavite found for NAZARENO and decreed as follows:

In view of the foregoing judgment is hereby rendered declaring --

1. Elvira B. Nazareno winner over protestee Edwina P. Mendoza by a margin of 185 votes in the mayoralty elections of 08 May 1995 and the duly elected Mayor of the Municipality of Naic, Cavite.
2. Ordering protestee Edwina P. Mendoza to vacate the position of municipal mayor and turn over the same to protestant Elvira B. Nazareno.

No costs.

On 27 September 1996 NAZARENO filed a Motion for Immediate Execution of Judgment.<sup>[2]</sup> In the meantime, MENDOZA filed a Notice of Appeal and paid the required appeal and docket fees.

On 15 October 1996 this Court issued Administrative Order No. 102-96<sup>[3]</sup> directing Judge Emerito M. Agcaoili "to return to his official station at the Regional Trial Court, Branch 9, Aparri, Cagayan and resume his regular duties thereat." Thus, on 16 October 1996, when Judge Agcaoili heard on oral arguments the Motion for Immediate Execution, MENDOZA contested Judge Agcaoili's authority to act thereon in view of said Administrative Order.

On 17 October 1996, MENDOZA filed a petition for certiorari, prohibition and mandamus with the COMELEC docketed as SPR No. 48-96, praying for the issuance of a temporary restraining order and/or writ of preliminary injunction ordering Judge Agcaoili to "cease and desist from further proceeding with, among others, Election Protest Case No. NC-7." MENDOZA amended the petition on 21 October 1996. On even date, COMELEC issued an Order<sup>[4]</sup> in SPR No. 48-96 and two other similarly situated cases, SPR No. 49-96 (Conrado Lindo vs. Judge Agcaoili and Rosario Velasco) and SPR No. 50-96 (Francisco Mendoza vs. Judge Agcaoili and Conrado Aure), the pertinent portions of which read:

In the meantime, considering that the designation of the respondent judge as Assisting Judge of the Regional Trial Court, Branch 15, Naic, Cavite, has been revoked by the Supreme Court on October 15, 1996 effective immediately, under Administrative Order No. 102-96, the Commission resolves to restrain the respondent Judge himself from acting or otherwise taking any further action on, resolving or, if resolved, enforcing the order granting the motion for execution pending appeal filed in EPC No. NC-7 entitled ELVIRA B. NAZARENO vs. EDWINA P. MENDOZA, EPC No. NC-8 entitled CONRADO LINDO vs. ROSARIO VELASCO, and EPC No. NC-4 entitled FRANCISCO MENDOZA vs. CONRADO AURE. However, the Regional Trial Court, Branch 15, Naic, Cavite, through the regular Presiding Judge or whoever may be specially designated by the Supreme Court, may resolve the motion unless the Supreme Court otherwise directs.

On 29 October 1996, Judge Napoleon V. Dilag, the regular judge appointed to Branch 15 of the RTC of Naic, Cavite issued an Order<sup>[5]</sup> granting the motion for execution of judgment upon NAZARENO's filing of a cash bond of P100,000.00. Judge Dilag ruled NAZARENO's right to the office had been established and the people had every right to be governed by their duly elected officials, especially since only 18 months remained of the term for which she was elected. Also on 29 October 1996, the RTC issued a writ of execution<sup>[6]</sup> directing the Provincial Director of Cavite of the Philippine National Police, who was deputized and appointed as special sheriff, to implement the writ.

On 30 October 1996 NAZARENO took her oath of office before Notary Public Prescila T. Baylosis. <sup>[7]</sup>

At 8:30 a.m. of 31 October 1996, MENDOZA filed with the COMELEC a petition for

Certiorari and Prohibition with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction,<sup>[8]</sup> praying that the writ of execution issued by Judge Dilag be set aside for having been issued without jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction in light of the following grounds:

- a) the decision ordered executed was based merely on XEROX COPIES of contested ballots which were NEVER offered in evidence;
- b) no good reason exists for the execution pending appeal;
- c) at the time the order granting execution pending appeal was issued the trial court had also lost jurisdiction over the case. On 27 September 1996 MENDOZA filed her notice of appeal with the trial court and paid all the legal and docket fees with the COMELEC; accordingly, the appeal was perfected. It was "(m)uch later in the afternoon of September 27, 1996" when NAZARENO filed her motion for execution pending appeal.

The COMELEC docketed the case as SPR No. 53-96.

On 5 November 1996 the COMELEC en banc issued in SPR No. 53-96 and in two other related cases, SPR No. 54-96 (Conrado Lindo v. Judge Napoleon V. Dilag, Jr, etc. and Rosario Velasco) and SPR No. 55-96 (Francisco Mendoza v. Judge Napoleon V. Dilag, Jr, etc. and Conrado Aure), an Order<sup>[9]</sup> directing respondents Judge Dilag and NAZARENO to answer the petition and setting the application for a writ of preliminary injunction for hearing on 7 November 1996 at 10:00 a.m.

After due hearing, the COMELEC en banc issued in SPR No. 53-96 the challenged Order of 7 November 1996 which reads as follows:<sup>[10]</sup>

After due hearing, the Commission finds that the petitioner has shown sufficient justification for the issuance of a writ of preliminary injunction, prohibitory and mandatory, to restrain the lower court from executing and implementing the order/writ of execution pending appeal, dated October 29, 1996, in EPC No. NC-7, and the private respondent from assuming and performing the duties and functions and/or to relinquish such duties and functions of mayor of the municipality of Naic, Cavite, upon the filing by petitioners of a bond in the amount of P200,000.00, to answer for whatever damages that private respondent may suffer should it be finally held that the issuance of this injunction was improper or improvident.

The Commission issues this order based on the following considerations:

- (1) That the lower court admittedly did not review or examine the original ballots contested in the election protest but merely relied on xerox copies in deciding the election protest;
- (2) That the lower court based its decision principally on invalidating the votes on two main grounds, namely:
  - (a) that the ballots were written by one hand; and,

(b) that the ballots were marked, which, obviously, require visual examination of the disputed ballots.

Viewed in the light of the rules on appreciation of ballots under Section 211 of the Omnibus Election Code, we find the lower court's decision to be seriously impaired and the Commission is not prepared to give its imprimatur on the execution pending appeal of the decision, which was timely appealed.

ACCORDINGLY, the Commission issues a writ of preliminary injunction prohibitory and mandatory, commanding the respondent judge or anyone acting in his behalf, or upon his orders, from executing, enforcing and implementing the order/writ of execution dated October 29, 1996, in EPC No. NC-7 of the Regional Trial Court of Cavite, Naic, Branch XV, and respondent Nazareno from assuming, performing and exercising the duties and functions and/or to relinquish such duties and functions of mayor of the Municipality of Naic, Cavite, upon the filing by the petitioner of a bond in the amount of P200,000.00, to answer for whatever damages that private respondents may suffer by reason of the issuance of this injunction, until further orders of the Commission.

Respondent court is commanded to elevate to the Commission on Elections, Manila, the original record of EPC No. NC-7, and all the exhibits and other documentary evidence, including ballot boxes, within five (5) days from notice, under penalties of the law.

The Commission hereby deputizes the Chief, Philippine National Police, or his duly designated representative, to enforce this order.

The Clerk of the Commission shall issue the corresponding writ.

SO ORDERED.

On 8 November 1996 the COMELEC issued the Writ of Preliminary Injunction <sup>[11]</sup> after MENDOZA posted a cash bond of P200,000.00. Hence this petition based on the following grounds:

### **5.1.**

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ORDER OF NOVEMBER 7, 1996 AND THE WRIT OF PRELIMINARY INJUNCTION WITHOUT GIVING PETITIONER NAZARENO THE OPPORTUNITY TO SUBMIT HER FORMAL OPPOSITION AND/OR ANSWER, IN VIOLATION OF HER RIGHT TO DUE PROCESS.

### **5.2.**

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ENJOINED THE EXECUTION PENDING APPEAL BASED ON ALLEGED CONSIDERATIONS THAT GO INTO THE MERITS OF THE DECISION RATHER THAN ON THE ORDER GRANTING EXECUTION PENDING APPEAL.

### **5.3.**

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE QUESTIONED ORDER AND WRIT BASED ON ALLEGED IMPAIRED DECISION A COPY OF WHICH WAS NEVER SUBMITTED TO IT OR EVEN OFFERED IN EVIDENCE.

### **5.4.**

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE QUESTIONED ORDER AND WRIT BASED ON XEROX AND UNCERTIFIED COPIES OF PORTIONS OF THE TRANSCRIPT OF STENOGRAPHIC NOTES.

### **5.5.**

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, CONTRARY TO LAW AND EVIDENCE, IT DEPRIVED THE REGIONAL TRIAL COURT OF NAIC, CAVITE OF THE COMPETENCE TO ORDER EXECUTION PENDING APPEAL

Thereafter, NAZARENO filed "extremely urgent" motions for the issuance of a temporary restraining order, which MENDOZA opposed.

In its Comment for public respondent COMELEC, the Office of the Solicitor General contends that the resolution of 14 January 1997 of this Court in *Conrado Aure v. Commission on Elections and Francisco Mendoza* (G.R. No. 126978) has rendered this petition moot and academic as the ultimate issue in the instant case is "similar to, if not identical with," the principal issue raised in *Aure*, thus:

The substantial similarity or identity of issue between the aforecited case and the instant case arose from the fact that the challenged order of respondent COMELEC in the aforecited case and the order of respondent COMELEC subject of the instant petition, apart from being identically worded and dated, were issued by respondent COMELEC in SPR No. 55-96 and SPR No. 53-96, respectively, which were two (2) of the three (3) cases consolidated by respondent COMELEC having identical factual and legal backdrops.

Thus, the said ruling of this Honorable Court finds relevance and