

EN BANC

[G.R. No. 218536, January 26, 2016]

ROLANDO P. TOLENTINO, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION), ATTY. CRISTINA T. GUIAO-GARCIA, AND HENRY MANALO, RESPONDENTS.

D E C I S I O N

BRION, J.:

This is a petition for *certiorari* filed by Rolando P. Tolentino from the May 25, 2015 Order of the Commission on Elections (*Comelec/the Commission*) in **SPR (BRGY) No. 03-2015**.^[1] Tolentino questions the Commission's order *advising* the Election Officer of Tarlac City to await its resolution of the case before implementing the writ of execution issued by the Municipal Trial Court in Cities (*MTCC*), Tarlac City, in Election Case No. 03-2013.

Antecedents

During the 2013 barangay elections, Tolentino and respondent Henry Manalo both ran for the position of Barangay Captain in Barangay Calingcuan, Tarlac City.

The election was held on October 28, 2013. Manalo was proclaimed the winner after garnering 441 votes compared to Tolentino's 440. Tolentino immediately filed an election protest before the MTCC on October 30, 2013. The protest was docketed as **Election Case No. 03-2013**.

During the revision of votes, the MTCC's initial tally was 439 votes for Tolentino and 442 votes for Manalo. However, the MTCC invalidated six (6) of the ballots cast for Manalo and one (1) ballot cast for Tolentino. Thus, Tolentino came out ahead.

On November 26, 2014, the MTCC proclaimed Tolentino as the winner with 438 votes compared to Manalo's 436. On the very same day, Manalo filed a Notice of Appeal with the MTCC.

The following day, November 27, 2014, Tolentino moved for execution pending appeal. Manalo opposed the motion.

On December 16, 2014, the MTCC issued a Special Order granting Tolentino's motion for execution pending appeal [pursuant to Rule 14, Section 11 (b)^[2] of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials], but held the issuance of the writ in abeyance. The MTCC also gave due course to Manalo's appeal.

On January 8, 2015, Manalo filed with the COMELEC a Petition for *Certiorari*, with a corresponding application for the issuance of a temporary restraining order (*TRO*), a

status quo ante order, or a writ of preliminary injunction. Manalo argued that the MTCC issued the Special Order with grave abuse of discretion because: (1) an execution pending appeal was not justified, and (2) Manalo, not Tolentino, was the clear winner in the election. The petition was docketed as **SPR (BRGY) No. 03-2015**.

On January 30, 2015, the MTCC issued the writ of execution.

On the same day, the COMELEC, First Division, issued a 60-day TRO prohibiting the MTCC from implementing its Special Order in Election Protest Case No. 03-2013. The Commission also required Tolentino to file his answer to the petition.

On February 5, 2015, Tolentino filed his answer and moved for the reconsideration of the TRO.

On February 9, 2015, the Commission required Manalo to file his Comment/Opposition to the motion for reconsideration. Manalo complied on February 17, 2015.

On February 27, 2015, Tolentino filed an urgent motion for the Commission to resolve his pending motion for reconsideration. Acting on the urgent motion, the Commission resolved to include the matter in the hearing of the main petition scheduled on March 4, 2015.

After hearing the parties on March 4, 2015, the Commission directed both parties to submit their respective memoranda within 10 days, after which the case shall be deemed submitted for resolution.

The 60-day TRO lapsed on April 1, 2015, without the Commission issuing a writ of preliminary injunction or rendering a decision. Thus, on April 10, 2015, Tolentino wrote the MTCC requesting the implementation of the writ of execution pending appeal. Tolentino also wrote to the City Election Officer of Tarlac requesting the implementation of the writ of execution pending appeal.^[3]

On April 27, 2015, the MTCC denied Tolentino's request/motion because it no longer had jurisdiction to entertain any further motions after it had transmitted the records of the case to the Commission.

Despite the MTCC's denial, Tolentino, through Atty. Ramon D. Facun, wrote a "Final Request" to the COMELEC City Election Office demanding the implementation of the writ of execution pending appeal with an accompanying threat that he would file contempt charges if immediate implementation would not take place:

In view of the foregoing, protestant Rolando Tolentino respectfully request, [sic] again, for the immediate implementation of the Writ of Execution Pending appeal dated January 30, 2015 within five (5) days from receipt hereof. **Otherwise, much to my regret my client will file contempt charge [sic] and other charges necessary for your non-action to the Writ of Execution Pending Appeal for implementation.**^[4] (emphasis supplied)

Respondent Atty. Cristina R. Guiao-Garcia, Election Officer IV, endorsed the matter to the Commission's Law Department which, in turn, made its own endorsement to the First Division where the case was pending.

Acting on the endorsement, the Commission issued the assailed order on May 25, 2015. The relevant portion reads:

Acting thereon and considering that the instant case is now deemed submitted for resolution per Order dated March 4, 2015 issued by the Commission (First Division) and the main case, the Election Appeal Case, docketed as EAC (BRGY) No. 07-2015 [sic] entitled "*Rolando Tolentino, protestant-appellee vs. Henry Manalo, protestee-appellant*," is likewise submitted for resolution, the Commission (First Division) hereby **ADVISES** herein Atty. Cristina T. Guiao-Garcia, Election Officer IV, Tarlac City, Tarlac, to await the Order and Resolution of the case by the Commission (First Division).

SO ORDERED.^[5]

On June 26, 2015, Tolentino filed the present petition.

The Petition

Tolentino protests: (1) that the Commission committed grave abuse of discretion in issuing the Order dated May 25, 2015, pursuant to the endorsement of the Law Department; (2) that the order was issued without giving him the benefit of a hearing; (3) that the order effectively prohibited the implementation of the writ of execution pending appeal without the issuance of a writ of injunction; and (4) that Atty. Guiao-Garcia's refusal to implement the writ of execution pending appeal amounted to willful disobedience and is unethical for a lawyer.

Manalo counters: (1) that nothing in the assailed Order constitutes grave abuse of discretion on the part of the Commission; (2) that Tolentino was trying to subvert the Commission's authority, in blatant disregard of the pendency of the case, by seeking relief from another forum: the local COMELEC office; and (3) that Tolentino failed to exhaust his available remedies because he did not move for the reconsideration of the Comelec's Order.

Finally, the Commission maintains: (1) that the present petition is premature because Tolentino has a plain, speedy, and adequate remedy available - a motion for reconsideration of the May 25 Order; and (2) that the petition failed to show that Atty. Guiao-Garcia, who even sought guidance from the Commission, brazenly disregarded the appropriate processes.

Our Ruling

We dismiss the petition for patent lack of merit.

Certiorari is available when a court or other tribunal exercising quasi-judicial powers

acts without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. It is an extraordinary remedy of last resort designed to correct errors of jurisdiction.

There is grave abuse of discretion justifying the issuance of the writ of *certiorari* when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction;^[6] where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice; or where action is impelled by personal hostility amounting to an evasion of positive duty, or to virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.^[7]

After evaluating the facts, this Court fails to see any action on the part of the Commission that constitutes grave abuse of discretion or absence of jurisdiction.

First, the assailed Order dated May 25, 2015, was directed to City Election Officer IV Atty. Guiao-Garcia. As an agent of the Commission, an election officer is under the Commission's direct and immediate control and supervision.^[8] The Commission clearly has the power and jurisdiction to issue orders to its employees to carry out its mandate. It is even clothed with the power to discipline or relieve any officer or employee who fails to comply with its instructions.^[9]

Second, the Commission is authorized to enforce its directives and orders that, by law, enjoy precedence over that of the MTCC. The Omnibus Election Code explicitly states:

Omnibus Election Code
Article VII
The Commission on Elections

Sec. 52 Powers and functions of the Commission on Elections. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall: x x x

(f) Enforce and execute its decisions, directives, orders and instructions **which shall have precedence over those emanating from any other authority**, except the Supreme Court and those issued in habeas corpus proceedings.^[10]

Third, the MTCC's writ of execution pending appeal cannot be enforced because it was issued after the MTCC had already lost its residual jurisdiction.

The MTCC rendered its decision on November 26, 2014. Both parties received copies of the judgment on the same day. Pursuant to Rule 14, Section 5 of AM No. 07-4-15-SC, Manalo had a reglementary period of five days, **or until December 1**, to file his notice of appeal.