

EN BANC

[G.R. No. 216691, July 21, 2015]

MARIA ANGELA S. GARCIA, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSE ALEJANDRE P. PAYUMO III, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

Nature of the Case

Before us is a petition for certiorari under Rule 65 in conjunction with Rule 64 of the Rules of Court, praying for the annulment of the September 10, 2014^[1] and January 29, 2015^[2] Resolutions of public respondent Commission on Elections (Comelec), acting through its First Division and *En Banc*, respectively, in Case No. EAC [AEL] 11-2014. The assailed rulings reinstated the election protest of private respondent Jose Alejandro Payumo III (Payumo) and effectively reversed the trial court's ruling that it was filed out of time.

The Facts

Petitioner Maria Angela S. Garcia (Garcia) and Payumo were candidates for the mayoralty race of Dinalupihan, Bataan during the May 13, 2013 national and local elections. In the poll's conclusion, Garcia was proclaimed winner for having garnered 31,138 votes as against Payumo's 13,202. The Office of the Election Officer of Dinalupihan then released to Payumo a certified copy of the printed Certificate of Canvass of Votes and Proclamation (*printed* COCP), bearing May 15, 2013 as the date of proclamation of the winning mayoralty candidate. As per the records, the *printed* COCP reflected the signatures and thumbprints of the members of the Municipal Board of Canvassers (MBOC).^[3]

On May 27, 2013, Payumo lodged an election protest^[4] with the Regional Trial Court, Branch 5 in Balanga, Bataan (RTC), docketed as Election Protest No. DH-001-13, citing the alleged prevalence of fraud and irregularities in all the clustered precincts of Dinalupihan, heightened by the Precinct Count Optical Scan (PCOS) machines' unreliability, casting doubt on the results of the counting and canvassing of votes.^[5] Anent the timeliness of the recourse, Payumo claimed that from May 15, 2013, the proclamation date appearing on the *printed* COCP, he had ten (10) days, or until May 25, 2013, within which to challenge the election results. He added that since May 25, 2013 falls on a Saturday, he filed his protest on the immediately succeeding working day, Monday, May 27, 2013.^[6]

In answer,^[7] Garcia belied the allegations of fraud and urgently moved for the dismissal of Payumo's protest. She claimed that she was proclaimed mayor on May

14, not May 15, 2013, as indicated in the *manual* Certificate of Canvass of Votes and Proclamation (*manual* COCP)^[8] issued by Dinalupihan's MBOC. She, thus, argued that the election protest was filed beyond the mandatory ten-day (10-day) reglementary period for filing an election protest, which, as she claimed in this case, lasted only until May 24, 2013, a Friday. On the ground of belated filing, Garcia urged the RTC to dismiss the election protest outright.^[9]

On July 1, 2013, the RTC heard the motion for preliminary determination of the affirmative defense of prescription. Members of the

Answer with Affirmative Defense and Compulsory Counterclaim with MBOC of Dihalupihan took the witness stand and testified that Garcia was proclaimed on May 14, 2013 at around 5:00PM.

Ruling of the Regional Trial Court

Giving credence to petitioner's assertion, the RTC, through its Order^[10] dated February 17, 2014, dismissed Payumo's protest for being barred by the statute of limitations. The *fallo* of the Order reads:^[11]

IN VIEW OF THE FOREGOING, the election protest filed by protestant Jose Alejandro P. Payumo III on May 27, 2013 is hereby DISMISSED for having been filed one day beyond the non-extendible period provided under Rule 2, Section 7, in relation to Rule 2, Section 12 (c), of A.M. No. 10-4-1-SC, the 2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials.

SO ORDERED.

In dispsbing the case, the trial court cited and relied on the individual declarations of the Chairman and the two members of the MBOC of Dinalupihan, Bataan, as well as on the *manual* COCP, as sufficient proof that Garcia's proclamation took place on May 14, 2013.^[12]

Undaunted, Payumo appealed the dismissal with the Comelec, docketed as EAC (AEL) No. 11-2014, alleging that he cannot be faulted for relying on the May 15, 2013 date indicated in the *printed* COCP since it was the official Comelec document signed by all the members of Dinalupihan's MBOC; that the *manual* COCP was only received by Garcia, and no one else; and that he had no representative when Garcia was allegedly proclaimed the winner.

Rulings of the COMELEC

The Comelec First Division, by its September 10, 2014 Resolution, granted Payumo's appeal thusly:^[13]

WHEREFORE, premises considered, the Appeal is **GRANTED**. The Order dated February 17, 2014 is **REVERSED** and **SET ASIDE**. Accordingly, the Regional Trial Court of Balanga, Bataan, Branch 5 is hereby ordered to proceed with the adjudication of RTC-EP Case No. DH-001-13 and resolve the same with dispatch.

SO ORDERED.

Ratiocinating in the following wise:^[14]

Evidently, appellant could not be faulted for not relying on the COCP dated May 15, 2013 because that was the only document officially furnished him. He was unaware of the alleged Manual COCP dated May 14, 2013. The election officer himself admitted to the trial court that he could not remember if he had posted a copy of the May 14, 2013 Manual COCP on the bulletin board of the Sangguniang Bayan as required by Comelec Resolution No. 9648. Neither did he furnish a copy thereof to the secretary of the Sangguniang Bayan and the Municipal Treasurer.

Additionally, the Comelec First Division relied on the case of *Federico v. Comelec*^[15] (*Federico*) and held that the 10-day reglementary period ought to be reckoned from the time a party became aware in good faith of the issuance of the COCP, which in this case, according to public respondent, is May 15, 2013, as indicated in the *printed* COCP Payumo received.^[16]

On reconsideration, the Comelec *En Banc*, by its assailed Resolution dated January 29, 2015, affirmed the holding of the First Division and disposed Garcia's motion in the following wise:^[17]

WHEREFORE, premises considered, the Commission En Banc **RESOLVES** to **DENY** the Motion for Reconsideration filed by Protestee-Appellee **MARIA ANGELA S. GARCIA** for failing to show any reversible error on the part of the First Division and **UPHOLD** its Resolution dated 10 September 2014 granting Protestant-Appellant Payumo's Appeal.

SO ORDERED.

As held by the *En Banc*:

It would be tantamount to injustice should the 10-day period to file the Election Protest in this case be reckoned or counted from May 14, 2013, the date indicated in the Manual COCP as Protestee-Appellee Garcia's proclamation as winner since its copy was not even furnished to Protestant-Appellant Payumo. Clearly, Protestant-Appellant Payumo's only source of information as to the date of the proclamation of Protestee-Appellee Garcia was the printed COCP. It indicated 15 May 2013 as the date of Protestee-Appellee Garcia's proclamation as winner. Thus, his reliance on 15 May 2013, as the reckoning date of the 10-day period to file his *Election Protest* was in good faith.^[18]

Hence, the instant recourse.

The Issue

Succinctly put, the issue in extant case boils down to whether or not Payumo's election protest was filed out of time. On the main, Garcia contends that the reckoning date of the 10-day reglementary period is from the actual date of proclamation, which is May 14, 2013. Meanwhile, Payumo counters that Garcia was

proclaimed on May 15, 2013, and assuming *arguendo* that it was done on May 14, 2013, as Garcia insists the proclamation date to be, he cannot be faulted for relying on the date appearing on the *printed* COCP he received.

Respondent Comelec's Consolidated Comment, filed by the Office of the Solicitor General, echoes the sentiment of Payumo that the latter could not have known that Garcia was proclaimed on May 14, 2015 because the printed COCP, which was furnished him, stated otherwise. The Comelec likewise alleged that Garcia failed to establish that Payumo had a representative present at the exact moment Garcia was proclaimed winner and, thus, assuming that it were true, he could not have known that Garcia was already declared winner on May 14, 2015.

The Court's Ruling

We grant the petition.

Garcia's Proclamation Date

Pivotal in resolving whether or not Payumo's election protest is barred by the statute of limitations is ascertaining when the MBOC proclaimed Garcia as the winning mayoralty candidate. The significance of verifying this proclamation date is underscored by Rule 2, Section 12 (c), in relation to Sec. 7 of the same rule, A.M. No. 10-4-1-SC,^[19] otherwise known as the 2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials, which provisions pertinently state:

Section 12. Summary dismissal of election contests. - The court shall summarily dismiss, motu proprio, an election protest, counter-protest or petition for quo warranto on any of the following grounds:

- (a) The court has no jurisdiction over the subject matter;
- (b) The petition is insufficient in form and content as required under Section 10;
- (c) The petition is filed beyond the period prescribed in these Rules;**
- (d) The filing fee is not paid within the period for filing the election protest or petition for quo warranto; and
- (e) In a protest case where cash deposit is required, the deposit is not paid within five (5) days from the filing of the protest.

xxx

Section 7. Period to file protest or petition; non-extendible. - The election protest or petition for quo warranto shall be filed within a non-extendible period of ten (10) days counted from the date of proclamation. (emphasis added)

Jurisprudence teaches that the rule prescribing the 10-day reglementary period is mandatory and jurisdictional, and that the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should neither be taken lightly nor brushed aside as a mere procedural lapse that can be overlooked. The rule is not a mere technicality but an essential requirement, the

non-compliance of which would oust the court of jurisdiction over the case.^[20]

Aware of the repercussions that befall an election protest belatedly filed, the private parties herein advance two conflicting dates whence the reglementary period should reckon. But between the two proposed reckoning dates, May 14, 2013, as claimed by petitioner, appears to be the correct date of proclamation.

As can be recalled, the RTC, on July 1, 2013, conducted a motion hearing to determine the timeliness of the election protest. Records reveal that during the said proceeding, the members of the MBOC testified in the following manner:^[21]

Court:

Please take your seats. So, Election Officer Leonilo Miguel, Municipal Treasurer Lani Penaflor. Ms. Socorro Sacdalan, the resolution of the Motion to Resolve Affirmative Defense on the ground that the protest was filed out of time will be resolved based on the answers that you will give this afternoon, xxx So, the first question of the Court is that, **when did you officially proclaim the winning candidate, the protestee, Maria Angela S. Garcia?** You give your answers one by one. So, for Election Officer Mr. Miguel, what is your answer?

Leonilo Miguel:

Sir, we proclaimed Maria Angela Garcia on May 14.

Court:

What time?

Leonilo Miguel:

At almost 5:00 o'clock, sir.

Court:

So, take your seat first. And then Municipal Treasurer Lani Penaflor, as part of the members of the [MBOC] of Dinalupihan, - when did you officially proclaim Maria Angela Garcia as the winning mayor of Dinalupihan, Bataan?

Lani Peñaflor:

Can I give my statement, sir?

Court:

Please give up (sic).

Lani Peñaflor:

I, Lani Penaflor, vice-chairman of the [MBOC], do hereby certify that our functions based on general instructions and minutes on the consolidation, canvass and transmission of votes cannot proceed on the second step due to the problem occurred on the memory card of precinct No. 15 of Brgy. Bangal, we resulted to only 98.75% of votes canvass as of May 14, 2013. Due to this situation, the legal counsel of