

EN BANC

[G.R. No. 199433, November 13, 2012]

ISABELITA P. GRAVIDES, PETITIONER, VS. COMMISSION ON ELECTIONS AND PEDRO C. BORJAL, RESPONDENTS.

DECISION

VILLARAMA, JR., J.:

This Rule 65 petition for certiorari seeks to annul and set aside the following issuances by public respondent Commission on Elections (COMELEC): (1) Resolution^[1] dated August 25, 2011 of the First Division granting the appeal of private respondent Pedro C. Borjal (Borjal) from the December 7, 2010 Order^[2] of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 33 in EPC No. 10-1313; (2) Order^[3] dated November 23, 2011 of the Commission *En Banc* denying the motion for reconsideration filed by petitioner Isabelita P. Gravides (Gravides); and (3) Entry of Judgment^[4] dated November 24, 2011 declaring that the Resolution dated August 25, 2011 had become final and executory as of September 17, 2011.

Borjal and Gravides both ran for the position of *Punong Barangay* of Barangay U.P. Campus in Diliman, Quezon City during the October 25, 2010 Barangay and *Sangguniang Kabataan* (SK) Elections. Results of the elections showed that Gravides garnered a total of 2,322 votes as against Borjal's 2,320 votes. On October 26, 2010, the Barangay Board of Canvassers (BBOC) officially proclaimed Gravides as the winning candidate for the said post.

On November 5, 2010, Borjal filed an Election Protest^[5] alleging the following irregularities and violation of election laws:

7.1 Harassment, corruption, and anomalous activities committed by the BET and the Barangay Board of Canvassers.

7.2 Valid votes cast in favor of protestant were misread and misappreciated by the Board of Election Tellers (BET). For instance, several ballots containing wrong spelling (but with the same sound when read) of protestant's surname were not counted, there being no candidate with the surname when read.

7.3 Valid votes for protestant were erroneously counted/tallied in the election returns and/or erroneously tallied as votes of protestee and other candidates. Such that protestee and other candidates seemed to have received more votes than those actually cast in their favor.

7.4 Falsification, alteration, and manipulation of the votes and related data in the election returns.

7.5 Valid votes in favor of protestant were not counted or were considered stray and rejected. For instance, several ballots containing protestant's registered nickname "Doc" were not counted for protestant, there being no candidate with the same nickname. On the other hand, invalid ballots such as spurious and those containing markings to identify the ballots/voters, or with irrelevant, derogatory writings or drawings were counted in favor of protestee and other winning candidates.

7.6 The use of either fake, spurious ballots or genuine but manufactured ballots to increase protestee's votes.

7.7 Invalid ballots (prepared by persons other than the voters themselves) such as written-by-one person (WBO) and/or individual ballots written-by-two persons (WBT) containing protestee's name were counted as valid votes for protestee and other winning candidates.^[6]

Borjal thus asserted that there is a need for revision, re-appreciation of ballots, judicial recount and thorough scrutiny of the election returns and minutes of voting in the protested precincts, the results of which will change the election sufficient to overcome the presumptive lead of the declared winner.

Gravides filed her Answer with Compulsory Counterclaim^[7] denying the allegations of fraud, vote manipulation, misreading/misappreciation of ballots and other irregularities in the counting and tallying of votes, committed either by her or by the Board of Election Tellers (BET)/BBOC. She pointed out that the protest failed to provide a detailed specification of the acts or omissions complained of, which would show the alleged fraud or irregularities in the protested precincts. Such general and sweeping allegations violate the provisions of A.M. No. 07-4-15-SC^[8] or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, including non-compliance with the requirement of cash deposit. Neither Borjal nor his watchers filed a challenge or raised any issue with the BET or BBOC on the integrity of the ballots during the voting and counting of votes in accordance with Sections 202 and 203 of Batas Pambansa Blg. 881, as evidenced by the Minutes of Voting and Counting of Votes.

On November 15, 2010, the MeTC issued a Notice of Pre-Trial Conference stating:

This Court sets the case for preliminary conference on the 18th day of November 2010 at 2:00 o'clock in the morning in the Session Hall of this Branch, Room 312, Third Floor, Hall of Justice, Quezon City.

In order to assist the Court in conducting the Preliminary Conference, parties are enjoined to be ready on that date regarding the following:

1. A statement whether the parties have arrived at an amicable settlement, and if so, the terms thereof;

2. Intention to refer the case for mediation;
3. A Summary of admitted facts and proposed stipulation of facts;
4. The issues to be resolved or a clear specification of material facts which remain controverted;
5. Such other matter intended to expedite the disposition of the case.

The counsel served with this Notice is duty bound to notify the party represented by him of the schedule of Preliminary Conference. Failure of the plaintiff or the defendant to appear in the preliminary conference shall respectively be cause for dismissal of his/her case or a summary judgment based solely on the complaint in accordance with Rule 70, Sec. 8, par[.] 2 & 3 of the Rules of Civil Procedure.^[9]

During the preliminary conference, Gravidas moved for the dismissal of the election protest for non-compliance with Section 4, Rule 9 of A.M. No. 07-4-15-SC as to the contents of the preliminary conference brief. After considering the movant's arguments and the counter-arguments of the opposing counsel, the MeTC resolved to grant the motion. The Order^[10] dated December 7, 2010 thus ordered the dismissal of the election protest in accordance with the aforesaid provisions in relation to Sections 5 and 6 of the same Rule.

Borjal appealed the order of dismissal to the COMELEC arguing that the MeTC erred (1) in applying the Rules of Civil Procedure on the preliminary conference in the election protest and in misinforming him of the contents of a preliminary conference brief in its Notice of Pre-Trial Conference; (2) assuming said notice is not defective, it was issued prematurely, contrary to the mandate of Section 1, Rule 9 of A.M. No. 07-4-15-SC; (3) in applying the ruling in *Cabrera v. COMELEC*^[11] considering that the factual circumstances are not foursquare with the present case; and (4) in dismissing the election protest by holding that his Preliminary Conference Brief failed to comply with the required contents under Section 4, Rule 9 of A.M. No. 07-4-15-SC.^[12]

In its Resolution dated August 25, 2011, the COMELEC's First Division granted the appeal, annulled the December 7, 2010 Order of the MeTC and remanded the case for further proceedings. In finding for Borjal, the First Division held:

First, the assailed Order of the court a quo declared the Preliminary Conference Brief of Borjal non-compliant with Section 4, Rule 9 of A.M. 07-4-15-SC in the following manner:

x x x x

The court a quo, after stating the antecedent facts of the case, the contentions of each party, and the pertinent provisions of the rules, simply dismissed the election protest without specifying which of the required contents were lacking in Borjal's Preliminary Conference Brief. It would appear, based on the court's Order, that the said brief did not at all

contain the contents required in Section 4 of Rule 9.

Examination thereof reveals, however that the same has substantially complied with Section 4, Rule 9 of A.M. No. 07-4-15-SC.

In his Preliminary Conference Brief, Borjal stated a summary of admitted facts and proposed stipulation of facts; the issues to be tried or resolved; documents to be presented; witnesses to be presented; proposed number of revision committees; and a statement of his conformity to discovery procedures or referral to the commissioners to facilitate the speedy disposition of the case.

Apparently, what Borjal failed to include are statements of (1) a manifestation of withdrawal of certain protested precincts, if such is the case; and (2) in case the election protest or counter-protest seeks the examination, verification, or re-tabulation of election returns, the procedure to be followed.

Nonetheless, **these omissions do not warrant the outright dismissal of the election protest.** As explained by Borjal's counsel during the preliminary conference, withdrawal of certain protested precincts will be made either after or during the revision.

Moreover, **Borjal's failure to provide for the procedure to be followed in case the election protest seeks the examination, verification or re-tabulation of election returns is not fatal.** A reading of the election protest shows that Borjal's allegations consist mainly of election irregularities and frauds that resulted to an incorrect number of votes pertaining to each candidate. Hence, Borjal's prayer is for the recount/revision of the ballots to determine the correct number of votes cast in his favor.

Undoubtedly, **Borjal does not seek the examination, verification or re-tabulation of the election returns; therefore, a statement for its procedure is not necessary in the instant case.**

Second, it must be emphasized that Gravidez won by a lead of merely two (2) votes. Thus, **should the allegation of Borjal that some votes cast in his favor were misread and misappreciated during the counting of votes appears to be true in at least two (2) ballots, the election result will be different, as the same will result in a tie.** This fact should have been taken into consideration by the court a quo.

It bears stressing that blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced. Likewise, it has been held that "on more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties' right to due process." While

procedural rules are intended for the expeditious disposition of election cases, this should not impede this Commission from compliance with the established principles of fairness and justice and adjudication of cases not on technicality but on their substantive merits.

Finally, it is worth mentioning that the court a quo, in its "Notice of Pre-Trial Conference," required the parties to state in their respective preliminary conference briefs the following:

x x x x

Noticeably, **the court a quo overlooked the rule applicable in the instant case, i.e., Section 4, Rule 9 of A.M. No. 07-4-15-SC, as it failed to include all the matters required under the said rule.** On the contrary the foregoing notice is more akin to the provision on pre-trial brief under the Rules on Civil Procedure. Notwithstanding this, the court a quo hastily dismissed the election protest for non-compliance with Section 4, Rule 9 of A.M. 07-4-15-SC.^[13] (Underscoring in the original; additional emphasis supplied)

Gravides filed a motion for reconsideration which was denied by the Commission En Banc in its Order dated November 23, 2011. The denial of the motion was based on the failure to pay the required motion fees prescribed under Section 7(f), Rule 40, COMELEC Rules of Procedure, as amended by COMELEC Minute Resolution No. 02-130 dated September 18, 2002, in relation to Section 18 of the same Rule, to wit:

It [Motion for Reconsideration] should be accompanied by the payment of the correct amount of motion fee and should be paid within the five (5)-day period for the filing of said motion.

There being no valid motion for reconsideration to speak of, the provision of Section 13, paragraph (c) Rule 18, Comelec Rules of Procedure applies, to wit:

Rule 18 – Decisions

xxx xxx xxx

"Sec. 13. Finality of Decisions or Resolutions. –

xxx xxx xxx

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation."

Hence, the Resolution of the Commission (First Division) promulgated on