

## EN BANC

[ G.R. No. 182865, December 24, 2008 ]

### ROMULO F. PECSON, PETITIONER, VS. COMMISSION ON ELECTIONS, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT AND LYNDON A. CUNANAN, RESPONDENTS.

#### DECISION

##### BRION, J.:

This petition for *certiorari* - filed by Romulo F. Pecson (*Pecson*) under Rule 64, in relation with Rule 65 of the Revised Rules of Court - seeks to set aside and annul the Resolution dated May 21, 2008 of the Commission on Elections *en banc* (COMELEC) in SPR 60-2007.<sup>[1]</sup> The assailed Resolution nullified the grant (*via* a Special Order) by the Regional Trial Court (RTC), Branch 56, Angeles City, of the execution pending appeal of its Decision in the election contest between Pecson and the private respondent Lyndon A. Cunanan (*Cunanan*), the proclaimed winner in the 2007 mayoralty election in Magalang, Pampanga.

#### THE ANTECEDENTS

Pecson and Cunanan were candidates for the mayoralty position in the Municipality of Magalang, Province of Pampanga in the May 2007 elections. On May 17, 2007, Cunanan was proclaimed the winning candidate, garnering a total of 12,592 votes as against Pecson's 12,531, or a margin of 61 votes. Cunanan took his oath and assumed the position of Mayor of Magalang. Soon thereafter, Pecson filed an election protest, docketed as EPE No. 07-51, with the RTC.

On November 23, 2007, the RTC rendered a Decision in Pecson's favor. The RTC ruled that Pecson received a total of 14,897 votes as against Cunanan's 13,758 - a vote margin of 1,139.

Cunanan received a copy of the Decision on November 26, 2007 and filed a Notice of Appeal the day after. The RTC issued on November 27, 2008 an Order noting the filing of the notice of appeal and the payment of appeal fee and directing the transmittal of the records of the case to the Electoral Contests Adjudication Department (ECAD) of the COMELEC. Pecson, on the other hand, filed on November 28, 2007 an Urgent Motion for Immediate Execution Pending Appeal, claiming that Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and Barangay Officials<sup>[2]</sup> (*Rules*) allows this remedy.

The RTC granted Pecson's motion for execution pending appeal *via* a Special Order dated December 3, 2007 (*Special Order*) but suspended, pursuant to the Rules, the actual issuance of the writ of execution for twenty (20) days. The Special Order states the following reasons:

1. The result of the judicial revision show[s] that the protestant garnered 14,897 votes as against protestee's 13,758 votes or a plurality of 1,139 votes. The victory of the protestant is clearly and manifestly established by the rulings and tabulation of results made by the Court x x x;
2. It is settled jurisprudence that execution pending appeal in election cases should be granted "to give as much recognition to the worth of a trial judge's decision as that which is initially ascribed by the law to the proclamation by the board of canvassers." The Court holds that this wisp of judicial wisdom of the Supreme Court enunciated in the *Gahol* case and subsequent cases citing it is borne by the recognition that the decision of the trial court in an election case is nothing but the court upholding the mandate of the voter, which has as its source no other than the exercise of the constitutional right to vote. While it is true that the protestee can avail of the remedy of appeal before the COMELEC, the Court is more convinced that between upholding the mandate of the electorate of Magalang, Pampanga which is the fruit of the exercise of the constitutional right to vote and a procedural remedy, the Court is more inclined to uphold and give effect to and actualize the mandate of the electorate of Magalang. To the mind of the Court, in granting execution pending appeal the Court is being true to its bounden duty to uphold the exercise of constitutional rights and gives flesh to the mandate of the people. The foregoing is, as far as the Court is concerned, considered far superior circumstance that convinces the Court to grant protestant's motion;
3. Public interest and the will of the electorate must be respected and given meaning;
4. In the case of *Navarosa v. Comelec*, the Supreme Court held that "In the *Gahol* case, the Court gave an additional justification for allowing execution pending appeal of decisions of trial courts, thus: Public policy underlies it, x x x [S]omething had to be done to strike the death blow at the pernicious grab-the-proclamation-prolong-the-protest technique often, if not invariably, resorted to by unscrupulous politicians who would render nugatory the people's verdict against them and persist in continuing in an office they very well know they have no legitimate right to hold. x x x." A primordial public interest is served by the grant of the protestant's motion, *i.e.*, to obviate a hollow victory for the duly elected candidate. In the words of Chief Justice Cesar Bengzon, "The well known delay in the adjudication of election protests often gave the successful contestant a mere pyrrhic victory, *i.e.*, a vindication when the term of office is about to expire or has expired."

Expectedly, Cunanan moved to reconsider the Order, arguing that the RTC gravely abused its discretion: (1) in ruling that there were good reasons to issue a writ of execution pending appeal; and (2) in entertaining and subsequently granting the motion for execution pending appeal despite the issuance of an order transmitting the records of the case.

Thereupon, Cunanan filed with the COMELEC a Petition for Application of Preliminary Injunction with Prayer for Status Quo Ante Order/Temporary Restraining Order (TRO) with Prayer for Immediate Raffle. He argued in his petition that: (1) the RTC Decision did not clearly establish Pecson's victory or his (Cunanan's) defeat - a requirement of Section 11, Rule 14 of the Rules; among other reasons, the number of votes the RTC tallied and tabulated exceeded the number of those who actually voted and the votes cast for the position of Mayor, and (2) the RTC had constructively relinquished its jurisdiction by the issuance of the Order dated November 27, 2007 directing the transmittal of the records of the case.

The Second Division of the COMELEC issued on January 4, 2008 a 60-day TRO directing: (1) the RTC to cease and desist from issuing or causing the issuance of a writ of execution or implementing the Special Order; and (2) Cunanan to continue performing the functions of Mayor of Magalang.

In his Answer and/or Opposition, with Prayer for Immediate Lifting of TRO, Pecson argued that: (1) preliminary injunction cannot exist except as part or incident of an independent action, being a mere ancillary remedy that exists only as an incident of the main proceeding; (2) the "petition for application of preliminary injunction," as an original action, should be dismissed outright; and (3) Cunanan is guilty of forum shopping, as he filed a motion for reconsideration of the Special Order simultaneously with the petition filed with the COMELEC.

The COMELEC's Second Division denied Cunanan's petition in a Resolution dated March 6, 2008. It ruled that: (1) the resolution of the motion for execution pending appeal is part of the residual jurisdiction of the RTC to settle pending incidents; the motion was filed prior to the expiration of the period to appeal and while the RTC was still in possession of the original record; and (2) there is good reason to justify the execution of the Decision pending appeal, as Pecson's victory was clearly and manifestly established. Ruling on the alleged defect in the RTC count, the Second Division ruled:

[A]fter a careful scrutiny of the Decision, We found that the error lies in the trial court's computation of the results. In its Decision, the trial court, to the votes obtained by the party (as per proclamation of the MBOC), deducted the votes per physical count after revision and deducted further the invalid/nullified ballots per the trial court's appreciation and thereafter added the valid claimed ballots per the trial court's appreciation, thus:

*Votes obtained per proclamation of the MBOC (-) Votes per physical count (-) Invalid or nullified ballots (+) Valid claimed ballots = Total Votes Obtained*

The formula used by the trial court is erroneous as it used as its reference the votes obtained by the parties as per the proclamation of the MBOC. It complicated an otherwise simple and straightforward computation, thus leading to the error. The correct formula should have been as follows:

*Total Number of Uncontested Ballots (+) Valid Contested Ballots (+) Valid*

*Claimed Ballots = Total Votes Obtained*

Using this formula and applying the figures in pages 744 and 745 of the trial court's Decision, the results will be as follows:

For the Petitioner

Cunanan

Total Number of 9,656

Uncontested Ballots

Add: Valid Contested 2,058

Ballots

Add: Valid Claimed Ballots 36

**Total Votes of 11,750**

**Petitioner**

For the Private

Respondent (Pecson)

Total Number of 9,271

Uncontested Ballots

Add: Valid Contested 2,827

Ballots

Add: Valid Claimed Ballots 39

**Total Votes of 12,134**

**Petitioner**

Using the correct formula, private respondent still obtained a plurality of the votes cast and enjoys a margin of 384 votes over the petitioner. Although not as wide as the margin found by the trial court, We are nevertheless convinced that the victory of private respondent has been clearly established in the trial court's decision for the following reasons:

**First, the error lies merely in the computation and does not put in issue the appreciation and tabulation of votes. The error is purely mathematical which will not involve the opening of ballot boxes or an examination and appreciation of ballots. It is a matter of arithmetic which calls for the mere clerical act of reflecting the true and correct votes of the candidates.**

**Second, the error did not affect the final outcome of the election protest as to which candidate obtained the plurality of the votes cast.**

We are likewise convinced that the assailed order states good or special reasons justifying the execution pending appeal, to wit:

- (1) The victory of the protestant was clearly and manifestly established;
- (2) Execution pending appeal in election cases should be granted to give as much recognition to the worth of a trial judge's decision as that which is initially ascribed by the law to the proclamation by the board of canvassers;
- (3) Public interest and the will of the electorate must be respected and given meaning; and

- (4) Public policy underlies it, as something had to be done to strike the death blow at the pernicious grab-the-proclamation-prolong-the-protest technique often, if not invariably resorted to by unscrupulous politicians.

Such reasons to Our mind constitute superior circumstances as to warrant the execution of the trial court's decision pending appeal.

Pecson thus asked for the issuance of a writ of execution *via* an *Ex-Parte* Motion. Despite Cunanan's opposition, the RTC granted Pecson's motion and issued the writ of execution on March 11, 2008. Pecson thereafter assumed the duties and functions of Mayor of Magalang.

### **The Assailed Resolution**

On Cunanan's motion, the COMELEC *en banc* issued its Resolution dated May 21, 2008 reversing the ruling of the Second Division insofar as it affirmed the RTC's findings of good reasons to execute the decision pending appeal. It affirmed the authority of the RTC to order execution pending appeal; it however nullified the March 11, 2008 writ of execution on the ground that the RTC could no longer issue the writ because it had lost jurisdiction over the case after transmittal of the records and the perfection of the appeals of both Cunanan and Pecson (to be accurate, the lapse of Pecson's period to appeal).

On the propriety of executing the RTC Decision pending appeal, the COMELEC *en banc* ruled that it was not convinced of the good reasons stated by the RTC in its Special Order. It ruled that recognition of the worth of a trial judge's decision, on the one hand, and the right to appeal, including the Commission's authority to review the decision of the trial court, on the other, **requires a balancing act**; and not every invocation of public interest will suffice to justify an execution pending appeal. It added that at a stage when the decision of the trial court has yet to attain finality, both the protestee and the protestant are to be considered "presumptive winners." It noted too that the Second Division already cast a doubt on the correctness of the number of votes obtained by the parties after the trial court's revision; thus, the resolution of the pending appeal becomes all the more important. *Between two presumptive winners*, considering the pending appeal of the election protest to the Commission and public service being the prime consideration, **the balance should tilt in favor of non-disruption of government service**. The execution of the RTC Decision pending appeal would necessarily entail the unseating of the protestee, resulting not only in the disruption of public service, but also in confusion in running the affairs of the government; a subsequent reversal too of the RTC Decision also results in the unseating of the protestant. This situation (*i.e.*, the series of turn-over of the seat of power from one presumptive winner to another) cannot but cause irreparable damage to the people of Magalang, and overweighs the reasons asserted by the RTC in its Special Order. In the end, according to the COMELEC, public interest is best served when he who was really voted for the position is proclaimed and adjudged as winner with finality.

### **The Petition and the Prayer for the issuance of a Status Quo Order**

In imputing grave abuse of discretion to the COMELEC *en banc*, Pecson argues that: (1) the RTC Decision clearly showed Pecson's victory; (2) the reasons for the