

EN BANC

[G.R. No. 157957, September 18, 2003]

CHARITO NAVAROSA, PETITIONER, VS. COMMISSION ON ELECTIONS, HONORABLE DEAN R. TELAN, AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 9, KALIBO, AKLAN AND ROGER M. ESTO, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This is a petition for certiorari of the Commission on Elections ("COMELEC") *En Banc* Resolution dated 15 April 2003 denying petitioner Charito Navarosa's motion for reconsideration of the COMELEC Second Division Resolution^[1] dated 28 November 2002. The COMELEC Second Division Resolution ordered the execution pending appeal of the Decision^[2] of the Regional Trial Court, Branch 9, Kalibo, Aklan, proclaiming respondent Roger M. Esto winner in the mayoralty race in the 14 May 2001 elections.

The Facts

Petitioner Charito Navarosa ("petitioner Navarosa") and respondent Roger M. Esto ("respondent Esto") were candidates for mayor of Libacao, Aklan in the 14 May 2001 elections. On 17 May 2001, the COMELEC Municipal Board of Canvassers of Libacao proclaimed petitioner Navarosa as the duly elected mayor, with a winning margin of three (3) votes over respondent Esto.^[3]

Claiming that irregularities marred the canvassing of ballots in several precincts, respondent Esto filed an election protest docketed as Election Case No. 129 ("election protest") in the Regional Trial Court, Branch 9, Kalibo, Aklan ("trial court"). Petitioner Navarosa, who also claimed that canvassing irregularities prejudiced her, filed a counter-protest in the same case.

On 4 March 2002, after revision of the contested ballots, the trial court rendered judgment in favor of respondent Esto. The trial court found that respondent Esto obtained 4,595 votes over petitioner Navarosa's 4,553 votes. Thus, the trial court declared respondent Esto the elected mayor of Libacao by a margin of 42 votes and annulled the earlier proclamation of petitioner Navarosa. The trial court also ordered petitioner Navarosa to pay respondent Esto actual damages and attorney's fees. The dispositive portion of the decision provides:

WHEREFORE, judgment is hereby rendered:

- a) Declaring the Proclamation of xxx protestee [Navarosa] as

the duly elected Mayor of Libacao, Aklan and the Certificate of Canvass of Votes and the Proclamation of the Winning Candidates for Municipal Offices, dated May 17, 2001, as null and void;

- b) Declaring the protestant, Roger M. Esto, as the duly elected Municipal Mayor of Libacao, Aklan in the May 14, 2001 election;
- c) Ordering the protestee [Navarosa] to pay the sum of P14,215.00 as actual and compensatory damages, and the amount of P50,000.00 as and for attorney's fees, plus the cost of suit.^[4]

Petitioner Navarosa appealed the trial court's ruling to the COMELEC (EAC Case No. A-9-2002). Respondent Esto, on the other hand, filed with the trial court a motion for execution of the judgment pending petitioner Navarosa's appeal. Petitioner Navarosa opposed respondent Esto's motion. In the alternative, petitioner Navarosa offered to file a supersedeas bond to stay execution pending appeal, should the trial court grant respondent Esto's motion.

In its Order of 22 March 2002 ("Order"), the trial court granted respondent Esto's motion subject to the filing of a P300,000 bond. However, in the same order, the trial court also granted petitioner Navarosa's prayer to stay the execution pending appeal, upon filing a P600,000 supersedeas bond. The Order reads:

The Supreme Court has explicitly recognized and given approval to execution of judgments pending appeal in election cases, filed under existing election laws. In these cases, the immediate execution was made in accordance with Sec. 2, Rule 39 of the Rules of Court (Ramas et al. vs. COMELEC, et al., G.R. No. 130831, 2/10/98). There is, therefore, no question now that execution pending appeal may be granted.

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[T]he grant of execution would give substance and meaning to the people's mandate specially since the court has established protestant's right to the office (Lindo vs. COMELEC cited in the Ramas case); more than 10 months or nearly 1/3 of the 3-year term for Mayor had already lapsed (Gutierrez vs. COMELEC, G.R. 126298, 3-25-97; Tobon Uy vs. COMELEC also cited in the Ramas case). These are two "good reasons" to justify execution of the decision pending appeal.

[P]rotestee [Navarosa] however, prays in the alternative, that should execution pending appeal be granted, the same be stayed upon his [sic] filing of supersedeas bond to be fixed by the court under Sec. 3, Rule 39, 1997 Rules of Civil Procedure.

Unlike Sec. 2, Rule 39 where the grant of execution pending appeal is conditioned upon the presence of the "good and valid reason" for its grant, Sec. 3, Rule 39 does not provide for any condition precedent before the discretionary execution of Rule 2 may be stayed. All that it requires is that a sufficient supersedeas bond must be approved by the

court conditioned upon the performance of the judgment allowed to be executed in case it shall be finally sustained in whole or in part. Under this section, therefore, the filing of a supersedeas bond sufficient in amount is enough to stay the execution granted under Sec. 2.

Moreover, the margin of 42 votes in the instant case is not so big, overwhelming or insurmountable as to be practically beyond or improbable of being overturned by the higher courts. xxx

WHEREFORE, in view of the foregoing[,] the court finds that the protestant, Roger M. Esto is entitled to the execution of the decision dated March 4, 2002, pending appeal, upon the filing of a bond which covers the salary and emoluments of the office of the Municipal Mayor of Libacao, Aklan and or the payment of all damages in the amount of P300,000.00, Philippine Currency, in cash, surety bond or real property with assessed value in said amount to be filed on or before April 3, 2002, furnishing copy thereof to the protestee or his duly authorized representative.

The protestee, Charito Navarosa, considering that the margin is not so insurmountable as to be beyond reversal by the higher court[,] is hereby allowed to stay the execution of the decision of March 4, 2002 pending appeal, by filing a supersedeas bond in double the amount posted by the protestant, on or before April 3, 2002, furnishing copy thereof the protestant or his duly authorized representative.^[5]

Both petitioner Navarosa and respondent Esto sought reconsideration of the Order but the trial court denied their motions on 5 April 2002.

Respondent Esto filed a petition for *certiorari* with the COMELEC against the Order. In her memorandum to the petition, petitioner Navarosa raised for the first time the issue of the trial court's failure to acquire jurisdiction over the election protest because of respondent Esto's failure to pay the COMELEC filing fee.

The Ruling of the COMELEC

In its Resolution dated 28 November 2002 ("Resolution"), the COMELEC Second Division affirmed the trial court's Order granting execution pending appeal and nullified the stay of the execution. The Second Division also found that respondent Esto duly paid the COMELEC filing fee. The Resolution reads:

Going now to the main issue at hand, did respondent judge gravely abuse his discretion and/or exceed his jurisdiction when he stayed the immediate execution of his decision on a finding of "good reasons" he made in his questioned Order of March 22, 2002 by allowing in the same Order the filing of a supersedeas bond double the amount posted by petitioner?

The answer is yes.

It is [for] the Commission on Elections, in the exercise of its appellate jurisdiction to issue the extraordinary writs of *certiorari*, prohibition,

mandamus and injunction over all contests involving elective municipal officials decided by the trial courts of general jurisdiction elevated on appeal, and not the trial court, that may order the stay or restrain the immediate execution of the decision pending appeal granted by the trial court of general jurisdiction in an election contest. Except when the trial court reversed itself in a motion for reconsideration of its order granting immediate execution, it cannot later on stay or restrain the execution thereof in the guise of allowing the losing party to file a supersedeas bond. The issue before the trial court where a motion for execution pending appeal is filed is to determine whether or not there are "good reasons" to justify the immediate execution pending appeal. The issue is not whether x x x there are good reasons to stay the immediate execution of the decision pending appeal.

The trial court, by granting the immediate execution of the March 4, 2002 decision, recognized that the "good reasons" cited in the questioned Order constitute superior circumstances demanding urgency that will outweigh the injuries or damages to the adverse party if the decision is reversed. By declaring that petitioner Esto is the duly elected Mayor of Libacao, Aklan, the trial court gave substance and meaning to the people's mandate as expressed in the ballot, especially since it has established petitioner Esto's right to the office. The trial court cannot indirectly reverse its substantial finding of "good reasons" by a rule of procedure which does not strictly apply in election protest cases when it allowed the filing of a supersedeas bond under Section 3, Rule 39 of the 1997 Rules of Civil Procedure. To allow the application of the said procedural relief would defeat the right of the winning candidate in an election protest to hold the public office by virtue of the people's mandate expressed through the ballot and to perform the functions of the said public office.

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It is interesting to note that instead of expounding on the propriety of the supersedeas bond to stay the execution of a judgment in an election protest case, private respondent raised for the first time in his [sic] memorandum the issue of lack of jurisdiction of the trial court over the instant election protest for the alleged failure of petitioner Esto to pay the filing fee of P300.00 required under Section 9, Rule 35 of the COMELEC Rules of Procedure. However, the records of Election Case No. 129 of the RTC of Kalibo, Aklan, Branch 9 showed otherwise. The Official Receipts issued by the RTC of Kalibo, Aklan shows [sic] that petitioners paid a total of P515.00 filing fees in Election Case No. 129 by specifically stating therein "[F]iling Fee in Election Case No. 129". At the time of filing the election protest, petitioner specified that the payment made was to cover the COMELEC filing fee for the election protest. Upon assessment, petitioner paid not only the amount of P300.00 required under Section 9, Rule 35 of the COMELEC Rules of Procedure, but a total sum of P515.00 as filing fees. While it is true that the issue of jurisdiction may be raised anytime, even on appeal, the same is of no moment now.^[6]

Petitioner Navarosa sought reconsideration of this ruling but the COMELEC *En Banc* denied her motion on 15 April 2003.

Hence, this petition.

On 10 June 2003, the Court required the parties to maintain the *status quo* pending resolution of this petition.

The Issues

Petitioner Navarosa raises the following issues:

1. WHETHER PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE 28 NOVEMBER 2002 RESOLUTION OF THE COMELEC SECOND DIVISION FOR FAILURE TO RULE ON THE BASIC ISSUE OF LACK OF JURISDICTION OF THE COURT A *QUO* OVER RESPONDENT ESTO'S ELECTION PROTEST FOR NON-PAYMENT OF THE MANDATORY COMELEC FILING FEE OF P300.00.
2. WHETHER PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE 28 NOVEMBER 2002 RESOLUTION OF THE COMELEC SECOND DIVISION DESPITE THE FACT THAT THERE WERE NO "GOOD REASONS" TO EXECUTE THE 4 MARCH 2002 DECISION OF THE TRIAL COURT.
3. WHETHER PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE 28 NOVEMBER 2002 RESOLUTION OF THE COMELEC SECOND DIVISION WHEN THE LATTER RULED THAT THE TRIAL COURT HAD NO POWER TO ORDER THE STAY OF EXECUTION OF ITS 4 MARCH 2002 DECISION PENDING APPEAL IN AN ELECTION CONTEST, BECAUSE SECTION 3, RULE 39 OF THE REVISED RULES OF COURT DOES NOT APPLY TO ELECTION CASES.^[7]

The Ruling of the Court

The petition has no merit.

The Trial Court Acquired Jurisdiction Over Election Case No. 129

Petitioner Navarosa contends that the trial court did not acquire jurisdiction over the election protest because of respondent Esto's failure to pay the COMELEC filing fee under Rule 35, Section 9 of the COMELEC Rules of Procedure ("Section 9"). Procedurally, petitioner Navarosa should not have raised this jurisdictional issue in this petition which involves only the ancillary issue of whether to allow execution of the trial court's decision pending appeal. Nevertheless, as the question of the trial court's jurisdiction also affects its authority to issue ancillary orders such as its