

EN BANC

[G.R. No. 139357, May 05, 2000]

ABDULMADID P.B. MARUHOM, PETITIONER, VS. COMMISSION ON ELECTIONS AND HADJI JAMIL DIMAPORO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

Whether or not a motion to dismiss, filed after an answer has been filed, is a prohibited pleading in an election protest pending before the Regional Trial Court is the issue posed in this petition for *certiorari* with prayer for preliminary injunction challenging the Resolution of the Commission on Elections (COMELEC) dated July 6, 1999^[1] dismissing Comelec Case SPR No. 52-98.

The COMELEC's challenged order summarizes the relevant facts of the controversy thus:

1. Petitioner and private respondent were both candidates for Mayor in the Municipality of Marogong, Lanao del Sur and voted as such in the last May 11, 1998 national and local election (*sic*). Petitioner is a re-electionist and a veteran politician;
2. The election in Marogong functioned on May 11, 1998, and after the voting the ballot boxes were transmitted to the Kalimodan Hall, Provincial Capitol of Lanao del Sur at Marawi City where the automated counting of votes and canvass of election returns were centralized;
3. During the counting of votes, serious irregularities, anomalies and electoral frauds were committed at the instance of petitioner or his followers in that votes actually casted (*sic*) for the private respondent were not counted and credited in his favor thru (*sic*) the concerted acts, conspiracy and manipulation of the Board of Election Inspectors, military, Election Officer and the Machine Operator who happens to be a nephew of the petitioner;
4. In Precincts Nos. 1A-1A1, 7A1, 8A, 10A-10A1 and 11A about 115 official ballots were refused or rejected by the counting machine which the private respondent's watchers or representatives have requested and insisted to be re-fed to the automated machine for the second and third times pursuant to the provisions of Comelec Resolution No. 3030 but their requests were not heeded by the Election Officer and the Machine Operator, Solaiman Rasad, who is a close kin of the Petitioner, and instead considered the said ballots as finally rejected, while in Precincts Nos. 12A, 23A1 and 6A, around 56 ballots were found therein which were not drawn from the official ballots and were included in the counting of votes over the objection of the private respondent's watchers or representatives;

5. Before the termination of the counting of votes and the consolidation of the results, the machine operator and the Election Officer carried away from the Kalimodan Hall the diskette and brought the same to the down town without the knowledge of the private respondent's watchers or representatives;
6. As a result of the foregoing irregularities, anomalies and electoral frauds, the petitioner was illegally proclaimed as winner because he appeared to have obtained 2,020 votes while the private respondent garnered 2,000 votes with a slight margin of only 20 votes;
7. After the counting of votes, the ballot boxes were kept at the Kalimodan Hall, Provincial Capitol, Marawi City guarded and secured by military and PNP personnel together with the watchers/representatives of the petitioner and the private respondent and other candidates or political parties until they were transported and delivered to the respondent court at Malabang, Lanao del Sur sometime on August 13, 1998 by 1Lt. Napisa AG together with the duly authorized representatives of both parties.

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1. On May 22, 1998, private respondent, knowing that he was cheated and the true winner for Mayor, filed before this Honorable Commission a petition to annul the proclamation of petitioner Abdulmadid Maruhom as the duly elected Mayor of Marogong, Lanao del Sur docketed as SPC No. 98-226.^[2]
2. As precautionary measure to avoid any technicality, private respondent filed on May 25, 1998, an ordinary "Protest ad Cautelam" against the petitioner before the Regional Trial Court, Branch 11, Malabang, Lanao del Sur entitled "*Hadji Jamil D. Dimaporo vs. Abdulmadid Maruhom*" for election protest (Manual Judicial Recount, Revision and Reappreciation of ballots) docketed as Election Case No. 11-127.^[3]
3. On June 1, 1998, *petitioner Abdulmadid Maruhom filed an answer with counter-protest in Election Case No. 11-127* special and affirmative defenses and counter-protest.^[4] In his answer petitioner prayed to hold in abeyance further proceedings since the protest is *ad cautelam* or subject to the petition filed before this Honorable Commission.
4. On July 2, 1998, before SPC No. 98-228 could be set for hearing by this Honorable Commission, the private respondent as petitioner therein, filed a motion to withdraw his petition in said SPC No. 98-228 albeit said case was among those cases the proceedings of which were ordered to be continued beyond June 30, 1998, under Comelec Resolution No. 3049 promulgated on June 29, 1998.^[5] xxx
5. On July 17, 1998, an order was issued by this Honorable Commission, (*First Division*) granting the private respondent's motion to withdraw petition in SPC No. 98-228 and considered the same withdrawn.^[6] xxx.
6. Upon receipt of a copy of said order, dated July 17, 1998, private respondent filed an urgent motion before the respondent court on July 27, 1998, praying

for the issuance of an order directing the proper officials/officers concerned to bring and produce before said court the ballot boxes subjects of the protest and counter-protest and to set the case for hearing as mandated by law.^[7]
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7. After the delivery of the ballot boxes involved in the protest and counter-protest, the public respondent issued an order, dated August 17, 1998, setting Election Case No. 11-127 for hearing (a) for the creation of the Committee on Revision and appointment of the Chairman and Members thereof; (b) making of the cash deposit and payment of the revisor's compensation; (c) partial determination of the case, etc. on September 1, 1998, at 8:30 o'clock in the morning.^[8]
8. When the case was called for hearing on September 2, 1998, a Revision Committee was created and its membership were duly appointed in open court which committee was directed by the respondent court to finish the revision of ballots, if possible, within 20 days from the commencement of the revision^[9]
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9. After the Revision Committee was directed by the respondent to commence the revision of ballots, the *petitioner Abdulmadid Maruhom thru counsel orally moved for the dismissal of the protest* on the grounds that (1) The ballot boxes containing the ballots in the protested and counter-protested precincts have been violated; (2) Automated counting of ballots does not contemplate a manual recount of the ballots; and (3) Protestant is guilty of forum shopping warranting summary dismissal of the petitioner of the protest.
10. The private respondent thru (*sic*) undersigned counsel, vigorously opposed the said oral motion to dismiss and orally argued that the motion is clearly dilatory having been made only after the Revision Committee has been ordered to commence the revision of ballots on September 1, 1998 and maintained that (1) The motion to dismiss is not allowed in an election protest; (2) The sanctity and integrity of the ballot boxes subject matter of the protest and counter-protest have been preserved and never violated; (3) The automated counting of ballots does not preclude the filing of the election protest for the judicial recount and revision of ballots; and (4) The private respondent is not guilty of forum shopping because his petition of protest is clearly and explicitly a Protest *Ad Cautelam* in view of the pendency of his petition before this Honorable Commission which was withdrawn by the private respondent before it could be set for hearing or acted upon by this Honorable Commission.
11. After the oral arguments of both parties, the petitioner's counsel asked that he be given ample time to file a written Omnibus Motion to Dismiss and the respondent court thru then Acting Presiding Judge Rasad Balindong, issued an order dated September 2, 1998, giving ten (10) days to Atty. Tingcap T. Mortaba to file an Omnibus Motion in substantiation of all the oral motions he made, furnishing a copy thereof to the undersigned counsel for the private respondent who was likewise given an equal period of time to comment.^[10]
12. On September 11, 1998, petitioner filed his motion to dismiss^[11] and on September 21, 1998, the private respondent filed a vigorous opposition to

motion to dismiss.^[12]

13. During the hearing on the motion to dismiss and the opposition thereto on September 21, 1998, the petitioner's counsel requested for ample time to file a rejoinder to the vigorous opposition to motion to dismiss submitted by the private respondent which was granted by the court and on September 28, 1998, petitioner filed his rejoinder^[13] and on October 5, 1998 private respondent filed his comment^[14] thereto and thereafter all incidents were submitted for resolution of the court.
14. On November 10, 1998, the respondent court thru Honorable Presiding Judge Moslemen T. Macarambon, issued the assailed order denying the petitioner's motion to dismiss for lack of merit and ordering the Revision Committee to report to the court on November 19, 1998, at 8:30 o'clock in the morning for their oath taking and to receive the instruction of the court in the revision of the ballots and other allied matters.^[15]
15. On November 18, 1998, the petitioner filed a motion for reconsideration of the order dated November 10, 1998,^[16] and on November 23, 1998, private respondent filed a vigorous opposition [to motion] for reconsideration.^[17]
16. Finding no compelling reason to disturb its order dated November 10, 1998, the respondent court issued the assailed order dated December 1, 1998 which denied the motion for reconsideration for lack of merit. In the same order, the respondent court reiterated its previous order to the members of the Revision Committee to take their oaths before Atty. Raqueza T. Umbaro or Atty. Khalil Laguindab and thereafter to convene and start the revision of ballots on December 14, 15, 16, 17 and 18, 1998, morning and afternoon.^[18]
17. As a diabolical scheme to cause further delay of the proceedings of the case more specifically the revision of ballots, the petitioner filed on December 10, 1998, the instant petition for certiorari and prohibition with prayer for preliminary injunction and on December 11, 1998, petitioner filed an urgent motion before the respondent court praying that further proceedings in Election Case No. 11-127 be deferred until after protestee's petition for certiorari and prohibition before this Honorable Commission shall have been finally resolved, copy of which was served upon the undersigned counsel only on December 12, 1998, at 10:50 A.M.^[19] xxx
18. 18. That before the undersigned counsel could file his opposition to said urgent motion on December 14, 1998 and in the absence of a restraining order or writ of preliminary injunction issued by (the COMELEC), the respondent judge already issued an order granting the same motion and ordering the Revision Committee to hold in abeyance the scheduled revision of ballots on December 14, 15, 16, 17 and 18, 1998, etc. until further order from the court xxx.^[20]

Petitioner alleges that in dismissing the petition the COMELEC acted in excess of, or with grave abuse of discretion, amounting to lack of jurisdiction in —

1.] holding that a motion to dismiss an election protest case filed in the Regional Trial Court is a prohibited pleading;

2.] holding that the motion to dismiss filed after the answer is not allowed;

3.] failing to resolve the issues raised in SPR No. 52-98 which are sufficient legal bases to dismiss Election Case No. 11-127.

In sum, petitioner insists that in refusing to pass upon the three (3) principal issues raised in COMELEC Case SPR No. 52-98, to wit:

1. Whether or not public respondent acted in excess of, or with grave abuse of discretion, amounting to lack of jurisdiction in holding that a motion to dismiss an election protest case in the Regional Trial Court is a prohibited pleading;
2. Whether or not public respondent acted in excess of, or with grave abuse of discretion, amounting to lack of jurisdiction, in holding that a motion to dismiss filed after the answer to an election protest case in the Regional Trial court is not allowed; and
3. Whether or not public respondent gravely abused its discretion amounting to lack of jurisdiction, in failing to resolve the relevant material and substantial issues raised in SPR No. 52-98.

the COMELEC "abdicated its duty under its own rules of procedure and under the Constitution and the election laws." Such abdication of duty, according to petitioner, amounts to grave abuse of discretion amounting to lack of jurisdiction.

It must be borne in mind that the purpose of governing statutes on the conduct of elections —

x x x [i]s to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, *the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created — to promote free, orderly and honest elections. The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.*^[21]

Section 2 (1) of Article IX of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." There can hardly be any doubt that the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve the holding of free, orderly, honest, peaceful and credible elections.

In accordance with this intent, the Court has been liberal in defining the parameters of the COMELEC's powers in conducting elections. *Sumulong v. COMELEC*^[22] aptly points out that —