

EN BANC

[G.R. No. 134696, July 31, 2000]

TOMAS T. BANAGA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND FLORENCIO M. BERNABE, JR., RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This special civil action for *certiorari* seeks to annul the *en banc* resolution of public respondent Commission on Elections promulgated on June 29, 1998, in a COMELEC special action case, SPA No. 98-383.

The factual antecedents of this case are as follows:

Petitioner and private respondent were the candidates for vice-mayor of the City of Parañaque in the May 11, 1998 election. On May 19, 1998, the city board of canvassers proclaimed private respondent, Florencio M. Bernabe, Jr., the winner for having garnered a total of Seventy One Thousand Nine Hundred Seventy Seven (71,977) votes of the total votes cast for the vice-mayoralty position. On the other hand, petitioner, Tomas T. Banaga, Jr., received the second highest number of votes for the said position, with Sixty Eight Thousand Nine Hundred Seventy (68,970) of the total votes cast. Thus, the difference between the votes received by the private respondent and the petitioner is three thousand seven (3,007) votes.

Dissatisfied, petitioner filed with the COMELEC on May 29, 1998, an action denominated as "*Petition to Declare Failure of Elections and/or For Annulment of Elections*",^[1] alleging that:

"3. xxx the local elections for the office of Vice-Mayor in the City of Parañaque, Metro Manila, held on 11 May 1998, amounts to a denigration of the expression of the true will of the people, as it was tainted with widespread election anomalies which constitutes election fraud. The local elections for the position of Vice-Mayor in the City of Parañaque, Metro Manila, was replete with election offenses, specifically vote buying and flying voters being allowed to vote. Moreover, during the canvassing of votes before the Board of Canvasser, numerous Election Returns were discovered to contain glaring discrepancies and are replete with blatant omissions, not to mention the fact that numerous election returns appeared to be tampered with. All told, it is readily apparent that the portion of the Election Returns pertaining to the position of Vice-Mayor in the City of Parañaque, appear to be altered, falsified or fabricated.

4. The will of the legitimate voters of the City of Parañaque were denigrated during the 11 May 1998 election as a consequence of the fact

that an indeterminable number of flying voters were allowed to vote.

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5. The 11 May 1998 elections for local officials in the City of Parañaque has likewise been marred by massive vote buying. To cite but one example, in Precinct Nos. 111-112 at the Tambo Elementary School in the City of Parañaque, a certain Dennis Sambilay Agayan ("Agayan") was arrested for voting in substitution of registered voter Ramon Vizcarra. Agayan admitted before SPO1 Alberto V. Parena that he was paid One Hundred Fifty Pesos (P150.00) to vote at precincts No. 111-112 and use the name Ramon Vizcarra. As proof of the foregoing, attached hereto as Annex "E" is the Information dated 11 May 1998 filed against Agayan.

The magnitude of the vote buying in the 11 May 1998 local elections in the City of Parañaque, is such that the voters involved number in the thousands. Evidence in this regard shall be presented in the proper time.

6. Also, there have been several instances where purported voters were depositing more than one (1) ballot inside the ballot box. As evidence thereof, attached hereto as Annex "F" is the Affidavit of a certain Rosemarie Pascua of Barangay Baclaran, City of Parañaque.

7. The foregoing incidents alone actually suffices to establish that a failure of elections should be declared on the ground that the will of the electorate of the City of Parañaque has been denigrated. The elections for the office of the Vice-Mayor in the City of Parañaque, on 11 May 1998 cannot be considered as reflective of the true will of the electorate. However, the anomalies do not stop there.

8. In addition to the foregoing, during the canvassing of votes before the Board of Canvassers, it was discovered that numerous election returns contain glaring discrepancies and are replete with blatant omissions, not to mention the fact that several election returns appeared to be tampered with or appear to be fabricated. The Honorable Commission should seriously consider these anomalies specially on account of the fact that the lead of the respondent over the petitioner is a mere Three Thousand Seven (3,007) votes.

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9. Moreover, several Election Returns are found to have glaring discrepancies which may materially alter the results of the election for the office of Vice-Mayor in the City of Parañaque.

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10. Finally, what seriously casts doubt on the legitimacy of the elections for the office of the Vice-Mayor in the City of Parañaque is the fact that the results thereof are statistically improbable. A case in point is precinct number 483 where petitioner shockingly is supposed to have received zero (0) votes. Petitioner is the incumbent Vice-Mayor of the City of

Parañaque. It is, thus, impossible that he will receive zero (0) votes in any given precinct."^[2]

Petitioner asked the COMELEC for the following reliefs:

"1. After trial, judgment be rendered as follows:

1.1 Declaring a failure of elections, or declaring the annulment of the elections, for the office of the Vice-Mayor in the City of Parañaque, Metro Manila;

1.2. Annulling the proclamation of the respondent as the elected Vice-Mayor of the City of Parañaque, Metro Manila, during the 11 May 1998 elections; and

1.3. Declaring that special elections should be held for the office of Vice-Mayor in the City of Parañaque, Metro Manila.

2. Alternatively, in the remote event that the Honorable Commission does not render judgment as aforesaid, an order be issued to the Treasurer of the City of Parañaque to bring and present before this Honorable Commission on or before the day of the hearing of the Election Protest, the ballot boxes, copies of the registry lists, election returns, the minutes of election in all precincts, and the other documents used in the local elections for the Office of the Vice-Mayor held on 11 May 1998 in the said City, for the Honorable Commission to re-examine and revise the same; and

3. After due trial judgment be rendered as follows:

3.1. The election of respondent FLORENCIO M. BERNABE, JR., for the office of Vice-Mayor in the City of Parañaque, Metro Manila be annulled;

3.2. The petitioner, TOMAS T. BANAGA, JR., be adjudged as the duly elected Vice-Mayor in the City of Parañaque, during the 11 May 1998 local elections; and

3.3. The expenses, costs and damages incurred in these proceedings be assessed against the respondent.

Other just and equitable reliefs are likewise prayed for."^[3]

On June 29, 1998, the COMELEC dismissed petitioner's suit. It held that the grounds relied upon by petitioner do not fall under any of the instances enumerated in Section 6 of the Omnibus Election Code. The election tribunal concluded that based on the allegations of the petition, it is clear that an election took place and that it did not result in a failure to elect.^[4]

Considering that a motion for reconsideration of a COMELEC *en banc* ruling is prohibited, except in a case involving an election offense,^[5] and aggrieved by the COMELEC's dismissal of his suit, petitioner timely filed the instant petition for *certiorari* with this Court.

Before us, petitioner now claims that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his petition *motu proprio* without any basis whatsoever and without giving him the benefit of a hearing. He contends that:

I

THE PETITION DATED 28 MAY 1998 IS ESSENTIALLY AN ELECTION PROTEST. HENCE, THE COMELEC COULD NOT LEGALLY DISMISS THE ENTIRE PETITION MERELY ON THE GROUND THAT THERE WAS ALLEGEDLY NO FAILURE OF ELECTION IN THE CITY OF PARANAQUE DURING THE 11 MAY 1998 ELECTIONS.

II

THE AUTHORITY RELIED UPON BY THE COMELEC AS BASIS FOR THE DISMISSAL OF THE PETITION DATED 28 MAY 1998, THAT OF *EDWIN SAR[D]EA, ET. AL. V. COMELEC, ET. AL.*, AND *MITMUG V. COMELEC*, ARE NOT APPLICABLE TO THE CASE AT BAR CONSIDERING THAT ASIDE FROM BEING AN ELECTION PROTEST, THE SAID PETITION SEEKS THE ANNULMENT OF AN ELECTION PURSUANT TO THE DOCTRINE LAID DOWN BY THE HONORABLE SUPREME COURT IN *LOONG V. COMELEC*.^[6]

Clearly, the issue for our resolution is whether or not public respondent acted with grave abuse of discretion in dismissing petitioner's petition, in the light of petitioner's foregoing contentions.

While petitioner may have intended to institute an election protest by praying that said action may also be considered an election protest, in our view, petitioner's action is a petition to declare a failure of elections or annul election results. It is not an election protest.

First, his petition before the COMELEC was instituted pursuant to Section 4 of Republic Act No. 7166 in relation to Section 6 of the Omnibus Election Code. Section 4 of RA 7166 refers to "*postponement, failure of election and special elections*"^[7] while Section 6 of the Omnibus Election Code relates to "*failure of election*". It is simply captioned as "*Petition to Declare Failure of Elections and/or For Annulment of Elections*".

Second, an election protest is an ordinary action while a petition to declare a failure of elections is a special action under the 1993 COMELEC Rules of Procedure as amended. An election protest is governed by Rule 20 on ordinary actions, while a petition to declare failure of elections is covered by Rule 26 under special actions.

In this case, petitioner filed his petition as a special action and paid the corresponding fee therefor. Thus, the petition was docketed as SPA-98-383. This conforms to petitioner's categorization of his petition as one to declare a failure of elections or annul election results. In contrast, an election protest is assigned a docket number starting with "EPC", meaning election protest case.

Third, petitioner did not comply with the requirements for filing an election protest.