

EN BANC

[G.R. No. 136966, July 05, 2000]

JAMES MIGUEL, PETITIONER, VS. HONORABLE COMMISSION ON ELECTIONS, EN BANC AND ELADIO M. LAPUZ, RESPONDENTS.

D E C I S I O N

BUENA, J.:

Impugned before the Court in this special civil action for *Certiorari*, Prohibition and Preliminary Injunction with Prayer for Issuance of Temporary Restraining Order^[1] is the Resolution of the Commission on Elections (COMELEC) *En Banc*,^[2] dated 17 December 1998, which set aside the twin orders of the Regional Trial Court (RTC) of Cabanatuan City, Third Judicial Region, Branch 23, dated 07 July 1998 and 11 August 1998.

Similarly assailed is the Resolution of the COMELEC *En Banc*, dated 14 January 1999, denying petitioner's motion for reconsideration.

Herein petitioner James Miguel and private respondent Eladio Lapuz were candidates who ran for the mayoralty post in the Municipality of Rizal, Nueva Ecija during the elections held on 11 May 1998. Three days thereafter, petitioner who garnered a total of 9,951 votes was proclaimed Mayor-elect, over private respondent who obtained 8,911 votes.^[3]

On May 25, 1998, private respondent filed a verified Petition of Protest^[4] against herein petitioner before the RTC of Cabanatuan City, Branch 23, impugning the results of the elections for the mayoralty position in all 105 precincts of the Municipality of Rizal, Nueva Ecija on grounds of election fraud, anomalies and irregularities, *inter alia*:

- a) Rampant switching of ballot boxes and stuffing of ballot boxes with fake ballots;
- b) Padding of votes in favor of petitioner;
- c) Misappreciation of ballots to the prejudice of private respondent;
- d) Counting of illegal and/or marked ballots and stray votes in favor of petitioner;
- e) Misreading and mis-tallying of ballots or votes;

- f) Massive vote-buying;
- g) Substitution of votes;
- h) Multiple voting by flying voters and harassment of voters;
- i) Massive disenfranchisement;
- j) Massive threats, coercion and intimidation of voters.

On 04 June 1998, petitioner Miguel filed an "Answer/Comment to Petition with Counterclaim,"^[5] interposing the affirmative defense that herein private respondent had "no valid cause of action" inasmuch as the grounds for protest were all couched in general terms" and that the conduct of the election was "clean, honest and peaceful" as certified by the Narrative Report of Acting Election Officer Lourdes C. Barroga.^[6]

In an order dated 09 June 1998^[7], the court a quo scheduled a conference for the purpose, among others, of discussing and resolving matters relating to the "constitution of Board of Revisors, deposit of the requisite sum for revision of ballots and the commencement of presentation and reception of evidence."

On 23 June 1998,^[8] petitioner Miguel moved to reconsider the lower court's order dated 09 June 1998, and prayed for the conduct of a "preliminary hearing on the merits" to prove private respondent's allegations of electoral fraud and irregularities. Petitioner further prayed that in the absence of such preliminary hearing, the opening of the ballot boxes and recounting of ballots should not be undertaken.

On 26 June 1998, private respondent filed a "Comment, Opposition to Motion for Reconsideration of Protestee,"^[9] to which petitioner submitted a Rejoinder.

In an order^[10] dated 07 July 1998, the court a quo, relying on the Narrative Report of Acting Election Officer Lourdes C. Barroga, granted petitioner's motion for reconsideration, and in effect sanctioned the conduct of a preliminary hearing and set a date therefor, as prayed for by petitioner, thus:

"Let a preliminary hearing be set on July 21, 1998 at 8:30 a.m. at which hearing, the protestant is required to adduce with documentary, competent and definite evidence that would tend to initially show samplings of instances or occasions that would traverse and negate prima facie the above-stated Report for being incomplete and inaccurate or contrary to what had taken place in the municipality."

Private respondent filed an "Urgent Motion for Reconsideration"^[11] which the lower court denied in an order dated 11 August 1998.^[12]

On 24 August 1998, private respondent Lapuz questioned before the COMELEC the twin orders of the court *a quo*,^[13] in a Petition for *Certiorari*, Prohibition and

Mandamus with writ of preliminary injunction or temporary restraining order docketed as SPR No. 36-98,^[14] to which herein petitioner Miguel filed Comment.^[15]

On 17 December 1998, the COMELEC *En Banc* issued a Resolution the decretal portion of which reads:

"WHEREFORE, finding grave abuse of discretion on the part of herein respondent Judge, the two (2) orders dated July 7, 1998 and August 11, 1998 are hereby SET ASIDE.

"Respondent judge is hereby DIRECTED to immediately order the transfer of all the ballot boxes comprising the entire 105 precincts of Rizal, Nueva Ecija, from the Office of the Municipal Treasurer of Rizal, Nueva Ecija or wherever they may have been deposited, to the trial court for safekeeping and revision of ballots.

SO ORDERED."^[16]

On 28 December 1998, petitioner Miguel filed a motion for reconsideration^[17] which the COMELEC denied via a Resolution^[18] dated 14 January 1999.

Through the expediency of Rule 65, herein petitioner imputes grave abuse of discretion on the part of public respondent COMELEC in issuing the questioned *En Banc* Resolutions, and "in not giving credence to the arguments of herein petitioners that respondent (protestant) must first present in a **preliminary hearing** the particulars of alleged fraud and irregularities." (emphasis ours)

Petitioner argues that the general allegations of fraud and irregularities are not sufficient to order the opening of ballot boxes and counting of ballots.^[19]

The petition deserves no merit.

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an **allegation in an election protest** that would require the perusal, examination or counting of ballots as evidence, it is the **ministerial duty** of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.^[20] (emphasis ours)

In ***Astorga vs. Fernandez***,^[21] this Court inked the rationale behind the principle through the pen of Chief Justice Roberto Concepcion:

"xxx Obviously, the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in *Cecilio vs. Belmonte*,^[22] this `would be to sanction an easy way to defeat a protest.'" (emphasis ours)