

## EN BANC

[ G.R. No. 126298, March 25, 1997 ]

**PATRIA C. GUTIERREZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND VICENTE TOMAS VERA III, RESPONDENTS.**

### DECISION

**VITUG, J.:**

A special civil action for certiorari and prohibition, with a prayer for the issuance of a writ of temporary restraining order ("TRO") and/or preliminary injunction, has been filed with this Court to nullify the TRO,<sup>[1]</sup> dated 26 July 1996, and writ of preliminary injunction,<sup>[2]</sup> dated 04 September 1996, issued by respondent Commission on Elections ("COMELEC") (a) commanding herein petitioner Patria Gutierrez to cease and desist from performing the duties and functions of Mayor of Tiwi, Albay, and (b) enjoining the presiding Judge of the Regional Trial Court ("RTC"), Branch 5, Legaspi City, from enforcing the order/writ of execution pending appeal of his decision in Election Case No. 01-95.<sup>[3]</sup>

In the last concluded local elections of 08 May 1995, Patria Gutierrez and Naomi Corral ran for the position of Municipal Mayor of the Municipality of Tiwi, Albay. The results of the canvass of election returns showed that Corral garnered a total of nine thousand ninety seven (9,097) votes and led Gutierrez by one thousand fifty six (1,056) votes who only obtained a total of eight thousand forty one (8,041) votes. On the basis of these results, Corral was proclaimed elected Mayor of Tiwi, Albay, on 30 June 1995 and assumed the office in due time.

Asseverating fraud, misappreciation of ballots and other election irregularities, Gutierrez filed a timely protest contesting the results of the elections in fifty-nine (59) precincts of Tiwi, Albay. In her answer, Corral denied the allegations of Gutierrez and counter-protested the remaining twenty-six (26) precincts of Tiwi, Albay.

The case was initially heard before the RTC, Branch 15, of Tabaco, Albay. When the revision of ballots had concluded, the parties were directed by the court to submit their respective position papers.

In compliance with an order later issued by this Court, the election case was transferred to the RTC of Legaspi City, raffled to Branch 5, and there so docketed as Election Case No. 01-95. The parties stipulated that the only issue for resolution was "whether or not the contested ballots were properly and correctly appreciated and counted in favor of either the protestant (Gutierrez) or (the) protestee (Corral)." The parties agreed to dispense with all other issues.

Naomi Corral unexpectedly died on 06 April 1996 and, following her demise, the Vice-Mayor, herein respondent Vicente Tomas Vera III ("Vera") assumed the office of

Municipal Mayor. With leave of court, Vera was allowed to intervene in Election Case No. 01-95. Vera filed a complaint/answer where he joined and adopted Corral's answer along with the counter-protest. Gutierrez and Vera submitted their respective position papers.

On 11 July 1996, Vera's counsel received a copy of the decision, dated 10 July 1996, of the trial court in Election Case No. 01-95, which concluded:

"WHEREFORE, premises considered, and it being the finding of this court that the protestant Patria C. Gutierrez garnered a total of Eight Thousand Twenty (8,020) votes while the protestee, the late mayor Naomi C. Corral garnered Seven Thousand Three Hundred Ten (7,310) votes, thus, leading over the protestee by Seven Hundred Ten (710) votes, decision is hereby rendered, declaring as null and void the proclamation of the late Naomi C. Corral as the elected mayor of Tiwi, Albay on June 30, 1995, and instead, hereby proclaim and declare Patria C. Gutierrez as the duly elected mayor of Tiwi, Albay in the last concluded local elections of May 8, 1995.

"The intervenor Vicente Tomas Vera, the duly elected Vice-Mayor of Tiwi, Albay who acted as Mayor after the death of Naomi C. Corral on April 6, 1996, and during the pendency of this protest is hereby ordered to vacate the position and surrender the same peacefully to the protestant Patria C. Gutierrez. Costs against the protestee and Intervenor.

"SO ORDERED."<sup>[4]</sup>

The next day, or on 12 July 1996, Gutierrez moved for an immediate execution of the decision citing, among other things, the following reasons for the grant thereof, viz:

"2. It is well settled that all election cases, especially protest cases, are imbued with PUBLIC INTEREST and, 'it is neither fair nor just to keep in office for an uncertain period, one whose right is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner, but for the sake of public interest' (Unda vs. COMELEC, 190 SCRA 820).

"3. The instant election protest case was initiated as far back as July 7, 1995, and ONE (1) FULL YEAR had elapsed since then. The term of office of local elective officials is SHORT, only THREE (3) years to be exact, and one third (1/3) of said term had already been used by the protestee and/or intervenor who turned out to be the LOSER and not the person elected by the people of Tiwi, Albay."<sup>[5]</sup>

On even date, Vera filed before the trial court a notice of appeal, together with an "Opposition to Motion for Execution with Urgent Motion for Continuance," claiming that "there (was) no legal and factual basis for an execution pending appeal particularly under the COMELEC Rules and Regulations x x x (governing) all election contests even before regular courts"<sup>[6]</sup> and that "the execution of judgment of election case could only be made after decision by the COMELEC EN BANC."<sup>[7]</sup> On 15 July 1996, he furnished the COMELEC with a copy of his notice of appeal, through its Electoral Contests Adjudication Department, and paid the corresponding fee. The appeal was docketed EAC No. 30-96.

On 16 July 1996, after the trial court had denied Vera's motion for postponement, the motion for execution was heard and thereafter submitted for resolution. Forthwith, the trial court granted the motion for execution pending appeal and ordered the issuance of the corresponding writ of execution<sup>[8]</sup> fixing a P400,000.00 bond therefor. Gutierrez posted a cash surety bond of P400,000.00, and the writ of execution was forthwith issued to enforce the judgment in the election protest.

On 17 July 1996, Gutierrez took her oath of office and assumed office.

Two days later, or on 19 July 1996, Vera filed with the COMELEC a petition for certiorari, with preliminary mandatory injunction and restraining order, docketed SPR No. 28-96, assailing the order of the trial court granting execution pending appeal.

The COMELEC, on 25 July 1996, issued, ex parte, a temporary restraining order directing Gutierrez "to cease and desist from performing the duties of the office of Mayor, Tiwi, Albay, until (after the) resolution of the application."<sup>[9]</sup> Gutierrez promptly filed with the COMELEC an "Urgent Motion to Lift Temporary Restraining Order" contending, among other grounds, that the execution pending appeal is allowed under Section 2, Rule 39, of the Rules of Court.

After a hearing on the petition, the COMELEC, on 04 September 1996, issued its other questioned order.

Hence, this petition.

In a resolution, dated 08 October 1996, the Court resolved to issue the temporary restraining order prayed for.<sup>[10]</sup>

Petitioner argues that respondent COMELEC has committed grave abuse of discretion in discarding the trial court's authority to execute its decision pending appeal. The Solicitor General counters that the issuance of the TRO and preliminary injunction by the COMELEC "appears to be justified" against the backdrop of argument raised by respondent Vera that he was denied due process, i.e., an opportunity to be heard anent the motion for execution pending appeal.

The Court rules in favor of petitioner.

On the supposed denial of due process, suffice it to say that Vera, in fact, submitted an opposition to the motion for execution pending appeal. In turn, the 16th July 1996 order of the trial court would show that Vera's opposition was duly considered before the writ of execution was finally issued. An opportunity to be heard was given, and Vera made use of it.

The rule is now settled that Section 2, Rule 39, of the Rules of Court, which allows Regional Trial Courts to order executions pending appeal upon good reasons stated in a special order, can be applied, pursuant to Rule 41<sup>[11]</sup> of the COMELEC Rules of Procedures,<sup>[12]</sup> to election contests decided by the courts.

A motion for execution pending appeal may be filed at any time before the period