

UNA KIBAD, PETITIONER V. THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF TUBARAN, LANA DEL SUR, AND ABDULMADID MARHOM PANONDIONGAN, RESPONDENTS.*G.R. No. L-28469. May 07, 1968*

Ponente: FERNANDO, J.

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The availability of a suit for mandamus to compel respondent Commission on Elections to direct respondent Municipal Board of Canvassers of Tubaran, Lanao del Sur to annul its previous canvass and to proceed anew with such a task, but rejecting the returns from four precincts under the Lagumbay doctrine, is the question that confronts the Court.

Petitioner is the Liberal Party candidate for mayor of such municipality, with respondent Abdulmadid Maruhom Panondiongan as his opponent from the Nacionalista Party in the November 14, 1967 elections. On November 22, 1967, respondent Commission on Elections, upon motion of petitioner, issued a directive suspending the canvassing and proclamation of the winning mayoralty candidate in Tubaran, Lanao del Sur, which was, however, modified in the resolution dated November 30, 1967, lifting the suspension of the canvassing only, but leaving the suspension on the Proclamation undisturbed. Then on December 8, 1967, he filed an amended petition before the respondent Commission praying that the canvassing be annulled in the said municipality, and a re-canvassing be made of the election returns, but excluding from the said re-canvassing, the election returns in precincts 10, 11, 12 and 13, the ground being that the voting in such precincts "was vitiated by frauds, terrorism, and other irregularities," resulting in the returns having the character of being "manufactured" and, therefore, should not be counted, following *Lagumbay v. Commission on Elections*.^[1]

After the matter was heard and argued before respondent Commission on December 11, 1967, a decision was promulgated by it four days later, holding that "assuming that there were frauds, terrorism, and other irregularities, the Municipal Board of Canvassers of Tubaran, Lanao del Sur, may not be compelled to reject the election returns," precisely in keeping with the Lagumbay doctrine which precludes the board from going beyond the face of the returns. Petitioner would consider such refusal of respondent Commission to order the respondent board of canvassers from rejecting the aforesaid returns as a neglect "to do an act which the law and the Constitution specifically enjoins as a duty resulting from an office," with petitioner allegedly having no plain, speedy, and adequate remedy in the ordinary course of law except this petition for mandamus with preliminary injunction.

To bolster his plea for relief and to lay the basis for the application of the Lagumbay ruling, petitioner stated that in the aforesaid Precincts 10, 11, and 12 there was an excess of the votes counted over the votes cast for councilors and for senators as well as for vice-mayor and provincial governor in Precinct 11. In this particular precinct, the allegation was that for councilors, the votes counted for all candidates voted exceeded the votes cast by 140. As for the vice-mayorship position, the alleged excess numbered 27 and for the governorship, 5. In

precinct 10, it was asserted that there was an excess, as far as all senatorial candidates are concerned, of 48 and for all candidates for councilors, 770. For the same office in precinct 12, the figure given is 1,398. There was no allegation of excess votes as to precinct 13.

This Court, in a resolution of December 29, 1967, gave due course to the petition, giving respondents up to January 6, 1968, to file their answers. A temporary restraining order was issued enjoining the municipal board of canvassers from making the corresponding proclamation for Mayor of Tubaran, Lanao del Sur. The hearing for preliminary injunction was set for January 9, 1968.

The answer of respondent Commission of January 6, 1968, while admitting most of the facts alleged, specifically denied the alleged excess votes by citing figures from certified photostatic copies of election returns to show that petitioner's allegation to that effect was unfounded, noted that what is being contested in this petition is the office of mayor, not that of senator nor that of councilor, and emphasized that in not one of the three precincts did any candidate obtain a zero vote. It could not then envision how the Lagumbay doctrine could find application, considering especially the later cases of *Estrada v. Commission on Elections*,^[2] *Sangki v. Commission on Elections*,^[3] and *Demafiles v. Commission on Elections*.^[4] The approach followed in the answer of respondent Abdulmadid Maruhom Panondiongan, dated January 9, 1968, was not dissimilar, the main special defense being an explicit denial that the election returns in the challenged precincts were manufactured, with stress laid on the assertion that in any event *Lagumbay v. Commission on Elections* could in no wise be considered applicable.

With the submission of the memorandum for petitioner of January 29, 1968, that of respondent of February 8, 1968, and a reply-memorandum of the former dated February 20, 1968, the case was submitted for decision.

The petition must fail; mandamus does not lie. There is no occasion to apply the Lagumbay doctrine. As was clearly explained in the opinion of former Chief Justice Bengzon: "It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number; whereas all the eight candidates of the other party got precisely nothing." Fealty to logic no less than to common-sense thus dictated a holding that such returns were "obviously manufactured" and should be rejected; Or in the language of the Lagumbay opinion: "Hence, denying prima facie recognition to such returns on the ground that they are manifestly fabricated or falsified, would constitute a practical approach to the Commission's mission to insure free and honest elections."

It by no means follows that the Lagumbay ruling is a talismanic formula at the mere invocation of which, even if ostensibly fortified by allegations of deceptive plausibility, the returns objected are to be automatically rejected. It is understandable why the trend as reflected in later adjudications is to view it restrictively, the utmost care being taken lest in penalizing fraudulent and corrupt practices, which indeed is called for, innocent voters become disfranchised, a result which hardly commends itself. When viewed not in isolation but with other decisions equally relevant, the words of Justice Makalintal, speaking for the Court in *Estrada v. Navarro*,^[5] reflect fairly the prevailing principle, namely, "a conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof." As a matter of fact, this Court has even gone further. In *Demafiles v. Commission on Elections*^[6] and *Tagoranao v. Commission on Elections*,^[7] there was an insistence for the Lagumbay holding to be applicable that the "palpably false" character of the returns be evident on their face, no evidence aliunde being acceptable.

Even more in point is an excerpt from the opinion of Justice J.B.L. Reyes, in *Alonto v. Commission on*

Elections:[8] "Nor do we find that the alleged excess of votes cast is adequate to support the conclusion, that the returns are obviously manufactured for reasons of statistical improbability. We do not find in the returns here questioned that uniformity of tallies in favor of candidates belonging to one party, and the systematic blanking of the opposing candidates, that led us to reject the returns in the Lagumbay case." Thus even if the facts as alleged in the petition, without considering the analysis to which they were subjected in the answer of respondent Commission, were accorded full acceptance, it can hardly be said that petitioner's reliance on the Lagumbay principle was an effort marked by success. There is still a considerable area of doubt that must be thinned perceptibly, if not altogether erased, to justify this Court in applying the drastic remedy of what is virtually the nullification of the right of suffrage of those voters affected, even assuming that mandamus is the proper remedy, which is by no means certain. To resort to more traditional terminology, the right asserted on the part of petitioner must be clear and the neglect of duty of respondent manifest for mandamus to issue. Such is not the case here.

Nor is a different conclusion called for by the allegation that the counting of votes in precincts 10, 11, 12 and 13 "was done in the PC barracks of Lumbatan, Lanao del Sur, which is a different municipality, and on November 17, 1967, or three days after election day." An allegation similar in character was raised and rejected in the aforecited *Alonto v. Commission on Elections*.^[9] Thus: "We believe petitioners' position to be extreme and untenable. It requires no great effort to understand that external circumstances may occasionally compel the transfer of the ballot boxes and inspectors to places of safety in order to avoid frustration of the popular will. Where political passions run rife, and armed persons are running loose, adequate protection can not be afforded to the election officers in each and every precinct, because law officers would be spread out thin and their effectiveness nullified. It would be unrealistic to deny the Comelec the authority to provide adequate safeguards to permit the results of the voting to be properly ascertained, free from threats and pressure, if not actual bloodshed. To require election officials to disregard their own safety, risk their lives and stick to their posts in the face of imminent violence would not be only extreme idolatry of the letter of the law, but would tend to frustrate its primary end of ascertaining the true will of the people." It cannot escape attention that the *Alonto* petition sought the permanent suspension of canvass of the votes cast for candidates to provincial offices in various precincts in 27 municipalities of Lanao del Sur, one of the municipalities being Tubaran, and the rejection of the returns, as likewise prayed for here. Even if then the facts in that certiorari and mandamus petition could be distinguished in some particulars from that alleged here, the rationale for the broad discretion conferred on the Commission on Elections regarding the time when and the place where the votes should be counted^[10] applies with fundamental force to the present suit.

This is all then that needs be said to dispose of this petition for mandamus, were it not for the fact that on April 23, 1968, petitioner filed a motion to cite respondent Panondiongan Abdul Madid, presumably referring to the same respondent in his petition designated Abdulmadid Maruhom Panondiongan, to show cause why he should not be punished for contempt for a violation of the restraining order of December 29, 1967, and to restrain him in the meantime from discharging the functions of Mayor of Tubaran, Lanao del Sur, which motion was given due course by a resolution of this Court of May 2, 1968.

WHEREFORE, without prejudice to the final disposition of the motion to cite respondent Panondiongan Abdul Madid for contempt, the restraining order of December 29, 1967 is lifted and the petition for mandamus denied. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

Petition denied.

- [1] L-5444, Jan. 31, 1966.
- [2] L-28374, December 29, 1967.
- [3] L-28359, December 26, 1967.
- [4] L-28396, December 29, 1967.
- [5] L-28340, December 29, 1967.
- [6] L-28396, December 29, 1967.
- [7] L-28590, March 12, 1968. In this, as in the Demafiles decision, the opinion was Penned by Justice Castro.
- [8] L-28490, February 29, 1968. Cf. Sangki v. Commission on Elections, L-28359, December 26, 1967.
- [9] L-28490, Feb. 24, 1968.
- [10] Cf. Ibuna v. Commission on Elections, L-28328, Dec. 29, 1967; Demafiles v. Commission on Elections, L-28396, Dec. 29, 1967 and Pacis v. Commission on Elections, L-28455, Feb. 10, 1968.

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