

NAGA TAGORANAO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF MARANTAO, LANA DEL SUR AND MA-NGATA MANGONDATO, RESPONDENTS. COTA CORNELL, PETITI...

G.R. Nos. L-28590 and L-28598. March 12, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Cota Cornell, Naga Tagoranao and Hadji Mangata Mangon-dato were three of the four mayoralty candidates in the gen-eral elections held on November 14, 1967 in the municipality of Marantao, Lanao del Sur.

The day after the elections, Cornell, the Liberal Party candidate, asked the Commission on Elections (Comelec) to an-nul the elections in precincts 1, 2, 3, 13, 14, and 15 on the ground of fraud and terrorism. He charged that followers of Tagoranao, a Nacionalista Party candidate, fired their guns and, in the ensuing confusion, seized the ballots, filled them up for Tagoranao, and dropped them in the ballot box. Acting on this petition, the Comelec ordered the board of can-vassers of Marantao to suspend the canvass and proclamation of the winning candidates until the matter could be investi-gated. At the same time it wired the municipal treasurer to report compliance with this order.

Both telegrams were sent on November 22, but the board of canvassers just the same met on that day in Camp Keithley in Marawi City and proclaimed Tagoranao mayor-elect of Marantao. When apprised, therefore of this action of the board, the Comelec, on December 2, 1967, annulled the proclamation of Tagoranao.

On December 12, Mangondato, another candidate of the Na-cionalista Party, asked the Comelec (1) to annul permanently Tagoranao's proclamation on the ground that it was made in violation of the Comelec's restraining order, (2) to order the rejection of the returns from precincts 1, 2,13, and 14 as "obviously manufactured," and (3) to declare him elected mayor of Marantao, Tagoranao entered his appearance and asked the Comelec to throw out Mangondato's petition. He contended that Mangondato had earlier filed in the Court of First In-stance of Lanao del Sur an action for the annulment of the returns in question and that to permit him to maintain his action would actually be to allow him to split a single cause of action. He also argued that the frauds and terrorism which Mangondato had denounced as having attended the election in the precincts in question could be the subject only of an elec-tion protest.

On December 20 Cornell in turn filed a petition with the Comelec in which he asked that the board of canvassers be or-dered to reject the returns from precinctss 1 and 13. Accordingly to him the returns were not signed by LP inspectors, and the counting of votes was made by the board of inspectors at Camp Keithley on November 20, instead of in the polling place on the day of the election (November 14, 1967) as provided in the Revised Election Code. In passing, it may be stated here that while denominated "supplemental," the petition was ac-tually an amendment of Cornell's original petition filed on November 14, for now he limited his prayer for exclusion to the returns from precincts 1 and 13 (he originally asked for the exclusion of the returns from 4 other precincts), and

changed the basis of his action from fraud and terrorism to the fact that the counting of votes was held at a place and on a day other than those specified by law. In his answer, Tagoranao denied that the signatures of the LP inspectors were forged and claimed that counting of votes was made in Camp Keithley, after the elections, in line with a practice adopted since 1951 to prevent a repetition of the infamous 1949 elections in Lanao.

On January 3, 1968 the Comelec rendered a decision, affirming its original order of December 2, 1967 voiding Tagoranao's proclamation, and denying Cornell's petition for the rejection of the returns from precincts 1 and 13, even as it granted Mangondato's petition by ordering the canvassing board to exclude the return from precinct 2 as "obviously manufactured."

The result was virtually to signal the proclamation of Mangondato, as the rejection of the return from precinct would mean a loss of 366 votes for Tagoranao. Thus what began as an effort to turn the tide, as it were, in favor of Cote Cornell ended in the virtual proclamation of another candidate, Hadji Mangata Mangondato. The observation^[1] has once been made that any enemy of the common enemy is, if not necessarily a friend, at least a potential ally. This is so only to the extent that the parties remain in status quo. For as this case amply demonstrates, upon the fall of the erstwhile common enemy, his position is taken over by the once potential ally.

Accordingly, Tagoranao moved for a reconsideration. On January 8, in a move obviously intended to block Mangondato's proclamation, Cornell for his part asked for the suspension of the proceedings, claiming that he had filed on October 31, 1967 with the Comelec a petition for the annulment of the registry list of voters, and that the issue posed by his petition was a prejudicial question. Curiously enough, he moved, the following day, for the reconsideration of the Comelec decision insofar as it refused to order the rejection of the returns from precincts 1 and 13 and ordered the exclusion of the return from precinct 2. On January 23, the Comelec denied the motions for reconsideration filed by Tagoranao and Cornell, and on January 29 it declared that the motion to hold action in abeyance must be deemed to have likewise been denied. Both Cornell and Tagoranao have come to this Court on petitions for certiorari, prohibition and mandamus.

In L-28598, Cornell charges the Comelec with neglect of duty in not ordering the rejection of the returns from precincts 1, 2, 5, 13, 14, 15, 17, 18, 19, and 20. According to him the votes cast in those precincts were based on the registry list whose nullification he had sought even before the election. While conceding that the Comelec has no power to decide questions involving the right to vote, Cornell nevertheless argues that without valid registration the votes cast are "void ab initio" so that "in legal contemplation, there are no votes cast, hence, the COMELEC will not be annulling a vote for none has been cast."

This is nothing but sophistry, to dispose of which it should be sufficient to quote what this Court said in *Nacionalista Party v. Commission on Elections*:^[2] "The power to decide election contests which is vested exclusively in the courts and in the electoral tribunals of the Senate and of the House of Representatives" necessarily includes the power to determine the validity or nullity of the votes questioned by either of the contestants." If that power is vested in the courts and in the electoral tribunals alone, as in fact it is, then the incidental power to determine the validity or nullity of the votes must perforce be deemed impliedly withheld from any other body or tribunal such as the Comelec.

Still it is claimed that the Comelec should have ordered the returns from precincts 1 and 13 excluded from canvass, first, because the signatures of the LP inspectors were forged and, second, because the counting of votes by the board of inspectors was held at Camp Keithley in Marawi City (some 9 kilometers from the polling places) and on a day (November 20) after the election, contrary to the provisions of the Election Code.

Whether the returns in question are spurious is a question that should have been laid before the board of canvassers, not before the Comelec.^[3]

With respect to the second point raised, this Court has recently held in *Alonto v. Commission on Elections*,^[4] which involves the elections held on November 14, 1967 in 27 other municipalities of Lanao del Sur:

"It requires no great effort to understand that ex-ternal 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 blood-shed. To require election officials to disregard their own safety, risk their lives and stick to their posts in the face of imminent violence would be not only extreme idolatry of the letter of the law, but would tend to frustrate its pri-mary and of ascertaining the true will of the people."

It is finally contended that the Camelec gravely abused its discretion in rejecting the return from precinct 2 as "obviously manufactured." A similar claim is made by Nap Tagoranao in his petition in G.R. No. L-28590. We shall take up both arguments jointly since they raise the same issue, but before we do so, we shall dispose of the other point raised in Tagoranao's petition, namely, that the filing of Mangondato's election protest in the Court of First In-stance divested the Comelec of its jurisdiction over this case. The election case, however, has since been dismis-sed by the lower court upon motion of Mangondato, not to mention the fact that Mangondato's petition before the Co melee was filed earlier on December 12 than his protest in the lower court which was filed only two days after, on De-cember 14. What is more, as this Court recently held, where the proclamation itself is illegal the Comelec may still as-sume jurisdiction notwithstanding the filing of an election protest.^[5]

And now to the common issue raised by Cornell and Tagoranao, namely, that the return from precinct 2 cannot be stigmatized as "obviously manufactured" within the intendment of *Lagumbay v. Commission on Elections*.^[6]

In its January 3, 1968 decision rejecting the return in question, the Comelec said:

"I/t has been established thru the investigation of Commission attorneys sent to Lanao del Sur that there were frauds and terrorism, shooting and explo-sion of dynamite in the area where this polling place is located. The official ballots intended to be used in said precinct were snatched and taken away by the followers of mayoralty candidate Naga Tagoranao, were accomplished outside of the polling places by these men (Annex 'A-E, petition of Mangondato), and were later on stuffed and placed inside a kerosene can which was used as a ballot box in lieu of the ballot box supplied by the Commission. There is no evidence to show that the use of the kerosene can was with prior approval of the Commission or any of its authorized representatives nor was it later confirmed by the Com-mission.

"In Precinct 2 there are 259 registered voters (see certified list of names, Annexes '1' '1-1,1 '1-2', petition of Mangondato). The records of the Commission show that 4 pads or a total of 450 ballots were issued to Precinct 2. It appears, however, that 570 official ballots were actually found inside the kerosene can, thus, even if all the 450 ballots in Precinct 2 were used there would still be an excess of 120 ballots inside the kerosene can. The returns itself show that mayoralty candidates Cota Cornell obtained 11 votes; Palao Mama - 10 votes; Mangata Mangonda-to - 2 votes; and Naga Tagoranao - 366 votes, or a total 389 valid ballots cast for the office of the Mayor alone. Again, even if all the 259 registered voters of Precinct 2 voted, there would still be 130 more votes cast and counted in Pre-cinct 2. And furthermore, even if all the 259 registered voters of Precinct 2 voted for Naga Ta-goranao only, still the 366 votes received by Naga Tagoranao is 107 more votes than the total number of registered voters for Precinct 2. This is not only statistically improbable, this is impossible. One look at the election returns for Precinct 2 and the falsity of the same will stare at you in the face. There is even no need, in this case, to go behind the returnsto prove its falsity. Everything considered - the incidents before, during and after the voting in Precinct 2, the face of the returns itself, the only justifiable conclu-sion would be that the returns corresponding to this precinct is an obviously manufactured return."

In its resolution dated January 23 1968, denying Cornell and Tagoranao's motion for reconsideration, the Comelec said:

"The election return of Precinct 2 is blank with respect to the data on the number of voters who registered and number of voters who actually voted, as well as on the data on the number of ballots received by the Board of Inspectors and the number of ballots used in the voting, although, the plebiscite return of Precinct 2 prepared by the same Board of Inspectors states that the number of voters who registered is 375 and the same number of voters voted. On the basis of 375 as the number of voters registered in the precinct, there are still more votes credited to candidates for mayor, because, as stated in the decision of the Commission on January 3, 1968 a total of 389 votes were credited for all the candidates for mayor or an excess of 14 votes over the number of voters registered, assuming that all said voters voted.

"There is one more patent fact appearing on the face of said election return of Precinct 2 which shows that this election return is obviously manufactured, namely, the votes for senators as they are hereunder reproduce.

Benitez, Helena

Espinosa, Emilio

Katigbak, Maria K.

Perez, Leonardo

Rodrigo, Francisco

Pelaez, Emmanuel

Teves, Lorenzo

Veloso, Fernando

Usman, Asaas

375

375

375

375

375

370

370

370

300

As shown above, five senatorial candidates received exactly the same votes of 375 each. What is more, three of these candidates, namely - Benitez, Espinosa and Perez are Nacionalistas and two, namely - Katigbak and Rodrigo are Liberals. No more convincing proof than this could be produced to prove that this election return is manufactured. For it is indeed statistically improbable that the alleged 375 registered voters, claimed to have all voted, should one and all equally and in the same manner vote for three Nacionalista candidates and two Liberal candidates for senator. This is contrary to all records and experience in elections. And then, there are nine

candidates, including Asaas Usman, who received votes ranging from 300 to 375, or a total number of votes credited for these nine candidates of 3,265. But the maximum total number of votes that could be cast by the 375 voters, assuming that all of them voted and that each of them cast his vote for eight candidates for senators, will be only 3,000 votes. But here, the total number of votes credited for the aforesaid nine candidates for senator is 3,265, thereby producing an excess of 265 votes credited for senator. The foregoing facts appearing on the face of said election return itself show that the election return is obviously manufactured."

What we said in *Demafiles v. Commission on Elections*[7] is here applicable with equal propriety and vigor. The return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certification of the election register, or with the Comelec record of the number of ballots issued to precinct 2, or with the plebiscite return that a discrepancy appears. In other words, the defect is not apparent and therefore the return is by no means "obviously manufactured" -- if "manufactured" it is -- so as to justify its exclusion. This is not to belittle the claim that more votes were cast than there were voters. Perhaps that is true. The point simply is that this question should be threshed out in an election protest.

This Court has heretofore held that a canvassing board may apply to the Comelec for authority to use another copy of an election return where the one before it is falsified[8] or where it is so incomplete that the number of votes cast for each candidate cannot be determined.[9] But here the problem is not that posed by a return that does not speak the truth but, possibly, if we are to believe Mangondato, that presented by ballots which have been fraudulently dropped in the ballot box and there commingled with the genuine ones. For all that we know a count of the ballots will confirm the statement in the return that 366 votes were actually cast for Tagoranao in precinct 2, in which event the integrity of the return will have been established. Whether the 366 votes were cast through fraud and other irregularities, as both Mangondato and Cornell claim and as the Comelec found, is altogether a different matter. That question would require proof and, necessarily, time, which the need for the prompt proclamation of elected officials would not permit.

On the other hand, to reject the return, as Mangondato urges, would be to disfranchise voters. It bears strong emphasis to state here that canvassing boards must exercise "extreme caution" in rejecting returns and they may do so only when the returns are palpably irregular.[10]

ACCORDINGLY, the decision dated January 3, 1968 and the resolution dated January 23, 1968 of the Commission on Elections are set aside only in so far as they direct the exclusion from the canvass of the return from precinct 2. The Commission is hereby directed to order the municipal board of canvassers of Marantao, Lanao del Sur, (1) to convene without delay for the purpose of canvassing all the votes cast in that municipality including those cast in precinct 2 as reflected in the return therefrom, and (2) to proclaim the winning candidates in accordance with the results of such canvass. No pronouncement as to costs.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] S. P. Lopez, *The Split of the Communist Camp - Its Meaning to Us*, *The Manila Times*, April 29, 1964, at 18, col. 4.

[2] 85 Phil. 149, 155-56 (1949) (emphasis added).

[3] See *Id.*

[4] G.R. No. L-28490, Feb. 28, 1968.

[5] Mutuc v. Commission on Elections, G.R. No. L-28517, Feb. 21, 1968.

[6] G.R. No. L-25444, Jan. 31, 1966, 16 S.Ct. Ann. 175.

[7] G.R. No. L-28396, Dec. 29, 1967, 1967D PHILD 937.

[8] Ong v. Commission on Elections, G.R. No. L-28415, Jan. 28, 1968; Espino v. Zaldivar, G.R. No. L-22325, Dec. 11, 1967, 1967D PHILD 670.

[9] Mutuc v. Commission on Elections, *supra*, note 5.

[10] Estrada v. Navarro, G.R. Nos. L-28340 & L-28374, Dec 29, 1967, 1967D PHILD 929.

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