

## CLENIO L. ONDONA, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CAN-VASSERS OF CAGWAIT, SURIGAO DEL SUR AND ADELFO LUENGAS, RESPONDENTS.

*G.R. No. L-29199. March 28, 1969*

Ponente: SANCHEZ, J.

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### SANCHEZ, J.:

Appeal from two resolutions of the Commission on Elections (Comelec) dismissing petitioner's petition for the annulment of canvass and proclamation made by the municipal canvassing board of Cagwait, Surigao del Sur, on November 16, 1967.

An account of the facts following the November 14, 1967 elections in Cagwait follows:

On November 16, 1967, a canvass of the votes cast for the candidates for municipal offices was made by four members of the municipal board of canvassers of Cagwait, Surigao del Sur.

Among those proclaimed was Liberal Party mayoralty candidate Adelfo Luengas who garnered 1372 votes. Nacionalista Party mayoralty candidate Clenio L. Ondona, with 1351 votes, lost.

On the same date, November 16, 1967, right after canvass, Clenio L. Ondona filed with Election Registrar of Cagwait, Esteban T. Degamo, a petition for annulment of the canvass and proclamation.

The petition was directed against the municipal canvassing board. Receipt of the petition was acknowledged by the election registrar.[1]

An election protest was thereafter, on November 29, 1967, registered by Ondona against Luengas before the Court of First Instance of Surigao del Sur.[2] Protested by Ondona were (a) the alleged extension of the casting of ballots in Precinct 7 beyond six o'clock in the evening to almost twelve o'clock midnight in order to allow the casting of votes in favor of his opponent Luengas; and (b) the counting of the votes in Precinct 7 where the inspectors allegedly read in favor of Luengas the votes cast for Ondona or rejected said votes. The protest pointed out that had said votes been counted in favor of Ondona, the latter would have won in the elections.

Adelfo Luengas lodged his Answer With Counter-Protest on December 16, 1967.

It was only on December 29, 1967 that Ondona's petition filed with the Election Registrar for the annulment of canvass and proclamation was submitted to Comelec. The grounds cited by Ondona in this petition were: (a) that the canvass was not attended by a quorum; (b) that not one of the candidates was notified of the canvass nor present therein, particularly petitioner Ondona; and (c) that the election registrar was not also notified of said canvass.

On January 16, 1968, the petition was dismissed by Comelec. Cause for such dismissal was, as stated by Comelec in that resolution, premised as follows:

"Considering that up to the present, there is no report yet received from the Election Registrar of Cagwait, Surigao del Sur, and there is no indication that such report is forthcoming; and considering further that the certificate of canvass and proclamation was signed by a majority of four members who are not in any way disqualified, among the seven who compose the Municipal Board of Canvassers of Cagwait, Surigao del Sur, and therefore, validly made; and considering finally that, based on the Commission copies of the election returns, the petitioner and the other candidate who was proclaimed as Mayor-elect received the following votes:

Prec. No.

Adelfo C. Luengas

Clenio L. Ondona

1

30

116

2

26

113

3

58

145

4

71

126

5

228

52

6

240

110

7

245

58

8

141

90

9

163

105

10

105

106

11

58

178

12

7

132

TOTAL

1375 [3]

1351

which means that even if a recanvass of the election returns will be made, there is no chance at all that the petitioner will emerge as the winner, and therefore, he will not in any way be adversely affected by the upholding of the proclamation made on November 16, 1967, x x x.”

On February 1, 1968, Ondona moved to reconsider Comelec's January 16 resolution.

On February 23, 1968, Comelec received the findings submitted by Election Registrar Esteban T. Degamo on the latter's investigation on Ondona's petition for annulment of the canvass and proclamation. The report disclosed that really the municipal treasurer failed to notify the candidates or their watchers and the Comelec representative of the date, time and place of the canvass. On the date of the canvass, the following members of the canvassing board met and canvassed the returns:

- (1) Mayor Pedro Badilla-Chairman;
- (2) Councilor Josefa Garcia-Member;
- (3) Councilor Mariano Bigcas- Member; and
- (4) Councilor Venustiano Lambo- Member.

Absent from the meeting and who were not substituted as members of the canvassing board were:

- (1) Councilor Teofanes Cabrera- re-electionist;
- (2) Councilor Candelario Lozada- re-electionist; and
- (3) Atty. Celso Cainhug, who no longer resides in the municipality.

It was found out that this omission was the result of the failure of the municipal treasurer to inform Comelec as to the incapacity of the three members of the council to act as members of the canvassing board.

On April 18, 1968, Adelfo Luengas moved to intervene in the case before the Comelec. His memorandum, and that of the board of canvassers, in opposition to Ondona's motion for reconsideration, were separately filed on April 26, 1968.

The election protest before the Court of First Instance was heard on May 17, 1968. Counsel for Adelfo Luengas manifested in open court that Luengas had previously presented a motion for postponement of the hearing of the case. Reason therefor was that Ondona's motion for reconsideration of the Comelec resolution of January 16, 1968 was still pending before Comelec. That motion was objected to by counsel for Ondona. His position was that the petition before Comelec did not constitute a prejudicial question.[4] Counsel for Ondona further manifested:

"ATTY. BUENAFLOR:

If your Honor please, we would like to manifest to this Honorable Court that although the motion for postponement be granted, inasmuch as the protest will have to be decided on June 1st, according to the provisions of the Election Code, we are Manifesting your Honor please that we are withdrawing our motion for reconsideration in the COMELEC and that the postponement will not be after June 1st to give us time to get the formal withdrawal of our motion for reconsideration."[5]

Which drew the following remarks from Luengas' counsel:

"ATTY. YANCHA:

We have no objection. If they are withdrawing, we can proceed with the trial even today."[6]

Trial of the election protest thus proceeded.

It was on May 23, 1968, that the Court of First Instance of Surigao del Sur came out with its decision declaring protestee Adelfo Luengas as the duly elected Mayor of Cagwait, with costs against protestant Ondona.

The adverse decision on the election protest was eventually appealed by Ondona to the Court of Appeals.

On June 18, 1968, Comelec denied Ondona's motion to reconsider its January 16 resolution. The reason given is "that movant Clenio L. Ondona filed an election protest with the Court of First Instance of Surigao del Sur and said Court in its decision has declared Adelfo Luengas 'as the duly elected mayor of Cagwait, Surigao del Sur.'"

From Comelec's resolutions of January 16 and June 18, 1968, Ondona appealed to this Court.

Comelec filed its answer. After the joint return of respondents Luengas and the canvassing board and petitioner's reply thereto were filed, petitioner Ondona lodged an "Urgent Petition to Adopt and Consider Amended Petition and Replies to Answer of Respondent as Brief for Petitioner." This request was granted. Respondents thereafter submitted their printed brief.

The case before us calls for the determination of the question of whether or not Comelec was in error when it over-turned Ondona's petition for the annulment of Luengas proclamation.

A peculiar situation here arises. Petitioner Ondona went to the Comelec for the annulment of the proclamation. He also filed an election protest in the Court of First Instance. Comelec rejected him. He asked Comelec to reconsider. That reconsideration was pending when, meanwhile, the court protest came up for hearing. Ondona, instead of awaiting the results of his motion for reconsideration in Comelec, insisted upon the hearing in court of his election protest. He opposed the petition of Luengas, his opponent, to hold in abeyance the hearing of said election protest pending the result of his (Ondona's) motion for reconsideration before Comelec. To lend support

to his opposition to the postpone-ment of the hearing of the election case, he told the court that he was "withdrawing" his "motion for reconsideration in COMELEC" and sued for time "to get the withdrawal" of that motion for reconsideration. The election protest was concluded in the Court of First Instance. But, Ondona lost.

Given these facts, we find it easy enough to say that petitioner Ondona, having lost in the election protest, may not be permitted to hold on to his petition with the Comelec the purpose of which is to declare void the proclamation on which the protest he pursued, was based. He cannot be allowed to proceed with the election protest and in the event he loses, as he did, fall, back on Comelec and seek the nullification of the canvassing and proclamation. This cannot be sanctioned. It is unfair; it is inequitable. No amount of ratiocination is necessary to show that had Ondona won in the election protest, he would have been amongst the first to say that the proclamation was valid. The least that can be said is that by insisting that the protest proceed to its conclusion in the Court of First Instance, he recognized the validity of the proclamation and abandoned his petition for the annulment of the canvass and proclamation. He has no cause for complaint.

For the reasons given, the resolutions of the Commission on Elections of January 16, 1968 dismissing the petition for the annulment of the canvass and proclamation and that of June 18, 1968 denying reconsideration are hereby affirmed.

Costs against petitioner.

**SO ORDERED.**

Concepcion, C.J., Reyes, JBL Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

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[1] Rollo, p. 101.

[2] Election Case No. 4 (Civil Case 123-New), entitled "Clenio L. Ondona, Protestant, versus Adelfo Luengas, Protestee

[3] Should be 137 22

[4] Tr., May 17, 1968, p. 6.

[5] Id. p. 17; emphasis supplied.

[6] Id.

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