

DIMALOMPING MACUD, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF LUMBA-BAYABAO, LANA DEL SUR, AND ALIO-DIN GANI NOOR, RESPONDENTS.

G.R. No. L-28562. April 25, 1968

Ponente: DIZON, J.

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DIZON, J.:

Before Us is a verified petition praying for the is-suance of the writs of certiorari, mandamus and prohibition, with an additional prayer for the immediate issuance of a writ of preliminary injunction, filed by Dimalomping Macud against the Commission on Elections - hereinafter referred to as COMELEC -, the Municipal Board of Canvassers of the Municipality of Lumba-Bayabao, Lanao del Sur - hereinafter referred to as the Board - and Aliodin Gani Noor.

Purpose of the action as one for certiorari is to annul: the resolution of COMELEC of January 10, 1968 sustaining the proclamation of respondent Noor as Municipal Mayor elect of the abovementioned municipality made by the Board on December 29, 1967; of another resolution of COMELEC dated January 18, 1968 denying Macud's motion for reconsideration and reiterat-ing its resolution of January 10, and, finally, to declare void the proclamation mentioned heretofore.

Purpose of the action as one for prohibition is to restrain respondent Noor from taking oath and/or assuming office as Mayor of Lumba-Bayabao, Lanao del Sur, and, in case he had already taken oath and assumed office, from discharging the duties thereof.

The action, as one for mandamus, seeks to compel the Board to take cognizance of the writ of preliminary in-junction issued by the Court of First Instance of Lanao del Sur, 15th Judicial District, Branch I, pending reso-lution of the petition for judicial recount filed therewith by Macud; to reconvene as Board of Canvassers and make a recanvass on the basis of the result of said petition for recount.

Upon the filing of the verified petition We issued a temporary order restraining respondent Noor from taking oath and/or assuming office and from further exercising the duties and functions of the office of Mayor of Lumba-Bayabao, Lanao del Sur.

From the pleadings filed by the parties and the documents thereto attached, We find the following to be the facts neces-sary for an adjudication of the issues involved:

Macud and Noor were candidates for the office of Mayor of the Municipality of Lumba-Bayabao, Lanao del Sur, in the elections held on November 14, 1967. After the elections the Board met to canvass the results, but having failed to canvass the votes cast in Precincts 3 and 11, it made no proclamation of the winners. Considering this as violative of its order of December 12, 1967 directing the members of the Board to canvass the results and proclaim the winning candidates, COMELEC, on December 26, 1967, suspended the members of the Board,

substituted them with lawyers employed in its law department, and ordered this new Board to complete the canvassing of the election returns and thereafter to proclaim the winners.

The new Board met for the above purposes on December 28 and 29 in the Manila office of COMELEC pursuant to another resolution of the latter of December 21, 1967 changing the venue of the canvassing in view of the tense conditions prevailing in the Municipality of Lumba-Bayabao. During the session of the Board on December 28, 1967, the question arose as to which copy of the election returns submitted to it corresponding to Precinct 3 should be used in the canvass. After hearing the parties through their representatives so the minutes of the session show - the Board ruled that the copy of the election returns for COMELEC should be used because the other copy submitted to it appeared to have been tampered. When the Board met again the following day (December 29), a similar question arose as to which of the sets of election returns for Precinct 11 submitted to it should be used. Again the Board decided to use the election returns of said precinct bearing Serial No. 42721 prepared by the Board of Inspectors under the supervision of Atty. Adolfo Alagar, representative of COMELEC.

As a result of the completed canvass, respondent Noor was proclaimed as Municipal Mayor elect of the Municipality of Lumba-Bayabao on December 29, 1967. On the same date he took his oath of office, and assumed office on January 1, 1968.

It is a fact, however, that on December 30, 1967 Macud filed a motion with COMELEC for the annulment of the proclamation of respondent Noor made the previous day. At the hearing held in connection therewith on January 2, 1968, Senator Diokno, as Macud's counsel, asked for a clarification of the COMELEC resolution of December 27, 1967 mentioned here-tofore. In connection therewith COMELEC issued another resolution on that date reiterating "its resolution of December 27, 1967 suspending proclamation of winning candidates for the period of ten (10) days given in said resolution of December 27, 1967, in connection with the canvass and proclamation for local offices in LUMBA BAYABAO, LANAO DEL SUR, hereby setting aside during the said period of ten (10) days the effects of any proclamation made, if any, provided that if within the aforesaid period no judicial relief is obtained, then the proclamation per canvass made shall stand".

It is not denied that Macud did not appeal from COMELEC resolutions of December 12 and 27, 1967 nor from that of January 2, 1968. However, after the issuance of the latter, or more specifically on January 4, 1968, he filed in the Court of First Instance of Marawi City, Lanao del Sur, a petition for judicial recount and secured from said court a writ of preliminary injunction restraining the Board from proclaiming the winning candidate for Mayor of Lumba-Bayabao. Attempts to serve the writ on the Chairman of the Board, Atty. Lydia Querubin, failed, so on January 10, 1968, an undated letter of Atty. Mindalano, as counsel for Macud, - received by COMELEC on January 6 of the same year - was submitted to said body for consideration, and, acting upon the same, COMELEC issued on the same date a resolution, the dispositive part of which reads as follows:

"Considering that the 'appropriate judicial relief' stated in the resolution of this Commission dated January 2, 1968, contemplated a judicial relief from the Supreme Court, the Commission, after hearing Atty. Mangorsi Mindalano, RESOLVED to hold that the proclamation made by the Municipal Board of Canvassers of Lumba-Bayabao, Lanao del Sur, on December 29, 1967 shall stand."

As Macud's motion for reconsideration of this last resolution was denied by COMELEC on January 18, 1968, Macud, instead of appealing from the resolution referred to, filed the present triple petition.

According to petitioner, the issue in this case is whether or not the COMELEC has the power to order a canvassing board to refuse recognition of a petition for judicial recount filed by an affected candidate pursuant to a COMELEC resolution (AS INTERPRETED BY THEM) suspending the proclamation of the winner, to give opportunity to the aggrieved party to seek appropriate judicial relief, upon the ground that such petition for

judicial recount is not the appropriate remedy but an appeal to the Supreme Court from the previous resolutions of COMELEC of December 12, December 27, 1967 and January 2, 1968.

On the other hand, respondents contend that the true issue in this case is whether COMELEC has jurisdiction to suspend the effects of a proclamation after the party pro-claimed has already assumed office, and whether or not the phrase "appropriate judicial relief" used in the COMELEC resolutions meant a petition for judicial recount or an appeal to the Supreme Court from the orders complained of.

We have held heretofore that when a board of canvassers rejects an election return on the ground that it is spurious or has been tampered with, the aggrieved party may elevate the matter to the Commission on Elections for appropriate relief (*Ong vs. COMELEC*, G. R. No. L-28415, January 29, 1968), and that, if the Commission sustains the action of the Board of Canvassers, the aggrieved party may appeal from the corresponding resolution to the Supreme Court. The facts stated heretofore show that Macud failed to appeal not only from the resolutions of COMELEC of December 12 and 27, 1967 and of January 2, 1968, but also from the one issued on January 10, 1968, which sustained the proclamation made by the Board on December 29, 1967 by allowing it to stand. Instead, he re-sorted to the abovementioned petition for judicial recount which COMELEC did not consider as the appropriate judicial relief mentioned in its aforesaid resolution of January 2, 1968. Upon the facts appearing of record, We can not find that, in so doing, COMELEC had acted without or in excess of its jurisdiction or with grave abuse of discretion.

Concerning Macud's contention that COMELEC should be ordered to take cognizance of - in other words, to respect -the writ of preliminary injunction issued by the Court of First Instance of Lanao del Sur in the petition for judicial recount filed therewith, the least that We can say at this time is that the enforceability of said writ against COMELEC is of doubtful legality, considering the status and rank of the issuing Court in relation to that of COMELEC.

HAVING ARRIVED AT THE FOREGOING CONCLUSIONS, We are constrained to hold that neither one of the writs prayed for in the verified petition under consideration is proper. Consequently, the petition for their issuance is hereby denied, and the restraining order issued heretofore is set aside. With costs.

Reyes, J.B.L., (Acting C.J.), Makalintal, Bengzon, J.P., Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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