

JULASIRI M. ANNI, PETITIONER, VS. MUSS IZQUIERDO, COMMISSION ON ELECTIONS AND THE PROVINCIAL BOARD OF CANVASSERS OF SULU, RESPONDENTS.

G.R. No. L-35918. June 28, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside the questioned Comelec resolution which ordered the outright exclusion and rejection of the returns of 89 precincts from 7 Sulu municipalities as "manufactured returns" (because of excess votes) and thereby excluded over 5,000 votes for petitioner notwithstanding the admitted existence of actual voting therein and their having been duly verified by the Cornelec examination of the registration and voting records to have been validly cast by the duly registered voters, which if not arbitrarily rejected, were much more than sufficient to maintain petitioner's margin of victory over respondent for the third and last provincial board member seat of Sulu.

After the November 8, 1971 local elections, two petitions were filed with respondent Comelec involving the proclamation of the winning candidates for provincial officials of the province of Sulu.

The first of said petitions filed by Santanina Rasul, LP candidate for provincial board member and docketed as Case No. C-294 asserted her right to be proclaimed as one of the three duly elected provincial board members as against her opponents.

The second petition docketed as Case No. 339 was filed by Salih Ututalum, Yahya Radjae, Muss Izquierdo and Ismael Ratag, LP candidates for governor, vice-governor and provincial board members, respectively, against their NP counterpart-opponents, namely, Murphy Sangkula, Cauti Lim, Julasiri Anni, Julkipli Anni and Hadji Hassan Tawasil, who had garnered the highest number of votes in the provincial canvassing board's tally.

Comelec initially heard the two petitions jointly. After preliminary examination, it found that the results for governor would no longer be altered by the questioned returns and authorized per its resolution of January 24, 1972 the proclamation of Murphy Sangkula as governor.

In suspending proclamation, Comelec per its resolution No. 78 of November 26, 1971 resolved inter alia that "all questions regarding the returns be initially raised before the board during the canvass" and that "upon termination of the canvass, (the board) give the candidates reasonable time within which to appeal its rulings to the commission and in the meantime to desist from proclaiming the winning candidates.

Comelec next resolved Rasul's case and held per its resolutions Nos. RR-1161 and 1162 dated March 20 and 21, 1972 that Julkipli Anni and Santanina Rasul could no longer be affected by pending disputes over questioned returns in the second petition which was still pending (Case C-339) and that they should be proclaimed as two of the winning candidates for provincial board member without awaiting the Comelec's final action on said pending petition.

This gave rise to the case of Julasiri M. Anni and Hadji Hassan Tawasil vs. Santanina Rasul, et al.[1] wherein the Court in its de-cision of August 30, 1972 (hereinafter referred to as the first case) up-held the questioned Comelec resolutions.

The canvassing board's unofficial tally (since Comelec has ordered suspension of the proclamation) showed the four front-running candidates for the three positions of provincial board member, as follows:

Candidates for
Board Member

Votes per returns

Plurality over Rasul

ANNI, Julkipli

40,923 votes

14,484 votes

ANNI, Julasiri

37,009 votes

10,570 votes

TAWASIK, Hassan

27,714 votes

1,275 votes

RASUL, Santanina

26,439 votes

Our decision in the first case then showed that with Comelec's exclusion of six (6) returns from Tapul on grounds of statistical impro-bability (involving 730 votes) and of thirty-one returns from Siasi and Tapul on the ground that they were spurious or manufactured returns (involving 3, 212 votes), the standing of the five front-running candidates, as compared to the unofficial tally was altered with Rasul irretrievably dislodging Tawasil from the winners' circle of three, as follows:

“1. ANNI, JULKIPLI

36,930 votes

2. ANNI, JULASIRI

33,162 votes

3. RASUL, SANTANINA

26,406 votes

4. TAWASIL, HASSAN

24,244 votes

5. IZQUIERDO, MUSS

23,554 votes”

Our decision therein further pointed out that "(R)espondent Rasul further showed that the remaining examination of 164 precinct books of voters in Case C-339 could not possibly affect her winner's standing, for if the 164 returns were found and to be spurious or manufactured as a result of 'massive substitute and/or multiple voting,' the parties most adversely affected thereby would be the herein petitioners, since they stood to lose the most 'votes,' and petitioner Julasiri Anni would furthermore be dislodged by Muss Izquierdo, (one of the petitioners in C-339 and a co-candidate of Rasul on the same ticket) while Rasul would be catapulted to top place with the highest number of votes for provincial board member, as follows:

Unofficial Total

Total Excluded

Total Valid

Candidates

Votes

"Votes"

Votes

RASUL, Santanina

26,439

2,258

24,181

IZQUIERDO, Muss

23,623

1,631

21,992

ANNI, Julkipli

40,932

19,394

21,529

ANNI, Julasiri

37,009

18,993

18,016

TAWASIL, Hassan

27,714

14,958

12,756"

As stated in our said decision, two issues were raised by therein petitioners Julasiri Anni and Hassan Tawasil against the disputed Comelec resolutions which would proclaim Rasul ahead of them as board mem-ber.

On the first issue, Julasiri and Tawasil invoked the pending examination of the precinct books of 164 precincts involving some 8,000 votes which if they were upheld as valid, might alter the result, But we found that the facts and figures as per the above-quoted projected table of possible excluded votes could in no way "conceivably alter the winner status of Julkipli Anni and respondent Rasul" - since Julkipli and Rasul were thereby shown to be "certain of election regardless of the results of the examination of the 164 precincts" and it was only Julasiri Anni in third position then who might be displaced by Muss Izquierdo in the winners' circle "if the returns of the 164 precincts involved are rejected. "

As further stated in our decision in the first case, "(T)he se-cond issue raised by petitioners is that Comelec as a matter of fairness, since the voting records of the 164 precincts questioned in Case C-339 are still being examined by the experts to determine the genuine-ness or spuriousness of the corresponding returns, should have also granted their motion of March 12, 1972 similarly questioning as spurious the returns in 75 precincts where respondent Rasul obtained substantial votes and requesting also a similar examination by the experts of the precinct books of voters therein, with the projected result that the exclusion of such returns would show Rasul as not entitled to the victory claimed by her."

The Court sustained Comelec's denial of the examination of the returns of 75 Rasul precincts as sought by therein petitioners, stating that petitioners "never questioned them in the first instance during the canvassing before the provincial canvassing board, prescinding from the apparent insufficiency of the allegations and supporting documents of their motion of March 12, 1972 to justify Comelec's ordering the examination of the 75 precinct books sought by them. "

We further stressed therein that " '(I)t is well settled that the question whether certain returns are falsified or have been tampered with and should not be included in the canvass, must first be raised be-fore the board of canvassers, subject to appeal from its decision to the COMELEC.' As stated in Lucman vs. Dimaporo, Comelec exercises appellate jurisdiction in passing upon questions raised to it on appeal from the canvassing board's action of say, denying exclusion of returns challenged by the petitioner-appellant. Thus, the Court emphasized, 'petitioner could not legally raise before the commission in the exercise of its appellate jurisdiction any question not originally set up before said board.'"

Petitioners therein filed in due course their motion for reconsideration invoking that the Court's own ratio decidendi in rejecting the examination of the 75 Rasul precincts sought by them for not having been "initially raised before the board during the canvass" should equally apply to the 164 election precinct returns sought to be examined in pending Case C-339 of the Comelec.

The Court required Comelec's comment which was filed in due course and petitioners filed their reply, and the motion for reconsideration remained pending until the Court's resolution of even date stating that its dismissal of the petition in the first case could not be construed as an advance ruling on the propriety and validity of the examination ordered by Comelec in the same Resolution RR-1162 of the questioned 164 election returns which had no bearing therein and that it would resolve the said pending issue in the case at bar.

Comelec, meanwhile, without waiting for the Court's action on the motion for reconsideration proceeded with the examination of the 164 questioned precinct returns and handed down its Resolution RR-1191 of November 28, 1972 ordering the exclusion of the returns from 89 precincts therein enumerated in seven municipalities of Sulu[2] on the ground that the excess of votes received by the candidates over the number of maximum possible votes in the precinct is very great "[3] and ordered the total exclusion from the canvass of the returns as "manufactured returns" notwithstanding the admitted existence of voting and a great number of valid votes obtained by Anni, which if not arbitrarily excluded, were much more than sufficient to maintain Anni's victory over Izquierdo.

Hence, the present petition for the setting aside of the Comelec resolution and for the inclusion and counting in petitioner Anni's favor of the thousands of votes (around 5,000) validly cast for him as found in the very same resolution where Comelec noted from its handwriting experts' examination that "the handwritings and signatures appearing in the voting records were identical to the handwritings appearing in CE Form 1, in other words, those of the registered voters." [4]

The Court finds merit in the petition.

1. The Court will first dispose of the preliminary procedural questions. Petitioner questions Comelec's authority to have proceeded with the examination of the precinct books (CE Form 1) of the questioned 164 precincts notwithstanding the pendency of his motion for reconsideration in the first case seeking to disauthorize such examination on the ground that the returns from said 164 precincts had not been initially questioned before the canvassing board and that Comelec in the exercise of its appellate jurisdiction could not pass upon the questions belatedly raised by respondent Izquierdo who had not timely and properly challenged them during the canvass. (in the same manner that Comelec's action in the first case in denying therein petitioners' belated motion for an examination of the voting records of 75 Rasul precincts was sustained by this Court). This is in fact the burden of petitioner Anni's motion for reconsideration in the first case, which the Court in its resolution of even date has announced it will resolve instead in the case at bar as the proper setting.

While Comelec recognized that the objection timely raised before it was "an issue of fact, namely, whether or not petitioners had questioned the above-mentioned returns during the canvassing" it simply required the parties to submit their respective memoranda attaching thereto their evidence and perfunctorily determined on the basis of a letter petition of respondent dated November 25, 1971[5] listing the objections to the precinct returns from eleven municipalities that the objections had been timely raised before the canvassing board. While petitioner has raised substantial factual questions not frontally met by respondent, such as that the canvass had already been terminated before Izquierdo even presented his alleged objections, and that the minutes of the canvass show no such objections having been raised, still petitioner can only blame himself, for as stated by Comelec in its resolution "In the memorandum filed by respondents [referring to herein petitioner Anni and Tawasil] they failed to submit any evidence to support their contention that petitioners [referring to herein respondent and his

co-candidates] did not question the returns from the 164 precincts afore-mentioned during the canvass.... "[6]

At any rate, as will be hereafter seen, this factual question is not decisive of the merits of the petition, which the Court resolves on the basis of the results of the questioned examination of the registration and voting records of the 164 precincts involved.

2. The determination of the merits has entailed considerable difficulty and study because of the imprecision of the data and state-ments in the questioned Comelec resolution itself as well as in the pleadings of the parties, particularly the petition, which has constrained the Court itself to work out and compute the figures and data involved instead of such matters being normally submitted to it in clear, concise and precise form.

For example, the exact total number of election returns ordered excluded by Comelec is not given in its resolution. It merely listed the precincts in the seven municipalities with a state-ment of the alleged "maximum votes possible" and alleged "votes in excess of maximum" of each candidate in each precinct without giving the total number of precincts excluded, and total number of votes in excess of maximum of each candidate in each precinct.

Petitioner in his own petition adds to the confusion when he refers to fifty-six (56) precinct returns (without specification) that have been ordered excluded, while respondent in his answer states (likewise without specification) that Comelec ordered the exclusion and rejection of a total of eighty-nine (89) out of the 164 questioned returns.

The Court's own verification from the data given in the Comelec resolution shows that out of the 164 questioned returns in eleven (11) municipalities where the voters' registration and voting records were examined by the Comelec and NBI fingerprint and handwriting experts, a total of 147 precinct records in seven (7) municipalities[7] were considered and listed down by the Comelec with regard to the examina-tion of the handwritings and signatures of the voters.

As per the Comelec resolution itself, "the NBI handwriting examiners in examining the handwriting and signatures of the voters referred to them were able to ascertain the cases where the handwritings and signatures appearing in the voting records were identical to the handwritings appearing in CE Form 1, in other words, those of the re-gistered voters. They also found cases where the handwritings appear-ing in the voting records were of persons other than the registered voters. There were still however, quite the number of cases where the handwrit-ing experts could not render an opinion one way or the other. "

Comelec gave the combined results of the fingerprint and handwriting examination of the registration and voting records of the voters in the 147 precincts, as follows:

Positive

Negative

No

Positive Opinion

Opinion

Opinion

Opinion

Plus No Opinion

"Totals

5,407

6,525

5,456

10,863"[8]

Comelec explained in its resolution that notwithstanding the 5,407 votes for petitioner verified by examination of the registration and voting records to have been validly cast by the duly registered voters, it added the "positive opinion" and "no opinion" votes "so that the maximum possible number of valid votes which could be cast in said precincts would also be shown. Thus, where one or more candidates were credited with having received in a particular precinct votes in excess of the total of positive opinion and no opinion cases in said particular precinct the conclusion is, following the ruling of the Supreme Court in DIAZ versus COMELEC,[9] the return from said precinct is a manufactured return. "[10] As will be shown hereinafter, the approach of Comelec can hardly be justified, because since Anni received 14, 195 votes in the 147 precincts involved and his maximum possible number of votes was 10,863 (of which 5407 were positively identified as valid votes cast by the duly registered voters and the remaining 6,525 votes on which the experts could not give an opinion must also be counted concededly as valid votes for him) the differential of 3332 votes cannot be said to be "greatly excessive" and justify the rejection of the returns.

3. To go now to the rationale of the Comelec resolution ordering the exclusion of 89 returns: Comelec justified its resolution in this manner -

It determined the total votes received by the protagonists in the questioned precincts, and ruled that in eighty-nine (89) precincts "the excess of votes received by the candidates over the number of maximum possible votes in the precincts is very great" and that "the returns, therefore . . . are manufactured returns which should be excluded from the canvass" in line allegedly with Diaz vs. Comelec, supra.[11]

This meant the exclusion and nullification of 10, 731 votes cast for petitioner Anni in his bailiwick towns as against the exclusion of a mere 187 votes cast for respondent Izquierdo therein with the following drastic reversal of the results:[12]

Votes for Anni

33,055

(8,741 over)

Less: 10, 731 excluded votes . .

10,731

Anni. . . .

22,324

(1803 less than)

=====

Votes for Izquierdo. . .

24,314

Less: 187 excluded votes.

187

Izqueirfo. . . .

24,127

=====

Comelec thereby declared petitioner dislodged by respondent and ordered the proclamation of respondent as the winner of the third and last board member seat.

4. The sole basis of the Comelec resolution for rejecting the 89 returns as "manufactured returns" and excluding 10,731 votes for petitioner therein is its peremptory conclusion that "the excess of votes received by the candidate over the number of maximum possible votes in the precincts is very great.

A study of the figures given by it, however, per se destroys its own arbitrary conclusion of "very great excess" of votes received by petitioner. The individual treatment given by Comelec per precinct appears to be arbitrary for the only precincts with excess of votes which it did not consider as having "manufactured returns" were those where "the excess is from one to three votes and possibly could be due to honest mistake on the part of the board of inspectors"[13] and any excess above three votes was considered as "manufactured. "

On the basis of totals per Comelec's own figures, the maximum possible number of votes is 10,863 for 147 precincts, supra,[14] Adding up the votes received by the candidates in each of the above precincts as stated by the Comelec in its resolution[15] (since Comelec gave no totals) we find that Anni received a total of 14,195 votes while Izquierdo received a total of 1,312 votes. Going by all the 147 questioned precincts, the excess of Anni's votes which was 3,332 (representing the differential between his total 14,195 votes therein and Comelec's maximum possible number of valid votes of 10,863) cannot be said to be a "great excess" of votes that would justify the rejection of the returns, as indeed Comelec did not reject all the 147 returns.

Comelec found a "great excess" only in 89 out of these 147 precincts and excluded 10,731 votes for Anni and 187 votes for Izquierdo. This means that the differentials of 3,464 votes for Anni (14,195 total less 10,731 questioned in 89 precincts) and 1,125 votes for Izquierdo (1,312 total less 187 questioned in 89 precincts) were good valid votes cast in the 58 precincts (out of 147) and that Comelec found no discrepancy nor irregularity therein.

As to the remaining 89 precincts whose returns Comelec would exclude as "manufactured returns" on the ground of "great excess of votes", thereby rejecting 10,731 votes for Anni and 187 votes for Izquierdo, here are the data:

Comelec does not give us the maximum possible number of votes for these 89 precincts, but again by adding up the figures for each of the precincts as stated in the Comelec resolution,[16] we find from the totals that as against the 10,731 votes cast for Anni in these 89 precincts, the total "maximum votes possible" per Comelec computation amounted to 6,995 or an excess of 3,736 votes which does not appear to be too great an excess as to warrant the rejection of the returns as "manufactured returns."

If we go by the results of the experts' examination of the registration and voting records, *supra*, [17] that 5,407 votes for petitioner were verified to have been validly cast by the duly registered voters with another 6,525 votes (on which the experts could not render an opinion) which must be considered and taken as valid votes also for petitioner for purposes of pre-proclamation proceedings (specially since there is no statement that the thumbmarks were "blurred, smudged or faint" as in the Diaz case), [18] Comelec's conclusion of a "great excess" of votes cannot be taken as certain and convincing as to justify the outlawing of the returns as "manufactured returns."

It should be considered that there were three board seats up for election and conceivably the excess could be due to over-enthusiasm of some voters in casting two or three votes in the ballot for one and the same candidate and the board of inspectors recording them notwithstanding that each candidate was entitled to only one vote per voter. As was stated by Justice Castro for the Court in *Tagoranao vs. Comelec* [19] involving the exclusion of an election return on ground of excess of Votes cast, "to reject the return ... would be to disenfranchise 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. "

As stressed by the now Chief Justice in *Estrada vs. Navarro*, [20] "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. x x x Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disfranchisement of those who exercised their right of suffrage. "

5. The decisive factor is that where it has been duly determined by Comelec after investigation and examination of the voting and registration records that actual voting and election by the registered voters had taken place in the questioned precincts, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters but must be accorded *prima facie* status as *bona fide* reports of the result of the voting for canvassing and proclamation purposes. (If there be excess ballots and such question has been duly raised before the counting of the votes, then under the Comelec instructions such ex-cess ballots should have been segregated at random and not included in the counting of the votes.) [21]

Where the grievance relied upon is the commission of irregularities and violation of the Election Law as appears to be the case here, the proper remedy is the protest. In the language of Justice Sanchez, "(T)he boundaries of the forbidden area into which Comelec may not tread are also marked by jurisprudence. That Comelec is not the proper forum to seek annulment of an election based on terrorism, frauds and other illegal practices, is a principle emphasized in decisions of this Court." [22]

The case of Diaz cited by Comelec and similar cases[23] have their particular application under the special environment facts therein recited and represent an exception to the general rule. This was pointed out by the Court in Bashier vs. Comelec[24] thus: "(T)he Courts has in Diaz and Usman and in the present cases sanctioned Comelec's procedure of conducting on-the-spot investigations in critical areas where fabricated and spurious returns have been the rule rather than the exception and of utilizing its own fingerprint identification division and the services of handwriting experts to examine the voting records and verify the truth of reports or petitions that spurious returns have been manufactured with so called 'massive substitute voting' which really is fake voting done by a handful of persons."

But the Court stressed the general rule applies in cases like the case at bar that where "substantial evidence has been presented that there was actual voting, in the absence of strong evidence establishing the spuriousness of the returns, the basic rule of their being accorded prima facie status as bona fide reports of the result of the count of the votes for canvassing and proclamation purposes must be applied, without prejudice to the questions being tried on the merits with the presentation of all competent evidence, testimonial and real, in the corresponding electoral protest." [25]

ACCORDINGLY, Comelec Resolution RR-1191 dated November 28, 1972, is hereby set aside and the temporary restraining order heretofore issued against its enforcement is made permanent. The provincial board of canvassers of Sulu is ordered to reconvene and in accordance with this decision setting aside the Comelec resolution directing the exclusion of the 89 returns involved, proclaim petitioner Julasiri Anni as the winning candidate for third member of the provincial board. In line with established precedent, this decision shall be immediately executory upon its promulgation. No costs.

Makalintal, C.J., Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] L-34904, prom. August 30, 1972, reported in 46 SCRA 758 (1972).

[2] Namely, Siasi, Panamao, Parang, Pata, Patikul, Tapul and Indanan.

[3] Annex D, petition, p. 20; Rollo, p. 72

[4] Idem, p. 8, Rollo, p. 58.

[5] Annex A of Annex B, Comelec comment of Nov. 6, 1972, in the first case, L-34904.

[6] Annex D, petition, p. 6; Rollo, p. 56; notes in brackets supplied.

[7] Listed in fn. 2, supra.

[8] Annex D, petition, pp. 9-12; Rollo, pp. 59-62; emphasis supplied.

[9] Reported in 42 SCRA 426 (Nov. 29, 1971).

[10] Annex D, petition, p. 13; Rollo, p. 63.

[11] Idem, p. 20, Rollo, p. 70.

[12] Idem, pp. 21-23; Rollo, pp. 71-73.

[13] Rollo, p. 70.

[14] At pages 7-8 hereof.

[15] Rollo, pp. 63-67.

[16] At pp. 68-70, Rollo.

[17] At pages 7-8 hereof.

[18] 42 SCRA at page 430.

[19] 22 SCRA 978.

[20] 21 SCRA 1514, 1519-1520; See also *Alonto vs. Comelec*, 22 SCRA 882.

[21] See *Bashier vs. Comelec*, 43 SCRA 238, 260.

[22] *Abes vs. Comelec*, 21 SCRA 1252; See also *Badelles vs. Cabili*, 27 SCRA 113.

[23] See *Usman vs. Comelec*, 42 SCRA 667; and *Puñgutan vs. Abubakar*, 43 SCRA 9.

[24] 43 SCRA 238, 262-263; see also page 258; emphasis supplied.

[25] *Idem*, at page 263, emphasis supplied.

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