

USO DAN AGUAM, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND ALIM BALINDONG, RESPONDENTS.

G.R. No. L-28955. May 28, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In this, a petition for certiorari and prohibition with prayer for preliminary injunction, petitioner Uso Dan Aguam seeks to annul the resolution of the respondent Commission on Elections (Comelec) of April 27, 1968 declaring that it has jurisdiction to open the ballot box in Precinct 8 of the municipality of Ganassi, Lanao del Sur, and to conduct an investigation into the authentic electoral return therefrom, upon petition of respondent Alim Balindong. Petitioner levels a major attack on the jurisdiction of Comelec to inquire into the matters set forth in private respondent's petition therein, hereinafter to be recited. Petitioner reasons out that that petition was filed out of time, and that after proclamation Comelec is bereft of power to order the opening of the ballot box to determine the genuineness of an election return.

But first to the controlling facts.

In the November, 1967 elections, amongst the aspirants for Mayor of Ganassi, Lanao del Sur, were: petitioner Uso Dan Aguam, official Liberal Party candidate; respondent Alim Balindong, an independent Liberal; and Ali Daud B. Marohombsar, official candidate of the Nacionalistas. 2

It would appear that at the canvassing held in Marawi City on November 20, 1967, petitioner Uso Dan Aguam was proclaimed Mayor-elect of Ganassi. The minutes thereof reveal a close contest between petitioner and respondent: Petitioner Uso Dan Aguam received 575 votes; respondent Datu Alim Balindong, 572 votes.

On November 21, 1967, apparently unaware of the canvassing held at Marawi City the day before, respondent Alim Balindong went to the Court of First Instance of Lanao del Sur^[1] to restrain the board of canvassers from canvassing the votes for mayoral, candidates and from proclaiming the results thereof. Bases of the petition are that 43 voters were permitted to cast their votes in Precinct 5 by virtue of an unlawful order of the municipal judge and that the election returns in Precinct 8 were tampered with to favor petitioner herein. Petitioner there intervened and, inter alia, challenged the jurisdiction of the Court of First Instance. The case ended up with the court's order of December 21, 1967 dismissing the petition upon a no-jurisdiction ground. Allegedly, copy of this order was served on respondent Alim Balindong on January 4, 1968.

Meanwhile, on December 30, 1967, petitioner took his oath and thereafter assumed office as Mayor of Ganassi.

It was on January 6, 1968 when respondent Alim Balindong went to Comelec with a petition for the annulment of the November 20, 1967 canvass and proclamation, and for the opening of the ballot box in Precinct 8. The November 20 canvass and proclamation were there assailed by respondent Alim Balindong from different directions. Averment was there made that the board of canvassers was illegally constituted; that fraud and irregularities, which were made in con-nivance between the municipal treasurer and petitioner Uso Dan Aguam,

attended the canvassing; that no notice thereof was given to said re-spondent and other candidates; that the canvassing and proclamation were kept under wraps; that the election return for Precinct 8 was tampered with by making it appear that Alim Balindong obtained 8 votes in said precinct when in fact he obtained 13 votes; and that as a result of such tampering, petitioner Uso Dan Aguam herein was made to win against respondent Alim Balindong by a margin of 3 votes.

The foregoing petition was met by petitioner Uso Dan Aguam with an answer and a motion to dismiss. After making certain denials and admissions, petitioner herein raised in Comelec the issues, amongst others, of jurisdiction and time-bar.

It was while the case was pending in Comelec, after the parties have been heard, that the controverted order of April 27, 1968 was issued.

Hence, the present petition. To maintain the status quo, we issued a cease-and-desist order on May 10, 1968, upon a cash bond of P1,000.00. Upon the petition, respondents' returns, and the oral arguments, the case is now before us for decision.

1. By constitutional mandate, Comelec "shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law." The Constitution enjoins Comelec to "decide, save those involving the right to vote, all administrative questions, affecting elections." And, all of these are aimed at achieving an ideal: "free, orderly, and honest elections." [2] Implementing the constitutional precept, Congress legislated in Section 3 of the Revised Election Code that, in addition to the powers and functions conferred by the Constitution, Comelec has "direct and immediate supervision over the provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections."

The great breadth of the constitutional and statutory powers granted Comelec has brought to the fore judicial pronouncements which have long become guidelines. Time and again, this Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. [3] The fact that a candidate proclaimed has assumed office, we have said, is no bar to the exercise of such power. It of course may not be availed of where there has been "a valid proclamation." [4] Since private re-spondent's petition before Comelec is precisely directed at the annul-ment of the canvass and proclamation, we perceive that inquiry into this issue is within the area allocated by the Constitution and law to Comelec. Not that the view expressed herein is without reason. We draw from past experience. A pattern of conduct observed in past elections has been the "pernicious 'grab-the-proclamation-prolong-the?protest' slogan of some candidates or parties." [5] Really, were a victim of a proclamation to be precluded from challenging the validity thereof after that proclamation and the assumption of office thereunder, baneful effects may easily supervene. It may not be out of place to state that in the long history of election contests in this country, as observed in *Lagumbay vs. Climaco*, supra, a successful contestant in an election protest often wins but "a mere pyrrhic victory, i.e., a vindication when the term of office is about to expire or has expired." Protests, counter-protests, revisions of ballots, appeals, dilatory tactics, may well frustrate the will of the electorate. And what if the protestant may not have the resources and an unwavering determination with which to sustain a long drawn-out election contest? In this context therefore all efforts should be strained - as far as is humanly possible -to take election returns out of the reach of the unscrupulous; and to prevent illegal or fraudulent proclamation from ripening into illegal assumption of office.

But the foregoing are not all. In the course of oral arguments before this Court, we observed that in the minutes of the canvassing at Marawi on November 20, 1967, the following appear:

"The Treasurer/Secretary then presented all the Advanced Election Returns to the members of the Board for inspection. This was done in the presence of representatives of the Commission on Elections and the Philippine

Army.

Then the Municipal Board of Canvassers proceeded and began opening the election returns consecutively in accordance with the numbers of the precincts."^[6]

Advanced copies of election returns cannot be the basis of proclamation. Proclamation should be based on the copies of the returns for the municipal treasurer, or if unserviceable, on three other authentic copies of the returns, namely: that for the Comelec (Annex 2 of Comelec's answer), or for the provincial treasurer, or that in the ballot box. Nothing in the same minutes would show that anyone of those four returns was used. Nor do the minutes mention the presence of candidates or their representatives in the canvassing. A probe into these facts is important.

We have but to reiterate the oft-cited rule that the validity of a proclamation may be challenged even after the irregularly proclaimed candidate has assumed office.

2. We now grapple with the problem of the alleged nullity of Comelec's resolution of April 27, 1968. It will be recalled that re-spondent Alim Balindong has complained of the tampering of the return in Precinct 8 before the Court of First Instance and before Comelec. The Comelec copy of the return of Precinct 8 (Annex 2 of Comelec's answer to the petition before this Court) gives Comelec a good starting point upon which to look into the authenticity of the return from said precinct. Because, so Comelec alleges, the entries of votes therein for respondent Alim Balindong are crossed out by heavy pencil marks and written thereon is the word "eight" and figure "8". Comelec also underscores the fact that this runs counter to the certificate of votes signed by all the members of the board of inspectors of Precinct 8 where it appears that Mini Balindong obtained "thirteen" votes. Decisive of the political fortunes of petitioner and respondent Balindong is the difference of 5 votes. Heretofore adverted to is that petitioner herein upon the disputed canvass won by 3 votes. With these, the probability that respondent Mira Balindong is rightfully entitled to proclamation may not easily be shrugged off. If only for the fact that proclamation should be made within the limits of accepted notions of justice, and also because a candidate is not to be turned away upon a proclamation allegedly riddled with irregularities in various forms that affect its validity, investigation of the tampering here charged, is proper. The power of Comelec to do this is now beyond debate.^[7] And, we have specifically declared in *Cauton vs. Commission on Elections*, 19 Supreme Court Reports Anno. 911, 923, that "in ordering the opening of the ballot boxes the purpose of the Commission is not to help a particular candidate win an election but to properly administer and enforce the laws relative to the conduct of elections."

We, therefore, rule that certiorari and prohibition will not lie against the challenged resolution of April 27, 1968.

3. The stress of petitioner's argument is that respondent Alim Balindong filed his petition on January 6, 1968, i.e., long after the proclamation of November 20, 1967. It is petitioner's trenchant claim that since the two-week period from proclamation, allowed for protests, had long elapsed, 'Comelec is without power to entertain the same - it had no jurisdiction.

Petitioner draws our attention to the cases of *De Leon vs. Imperial*, 94 Phil. 680, and *Abes vs. Commission on Elections*, L-28348, December 15, 1967. These cases, however, are not to be read as throwing overboard Comelec's authority to inquire into whether or not a proclamation is null and void. For, these cases merely emphasize the rule that where a proclamation is validly made, errors in the proclamation may only be raised in a full-dress election protest.

The ratiocination advanced by petitioner fails to take stock of the fact that where a proclamation is null and void, that proclamation is no proclamation at all. This is axiomatic. To be remembered is *Mutuc vs. Commission on Elections*, *supra*, citing *Demafiles vs. Commission on Elections*, *supra*. Our ruling there is this: "It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest.

But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues."

And then, Comelec has yet to determine when respondent Alim Balindong actually had knowledge of the proclamation of November 20, 1967.

The election law does not provide for a time limit within which a candidate may challenge the validity of a proclamation before Comelec. We are unprepared to say that inaction for an unreasonable period may not block him. Even then, considering the steps taken by respondent, first, in the Court of First Instance, the second, in the Comelec, the time gap between the alleged illegal proclamation of November 20, 1967 and the petition before Comelec of January 6, 1968 does not authorize this Court to say that respondent Alim Balindong is guilty of laches.

We hold that Balindong's petition before Comelec was timely filed; and that Comelec has jurisdiction to inquire into the nullity of the November 20, 1967 proclamation, and consequently to inquire into the tampering of the election return in Precinct 8.

FOR THE REASONS GIVEN, the petition for certiorari and prohibition is hereby denied; and the preliminary injunction heretofore issued is hereby set aside.

Costs against petitioner.

SO ORDERED.

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

[1] Election Case No. 111-116, Court of First Instance of Lanao del Sur, Branch III-Marawi City, entitled "Alim Balindong, Petitioner, vs. Board of Election Inspectors, etc., et al., Respondents."

[2] Section 2, Article X of the Constitution.

[3] Pacis vs. Commission on Elections, L-28455, February 10, 1968, citing cases; Pedido vs. Commission on Elections, L-28539, March 30, 1968, citing cases.

[4] Pacis vs. Commission on Elections, supra; Mutuc vs. Commission on Elections, L-28517, February 21, 1968, citing Demafiles vs. Commission on Elections, L-28396, December 29, 1967.

[5] Lagumbay vs. Climaco, L-25444, January 31, 1966.

[6] Emphasis supplied.

[7] Ong vs. Commission on Elections, L-28415, January 29, 1968, citing cases.

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