

ABOLAIS R. OMAR, PETITIONER, VS. COMMISSION ON ELECTIONS AND YASIN B. ALAPA, RESPONDENTS.

G.R. No. L-53962. February 03, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Abolais R. Omar, an Independent candidate (p. 1, Rollo), was proclaimed on February 4, 1980 by the municipal board of canvassers as the duly elected mayor of Madalum, Lanao del Sur. He obtained 775 votes, winning by 104 votes over his opponent, Hadji Yasin B. Alapa, the incumbent mayor and the candidate of the Kilusan ng Bagong Lipunan (KBL).

On the following day, February 5, Alapa, in an urgent petition, asked the Commission on Elections to set aside that proclamation on the ground that frauds and irregularities were committed in voting centers Nos. 3 and 5 (Barangays Linuk and Sugod). Alapa alleged that there was massive substitution of voters which was tolerated by the citizens election committees. The ballots were filled up by persons other than the voters themselves so that the signatures and thumbmarks affixed to the voting record and stubs of the ballots were not those of the registered voters (Annex B of Petition; Petition in Election Case No. Pre-Proclamation-272).

Alapa further alleged that flying voters and minors were allowed to vote in voting centers Nos. 3 and 5. Affidavits supporting that allegation were attached to his petition. He asked that the ballot boxes and the election returns and paraphernalia be impounded and that fingerprint and handwriting experts should examine the voting records. He averred that he would win by a comfortable margin if the votes in the two voting centers were nullified and excluded.

He prayed that after the annulment of the votes in the two voting centers the election returns be recanvassed.

Acting on that urgent petition, the Comelec in its resolution of February 12 suspended the effects of Omar's proclamation and required him to answer the petition.

In the meantime or on February 14, Alapa filed an election protest ad cautelam in the Court of First Instance of Lanao del Sur.

Omar in his answer to Alapa's petition of February 5, denied the alleged frauds and irregularities. He supported that denial with affidavits. He contended that Alapa's remedy was in the election protest that he had already filed. Omar prayed that the petition be dismissed and that the order suspending the effects of his proclamation be lifted.

The Comelec in its resolution of March 1, 1980 dismissed Alapa's petition. It held that the ground relied upon by Alapa "is a proper ground for an electoral protest".

Before being apprised of that dismissal resolution, or on March 5, 1980, Alapa filed a motion to hold in abeyance the resolution on his petition. He submitted newly discovered evidence among which was that Omar was certified two times under two names, "Omar Abolais C" (Nacionalista) and "Omar Raquib" (Independent). Alapa

submitted a joint affidavit of two voters attesting to Omar's use for voting purposes of two names under two lineups.

Omar opposed the motion. After hearing, the Comelec in a telegram dated April 17, 1980 (1) informed Alapa that the implementation of its March 1 resolution lifting the suspension of the effects of Omar's proclamation was held in abeyance and (2) directed Alapa to remain as mayor in a holdover capacity as likewise directed by the Minister of Local Government in his letter of March 18, 1980.

In a manifestation dated April 23, 1980, Omar asked the Comelec to revoke its telegraphic order. The Comelec did not revoke it, thus continuing in force its resolution of February 12, 1980 suspending the effects of Omar's proclamation as mayor.

On May 15, 1980, the Comelec issued a resolution, directing experts of its Fingerprints Division and the handwriting expert of the National Bureau of Investigation to make a comparison and examination of the thumbprints and signatures appearing in the voting records of January 30, 1980 and those appearing in the permanent Books of Voters for the two voting centers so that it could have a basis for affirming or annulling Omar's proclamation or determining whether Alapa was elected mayor.

Not satisfied with that resolution, Omar, on June 2, 1980, filed the instant special civil action of certiorari to set aside the said Comelec resolution of May 15, 1980.

The issue is whether the Comelec committed a grave abuse of discretion, amounting to lack of jurisdiction, in requiring examination and comparison, by experts, of the thumbmarks and signatures in the questioned voting records.

We hold that the Comelec did not commit any grave abuse of discretion in requiring experts to examine the fingerprints and signatures on the questioned voting records to determine whether substitute voters or flying voters cast their votes in voting centers Nos. 3 and 5.

That proceeding would be a continuation of the pre-proclamation controversy which started on election day when Alapa asked that the voting in voting centers Nos. 3 and 5 be stopped because three nieces of Omar and a certain Romero Nasser voted therein although they were not registered voters in those precincts. And during the canvass, Alapa asked for the exclusion of the returns for voting centers Nos. 3 and 5.

The Comelec opined that the election registrar should have recommended the annulment of the election in the said voting centers and the holding of a special election (Annex O, p. 100, Rollo).

It cannot be said that the Comelec acted in a capricious, despotic and whimsical manner in directing that experts should examine the questioned thumbmarks and signatures. It acted within its prerogatives in adopting that procedure in a pre-proclamation controversy. (See *Diaz, Sr. vs. Commission on Elections*, L-33378, November 29, 1971, 42 SCRA 426; *Estaniel vs. Commission on Elections*, L-33453, November 29, 1971, 42 SCRA 436.)

The Comelec is "the sole judge of all pre-proclamation controversies" and, after hearing, it may annul any proclamation if it is convinced that there are discrepancies in the election returns (Sec. 175, 1978 Election Code).

In the instant case, the existence of discrepancies in the election returns for voting centers Nos. 3 and 5 is probable because of the prima facie finding that there was substitute voting in those centers.

As observed by Justice Barredo in *Aratuc vs. Commission on Elections*, L-49705-09, February 8, 1979, 88 SCRA 251, this Court's power to review a decision, ruling or order of the Comelec under the 1973 Constitution is narrower in scope than its power under the 1935 Constitution.

Under the 1935 Constitution, this Court exercised appellate jurisdiction to review any decision, ruling or order of the Comelec. Under the present Constitution, any decision, ruling or order of the Comelec can be assailed in this Court only by means of the special civil action of certiorari.

It should be stressed that the decisions orders or rulings of the Comelec in pre-proclamation controversies, of which it is the sole judge, are final and executory (Sec. 175, 1978 Election Code).

In factual matters, the Comelec is "en mejores condiciones que ningun otro organismo del Estado para conocer aquellos que tiendan a asegurar la pureza del sufragio, en que radica la salud de las democracias. Sus conclusiones, por tanto, relativas a los hechos y a las cuestiones de equidad no deben ser modificadas, a menos que en autos aparezca que abuso gravemente de sus facultades" (Horrilleno, J., in *Vinzons vs. Commission on Elections*, 73 Phil. 247, 251-2).

Justice Jose Abad Santos said that a "due regard to the independent character of the Commission (Comelec), as ordained in the Constitution, requires that the power of this Court to review the acts of that body should, as a general proposition, be used sparingly but firmly in appropriate cases".

That is the proper norm of conduct because "there are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of elections" "we must not by any excessive zeal take away from the Commission the initiative which by constitutional and legal mandates properly belongs to it." (*Sumulong vs. Commission on Elections*, 73 Phil. 288, 295-6.)

The Comelec as an independent constitutional body "is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization."

"The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created - free, orderly and honest elections."

"We may not agree fully with its choice of means but unless these are clearly illegal or constitute gross abuse of discretion, this Court should not interfere."

"Politics is a practical matter, and political questions must be dealt with realistically - not from the standpoint of theory. The Commission, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions." (*Sumulong vs. Commission on Elections*, supra, pp. 294-295 and *Lava vs. Commission on Elections*, 73 Phil. 390, 396-7.)

WHEREFORE, the petition is dismissed. The restraining order heretofore issued is lifted. Costs against the petitioner.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, and De Castro, JJ., concur.

Fernando, C.J., concurs in the result as set forth in a brief separate opinion.

Teehankee, J., dissents in a separate opinion.

Abad Santos, J., see dissenting opinion.

Melencio-Herrera, J., joins JJ. Abad Santos, and Teehankee in their dissenting opinion.

CONCURRING IN THE RESULT AND DISSENTING FROM THE OPINION OF THE COURT

FERNANDO, C.J.:

The dismissal of this petition is a foregone conclusion, a majority of my brethren being clearly of that view. So be it. I would predicate my concurrence in the result on the expectation that the failure of petitioner to set aside the challenged resolution should not stand in the way of the prompt termination of the matter now pending before respondent Commission on Elections.

Had my appraisal of the case prevailed, petitioner would now be entitled to sit subject to his election being contested in an election protest. This is not to deny that from the basic premise of Justice Aquino, his opinion finds support from our previous decisions.[1] Nor am I in disagreement with the respect accorded *Sumulong v. Commission on Elections*,[2] which rightfully falls under the category of a landmark decision. The policy therein embodied as to the approach certainly calls for application in appropriate cases. With all due respect, I submit this is not one of them.

It is my belief that our holding in *Aguinaldo v. Commission on Elections*[3] is controlling. Thus: "Since *Venezuela v. Commission on Elections*, this Court invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved." [4]

As this petition was filed only on June 2, 1980, assailing a resolution of the Commission of May 15, 1980, it is my submission that it falls within the ambit of the *Aguinaldo* decision. The *Venezuela* case therein referred to was promulgated on July 25, 1980. Such a policy was adopted to assure that pre-proclamation controversies be considered terminated so that whoever is proclaimed may discharge the functions of the office without prejudice to the filing of either an election protest or a quo warranto petition.

I am likewise prepared to concede that while the *Aguinaldo* principle ordinarily governs our appraisal of petitions, there could be exceptions. Evidently the majority of my brethren acted on such a view. While recognizing that consistency is not an inexorable requirement, I am bothered by the failure of the Commission on Elections to explain why its well-reasoned resolution of March 1, 1980, resulting in petitioner having thereafter assumed office, was reconsidered and set aside in the absence of any new evidence on May 15, 1980.

To repeat, notwithstanding the able opinion of Justice Aquino, I feel that the application of the *Aguinaldo* ruling calls for my withholding my assent and limiting my concurrence to the result for lack of necessary votes to grant the petition.

[1] Cf. *Vinzonz v. Commission on Elections*, 73 Phil. 247 (1941); *Sumulong v. Commission on Elections*, 73 Phil. 288 (1941); *Lava v. Commission on Elections*, 73 Phil. 390 (1941); *Diaz v. Commission on Elections*, L-33378, November 29, 1971, 42 SCRA 426; *Estaniel v. Commission on Elections*, L-33453, November 29, 1971, 42 SCRA 436; *Aratuc v. Commission on Elections*, L-49705-09, February 8, 1979, 88 SCRA 251.

[2] 73 Phil. 288 (1941).

[3] G.R. No. 53953, January 5, 1981.

[4] Ibid, 2.

SEPARATE DISSENTING OPINION

TEEHANKEE, J.:

I concur with the dissent of Mr. Justice Abad Santos and add the following vital facts and compelling considerations overlooked or disregarded in the majority opinion penned by Mr. Justice Aquino, which call for the granting of the petition and the setting aside of the Comelec's midnight[*] resolution of May 15, 1980 that would reopen the question of petitioner Omar's proclamation on March 1, 1980 and assumption of the contested office of mayor of Madalum, Lanao del Sur on March 4, 1980 and proper discharge of its functions and receipt of the corresponding compensation, after the Comelec itself had terminated and closed the pre-proclamation case with its extended four-page resolution of March 1, 1980, wherein

"x x x the Commission Resolved to dismiss for lack of merit herein petition for the annulment of the election in voting centers Nos. 3 and 5 of Madalum, Lanao del Sur on ground of massive substitute voting and the nullification of the proclamation of the respondent, the ground being relied upon by the petitioner is a proper ground for an electoral protest and not for a pre-proclamation controversy, to order the lifting of the suspension of the effects of the proclamation made by the MEC of Madalum, Lanao del Sur thereby giving full force and effect of law to the proclamation of Hadji Abolais Omar as Mayor-elect of Madalum." [1]

1. In its said Resolution of March 1, 1980, the Comelec had categorically rejected respondent Alapa's petition for exclusion of the returns from voting centers 3 and 5 on alleged grounds of frauds and "massive substitution" of voters, ruling after hearing and reception of evidence that herein respondent Alapa (as petitioner in the pre-proclamation case) had "not proven nor sufficiently established" his allegations; that herein petitioner Omar's (as respondent below) witnesses "who are the direct representatives of the Commission are more reliable and credible than (Alapa's) witnesses;" that "much more than the mere allegations of (Alapa) is required to effect the legal presumption of regularity of performance of official functions In the case at bar, not even a scintilla of evidence was ever adduced by (Alapa) that (the voting centers officials) failed to perform their functions;" and that Alapa's ground (of "massive substitution of voters") "is not one of the grounds mentioned in Sections 172, 173 and 174, Article XV of the Election Code for which the Commission can suspend or annul a proclamation pursuant to Section 175 of the same code, but a ground proper for an electoral protest." [2]

2. To use the majority opinion's own language, [3] "(I)t should be stressed that the decisions, orders or rulings of the Comelec in pre-proclamation controversies (such as the aforesaid Comelec Resolution of March 1, 1980), of which it is the sole judge, are final and executory (Sec. 175, 1978 Election Code)," as in fact the said Resolution dismissing Alapa's petition and "giving full force and effect to (Omar's) proclamation" previously made on February 4, 1980 was executed with Omar's oath and assumption of office and can no longer be undone at this late stage; and the Comelec's findings of fact, such as those at bar based on its evaluation that Omar's witnesses as the Comelec's own direct representatives were more reliable and worthy of credence, are binding and will not be disturbed on review.

3. The Comelec's midnight resolution of May 15, 1980, after Omar had already assumed office pursuant to the

Comelec March 1, 1980 resolution "giving full force and effect to (Omar's) proclamation," "flip-flopping" and again seeking to suspend the effects of such proclamation and directing the defeated Alapa to remain as mayor in a holdover capacity and requiring examination and comparison, by experts of the voting records in the two voting centers "to determine whether substitute voters or flying voters cast their votes (therein)," [4] is arbitrary, whimsical and oppressive, because: -

- the March 1, 1980 resolution had already been executed and Omar's proclamation and assumption of office thereunder could no longer be undone;
- Alapa's grounds of alleged "massive substitute voting" were proper grounds for election protest as held by Comelec in its said March 1, 1980 resolution and Alapa's election protest, already filed in the Lanao del Sur Court of First Instance since February 14, 1980, was pending trial and determination;
- the Comelec in its said March 1, 1980 resolution had made its definite factual finding that Alapa's bare allegations of "massive substitute voting" were not proven nor established, as well as its correct legal conclusion that such ground was not a ground for annulment or suspension of the proclamation under sections 172 to 174 of the 1978 Election Code;
- indeed, the only specific instance questioning the right of three nieces of Omar to vote as not being registered voters could not conceivably be termed as proof of "massive substitute voting" nor could it alter the result and Omar's winning margin of 104 votes over Alapa;
- under the same evidence which it had found pitifully inadequate, the Comelec now in its midnight May 15, 1980 resolution would have the voting records matched and examined in order to engage in a fishing expedition to determine whether there had been substitute or flying voters, upon the mere submission by Alapa of "newly discovered evidence that Omar was certified two times under two names 'Omar Abolais C' (Nacionalista) and 'Omar Raquib' (Independent)" [5] without in any way changing or setting aside - as it could not do so since there was no new evidence at all - its previous factual findings in its March 1, 1980 resolution dismissing Alapa's pre-proclamation petition;
- worse, the election returns from the questioned voting centers 3 and 5 had never been challenged before the board of canvassers and therefore could no longer be questioned before the Comelec in the exercise of its appellate jurisdiction. As stressed by the now Chief Justice in *Dipatuan vs. Comelec*, [6]

"In the recent decision of *Lucman vs. Dimaporo*, this Court, speaking thru the Chief Justice, made clear that petitioner there 'could not legally raise before the Commission, in the exercise of its appellate jurisdiction, any question not originally set up before said Board.' That is to reiterate a principle which five months earlier this Court had explicitly set forth in *Moore v. Commission on Elections*. In the latest case in point, *Anni v. Rasul*, decided barely two months ago, the rationale for such a doctrine has been expressed in the following language of Justice Teehankee: 'The rule has been time-tested. To allow a respondent in the Comelec to raise belated questions concerning returns at any time during the pendency of the case on review before the Comelec notwithstanding that he has not originally raised such questions before the canvassing board and only when he finds his position endangered would mean undue and endless delays in pre-proclamation proceedings before the Comelec, contrary to the settled doctrine that 'pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.'"

- the basic rule that the canvass and proclamation be terminated once commenced with the least delay since the outcome of the election is of the utmost public interest and should be immediately announced has been carried over in the 1978 Election Code which allows the suspension or annulment of proclamations only in the cases

mentioned in sections 172 to 174 thereof, viz, incomplete returns, tampered or falsified returns and discrepant returns, as correctly held by the Comelec in its March 1st resolution. No such case exists here.

- the Comelec's attempted justification for ordering the examination of the voting records and thereafter "to render a definitive resolution" on the cases in its challenged midnight resolution of May 15, 1980, namely, that

"Respondent's claim that petitioner did not in any way question the validity of the election returns of said votings is of no moment considering that when he assailed the integrity of the elections on the pregnant grounds of fraudulent votes, it in effect explicitly questioned the integrity of the said election returns to be prepared as a consequence,"

is so devoid of factual and legal basis that it cannot be allowed to stand. To engage in a fishing expedition and order the examination of the voting records in the face of its own factual finding that there was "not even a scintilla of evidence" of "fraudulent votes" and against the settled jurisprudence that only in cases of a strong prima facie case is permitted the reception of aliunde evidence other than the face of the returns themselves,[7] certainly constitutes a grave abuse of the Comelec's discretion; and

- it is grave abuse of discretion to keep Omar as the duly elected and proclaimed mayor out of office all this time and to maintain his defeated opponent Alapa as a holdover mayor against the mandate of the electorate and the law (if at all, the elected and proclaimed vice-mayor should have meanwhile taken over as acting mayor).

4. The pre-proclamation, more correctly, post-proclamation, petition to annul Omar's proclamation of February 4, 1980 was filed by Alapa only on February 5, 1980. And the proclamation was upheld and reaffirmed by the Comelec in its extended March 1st resolution as already discussed above. Alapa had already filed his election protest since last February 14th. The majority judgment, therefore, goes against the doctrine and ruling firmly adopted by the Court in the latest case of Arcenas vs. Comelec[8] decided through the Chief Justice only last November 28, 1980 that "It is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable" and "resort (must) be had to the remedy of an election protest or a quo warranto, whichever is proper." Shall the Court go "flip-flopping" too?

5. For the guidance of the Comelec itself as well as of the bar and the electorate, I submit that the Court must hold the line. The doctrine of Arcenas fully applies. With Omar's proclamation and assumption of office as upheld by Comelec itself in the March 1st proclamation, the pre-proclamation case has long been laid to rest and Alapa's remedy is to pursue his election protest. In the language of the late Justice Jose Abad Santos, this is the appropriate case where the Court must firmly use its power of review.[9]

[*] Issued on the eve of the retirement on May 17, 1980 of three of the then 5-member Comelec, namely, Chairman L. B. Perez and Commissioners Venancio S. Duque and Flores A. Bayot.

[1] Annex G, petition, Rollo, p. 56; emphasis supplied.

[2] Idem, Rollo, p. 56; emphasis supplied.

[3] At page 5, main opinion; note in parenthesis supplied.

[4] Main opinion, at page 4.

[5] Main opinion, at page 3.

[6] 47 SCRA 258, 265 (1972); emphasis supplied.

[7] See *Ilarde vs. Comelec*, 31 SCRA 72 (1970).

[8] G.R. No. 54039, citing the precedents of *Venezuela, Villegas and Potencion*; see also *Singco vs. Comelec*, G.R. No. 52830, decided also on Nov. 28, 1980.

[9] *Sumulong vs. Comelec*, 73 Phil. 288, 296 (1941).

DISSENTING OPINION

ABAD SANTOS, J.:

I dissent. The petition should be given due course because the COMELEC's extended resolution of March 1, 1980, (Annex G, Petition) which dismissed the petition of Yasin B. Alapa should stand and that pursuant to the same resolution the remedy of Alapa is an electoral protest. Moreover, it has to be noted that Abolais R. Omar, as a result of the aforesaid resolution took his oath of office as municipal mayor of Madalum, Lanao del Sur, before Justice Mama D. Busran. His title to the office was thus an accomplished fact so that thereafter, the matter ceased to be a pre-proclamation case and the COMELEC's telegram of April 17, 1980 (Annex M, Petition) which authorized Alapa to act as the holdover mayor as well as its resolution of May 15, 1980 (Annex O, Petition) which directed the NBI to examine the genuineness of the thumbprints and signatures in Voting Centers Nos. 3 and 5, as a basis for affirming or annulling Omar's proclamation, have no basis in law.

The proposition that this Court should sparingly use its power of review over the COMELEC because it is an independent constitutional body is correct but this is one case where we should firmly exercise our power because of the flip-flopping resolutions of the COMELEC.

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