

FELIX F. DIAZ, SR., PETITIONER, VS. THE COMMISSION ON ELECTIONS AND JOHN K. S. DAOAS, RESPONDENTS.*G.R. No. L-33378. November 29, 1971*

Ponente: REYES, J.B.L., J.

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Petition to review and set aside a resolution (RR-896) of the Commission on Elections (COMELEC for short) dismissing the petition of Warren Luyaben and Felix Diaz, Sr., for the amendment of all the election returns from the municipality of Sagada, Mountain Province, in connection with the 1970 elections for delegate of said Province to the Constitutional Convention, and for the exclusion from the canvass of all the returns aforesaid, for being spurious, fabricated and/or fictitious. In the course of the proceedings below, Luyaben withdrew from the case, leaving Felix Diaz, Sr., as sole petitioner.

It is uncontroverted that in the elections mentioned, the candidates received in all the municipalities of the Mountain Province except Sagada, the following number of votes:

WILLIAM CLAVER.....	5,001
FELIX DIAZ, SR.	3,433
WARREN LUYABEN.....	3,306
JOHN DAOAS.....	3,291

But the election returns for the 22 precincts in the municipality of Sagada purport to show the following results:

DAOAS.....	2,046
CLAVER.....	1,726
LUYABEN.....	285
DIAZ, SR.	71

If the returns from Sagada are accepted, it is plain that herein respondent Daoas would obtain a large majority over petitioner Diaz; but if said returns are nullified, the latter would obtain a majority of 107 votes over said respondent.

Acting on the original petition filed, with the COMELEC, wherein it was charged that many election inspectors in Sagada had been improperly appointed (because they had been previously found by the House Electoral Tribunal to have deliberately tolerated and abetted the commission of frauds in Sagada in connection with the 1961 elections), and that the elections for convention delegates (3) in said municipality were tainted with fraud and terrorism, and other irregularities, COMELEC ordered the bringing to Manila of the precinct books of voters and CE form 39 for all precincts of Sagada and had the same examined by the fingerprint and handwriting experts of the Commission and the NBI.

After hearing the evidence, the COMELEC found (Resolution RR-896, Annex "E", Petition, pages 23-25) that -?

"It may be gathered even from the statements of witnesses of petitioner that elections were actually held in the 22 precincts of Sagada, but that persons other than the registered voters had voted for some of the registered voters or that some of the registered voters had voted several times. This is also borne out by the findings of the Finger-print-Identification Division of the Commission and the Handwriting experts of the NBI to the effect that quite a number of voters had actually voted in these 22 precincts although some of the votes had been cast by substitute voters. It is, however, to be noted that if we were to consider the thumbprints and signatures that could not be identified as those of persons other than registered voters in most of these 22 precincts, there were more substitute voters than the registered voters. Even if we were to consider the thumbprints and signatures that could not be identified as those of the registered voters in these 22 precincts following the pre-sumption of regularity, still in quite a number of these precincts more substitute voters had voted than the registered voters themselves. But whether we consider the unidentified thumbprints and signatures as those of registered voters or not, the fact remains that many substitute voters had voted in all these 22 precincts. This is a matter of serious concern for it is symptomatic of a grievous malady afflicting our elections in Sagada. Petitioner has called the attention of the Commission to similar frauds and irregularities in Sagada in the past several elections. Sagada has gained a notoriety of its own since massive and large scale frauds therein have been exposed in election protest cases filed with the Courts or the Electoral Tribunals in connection with previous elections. These frauds and irregularities must be curbed or else their perpetrators would continue to make a mockery of the elections in Sagada."

Illegal voting was most glaring in Precincts Nos. 2, 7, 8, 13, 18, 20, 20-A, and most especially in Precinct No. 22, where there were 75 thumbprints and 32 signatures (were) found to be those of persons other than the registered voters as against only 12 thumbprints and 4 signatures definitely identified as those of the registered voters and 11 which could not be identified whether as those of the registered voters or by substitute voters. It is only in Pre-cincts 4, 11, 12, 14, 17 and 19 where majority of the voters who voted were definitely identified as those of the registered voters. The returns from these six precincts must necessarily be upheld as valid returns which should be included in the canvass. But even in these six precincts, the members of the board of inspectors must be called to account for a number of illegal voting in their respective precincts. And more so with the members of the board of inspectors in the other sixteen precincts where the illegal voting had been more numerous."

After concluding that the illegal voting by non-registered persons in the scale shown could only occur because the inspectors were either helpless to prevent the illegal voting or that they had tolerated the same, the COMELEC voted to suspend all the members of the Boards of Inspectors of all the precincts of Sagada for investigation and prosecution if so warranted. Nevertheless, because the votes returned for precincts 4, 11, 12, 14, 17 and 19 of said municipality gave Claver 471 votes, Daoas 511, and Diaz 30, which, added to the votes reported for all the other municipalities, give

CLAVER..... 5,472 votes
DAOAS..... 3,802 votes and
DIAZ..... 3,463 votes,

the COMELEC finally resolved as follows:

(1) To sustain the validity of the returns from Precincts 4, 11, 12, 14, 7 and 19 of Sagada, it appearing that in these precincts more than one-half of those who voted were the registered voters in said precincts and accordingly to uphold the action of the Pro-vincial Board of Canvassers of Mountain Province in including said returns in the canvass;

(2) To rule that with respect to the other sixteen (16) precincts of Sagada, it would not be necessary for the Commission to decide whether or not the returns from said precincts are not true returns or are manufactured returns or that there was no elections in said precincts since the result of the election for delegates for the lone district of Mountain Province would not be affected by the votes cast in said precincts;

(3) To direct the Board of Canvassers to complete the canvass of the returns for the election of delegates to the Constitutional Convention for the lone district of Mountain Province, including in said canvass all the returns from Sagada, but not to proclaim the winning candidates until 5:00 P.M. of 12 April 1971, unless restrained by the Supreme Court.

Thereupon, Diaz appealed to this Supreme Court, which issued a restraining order.

The reports of the fingerprint experts on their examination is to the effect that the Precinct Books of Voters showed that 2,911 votes were registered in all Sagada, and of these 2,188 had reportedly voted and 614 had not; but the thumbprints of 335 were definitely not identical to those shown in CEF-1, while those of 454 were identical; but then 1,508 thumbmarks were blurred, smudged or faint and could not be identified. The examination of the signatures purported to be of these 1,508 voters whose thumbprints could not be analyzed adequately, compared to those of the registry of voters, gave the following results:

Negative (did not tally) 677

Positive 432

No opinion 399.

Thus, of the 2,188 persons reported to have voted in Sagada only 886 were positively identified as being registered voters; while 1,012 were ascertained as not registered voters, and only 399 remained unidentified. Even if these unidentified voters were considered as registered ones, the total number of votes cast by registered voters in Sagada would only be 1,285; yet the returns showed (ante) 2,046 votes for Daoas. Even if all the identified registered voters had cast their votes for Daoas (which is certainly improbable), the returns are plainly untruthful on their face.

A closer examination of the returns of votes cast in Precincts 4, 11, 12, 14, 17 and 19 of Sagada, that the COMELEC sustained as valid because more than 50% of the registered electors voted in said precincts, parallel inconsistencies and improbabilities appear.

In PRECINCT 4, out of 132 votes cast, 73 were found to be by re-registered voters; 44 by unregistered persons; 25 by persons unidentified. Adding those cast by registered voters (73) to those cast by unidentified ones (25) gives a total of only 98 valid votes, and yet in this precinct the returns credit Daoas with 119 votes and Diaz with only 2. Even assuming that all the voters not identified were in fact registered voters, and all those identified and unidentified had voted for Daoas, the returns credit Daoas with more than their combined votes.

In PRECINCT No. 11, we find:

Votes Cast 46

(a) Identified as not registered voters 8

(b) Identified as by registered voters 31

(c) Unidentified or doubtful 7

Total of registered and doubtful (b & c) 38

Credited to Daoas per return ----- 45

PRECINCT No. 12

Votes Cast ----- 92

(a) By non-registered voters ----- 25

(b) Identified as by registered voters ----- 49

(c) Not identified or doubtful ----- 18

Total of (b) & (c) ----- 67

Credited to Daoas ----- 89

PRECINCT No. 14

Votes Cast ----- 57

(a) Identified as not by registered voters ----- 11

(b) Identified as by registered voters ----- 33

(c) Not identified or doubtful ----- 13

Total of (b) & (c) ----- 46

Credited to Daoas per return ----- 55

PRECINCT No. 17

Total Votes Cast ----- 96

(a) Identified as by not registered ----- 28

(b) Identified as by registered voters ----- 60

(c) Unidentified ----- 8

Total of (b) & (c) ----- 68

Credited to Daoas per return ----- 85

PRECINCT No. 19

Total Votes Cast ----- 154

(a) By not registered voters ----- 42

(b) By registered voters ----- 83

(c) Not identified ----- 29

Total of (b) & (c) ----- 112

Credited to Daoas ----- 118

Credited to Diaz ----- 26

In all these six (6) precincts, the total votes cast by identified registered voters were 329; by unidentified persons

100, or a total of 429. In contrast, the returns credit Daoas with 511 votes, i.e. 82 more than the sum of registered and unidentified voters lumped together. 158 votes were cast by persons identified as not registered.

Thus the analysis of the returns for the six precincts validated by the Commission leads to the same conclusion as that derived from a consideration of all the returns from Sagada, to wit: that even if all the votes cast by persons identified as registered voters were to be added to the votes cast by persons who can not be definitely ascertained as registered or not, and granting, *ad arguendo*, that all of them voted for respondent Daoas, still the resulting total is much below the number of votes credited to the latter in the returns for Sagada. Plainly, the said returns can not be relied upon and should be regarded as fictitious or manufactured and excluded from the canvass of the votes cast for the different candidates in the district. This conclusion becomes all the more imperative when account is taken of the additional circumstances that (a) of the 2,188 ballots cast in Sagada in the 1970 election for convention delegates, nearly one-half (1,012) were cast by persons definitely identified as not registered therein, and this number may even increase because some of the 399 thumbprints and/or signatures that could not be identified may have been cast by non-registered persons; (b) that such wholesale illegal voting could not have taken place without the connivance of the inspectors, either maliciously or through intimidation, as found by COMELEC in its resolution and the true results can not be ascertained; (c) that 16 of the inspectors and poll clerks who acted as such in the 1970 elections in Sagada had been found by the House Electoral Tribunal to have "deliberately tolerated and abetted the commission of frauds" in the 1961 elections (H.E.T. Case No. 145); (d) that Sagada has been notorious for massive and large scale frauds in the past, as found by COMELEC itself; and (e) that the resolution of the COMELEC in this case contradicts that which it adopted in connection with the returns from Karomatan, Lanao, all of which were rejected and excluded from canvass on account of similar anomalies (Usam vs. Comelec, G. R. No. L33325), when justice and equity imperatively demand that there should be no discrimination in the application of the rules by COMELEC.

It is pleaded by respondents that the rejection of the Sagada returns would result in the disfranchisement of a large number of legitimate voters. But such disfranchisement would only be provisional, subject to the final determination of the validity of the votes at the protest that may be filed with the Constitutional Convention.

In the leading case of *Gardiner vs. Romulo*, 26 Phil. 521, this Court quoted with approval from a similar case, *Russell vs. State*:

"In *Russell vs. State* (11 Kan. 236), the court said in part: 'Now comes the contestant and says that the record (of the election board) is a lie, and proves that 127 of the names so recorded as the names of legal voters are fictitious, and that 127 spurious ballots were cast into the ballot box. In other words, he proves absolutely that nearly one-fourth of this record is false. And this falsehood cannot have been the result of ignorance or mistake. It is not possible that this could have happened without the knowledge, consent, and connivance of both the clerks, and some, at least, if not all, of the judges. Surely, there was criminal culpability if not actual, intentional wrongdoing on the part of all the officers of that election board. But, says the contestee, the whole record is not shown to be false. Reject the 127 votes proved to have been spurious, and accept the balance not thus proven. In other words, accept all the record not proved untrue. If the falsehood resulted from mere mistake, there would be great force in this demand. So also, if the falsehood resulted from the fraud or wrong-doing of others than the board. But where the recording officers are proved to have knowingly made a largely false and fraudulent record, how can we place reliance on any of the record? Falsus in uno, falsus in omnibus.

'It doubtless happens that some legal voters are by this decision deprived of the benefit of their votes. Perhaps there were honest votes cast, enough to have given the majority to Fredonia. A large majority of the citizens of Fredonia are honest men, were ignorant of the fraud which was being perpetrated, and are doubtless as much grieved as we at this terrible trespass on the purity of the ballot box. May this example preach its lesson, not

alone to them, but equally to every citizen of the State. They who in Rome watched and kept the sacred fire were vestal virgins. Equally pure should they be who watch and guard that which is far more to us than mystic altar fires.'" (Gardiner vs. Romulo, 26 Phil. 521, 559-560)

And this Court concluded:

"In concluding this extremely disagreeable task, we desire to state that we are aware of the seriousness of disenfranchising the innocent electors of a whole precinct for acts done by others. We are not unmindful of the force of the argument that if courts set aside the returns from a precinct for light and trifling causes, it will encourage the unscrupulous to seek profit by the honest mistakes of election officers committed in the conscientious performance of their duties. On the other hand we appreciate the importance to the people of enforcing those statutory provisions which the legislature have provided to insure a free and undefiled expression of the popular will at the polls, to the extent that fraud may not flourish under the guise of honesty. The right of suffrage is of comparatively recent origin in this country. If at this early stage of its existence, the courts are to countenance such bold disregard of the law as was exhibited in the municipality of Camiling at the last general election, representative gov-ernment will soon become a farce; a mere catch-word or an empty illusion. Regardless of the political unrest engendered by such deplorable litigation as the present and its enormous expense to the contestants, we are of the opinion that a firm stand against fraudulent elections must now be taken, once for all. If no encouragement is offered to vicious practices, they will, at least, never grow larger.'" (Gardiner vs. Romulo, 26 Phil. 521, 565-566) "

This doctrine is all the more obligatory when it is borne in mind that what is involved in the case before us is the election of delegates to the Constitutional Convention, the men that are to frame the amend-ments to the fundamental law of the state that is to govern the lives of our citizens in years to come. These men must attend the convention deliberations backed by unimpeachable credentials.

As already observed, We are not here dealing with occasional or sporadic irregularities that succeeded in surprising the good faith of the election inspectors. All the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters in Sagada to cast their ballots in all the precincts of Sagada, and to count such spurious ballots and take them into account in the returns. There is thus no alternative but to consider said returns as deliberately prepared with a view to alter the real results of the voting, through either malice or coercion. In either case, the returns must be deemed manufactured or falsified, without any title to be included in the canvass of votes for delegates by the Provincial Board of Canvassers for the Mountain Province.

WHEREFORE, the resolution appealed from is reversed in so far as it directs that the returns from the Municipality of Sagada for the 1970 elections for convention delegates be included in the computation by the Board of Canvassers; and the Commission on Elections is hereby directed to order the Board to exclude said returns from the canvass. Let the records be returned to the Commission on Elections for further proceedings in conformity with this decision. Costs against private respondent John K. S. Daois.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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