

THE NACIONALISTA PARTY ET AL., PETITIONERS, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. L-3521. December 13, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is a petition for mandamus to compel the Commission on Elections to exclude (not to count) the votes cast for Senators in the provinces of Negros Occidental and Lanao during the last elections in the canvass to be performed by it pursuant to section 166 of the Revised Election Code. After due hearing on December 9, 1949, we denied the petition. This opinion is handed down to expound our decision.

The allegations of the petition which are admitted in respondent's answer are in substance as follows:

The petitioner Nacionalista Party is a national political party with official candidates for all the offices involved in the last national elections, and the other petitioners are the eight candidates for senators of said party. The respondent Commission on Elections is an entity created by the Constitution and charged with the duty of enforcing and administering all laws relative to the conduct of elections, with the power to take proper measures to insure free, orderly, and honest elections throughout the Philippines.

Several weeks before the holding of the last national elections, some of the petitioners made representations to the respondent that in view of the state of terrorism and political persecutions existing in the provinces of Negros Occidental and Lanao against the persons of the candidates, leaders, and sympathizers of the petitioners, intended to prevent the free expression of the voters' will in the national elections scheduled for November 8, 1949, and considering the rampant violation of the Election Law which were committed in said provinces to the prejudice of the petitioners during the two registration days, consisting among others of the padding of the electoral census in many of the municipal districts of Lanao, it had become impossible to hold free, orderly, and honest elections in said provinces.

In view of said representations the respondent Commission, after considering the evidence presented before it, approved a resolution on November 4, 1949, wherein it found in substance (1) that in Negros Occidental the provincial governor, who was the political leader in that province of one of the political parties (the Liberal Party), organized and fully armed special agents, some of whom were irresponsible minors with no training in discipline; that said agents, who owed loyalty to the provincial governor and followed blindly the latter's orders, arrested without warrants of arrest, threatened, intimidated, and assaulted the political leaders and followers of the opposition; that in some places the registration of the voters was made without the presence of the opposition inspectors because of such intimidation; that candidates and political leaders of the opposition had to evacuate to Iloilo, Manila, and other places for security reasons; that under the tense political situation in the province, the armed special agents headed by the provincial governor had full control of the election in said province; and that in the light of these facts the Commission believed that a clean, orderly, and honest election could not be held in the province of Negros Occidental; and (2) that in the province of Lanao, whole sale frauds were committed in the

1947 election consisting in the registration in various municipal districts of thousands of fictitious voters; that in some municipal districts the number of registered electors even exceeded the number of inhabitants; that what happened in the 1947 election in Lanao was bound to be repeated in the 1949 election, in view of the fact that the election precincts where there was fraudulent registration of voters were situated in distant places, the great majority of them in jungles without any means of communication and beyond the supervision of the representatives of the Commission on Elections. Upon these findings the Commission recommended to the President of the Philippines the postponement of the election in the entire province of Negros Occidental and in various specified municipal districts of Lanao.

The President chose not to follow said recommendation, and did not suspend the elections in the two provinces, in question.

Petitioners, further allege, but respondent denies, that the rampant terrorism and irregularities mentioned in the resolution and recommendation of the Commission on Elections "continued to exist during the last election according to reports duly submitted before the respondent Commission on Elections"; that, consequently, the elections held in the provinces of Lanao and Negros Occidental are null and void; and that therefore the votes cast therein should not be counted.

During the hearing of this case we were informed by counsel for the respondent that the petitioners had presented before the Commission on Elections a petition, which that body had not yet resolved, seeking the annulment, or exclusion from the canvass, of the votes cast for senators not only in the provinces of Negros Occidental and Lanao but also in five other provinces where, it is alleged, there had been no free, orderly, and honest elections.

As the court of last resort we are now called upon to define and delimit the powers of the Commission on Elections under the Constitution and the Election Law. Specifically, the question to decide is whether the Commission on Elections is empowered to annul an election in any political division or subdivision because of alleged terrorism or fraud committed in connection therewith.

During the oral argument counsel for the petitioners sought to impress upon us the grave political crisis with which the nation is now confronted as a result of the last elections, during which, it is denounced, the sovereign right of the people freely and honestly to elect their officers was not respected but brazenly violated in several provinces by the party in power; and that this Tribunal, as the bulwark of the people's right, is in duty bound to vindicate it and preserve democracy in this country. We are not unmindful of the grave political situation, nor are we insensitive to petitioners' vehement plea for redress. At the same time, it must ever be borne in mind that we are not omnipotent; our powers and jurisdiction are circumscribed by law, which we cannot transcend. We cannot correct an alleged abuse of power on the part of others by means of a similar abuse of our own powers; we cannot and must not assume the role of a dictator to forestall dictatorship; we cannot transcend the law to foster the reign of law. Our duty is to dispense justice under the law. We can only perform faithfully our assigned duty and expect others to perform theirs. Constitutional government can be preserved and maintained if every officer, who has sworn to preserve and defend the Constitution, keeps his solemn oath faithfully.

It is in that consciousness that we now proceed to resolve the question involved in this case.

Section 2 of Article X of the Constitution provides:

"The Commission on Elections 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. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials. All law-enforcement agencies and instrumentalities of the Government,

when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court."

Supplementing and in a way implementing that constitutional provision are, in so far as pertinent here, sections 8 and 166 of the Revised Election Code, which read as follows:

"SEC. 8. Postponement of election.—When for any serious cause the holding of an election should become impossible in any political division or subdivision, the President, upon recommendation of the Commission on Elections, shall postpone the election therein for such time as he may deem necessary.

"SEC. 166. Canvass of votes for President, Vice President and Senators.—Thirty days after the elections have been held, the Commission on Elections shall meet in session and shall publicly count the votes cast for Senators. The registered candidates in the number of Senators required to be elected who obtained the highest number of votes shall be declared elected. A copy of such statement shall be furnished to the Secretary of the Senate and to each elected candidate."

Germane to the above constitutional and statutory provisions is section 11 of Article VI of the Constitution, which reads as follows:

"SEC. 11. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective, Members, Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman."

What are the implications of the power vested in the Commission to enforce and administer all laws relative to the conduct of elections and to insure free, orderly, and honest elections? Does it include the power to annul an election which may not have been free, orderly, and honest?

It seems clear from the context of the constitutional provision in question as well as from other provisions already quoted above that such power is preventive only and not curative also; that is to say, it is intended to prevent any and all forms of election fraud or violation of the Election Law, but if it fails to accomplish that purpose, it is not the Commission on Elections that is charged with the duty to cure or remedy the resulting evil but some other agencies of the Government. We note from the text that the power to decide questions involving the right to vote is expressly withheld from the Commission although the right to vote is provided in the Election Law, the enforcement and administration of which is placed in the exclusive charge of the Commission. Parallel to the withholding of such power from the Commission is the vesting in other agencies of the more inclusive power to decide all contests relating to the election, returns, and qualifications of the members of Congress, namely, the Electoral Tribunal of the Senate in the case of the senators and the Electoral Tribunal of the House of Representatives in the case of the members of the latter. Election contests involving provincial and municipal officials are entrusted to the courts. (Sections 172 et seq., Revised Election Code.) The power to decide election contests necessarily includes the power to determine the validity or nullity of the votes questioned by either of the contestants.

Thus, in so far as contests relating to the election of senators and representatives are concerned, not even this court is empowered to intervene.

At bottom this case involves a senatorial election contest insofar as the petitioners who are candidates for senators

of the Nacionalista Party seek to exclude or annul the votes cast for senators during the last elections in Negros Occidental and Lanao, with the notorious defect that the opposing candidates have not been impleaded. At this stage the obvious intent of the petitioners is to avoid, if possible, the necessity on their part of filing an election protest before the Electoral Tribunal of the Senate. But as we construe the pertinent provisions of the Constitution and of the Election Law, neither the Commission on Elections nor this court is empowered to forestall and much less decide the impending contest. The jurisdiction over such case is expressly and exclusively vested by the Constitution in the Electoral Tribunal of the Senate. Implementing the constitutional mandate on the subject, section 182 of the Revised Election Code provides:

"In contests under their respective jurisdiction, the Electoral Tribunals of the Senate and the House of Representatives shall have and exercise the same powers which the law confers upon the courts, including that of summarily punishing contempts, ordering the taking of depositions, the arrests of witnesses for the purpose of compelling their appearances and the production of documents and other evidence, and the compulsory payment of costs and expenses which it may have assessed against the parties and their bondsmen; of giving notices of its decisions, resolutions, and orders and enforcing them through the officials charged with the enforcement of judicial orders; and of making the necessary rules for the effective performance of their constitutional functions. All the expenses of the said Tribunals and of their respective members shall be paid from the funds of the House of Congress to which each Tribunal pertains, and their telegrams and correspondence shall be transmitted free of charge."

Section 166 of the Revised Election Code hereinabove quoted constitutes the Commission on Elections as a national board of canvassers with respect to the election of senators, who under section 2 of Article VI of the Constitution are chosen at large by the qualified electors of the Philippines. In the absence of any provision in the law making the members of a canvassing board judges of the election and giving them full power and authority to approve thereof or set it aside and order a new election, "such a board is considered to be merely a ministerial body, which is empowered only to accept as correct returns transmitted to it, which are in due form, and to ascertain and declare the result as it appears therefrom. Questions of illegal voting and fraudulent practices are passed on by another tribunal. The canvassers are to be satisfied of the genuineness of the returns—namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied, however, they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the election. * * *. Where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast, the board will not be compelled to canvass them." (18 Am. Jur., Elections, sec. 254, pp. 346-348.)

It is contended for the petitioners that since the respondent Commission itself had recommended to the President the postponement of the election in the whole province of Negros Occidental and in certain specified municipal districts of Lanao because it was deemed impossible to hold a free, orderly, and honest election therein, the respondent Commission should be ordered to consider null and exclude the votes cast for senators in the election held in said provinces.

We do not deem it proper for us to determine the legal effect of the Commission's recommendation to the President to postpone the election in said provinces; that is to say, whether or not it was mandatory on the President to follow said recommendation and, in the affirmative case, whether the failure of the President to do so would render void the election in those places. Under the Constitution, "questions of illegal voting and fraudulent practices are passed on by another tribunal," the Electoral Tribunal of the Senate. Such questions will in all probability be raised before said tribunal at the proper time, and we must not prejudge an issue over which we have no jurisdiction. Whether the votes for senators in Negros Occidental and Lanao are valid or invalid is a question which neither the Commission on Elections nor this court is empowered to decide.

Upon the facts and the law as above expounded, we have no authority to grant the remedy prayed for. The writ of mandamus lies "when any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law." (Section 3, Rule 67.) We have seen that it is not the duty of the Commission on Elections to pass upon the legality of an election alleged to have been tainted with fraud, intimidation, or other violation of the Election Law. On the contrary, it is its ministerial duty to count the votes appearing in the election returns after satisfying itself of the genuineness of said returns. What in effect the petitioners seek is to require the respondent to desist from performing a ministerial duty.

The petition is denied, with costs against the petitioners.

Moran, C.J., Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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