

ALFONSO KOTICO, IRENEO FERINAL, EPIFANIO BERNABE, ROBERTO MOCAYA, PEDRO FLORES, AQUILINO JAMIRO, VIRGILIO CANOY, GEORGE PAANO AND GUILLERMO BURGOS, PETITIONERS, VS. THE COMMISSI...*G.R. No. L-29465. September 30, 1976*

Ponente: FERNANDO, J.

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As a result of the election held on November 14, 1967 for municipal officials in the newly created municipality of Don Carlos in the province of Bukidnon, the above two certiorari petitions were filed against the Commission on Elections[1] existing under the 1935 Constitution. The first one[2] assailed the validity of its resolution of December 21, 1967 directing the Provincial Board of Canvassers of Bukidnon to canvass the election returns of the new municipality of Don Carlos of that province disregarding that submitted for Precinct No. 20 thereof.[3] Accordingly, that directive was followed by the Provincial Board of Canvassers, and the private respondents were declared as winners in the first local election.[4] The reason for excluding the votes cast for such precinct was a report received by respondent Commission that after almost completing the counting, reading, and appreciating the ballots therein by the board of election inspectors, a group of armed men entered the polling place, mauled the chairman of the board and then snatched the ballots box, running away with it.[5] For petitioners, such an order amounted to a grave abuse of discretion as the tally sheets of such precinct duly signed by the chairman and the poll clerk of the board of election inspectors had been recovered.[6] They prayed, therefore, in a petition filed with respondent Commission to have a new canvassing of the returns, the winners to be proclaimed in accordance with its result. It was denied principally on the ground that there was no appearance of the parties either personally or through counsel.[7] Then came a motion for reconsideration of such resolution, which was granted.[8] After hearing the parties, they were informed by respondent Commission that it would not act on the matter in view of the absence of precedent to guide it, as well as the absence of any "election return" for such precinct.[9] It was such failure of the Commission on Elections to decide the question raised that resulted in the filing of this petition. Respondent Commission on Elections, in its answer, accepted only in part some of the factual allegations but premised its failure to act on the ground that subsequent to the hearing of such urgent petition on July 20, 1968, there were numerous pleadings filed and subsequent error discovered as regards another precinct in such municipality. It prayed, therefore, for the dismissal of the petition particularly on the ground that it was prematurely filed.[10] There was an answer likewise filed by private respondent Palma, through Attorney Jose W. Diokno, wherein it was pointed out that the alleged tally sheet on which the petition was based was "not a valid document" as admitted by respondent Commission in an order of September 26, 1968.[11]

In the other petition, a certiorari by way of review,[12] filed about a month and a half later, there was this clear manifestation of its being well-nigh identical to the former special civil action. Thus: "This [appeal], and the [certiorari, prohibition and mandamus] proceedings in G.R. No. L-29465, are closely related or practically treat the same subject-matter, praying for the same relief or remedies, involving the same parties, the same facts, and

substantially the same questions or issues. For, as we beg for leave in the Certiorari, Prohibition and Mandamus action to pray that the inaction of the Commission on Elections be considered as already a denial of petitioners' petition in its own Case RR-613 and said special civil action be considered as an appeal from such denial, as matters now stand, the Commission's decision under appeal is a denial of petitioners' urgent petition." [13]

It cannot be denied that as of the time of the filing of these petitions about the close of 1968, the legal question raised, both under the then existing Election Code [14] concerning the powers of the Commission on Elections created under the 1935 Constitution, [15] presented questions that had an element of novelty. Moreover, it was not unusual during such period considering the length of time election protests were decided for candidates to rely on an expanded concept of the powers of the Commission on Elections to prevent the persons proclaimed elected from assuming office based on the ground that serious irregularities vitiated the electoral polls. [16] Since then, however, there had been radical changes. There is a newly created independent Commission on Elections under the present Constitution [17] which took effect on January 17, 1973. [18] It may be mentioned likewise, that a new election for municipal officials did take place in November of 1971. The term of those elected and proclaimed in 1967 had thus expired. Petitioners clearly had lost their standing.

WHEREFORE, the two petitions are dismissed for being moot and academic.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] The Provincial Board of Canvassers of Bukidnon was likewise named as respondent along with Teodulo Palma, Ponciano Barriga, Santos Lagura, Luzonia Aban, Asterio Garcia, Fernando Ocaya, Fred Olipendo, Francisco Bugayong, Mariano Rajal and Santos Verzosa.

[2] L-29465.

[3] Petition in L-29465, par. IV.

[4] Ibid, par. V.

[5] Ibid, par. VI.

[6] Ibid, pars. VII-IX. There were likewise affidavits executed by the provincial inspectors of both the Nacionalista Party and the Liberal Party attesting to the correctness of the entries.

[7] Ibid, par. XI.

[8] Ibid, par. XIII.

[9] Ibid, par. XIV.

[10] Answer of respondent Commission.

[11] Answer of respondent Palma.

[12] G.R. No. L-29624.

[13] Petition in L-29624, 2.

[14] Republic Act No. 180, as amended (1947).

[15] According to Article X, Section 1 of the 1935 Constitution: "There shall be an independent Commission on Elections composed of a Chair-man and two other Members to be appointed by the President with the consent of

the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution. Until the Congress shall provide otherwise, the Chairman of the Commission shall receive an annual salary of twelve thousand pesos, and the other Members ten thousand pesos each. Their salaries shall be neither increased nor diminished during their term of office."

[16] Cf. *Antonio, Jr. v. Commission on Elections*, L-31604, April 17, 1970, 32 SCRA 319.

[17] According to Article XII C, Section 1(1) of the present Constitution: "There shall be an independent Commission on Elections composed of a Chairman and eight Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age and holders of a college degree. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years."

[18] Cf. *Javellana v. The Executive Secretary*, L-36142, March 31, 1973, 50 SCRA 30.

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