

TAHIR LIDASAN, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF PARANG, COTABATO, AND SANSALUNA BIRUAR, RESPONDENTS.

G.R. No. L-28473. March 06, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The present suit is a special civil action for certiorari with preliminary injunction filed by Tahir Lidasan, a mayoralty candidate for Parang, Cotabato in the 1967 elections.

Petitioner alleged that on December 27, 1967 the municipal board of canvassers of Parang, Cotabato, met to canvass; that on December 28, 1967, it rejected the re-turns of Precincts 15, 16, 23 and 240 on the ground that these were obviously manufactured, applying the rule of statistical probability in *Lagumbay v. Climaco*, G.R. No. L-25444, January 310 1966; that on December 29, 1967, it reversed itself, upon order of the Commission on Elections, stating that the doctrine in the *Lagumbay* case does not apply to the returns in question which did not contain 100% voting for one party. And thus the municipal board of canvassers counted said returns. Hence, on the same day, the instant action was filed, to assail respondent Commission on Elections' order to canvass the aforesaid re-turns and to declare all acts and proceedings in connection therewith null and void.

We required the respondents to answer.

Respondent Commission on Elections filed its answer on January 8, 1968. Respondent Sansaluna Biruar, the opposing candidate, filed his answer on January 17, 1968.

After petitioner filed his reply, the case was set for hearing on February 21, 1968. Respondent Biruar; however, on January 29, 1968, filed a manifestation and motion, stating that on January 9, 1968, petitioner filed an election protest in the Court of First Instance of Cotabato against him, and thus, the present case for certiorari should be dismissed for being moot and academic.

Petitioner, as required by Us, filed his comment thereto, which maintained that his protest expressly stated that he was not thereby abandoning the present case.

On February 21, 1968, We heard this case, as scheduled.

The protest filed by Tahir Lidasan, petitioner here-in, impugned the results of the election, canvass and proclamation of the protestee, Sansaluna Biruar, because, he alleged, in the elections, and election returns, of Precincts Nos. 14, 15, 16, 23 and 24 of Parang, Cotabato, terrorism, fraud, anomalies, irregularities and other violations of the election law, were perpetrated. From this it is evident that petitioner has a sufficient remedy in the ordinary course of law, that is, the protest, considering that he freely resorted to the same and that he has not shown, or even contended in the record, that said remedy of protest is not speedy or adequate enough for the purpose he seeks.

A special civil action of certiorari does not lie where a plain and speedy remedy lies in the ordinary course of law (Sec. 1, Rule 65, Rules of Court). In filing the protest, subsequent to the filing of this suit, petitioner has resorted to an ordinary remedy in the course of law. Since a litigant cannot avail of both a special civil action and an ordinary remedy, the present action cannot prosper.

Assuming, even, that the protest is not speedy enough the petition herein fails on the merits. During the hearing, petitioner's counsel made an offer of evidence of photostats to show the returns that he claimed were obviously manufactured. The same is sought to prove that in the returns of the precincts in question, petitioner obtained zero and respondent Biruar garnered practically all the votes for mayor. It however appears and is admitted that, in the same returns, candidates of both major parties, for other offices such as those of Senators, received a substantial number of votes. It should also be mentioned that the Court's attention was called to the fact that in other precincts, the returns showed the reverse, that is, for mayor petitioner herein got practically all the votes and respondent Biruar had zero.

It is clear, therefore, that the doctrine in *Lagumbay* finds no application herein. For such doctrine contemplated a situation where there is shown in the returns totally 100% voting for all the candidates of one party and zero for those of the other. Said this Court therein:

"It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates of one party garnered all the votes, all of them receiving exactly the same number; whereas all the eight candidates of the other party got precisely nothing."

No grave abuse of discretion, therefore, was committed in the inclusion of the returns herein involved, in the canvass.

WHEREFORE, the petition for certiorari is hereby dismissed. With costs.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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