

RE: COMELEC RESOLUTION NO. 2521 (IN THE MATTER OF PETI-TIONING THE SUPREME COURT TO INITIATE DISCIPLINARY ACTION AGAINST THE HON. JOSE T. PINON, RTC, BRANCH V, BONGAO, TAWI--TAW...

A.M. No. 92-12-916-RTC. July 08, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Comelec Resolution No. 2521 seeks to impose administrative disciplinary action against respondent Judge for issuing an allegedly illegal order and for gross ignorance of the law.

The antecedent facts as culled from the records are as follows:

Akmad J. Sana, Harkin Que, Hadji Otong Ayub and Samuel Bani filed a petition with the Commission on Elections (COMELEC), docketed as COMELEC Case No. UND 92- 245[1] for their official proclamation as vice-mayor and councilors of Bongao, Tawi-Tawi as a result of the May 1992 elections, alleging, among others, that despite their victory in said elections, the Municipal Board of Canvassers of Bongao failed to proclaim them as the duly elected vice-mayor and councilors.

On July 6, 1992, Harkin Que filed a petition for mandamus before the Regional Trial Court, Branch V, Bongao, Tawi-Tawi, presided by respondent Judge, docketed as CV Case No. 18-5, to compel the Municipal Board of Canvassers of Bongao to declare Harkin Que as a duly elected councilor of Bongao claiming that he placed number eight (8) among the winning candidates for councilors. It appears that the Board of Canvassers had previously proclaimed the first five (5) winning candidates for councilor.[2]

On July 22, 1992, the other candidates for councilors, namely, Idlana Mangona and Erong Udjid filed a motion to dismiss the mandamus case on the ground that the issue raised therein involved a pre-proclamation controversy over which the COMELEC had already taken cognizance.[3]

On September 22, 1992, respondent Judge issued an order directing the Municipal Board of Canvassers to convene within five (5) days from the promulgation of said order and to proclaim Harkin S. Que as the number eight duly elected councilor of Bongao. Said Order also directed all the respondents to jointly and severally pay Harkin S. Que moral, nominal, and exemplary damages, as well as attorney's fees, in the total amount of P145,000.00.[4]

On September 28, 1992, a petition was filed with the COMELEC by Amilajed Idjirani, Saipada Sangkula, Manuel Magbanua and Bantela Abubakar, docketed as SPA 92-353, alleging that there was a failure of elections in Precinct Nos. 44 and 43-A in Bongao affecting the positions of Vice-Mayor and the number six (6) to eight (8) slots for the positions of councilors.[5] The First Division of the COMELEC in its Resolution in UND 92-245 promulgated on September 25, 1992, advised the parties - the petitioners and intervenors/oppositors - to seek redress with the COMELEC En Banc.[6] The COMELEC then ordered the setting of the hearing of the cases on

October 15, 1992.[7]

On October 14, 1992, Harkin S. Que filed an Opposition in SPA 92-353 alleging that there was no report of any untoward incident that would warrant a declaration of failure of election in Precinct Nos. 44 and 43-A.[8]

Meanwhile, a motion for contempt was filed against the Board of Canvassers of Bongao in the Mandamus case for its failure to proclaim Harkin S. Que as a duly elected councilor. Atty. Wynne Asdala of the COMELEC who was assigned to represent the Board of Canvassers of Bongao, moved for the reconsideration of the contempt order. However, the motion for reconsideration was denied in the order of respondent Judge dated October 27, 1992.[9] In the same order, the members of the Board of Canvassers were declared in contempt of court for allegedly defying his order dated September 22, 1992. Simultaneously, respondent judge issued a warrant of arrest against the members of the Board and directed their commitment to the municipal jail until they shall have proclaimed Harkin S. Que as number eight (8) councilor and paid the amount of P145,000.00 in damages.[10] In view of their arrest, the members of the Municipal Board of Canvassers were prevented from boarding the plane for Manila to attend the hearing of the COMELEC in SPA 92-410 and SPA 92-353.[11]

On the same day, October 29, 1992, respondent Judge issued another order which reads as follows:

"An order was issued this morning adjudging Idlana Mangona, Abdunnasser Hadjiula and Ujid Erong, for contempt of court and the court ordered for their arrest until they comply with the Order of the Court, dated September 22, 1992.

Idlana Mangona, Abdunnasser Hadjiula were arrested soon thereafter and at 8:45 A.M., they submitted a duplicate original copy of the proclamation paper en banc of Harkin S. Que as the no. 8 councilor for Bongao, Tawi-Tawi.

That despite of their proclamation made of Harkin S. Que, the respondents in this case were ordered to pay to the petitioner Harkin S. Que, the sum of P145,000.00 by way of damages.

In a receipt signed by Harkin S. Que furnished to this court dated October 29, 1992, acknowledging the receipt of the sum of P145,000.00 from Fauzia M. Hadjiula, the wife of Municipal Treasurer Abdunnasser Hadjiula in payment for the damages cited in Special Civil Action No. 18-5 for Mandamus.

WHEREFORE, the Court, finding that respondents, Idlana Mangona and Abdunnasser Hadjiula having complied with the Order of the Court dated September 22, 1992, thereby Orders the release of said Idlana Mangona and Abdunnasser Hadjiula from custody and the Order of the Court citing them in contempt of court is hereby ordered LIFTED."[12]

In the aftermath of the above-described events, the COMELEC issued Resolution No. 2521. In said resolution, the COMELEC expressed its view that respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion:

"a) In denying the motion for reconsideration filed by the Commission on Elections and ordering the incarceration of the Municipal Board of Canvassers, as in fact they were detained and continued to be detained, had they not prepared and submitted under duress a duplicate original copy for the proclamation of Mr. Harkin Que as the No. 8 councilor for Bongao, Tawi--Tawi and paid the exorbitant amount of One Hundred Forty Five Thousand Pesos (P145,000.00) by way of damages on the basis of an illegal court order;

b) For taking cognizance of a pre-proclamation controversy case which is within the exclusive jurisdiction of the Commission of Elections under Sec. 3, par. c, Art. IX, Constitution;

c) For violation of Section 281, par. (f), Article XXII, quoted as follows:

Sec. 261 Prohibited Acts - The following shall be guilty of an election offense:

x x x x x x x x.

(f). Coercion of election officials and employees - Any person who, directly or indirectly, threatens, intimidates, terrorizes or coerces any election official or employee in the performance of his election functions or duties."[13]

In his comment on COMELEC Resolution No. 92-2521 as required by this Court, respondent Judge avers that the case at bar is not a pre-proclamation controversy because a proclamation of winning candidates for the 1991 municipal elections in Bongao, Tawi-Tawi was in fact made by the members of the Board of Canvassers on May 24, 1992.[14] On the aforementioned date, the mayor and five municipal councilors were proclaimed by the Board leaving out the vice-mayor and the candidates obtaining the 6th to 8th highest number of votes. He likewise contends that because a proclamation was made by the Municipal Board of Canvassers, it was the ministerial duty of the Board to proclaim all the winning candidates after the canvass of votes had been completed.[15]

We disagree.

Respondent Judge does not dispute the fact that the proclamation made by the Municipal Board of Canvassers of Bongao, Tawi-Tawi on the 24th of May 1992 did not include those candidates obtaining the 6th to 8th highest number of votes, among whom were petitioners in Comelec Case RTC UND 92-245. In other words, only a partial proclamation as authorized by Section 247 of the Omnibus Election Code[16] was made on that day. Under the aforecited section, the Commission may, motu proprio or upon filing of a verified petition and after due notice and hearing, order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy. Clearly, candidate Harkin Que, who filed a case for contempt docketed as Special Civil Action No. 18-5 for mandamus, was never proclaimed by the Municipal Board of Canvassers and there was no ministerial duty on the part of the Board to proclaim him prior to a resolution of the petitions made by various parties in the Municipal Elections before the Commission on Elections.

Under the circumstances above described, and in consonance with the above-stated legal provision, it is patently evident that the controversy brought before the respondent Judge was a pre-proclamation controversy outside of the jurisdiction of the Regional Trial Court.

"Sec. 241. Definition. - A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns."

Matters included in the sections cited in the definition of pre-proclamation controversies encompass delay, loss, or destruction of election returns;[17] material defects in election returns;[18] tampering or falsification of election returns;[19] and the presence or absence of discrepancies in election returns.[20] Since it had been alleged that possible discrepancies in election returns in Precinct No. 45 of said municipality might affect the results of the election, the members of the Board of Canvassers were well within the authority vested upon them by Section 241 of B.P. 881. Controversies of the nature involved in the instant case are within the exclusive and original jurisdiction of the Commission on Elections. This constitutional grant of power to the COMELEC is so fundamental that it would be difficult for this Court to situate respondent judge's actions within the sphere of an ordinary error of judgment.[21] Judges are expected to be knowledgeable of those jurisdictional areas mapped out and reserved by the Constitution exclusively upon certain quasi-judicial bodies, particularly the constitutional commissions. These jurisdictional boundaries are laid principally for the purpose of avoiding controversies such as the one involved in this case. Specifically, in the case of pre-proclamation controversies, the Commission on Elections, under the Omnibus Election Code, is mandated by law to exercise exclusive jurisdiction over all such

controversies.[22]

This case would, therefore, have been avoided if the respondent Judge had made it a point to acquaint himself with applicable Constitutional provisions involving the Commission on Election's power and functions and the provisions of the Omnibus Election code on pre-proclamation controversies. In *Zaldivar vs. Estenzo*[23] this Court emphatically ruled that since the Commission on Elections is vested by the Constitution with the exclusive charge of the enforcement of all laws relative to the conduct of elections, assumption of jurisdiction by the Regional Trial Court over a case involving enforcement of the Election Code "is at war with the plain constitutional command, the implementing statutory provisions and the hospitable scope afforded such grant of authority so clear and so unmistakable in recent decisions." [24] In the light of the present Constitution and the Omnibus Election Code which have in fact broadened the powers and functions of the COMELEC, we cannot see how respondent judge could have issued any of the assailed orders in Special Civil Action No. 18-5 under the color of any of our existing laws. His interference with the Board's proceedings in SPA Nos. 92- 410 and 92-353, the issuance of a warrant of arrest to prevent said Board from boarding their plane in order to attend en banc proceedings of the COMELEC in the aforesaid cases, and his order compelling the Board to proclaim candidate Harkin S. Que were clearly made without or in excess of jurisdiction.

The question now arises as to whether or not respondent Judge should be held administratively liable for issuing the order assailed by the Commission on Elections.

Since malice or deliberate intent has not been alleged in the case at bar, in order to hold respondent Judge liable for rendering a manifestly unjust judgment or order through inexcusable negligence or ignorance, it must be clearly shown that although he has acted without malice, he failed to observe, in the performance of his duty, the diligence, prudence and care which the law requires from a public official.[25]

As a public official charged with the responsibility of acquainting himself, at the very least, with the fundamental outlines of the law applicable to cases brought before him, his ignorance of the Constitutional provisions relating to the powers and functions of the COMELEC and the relevant portions of the Omnibus Election Code, is inexcusable particularly because he practically interfered with and prevented the exercise of the duties vested exclusively with the Municipal Board of Canvassers. Such gross ignorance constitutes serious misconduct for which this Court may impose the most stringent penalties.

It does not serve the interests of our judicial system for judges to be woefully lacking in the type of legal knowledge generally presumed by practitioners of the law to be fundamental. Not only is a judge expected to be proficient in the law, it is expected of a judge, as it is expected of any member of the bench, that he continuously keeps himself abreast of legal and jurisprudential developments, primarily because the learning process in law neither ends at the portals of law school or ceases upon admission to the bar. What exacerbates the respondent Judge's errors in the case at bench is the nagging suspicion that he acted the way he did - flagrantly violating provisions of the Omnibus Election Code - not out of ignorance but out of an attempt to thwart the sanctity of the ballot. Assuming he did not, the absence of provable intent does not, nonetheless, free him from the charge of gross ignorance of the law which requires us to impose upon him an appropriate penalty. If judges wantonly arrogate unto themselves the authority allocated to other officials, there can be no consequence but confusion in the administration of justice and, in many instances, oppressive disregard of the basic requirements of due process.[26] In the instant case, not only did respondent Judge prevent the members of the Municipal Board from attending the COMELEC en banc meeting in Manila but he went as far as incarcerating said officials in order to force them to proclaim the petitioner in SPA No. 18-5. The fact that said petitioner was subsequently proclaimed by the Commission on Elections does not validate any of the acts or orders made in flagrant violation of existing election laws.

WHEREFORE, in view of all the foregoing, the Court Resolved to hold respondent Judge administratively liable for gross ignorance of the law and arbitrariness and impose on him a fine of THIRTY FIVE THOUSAND PESOS (P35,000.00), with a STERN WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and Mendoza, JJ., concur.

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- [1] Rollo, p. 5
- [2] Id., at pp. 15-17.
- [3] Id., at pp. 18-19.
- [4] Id., at p. 24.
- [5] Id., at p. 5.
- [6] Id., at p. 6.
- [7] Ibid.
- [8] Ibid.
- [9] Ibid.
- [10] Id., at p. 8.
- [11] Id., pp. 7-8.
- [12] Id., p. 8.
- [13] Id., at pp. 8-9.
- [14] Id., at pp. 14-15.
- [15] Id., at p. 23.
- [16] Omnibus Election Code, Art. XX, Sec. 247 (hereinafter cited as Election Code).
- [17] Election Code, Art. XIX, Sec. 233.
- [18] Sec. 234.
- [19] Sec. 235.
- [20] Sec. 236.
- [21] Const., Art. IX B, Sec. 2, states:
- "The Commission on Elections shall exercise the following powers and functions:
- "xxx xxx.
- "2. Exercise exclusive original jurisdiction over all contest relative to elections, returns, and qualifications of all

elective regional, provincial and city officials, and appellate jurisdiction over all contest involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. x x x.

“3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of elective officials and inspectors, and registration of votes.”

[22] Election Code, Sec. 243.

[23] 23 SCRA 533 (1968).

[24] Ibid.

[25] Groizard, 4 ElCodigo Penal Español, 1912 ed., cited in In re Climaco, 55 SCRA 107, 119 (1974); AGPALO, LEGAL ETHICS, 470 (1989).

[26] Queto v. Catolico, 31 SCRA 52, 59 (1970).

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