

EUSEBIO B. MOORE, PETITIONER, VS. THE COMMISSION ON ELECTIONS THE PROVINCIAL BOARD OF CANVASSERS OF NORTHERN SAMAR, RAUL DAZA, AND THE PROVINCIAL TREASURER OF NORTHERN SAMAR, RE...

G.R. No. L-31394. January 23, 1970

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PER CURIAM:

Petition for review on certiorari of a resolution of the Commission on Elections, hereinafter referred to as COMELEC, dated December 18, 1969, and reading as follows:

"By unanimous vote of the members of the Commission, it hereby RESOLVES to sustain the action of the Board of Canvassers in including in the canvass the election returns of the precincts listed in the Manifestation of counsel for Candidate Moore, dated December 16, 1969, which returns were physically examined by the Commission during the hearing this afternoon. The Commission is satisfied, upon examination of these and each of these returns, that the returns are regular on their face, that the signatures of the boards of inspectors are regular, and on this basis, the Commission feels that it is not necessary to go beyond the return. And since the purpose in the presentation of the affidavits is to establish by evidence aliunde facts to contradict what appears on the return, the Commission RULES that it is not necessary to allow or to require the parties to submit the affidavits and counter-affidavits with re-spect to these particular returns specified in the Manifestation of Candidate Moore, dated December 16, 1969.

"However, the Provincial Board of Canvassers of Northern Samar is hereby directed to desist from proclaiming the winner for this congressional district until 12:00 Noon of December 26, 1969, to enable counsel for Candidate Moore to avail of the remedies in court, with the Supreme Court in particular, to review the rulings of the Commission with respect to the inclusion in the canvass of these particular returns. If by December 26, 1969, 12:00 Noon, no restraining order is issued by the Supreme Court, the Provincial Board of Canvassers shall convene to proclaim the winner in accordance with the result of their canvass following the rulings and instructions of this Commission in regard to these disputed precincts which have been elevated to this Commission for review."

Upon the filing of the petition, We required respondents COMELEC, the Provincial Board of Canvassers of Northern Samar hereinafter referred to as the Board - and Raul Daza to file their answer to the petition, as well as issued an order restraining the proclamation referred to in the aforementioned resolution. Soon thereafter, petitioner filed a supplemental petition, followed, still later by an amended petition, including therein the Provincial Treasurer of Northern Samar as one of the respondents. In due course, respondent Daza filed his answer and later a supplemental answer, admitting some allegations and denying other allegations of the petition, as well as making affirmative allegations.

It appears that, in the last general elections, held on November 11, 1969, petitioner Moore and respondent Daza were the official candidates of the Nacionalista Party and the Liberal Party, respectively, for Representative in the lone representative district of Northern Samar. Carmelita Lacson and F. Jumadiao were, likewise, candidates

for the same office. On November 18, 1969, the Board convened to canvass the corresponding returns, but the proceedings were suspended, upon orders of the provincial supervisor of the COMELEC, the returns for several municipalities not having, as yet, been received by the provincial treasurer. The Board reconvened and actually began the canvass, in the office of the Provincial Governor, at the Capitol Building, on November 26, 1969.

On November 28, 1969, Moore filed with the COMELEC an "Urgent Omnibus Petition" (Annex K), praying, inter alia, that the Board be restrained "from proceeding with the canvass and/or proclamation, " upon the ground, among others, that there had been "massive and pervasive fraud and terrorism, " coupled with "vote-buying, " and a tampering and falsification of "more than one hundred (100) election returns x x x to unduly increase the votes for LP candidate Raul Daza and insure the railroading of his pro-clamation."

On the same date, the COMELEC denied the petition for suspension of the canvass, but ordered the Board to desist from proclaiming the winner "to enable parties to elevate questions involving spurious returns" (Annex L). Accordingly, the Board proceeded with the canvass until its completion on November 30, 1969, on which date all of its members signed the corresponding statements of "votes by precinct" (Annexes 9 and 9-A to 9-T) and a certificate of votes by municipality (Annex 10), showing that Daza and Moore had obtained a total of 28,940 votes and 28,481 votes, respectively, and that, accordingly, Daza had been elected by a plurality of 459 votes.

On December 3, Daza filed, therefore, with the COMELEC, an "Urgent Petition to Lift Suspension of Proclamation" (Annex M), which was set for hearing on December 15, 1969. Prior to this date, or on December 12, 1969, Moore had filed, with the COMELEC, a petition (Annex P) seeking, inter alia, a declaration of nullity of all proceedings before the Board, subsequently to the alleged exclusion of his watchers "from the canvassing, " through threats, and the "rejection of the election returns" for the following precincts - "for being obviously false, spurious, falsified and/or fabricated" - upon the grounds stated after each:

1. Precinct No. 32 of Laoang - Election return not signed by the poll clerk.
2. Precinct No. 2 of Catubig - Election return not signed by one inspector.
3. The signatures, in the election returns for the following precincts, of specified members of its board of election inspectors, are spurious or false, they being different from those appearing on the respective minutes of voting:

a. Municipality of San Isidro:

- 1) Precinct No. 6 - Inspector G. Tabinas.
- 2) Precinct No. 9-A - The chairman, the poll clerk and one inspector.
- 3) Precinct No. 11 - All signatures.
- 4) Precinct No. 11-A - The chairman and the poll clerk.

b. Municipality of Laoang:

- 1) Precinct No. 11 - The chairman and the poll clerk.
- 2) Precinct No. 24 - The chairman and one inspector.

c. Municipality of Catubig:

- 1) Precinct No. 3 - One inspector.
- 2) Precinct No. 5 - Two (2) inspectors.
- 3) Precinct No. 6 - The poll clerk.

- 4) Precinct No. 7 - The chairman and the poll clerk.
- 5) Precinct No. 8 - The chairman, the poll clerk and one inspector.
- 6) Precinct No. 11 - One inspector.
- 7) Precinct No. 12 - One inspector.

d. Municipality of Mondragon:

- 1) Precinct No. 11 - The poll clerk and one inspector.

e. Municipality of San Antonio:

- 1) Precinct No. 6 - The chairman and two (2) inspectors.
- 2) Precinct No. 7 - The chairman.
- 3) Precinct No. 8 - The poll clerk.

4. The entries of the votes cast for the office of representative in the returns for the following precincts are obviously false or inherently impossible:

a. Precinct No. 19 of Laoang - Because of the 46 "Excess" ballots reported therein.

b. Precinct No. 14, San Antonio - Because Daza and Moore are credited therein with 72 votes and 42 votes, respectively, or a total of 114 votes, thereby exceeding by one (1) the one hundred thirteen (113) votes who had voted in the precinct and the one hundred thirteen (113) ballots found in the box for valid ballots therein.

5. The election returns for the following precincts of Las Navas are false or fabricated:

a. Precinct No. 11 - Because the entries and the signatures of the members of the board of inspectors appear to have been written by one and the same hand.

b. Precincts No. 16, 17 and 18 - Because the entries in the election returns for all, similarly, appear to have been written by one and the same hand.

On December 15, 1969, Daza's "Urgent Petition to Lift Suspension of Proclamation" (Annex M) and Moore's aforementioned petition, Annex P, were reset for a joint hearing, on December 18, 1969, by the COMELEC, which, likewise, gave Daza until December 17 to answer said petition (Annex P) of Moore and granted the latter up to December 18 to file his reply. It, moreover, directed Moore to substantiate the allegations of his petition, Annex P, by submitting affidavits in support thereof.

On December 18, Moore moved for postponement of said hearing to December 27, 1969, alleging that he had just received Daza's answer and that the affidavits he intended to present were already "in transit". The COMELEC denied this motion and proceeded with the hearing, in the course of which it examined, inter alia, the questioned returns and compared the signatures thereon with those appearing on the envelopes containing said returns. Immediately thereafter, the COMELEC issued the resolution sought to be reviewed (Annex A), which, in effect, denied Moore's petition (Annex P) and granted that (Annex M) of Daza, although, it, also, gave Moore up to December 26, 1969, to bring the matter to the Supreme Court. Thereupon, Moore sought a reconsideration, which was not entertained by the COMELEC. On December 23, 1969, Moore filed with the COMELEC his notice of appeal and, on December 24, 1969, docketed in the Supreme Court his present petition for review, upon the ground that the COMELEC had denied him due process and committed a grave abuse of discretion in denying his aforesaid motion for post-pone ment of the hearing from December 18 to December 27, 1969, and in issuing the resolution Annex A.

Upon a careful review of the records, We are fully satisfied that the petition herein is untenable.

1. Moore alleges that three (3) days - from December 15 to December 18, 1969 - were too short a time for him to gather affi-davits in Northern Samar and present them before the COMELEC in Manila. It should be noted, however, that the petition (Annex P) sought to be supported by said affidavits, had been filed on December 12, 1969, so that he had had not less than six (6) days there-for, and that he was supposed to have evidence to establish the allegations of said petition. What is more, said allegations were, to all intents, a reiteration of those made in his "Urgent Omnibus Petition" (Annex K), filed with the COMELEC on November 28, 1969, in which he averred that more than 100 election returns had been tampered with or falsified. From November 28, to December 18, 1969, Moore had had 20 days within which to obtain the aforementioned affidavits and have them brought to Manila on or before December 18, 1969. In fact, out of the 37 affidavits filed by him with the Supreme Court, on January 17, 1970, thirty-one (31) - Annexes T-1, T-4 to T-13, T-15 to T-18, T-20 to T-23, and T-25 to T-36 - had been subscribed and sworn to on or before November 28, 1969. Moore has not explained satisfactorily why he did not produce these affidavits before the COMELEC on December 18, 1969. The excuse given by him, to the effect that there had been no plane flights from Northern Samar to Manila on December 16 and 17 - which, even if true, is not plausible - has been proven to be false.

2. Petitioner maintained, in his petition Annex P, that the twenty-five (25) election returns above enumerated should not be included in the canvass, because: (a) some of the signatures in 17 of said election returns are falsified, because they do not look like the corresponding signatures in the minutes of voting; (b) one (1) return does not bear the signature of the poll clerk; (c) another return lacks the signature of one (1) inspector; (d) the 46 "Excess ballots" reported in still another return prove that the same is false; (e) the fact that the total number of votes (114) obtained by Moore and Daza exceeds by one the number of voters (113) who had cast their votes and the number of ballots (113) recorded in a fourth return, establishes that the same is spurious; (f) the entries and the signatures in a fifth return had been written by one and the same hand; and (g) the election returns for three other precincts had, likewise, been prepared by one and the same hand. None of Moore's aforementioned affidavits tends, however, to establish any of these pretenses, which refer to physical facts and conclusions drawn therefrom. Upon the other hand, such facts were determined by the COMELEC upon physical examination of the questioned returns and other pertinent documents, and We are not prepared to declare that said determination is not substantially supported by the record.

3. Contrary to petitioner's allegation, the photostatic copy (Annex 16-B) of the election returns for Precinct 2 of Catubig, bears the signatures of all of the members of its board of election in-spectors.

4. It is well settled that the question whether certain returns are falsified or have been tampered with and should not be included in the canvass, must first be raised before the board of canvassers, subject to appeal from its decision to the COMELEC.[1] Moore did not do so, and, instead, took it up directly with the COMELEC, in violation of the explicit provision of Section 163, R.A. No. 180, as amended. And this he did on December 12, 1969, by filing his peti-tion Annex P after the completion of the canvass by the Board, when it was already known that Daza had obtained a plurality of 459 votes. It should be noted, in this connection, that, although in his "Urgent Omnibus Motion" (Annex K) of November 28, 1969, he had alleged that "more than one hundred (100) election returns x x were tampered and falsified, " he did not mention then either the municipalities or the precincts alluded to.

5. Non-compliance with said Section 163 cannot be justified by Moore's allegation to the effect that Lt. Antonio Daza, a brother of respondent Raul Daza, had threatened to kill his (Moore's) watcher, Atty. Antonio Saba, and that, in consequence thereof, the latter and other watchers of Moore were "practically prevented through fear from attending the canvass" and Moore "was not represented during the canvass of the election returns from eleven (11)

municipalities." To begin with, this allegation has not been duly established. Indeed, the alleged incident between Daza's brother and Atty. Saba is said to have taken place on November 27, 1969, at about 4:45 p.m. Yet, it was not mentioned in a communication (Annex 2) filed with the Board by Moore's "spokesman", evidently after 5:00 p.m. of that date, merely expressing non-conformity with the decision of the Board to continue its canvass up to 7:00 p.m. daily, upon the ground that the working hours, pursuant to the Revised Administrative Code and the Civil Service Law, end at 5:00 p. m. and that the representatives of Moore could not attend the canvass after that time, because some of them were "going home" to their "respective towns which are distant from Catarman" - where the canvass was held - "to attend to urgent official and personal business."

Besides, the COMELEC supervisor, present at the canvass, denied the aforementioned incident, which is further negated by the fact that the detailed minutes of the canvass (Annex 1) are silent about it. Although reference was made to said alleged incident in a letter of Moore's watchers (Annex 3), dated November 27, 1969, and filed with the Board on November 28, 1969, it was forthwith denounced as false by nine (9) watchers of Daza, in another communication (Annex 5) to said Board, dated November 28, 1969, and by respondent Daza himself in his letter (Annex 6) of the same date, as well as by Lt. Antonio A. Daza, in his affidavit (Annex 7) dated December 10, 1969.

6. The election returns sought to be excluded by Moore are those of some precincts of the municipalities of Catubig, Laoang, Las Navas, Mondragon, San Antonio and San Isidro. The returns for Catubig were canvassed in the presence of Moore's watchers, before they absented themselves, on November 27, 1969, after 5:00 p.m. The returns for San Antonio and San Isidro were canvassed, also, in their presence, on November 30, 1969. Moore assails eight (8) returns from Catubig, four (4) from San Antonio and four (4) from San Isidro, so that, of the twenty-five (25) returns he sought to exclude from the canvass, sixteen (16) were in fact canvassed in the presence of his watchers. Yet, they did not question any of said sixteen (16) returns before the Board. At any rate, on November 30, 1969, the Board met and completed its canvass in the PC barracks in Catarman, Northern Samar, where Moore was admittedly represented by his watchers and it is not claimed that they had been under any restraint or duress. Still, they did not point out to the Board the alleged tampering or falsity of any of the sixteen (16) or twenty-five (25) election returns above-mentioned.

7. The 46 "Excess ballots" reported in the election return for precinct No. 19 of Laoang do not necessarily justify the conclusion drawn therefrom by petitioner Moore. As correctly explained by Daza, the total number of ballots received for said precinct were 250, of which 154 were used. Moore obtained 67 votes and Daza 84 votes, or a total of 151 votes for both, so that, apparently, 3 voters had not voted for representative. The total number of unused ballots reported in the return were 50, which, added to the 154 used, aggregate 204. This leaves 46 ballots unaccounted for, thus indicating that the 46 so-called "Excess ballots" are, in fact, unused ballots.

8. With respect to the return for Precinct No. 32 of Laoang (Annex 51-C) which does not bear the signature of its poll clerk, it is obvious that this fact does not suffice to nullify said return. Indeed, the provision of Section 150 of R. A. No. 180, as amended, requiring the signature on election returns of the members of the board of election inspectors "present", necessarily indicates that the absence of the signature of one of them does not necessarily invalidate the return. At any rate, the chairman of said board, its inspector for the Liberal Party and the poll clerk have executed affidavits (Annexes 51, 51-A and 51-B) stating that the latter's failure to sign on said return had been due merely to inadvertence on their part.

9. As regards the allegation that the entries as well as all of the signatures on the election return for Precinct No. 11 of Las Navas had been written by only one hand and that the returns for Precincts Nos. 16, 17 and 18 of the same municipality had been similarly written by one and the same hand, suffice it to say that, upon an examination of said returns, We can not say that the COMELEC has erred, much less abused its discretion, in

finding for respondent Daza.

10. Referring now to the return for Precinct No. 14 of San Antonio, it is obvious that the excess of one (1) vote, in the total number of votes (114) obtained by Moore (42) and Daza (72), over the number (113) of persons who voted, and whose ballots were found in the box for the valid ballots, is most probably due to a clerical error, and does not necessarily prove that the return is false or has been tampered with.

11. Significantly, the copies of the returns for the Provincial Treasurer dovetail in every respect with those of the COMELEC and those for the Municipal Treasurers. This circumstance strongly indicates that the copies on which the Board had based its canvass are genuine.

12. It may not be amiss to add that the affidavits submitted to Us by the petitioner, tending to show that the contested returns had been made under duress, were contradicted by affidavits (Annexes 40 and 40-A to 62-A), filed by respondent Daza, of members of the corresponding boards of election inspectors, who declared that the proceedings in the precincts adverted to above had been regular, peaceful and orderly, that the questioned returns were freely prepared, that the entries therein reflect the true result of the election in their respective precincts and that the signatures on said returns are the genuine signatures of the members of the afore-mentioned boards of election inspectors.

WHEREFORE, the appealed resolution of the COMELEC should be, as it is hereby affirmed, the restraining order issued by this Court is dissolved, and the Provincial Board of Canvassers of Northern Samar is, accordingly, directed to proclaim, not later than Saturday noon, January 24, 1970, the winning candidate for the lone representative district of Northern Samar, pursuant to its certificate of canvass, Annex 10, dated November 30, 1969. Inasmuch as the regular sessions of Congress begin on January 26, 1970, this decision shall be executory upon its promulgation.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Ong v. Comm. on Elections, L-28415, Jan. 29, 1968; Tagoranao v. Comm. on Elections, L-28590, March 12, 1968; Abrigo v. Comm. on Elections, L-31374, January 21, 1970.

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