

**DOMOCAO ALONTO, DATU GASANARA LUCMAN, HADJI MAPUNUD
DATU-IMAN, SHEIK ISMAEL LAUD AND SULTAN GUILING BUNTALIS,
PETITIONERS, VS. THE COMMISSION ON ELECTIONS, THE
PROVINCIAL BOARD ...**

G.R. No. L-28490. February 28, 1968

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

The petitioners, Liberal candidates for provincial offices in the elections of November 14, 1967, resorted to this Court in quest of writs of certiorari and mandamus to reverse the decision of respondent Commission on Elections (Comelec for short) of December 19, 1967, dismissing their petition for permanent suspension of the canvass of the votes case for candidates for provincial offices in various precincts in 27 municipalities of Lanao del Sur, to wit:

1. Marawi City
2. Saguwaran
3. Piagapo
4. Kapai
5. Ramain
6. Bubong
7. Marantao
8. Balindong
9. Tugaya
10. Masiu
11. Poona-Bayabao
12. Tamparan
13. Lumba-Bayabao
14. Taraka
15. Molondo
16. Bacolod Grande
17. Madalum
18. Madamba
19. Ganassi
20. Pualas
21. Pagayawan
22. Binidayan
23. Balabagan
24. Tubaran
25. Bayang
26. Lumbatan
27. Wao;

for the rejection of the returns from said municipalities, and for suspension of the proclamation of the results. They also ask the resolution of the same Commission issued on January 2, 1968, rejecting their motion for reconsideration be "set aside."

Originally, petitioners had prayed the Comelec for the rejection of the election returns of the municipalities above enumerated, on the ground that the same were "obviously manufactured", because the elections were allegedly characterized by frauds, irregularities, and terrorism. After the Commission had denied the petition on the basis of *Abes vs. Comelec*, L-28348, December 15, 1967, and other Supreme Court decisions that Comelec had no authority to look beyond the face of the returns, once satisfied of their authenticity, much less to permanently suspend the canvass, which would amount to nullifying the election, petitioners filed a motion for reconsideration, wherein they not only insisted that the returns from the contested precincts of the municipalities previously enumerated showed that the ballots cast exceeded the number of registered voters, and hence the returns were obviously manufactured, being statistically improbable; but advanced the additional ground that the counting of the votes in the municipalities aforesaid was null and void, as it was not made in the polling places designated but in PC camps in Marawi City, Ganassi, Lumbatan, Malabang and Wao, three days after election day, all in violation of sections 144 and 151 of the Election Code.

Their motion for reconsideration having been denied, the petitioners elevated the case to this Court, claiming grave abuse of discretion on the part of the Commission on Elections in refusing to grant their petition. In this Court they reiterate that the questioned returns should have been ordered rejected by the Provincial Boards of Canvassers, for the following reasons:

- Because the canvass of the votes and proclamation were made not in the polling places but outside of the same, in the PC camps, and not on election day, November 14, 1967 but three days thereafter (November 17) at the earliest.
- Because the election returns in 40 precincts had already been rejected by the Comelec in the senatorial count.
- Because the election returns in 38 precincts were obviously manufactured returns.

The petition was given due course and a restraining order issued.

Respondents in due time answered, pleading that the counting of the votes in the PC camps was made upon the request of either the election inspectors, or of the local Liberals, or by mutual consent of the candidates of both parties, and approved by; Comelec or by the Provincial Election Registrar on the basis of Comelec 'Resolution RR-551, authorizing the counting outside the polling places under specified conditions; that it had been the established practice since 1951 to count votes at PC camps, in order to avoid bloodshed and insure a fair and impartial appreciation of the ballots; that in fact in some of the past elections where petitioners had won, the same practice had been followed without any protest. As to the second ground relied upon by petitioners herein, respondents answered that the rejection of senatorial votes by Comelec does not prove that the provincial votes were likewise tampered with, and that anyway, the Comelec as senatorial canvassing board could reject returns before it, but could not interfere with the discretion of the Provincial Boards of Canvassers, who were entitled to their own judgment. Finally, the respondents plead that mere excess of votes does not make the returns obviously manufactured ones.

We agree with the respondents that the second and third grounds (*supra*) advanced by petitioners to force rejection by Comelec of the contested returns are untenable. For while the Commission in its role as senatorial canvasser had the power to reject returns before it that in its opinion were illegal or not authentic, neither law nor precedent authorize it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are certainly entitled to use their own judgment in determining whether the irregularities appearing on returns before

them warrant their rejection. It must not be forgotten that the copies of the returns upon which the provincial canvassers act are different from those in the possession of the Comelec, and the irregularities noted in the latter may not necessarily exist in the former. Should there be any discrepancy between the official copies, the petitioners can recourse to a judicial recount under section 163 of the Election law. But certainly, an a priori rejection on the basis of previous Comelec action is not justifiable.

Nor do we find that the alleged excess of votes cast (detailed and enumerated in the petition) is adequate to support the conclusion that the returns are obviously manufactured for reasons of statistical improbability. We do not find in the returns here questioned that uniformity of tallies in favor of candidates belonging to one party, and the systematic blanking of the opposing candidates, that led us to reject the returns in the Lagumbay case.[1] And in *Sangki vs. Comelec*, L-28359, December 26, 1967, we have warned against the undue expansion of the Lagumbay doctrine without due regard to the factual basis upon which it was based.[2] The only extraordinary discrepancy brought by petitioners to our attention in the case at bar is that of Precinct No. 19 of Lumbatan, where only 19 appear tallied as registered voters and 208 are shown to have voted; but as pointed out by respondents, this case is one of palpable mistake by the inspectors in recording the number of registered voters, for no precinct in the Islands could possibly have only 19 registered electors, and the figure given seems to have been the number of the precinct itself.

The petitioners herein are thus thrown back upon their main contention that the results in the contested precincts should be summarily rejected on the basis that the counting and tallying of the votes were not made in the precincts themselves and immediately after the closing of the polls, as provided by law. They rely upon and invoke sections 163, 144 and 151 of the Election Code:

"SEC. 63. Requirements for polling places.- Each polling place shall be, as far as practicable, a ground floor hall of sufficient size to admit and comfortably accommodate forty voters at one time outside the guard rail for the board of inspectors. The polling place shall be located as centrally as possible with respect to the residence of the voters of the precinct, but it may be located also in the poblacion of the municipality upon petition of the majority of the voters of the precinct or by agreement of all the political parties or by resolution of the Commission on Elections. A public building having the foregoing requirements shall be preferred. (C. A. 357-57; as amended by Republic Act 599)

"SEC. 144. Counting to be public and without interruption.- As soon as the voting is finished, the board of inspectors shall publicly count the votes cast in the precinct and ascertain the result. The board shall not adjourn or postpone or delay the count until it shall be fully completed. (C. A. 357-139)

"SEC. 151. Proclamation of the result of the election in the polling places, - Upon the completion of the statements of the election returns in the precinct, the chairman of the board of inspectors shall orally and publicly announce the total number of votes polled in the said election in the said precinct by each and every one of the candidates, naming them for each one of the offices. (C. A. 357-146)"

Petitioners contend that since the counting of the votes cast in the contested municipalities was done in PC camps and on November 17 at the earliest, three days after the election day, said canvass should be declared null and void ab initio.

We believe petitioner's position to be extreme and untenable. It requires no great effort to understand that external circumstances may occasionally compel the transfer of the ballot boxes and inspectors to places of safety in order to avoid frustration of the popular will. Where political passions run rife, and armed persons are running loose, adequate protection can not be afforded to the election officers in each and every precinct, because law officers would be spread out thin and their effectiveness nullified. It would be realistic to deny the Comelec the authority to provide adequate safeguards to permit the results of the voting to be properly ascertained, free from threats and

pressure, if not actual bloodshed. To require election officials to disregard their own safety, risk their lives and stick to their posts in the face of imminent violence would be not only extreme idolatry of the letter of the law, but would tend to frustrate its primary end of ascertaining the true will of the people.

Respondents have submitted evidence that the counting in PC camps was dictated by necessity, and in fact authorized either by the Comelec directly or by its provincial representative, the Provincial Election Supervisor, and likewise, that Liberal Party representatives have themselves requested for the canvassing to be done in safe places under PC protection. (Annexes 1 and 2, Respondent's Answer to Petitioners' Manifestation) While it is highly desirable that the authority for the transfer of the counting should be directly authorized by the Comelec itself, still, the latter's denial of the petitioners' motion for reconsideration where this same legal point was advanced, actually amounts to a ratification and validation of the authority issued by its Provincial representatives.

Since the validity of the transfer of the ballot boxes, for counting after the ballots have been cast, depends on the facts of each particular case, we are of the opinion that this issue can not be ventilated and decided in the proceedings now before us. In the first place, no evidence was submitted to the Comelec on this point. Secondly, and this is even more important, the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with law's desire that the canvass and proclamation be delayed as little as possible. As declared in *Abes et al. vs. Commission on Elections*, L-28348, December 15, 1967, the powers of the Comelec are essentially executive and administrative in nature, and the question whether or not there had been terrorism, vote buying and other irregularities in the election should be ventilated in a regular election protest,[3] and the Commission on Elections is not the proper forum for deciding such matters.

Furthermore, on the assumption that counting was delayed and made elsewhere, through fraud or corruption of the election officers, the guiding principle has been set in *Lino Luna vs. Rodriguez*, 39 Phil. 217-218, where this Court said:

"The various and numerous provisions of the Election Law are adopted to assist the voters in their participation in the affairs of the government, and not to defeat that object. When the voters have honestly cast their ballots, the same should not be nullified simply because the officers, appointed under the law to direct the election and guard the purity of elections, have not done their duty. The law provides a remedy, by criminal action, against them. They should be prosecuted, and the will of the honest voter, as expressed through his ballot, should be protected and upheld." (Italics supplied)

Petitioners stress that in *Lagumbay vs. Commission on Elections*, ante, this Court has taken official cognizance of the spread of the pernicious practice of tolerating or abetting the tampering or manufacture of election returns just to get the proclamation and then let the victimized candidate file the protest and spend his money to work for an empty triumph. True enough; but in *Abes vs. Comelec*, L-28348, December 15, 1967, we have likewise adverted to the equally pernicious effects of excessive delay of proclamations;

"And worse, to suspend canvassing and proclamation at this late date may result in a vacuum in office of — elective officials after the term of the present incumbents shall have ended on December 31, 1967. Canvassing and proclamation must proceed. Because, as Mr. Justice Querube Makalintal correctly observed in City Board of Canvassers vs. Moscoso, L-16365, September 30, 1963, 'to enjoin the city board of canvassers from assessing the returns would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in Court.' "

That is to say, the Comelec and the Courts should guard both against proclamation-grabbing through tampered returns as well as against attempts to paralyze canvassing and proclamation in order to prolong hold-overs by officials whose terms are officially ended. The petitioners' prayer to nullify the canvass of the disputed precincts

for alleged irregularities that bear no relation to the correctness and authenticity of the returns precisely suggests the maneuver last described.

The petition is dismissed, and the restraining order heretofore issued is dissolved. Costs against petitioners.

Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Petition dismissed.

[1] L-25444, January 31, 1966.

[2] Also: Demafiles vs. Comelec, L-28396 and Estrada vs. Comelec, L-28374, both promulgated December 29, 1967.

[3] Also: City Board of Canvassers vs. Moscoso, L-16365, September 30, 1963; Nationalists Party vs. Commission on Elections, 85 Phil. 149; Ututalum vs. Commission on Elections, L-25349, December 3, 1965.

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