

**JULASIRI M. ANNI AND HADJI HASSAN TAWASIL, PETITIONERS, VS.
SANTANINA RASUL, COMMISSION ON ELECTIONS AND THE
PROVINCIAL BOARD OF CANVASSERS OF SULU, RESPONDENTS.**

G.R. No. L-34904. August 30, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

A petition for certiorari and prohibition to annul and set aside twin resolutions of respondent commission on elections (Comelec) directing the provincial canvassing board to reconvene and proclaim Julkipli Anni and respondent Santanina Rasul as two of the winning candidates for members of the provincial board of the province of Sulu in the November 8, 1971 elections and for the issuance of a writ of mandamus to compel respondent Comelec to order the examination of the precinct books of voters of 75 precincts in 10 municipalities of the province as prayed for "by way of counter-protest" by herein petitioners as respondents in the Comelec after petitioner therein (herein respondent Rasul) had rested her case in the Comelec for the exclusion of certain spurious returns.

The elections to elect the provincial and municipal officials of the province of Sulu were held as scheduled on November 8, 1971, with a special election held subsequently in the municipality of Luuk on November 22, 1971 for the same purpose.

Disputed in the case at bar are the results of the election for the three (3) members of the provincial board. Incidentally, the said 1971 elections held in Sulu were noteworthy in that so far, the Comelec has only authorized the proclamation of the winning candidate for governor of Sulu, while the winning candidates for vice-governor and the three provincial board members have not yet been proclaimed. Hence, the incumbent vice-governor and three board members are all hold-overs still of the previous elections held in 1967.

Based on the unofficial tally, the four (4) front-running candidates for the three positions of provincial board member were the following:

Candidates for Board Member

Votes per returns

Plurality Over Rasul

ANNI, JULKIPLI

40,923 votes

14,484 votes

ANNI, JULASIRI

37,009 votes

10,570 votes

TAWASIL, Hassan

27,714 votes

1,275 votes

RASUL, Santinina

26,439 votes

On November 26, 1971, respondent Rasul filed with the Comelec an urgent petition to suspend proclamation, which was docketed as Case No. C-294. Respondent as petitioner below complained that she had objected before the provincial canvassing board to the inclusion in the canvass of election returns from five municipalities, among them Siasi and Tapul, based on their being tampered, spurious, manufactured or gunpoint returns, and that the difference between her and petitioner Tawasil as ostensible third placer was so minimal that the exclusion of the questioned returns would materially alter the result in her favor. Respondent Rasul therefore prayed Comelec to order the suspension of the proclamation of the winning candidates and direct the impounding of the precinct books of voters of the questioned five municipalities for forwarding to Comelec's main office in Manila.[1]

Acting thereon on the same date, November 26, 1971, the Comelec issued its resolution No. 78, resolving inter alia "a) to direct the board of canvassers concerned to continue with the canvass; b) to rule that all questions regarding the returns be initially raised before the board during the canvass * * *; c) to direct the board that upon termination of the canvass, to give the candidates reasonable time within which to appeal its rulings to the commission and in the meantime, to desist from proclaiming the winning candidates * * *; and d) to hold that, in the meantime, action on the petition be held in abeyance until termination of the canvass by the Board of Canvassers and an appeal from any ruling of the Board is seasonably filed with the Commission it being understood that all appeals from all rulings of the Board shall be in one consolidated appeal as no individual and piecemeal appeals will be countenanced."[2]

Accordingly, upon termination of the canvass respondent Rasul as petitioner below filed on December 15, 1971 a detailed 44-page petition in Case No. 294 itemizing her objections to numerous election returns by way of appealing the provincial canvassing board's action of overruling her objections thereto as per the written consolidated objections filed by her with the said board.

Respondent petitioned Comelec to direct the canvassing board to elevate for review all the contested election returns, to order the election registrars of Tapul, Siasi, Tandubas, Panamao, Parang and Indanan to forward the precinct books of voters of the contested precincts and the fingerprint identification division to examine and analyze the thumbmarks and signatures on the voting records, to direct the exclusion of the contested election returns and proclaim the candidates-elect on the basis of the remaining valid and authentic returns.[3]

On the same date, December 15, 1971, respondent Rasul's running mates on her party's ticket for governor, vice-governor and for the two other positions of provincial board member headed by Salih Ututalum filed a separate petition docketed as Case No. C-339 of the Comelec wherein they charged massive substitution and fabrication of returns in various precincts in 17 municipalities of the province and sought their exclusion from the canvass.[4]

Petitioners herein as respondents cited in the two petitions for review filed as Cases Nos. C-294 and C-339 in the Comelec filed in due course their answers, traversing the allegations of the petitions and averring by way of

affirmative defenses that "the elections in the enumerated precincts of the different municipalities mentioned in the petition were clean, honest and orderly as evidenced by the 'certifications' to that effect by the members of the board of election inspectors in the affected precincts." [5]

At the joint hearing of the two cases held on January 12, 1972 by Comelec, it ordered in open session the exclusion from the canvass of six (6) election returns in Tapul, Sulu (for precincts Nos. 9, 9-A, 9-B, 4, 13-B and 30-A) with a total of 730 votes therein, on grounds of statistical improbability. [6] At the same joint hearing, it further ordered the examination of the precinct books of eighteen (18) precincts of Siasi and of thirteen (13) precincts of Tapul for fingerprint and handwriting examination by its experts.

Petitioners concede that as a result of the experts' summary reports of "massive substitute voting", 2121 votes in Siasi and 1,091 votes in Tapul or a total of 3,212 votes represented by the questioned returns would have to be excluded from those tallied in favor of the ostensible three front-running candidates. [7] It will readily be seen that the votes thus excluded suffice to have respondent Rasul overcome the 1,275 vote-margin of Tawasil over her.

After the submittal at the hearings of February 24 and March 1, 1972 of the results of the fingerprint examination of the precinct books of 31 precincts of Siasi and Tapul above referred to, respondent rested her case on March 3, 1972 and petitioners as respondents were required to submit their evidence. Petitioners however instead filed on March 12, 1972 a pleading denominated manifestation and motion asking that Comelec also order the examination of the precinct books of seventy-five (75) precincts in ten (10) municipalities therein enumerated, accompanied by affidavits purportedly showing prima facie cases in twenty-five (25) of said precincts, and that it thereafter direct the exclusion of the returns therein as spurious returns.

On March 20, 1972, Comelec issued its questioned Resolution RR-1161 in Case C-294, wherein it rejected as spurious or manufactured returns all the returns in the 31 questioned precincts of Siasi and Tapul upon its finding after due opportunity to all parties to cross-examine Mr. Abrigo, the chief of the fingerprint identification division and Mr. E. Maniwang, the NBI handwriting expert, who testified on the examination made by them, that "(I)t is very clear from the result of the examination of the fingerprints of the voters when they voted and when they registered as graphically summarized in the reports of Mr. Abrigo, Exh. A-1 for Siasi and Exh. C-1 for Tapul and in the reports of Mr. Maniwang, Exh. B for Siasi, and Exh. D for Tapul that there had been massive substitute voting in all the precincts examined and subject of said reports and following the guidelines laid down by the Supreme Court in DIAZ vs. COMELEC, all the returns from said precincts, namely, Precincts 12-A, 15-A, 17-B, 21, 21-A, 22, 23, 23-A, 24, 30, 32, 32-B, 33-A, 43, 54, 55, 56-A and 58 of Siasi and Precincts 1, 2, 6, 7, 8, 9-B, 13, 13-A, 16-A, 23-A, 30 and 30-B and 31 of Tapul must be rejected as spurious or manufactured returns which should be excluded from the canvass."

Comelec rejected herein petitioners' motion of March 12, 1972 to order likewise the examination of the precinct books of 75 precincts in 10 municipalities, [8] filed by petitioners instead of submitting their evidence as respondents after herein respondent Rasul (as petitioner below) had rested her case, on the ground that "the returns from these precincts were never questioned by respondents during the canvassing before the Provincial Board of Canvassers. It was only after petitioner had rested her case that respondents for the first time had asked for the examination of the precinct books of voters in said precincts with the end in view of supporting their contention belatedly made that said returns are also manufactured and should be excluded from the canvass. The Commission cannot entertain such belated claim which obviously was made only at a time when respondents have realized their endangered position because of the result of the examination of the precinct books of voters in the precincts which petitioner had questioned from the beginning of her petition."

Comelec accordingly resolved in said resolution RR-1161 "to hold in abeyance further proceedings to await the

result of Case No. C-339 where petitioner SANTANINA TILLAH RASUL had been ordered impleaded as one of the respondents in view of the fact that she would be adversely affected by the proceedings in said Case No. C-339."

On March 20, 1972, petitioners in Case No. C-339 filed their amended petition reducing the number of municipalities where they questioned the election returns, so as to reduce and limit the same to 164 precincts^[9] and impleading herein respondent Rasul as a respondent who might be adversely affected by the proceedings, pursuant to Comelec Resolution RR-1161 above quoted.

On the same date, respondent Rasul moved to dismiss the petition in Case No. C-339 insofar as she was concerned and for the Comelec to declare her in Case C-294 as one of the duly elected candidates for provincial board member.

Respondent Rasul submitted figures which have not been disputed nor refuted that with the returns ordered excluded by Comelec in Case C-294, she had already been firmly and irreversibly assured of being one of the winners for the three positions of provincial board member, and that she had irrevocably dislodged Tawasil from the magic 3 circle. Thus, with Comelec's exclusion of six (6) returns from Tapul on grounds of statistical improbability (involving 730 votes) per its resolution of January 12, 1972 and of the thirty-one returns from Siasi and Tapul (involving 3,212 votes) as per its Resolution RR-1161, the standing of the five (5) front-running candidates, as compared to the unofficial tally, *supra*,^[10] sees Tawasil irretrievably dislodged by Rasul from the winners' circle, as follows:

1. ANNI, JULKIPLI

36,930 votes

2. ANNI, JULASIRI

33,162 votes

3. RASUL, SANTANINA

26,406 votes

4. TAWASIL, HASSAN

24,244 votes

5. IZQUIERDO, MUSS

23,554 votes

Respondent Rasul further showed that the remaining examination of 164 precinct books of voters in Case C-339 could not possibly affect her winner's standing, for if the 164 returns were found and declared to be spurious or manufactured as a result of "massive substitute and/or multiple voting," the parties most adversely affected

thereby would be the herein petitioners, since they stood to lose the most "votes", and petitioner Julasiri Anni would furthermore be dislodged by Muss Izquierdo, (one of the petitioners in C-339 and a co-candidate of Rasul on the same (ticket) while Rasul would be catapulted to top place with the highest number of votes for provincial board member, as follows:

Candidate

Unofficial Total Votes

Total Excluded "Votes"

Total Vaid Votes

1. RASUL, Santinina

26,439

2,258

24,181

2. IZQUIERDO, Muss

23,623

1,631

21,992

3. ANNI, Julkipli

40,923

19,394

21,529

4. ANNI, JULASIRI

37,009

18,993

18,016

5. TAWASIL, Hassan

27,714

14,958

12,756

On March 21, 1972, Comelec accordingly granted respondent Rasul's dismissal motion and issued its companion resolution RR-1162 in Case C-339, wherein after noting the reduced number of 164 precincts being questioned in the proceeding, it found that "whatever be the outcome of the case would no longer affect candidates JULKIPLI ANNI and SANTANINA TILLAH RASUL who would come out among the two winning candidates. It is the

third berth which remains to be contested among candidates JULASIRI ANNI, MUSS IZQUIERDO, ISMAEL RATAG and HASSAN TAWASIL, with the last candidate practically out of contention."

It found an imperative need to proclaim at least these two candidates for board member whose victory were no longer in doubt, thus: "(S)o far, the Commission had already authorized the proclamation of the winning candidate for Governor of Sulu. The winning candidates for Vice-Governor and the three Board Members have not yet been proclaimed. Thus, there exist the rather anomalous situation of the Provincial Government of the Province of Sulu being governed by a reelectionist Governor who was the only one proclaimed, while the incumbent Vice-Governor and three Board Members are all-hold-overs. There is, therefore, an imperative need to proclaim at least the candidates for the other offices whose winning no longer remains in doubt since regardless of how the remaining issues would be disposed of, said candidates would still emerge among the winners. Only when majority of said provincial officials have been anointed with the fresh mandate of the people of Sulu could the provincial elective officials of said province be truly representative of the will of the people."

Comelec accordingly ordered the provincial canvassing board "(T)o reconvene for the purpose of proclaiming as two of the winning candidates for members of the Provincial Board of the Province of Sulu, JULKIPLI ANNI and SANTANINA RASUL, including in said canvass all the returns questioned in both Cases Nos. C-294 and C-339, except those expressly ordered to be excluded from said canvass in the minute resolution of the Commission of January 12, 1972 and the resolution of the Commission of March 20, 1972 in Case No. C-294 which the Commission had found to be spurious, manufactured or prepared at gunpoint."

It ordered in the same resolution that its fingerprint examination division and handwriting experts continue with the fingerprint and signature examination of the voting records in the 164 questioned precincts for determining the authenticity or spuriousness of the returns therefrom, which would determine the third winning candidate for provincial board member.

Hence, the present petition challenging the twin resolutions of Comelec. Respondents Comelec and Rasul were required to answer the petition and the implementation of Comelec's challenged resolutions was ordered restrained until further orders of the Court.

Two principal issues were raised by petitioners, which owing to the lack and deficiency of supporting statements of facts and figures in the challenged Comelec resolutions, made out a seemingly strong prima facie case for petitioners.

The facts and figures as established by the answers and pleadings of record and as elicited at the hearing held on May 25, 1972 now show that there is no justifiable basis or reason to disturb, much less set aside, the questioned resolutions.

1. The first issue questioned as a grave abuse of discretion Comelec's action in a pre-proclamation controversy of authorizing the proclamation of Julkipli Anni (a running mate of petitioners on the same party ticket for provincial board member and seemingly the topnotcher) and Rasul as winners of two of the three positions of provincial board member of Sulu, when on the basis of the tentative tally by the canvassing board they ranked as No. 1 and No. 4 and there remained to be examined the precinct books of 164 precincts involving some 8,000 votes which if they were upheld as valid, might conceivably yet alter the result.

If the results of the pending examination of the said 164 precincts could conceivably alter the winner status of Julkipli Anni and respondent Rasul, then the petition would have merit.

However, the facts and figures given above show the contrary. The table of votes for the five (5) front running candidates for provincial board member given above shows that Julkipli Anni and respondent Rasul are certain of

election as two of the three members of the provincial board of Sulu, regardless of the results of the examination of the 164 precincts that is still pending and the results of which have not yet been reported as far as the records show. Comelec has correctly stated in its answer that "Julkipli Anni and Santanina Rasul may be dislodged from first place to third place and may even be dislodged from 1st to 2nd place and vice versa but they may never place lower than 3rd place regardless of the results of the examination of the 164 precincts. However, in the case of petitioner Julasiri Anni, now tentatively occupying the 3rd position, there is the possibility that he may be displaced by (candidate) Muss Izquierdo if the returns of the 164 precincts involved are rejected. It is he whose winning is affected if all these returns should be rejected." [11]

2. The second issue raised by petitioners is that Comelec as a matter of fairness, since the voting records of the 164 precincts questioned in Case C-339 are still being examined by the experts to determine the genuineness or spuriousness of the corresponding returns, should have also granted their motion of March 12, 1972 similarly questioning as spurious the returns in 75 precincts where respondent Rasul obtained substantial votes and requesting also a similar examination by the experts of the precincts books of voters therein, with the projected result that the exclusion of such returns would show Rasul as not entitled to the victory claimed by her.

Comelec committed no error in denying petitioners' belated motion for an examination of the voting records in the 75 precincts now questioned by petitioners, when they never questioned them in the first instance during the canvassing before the provincial canvassing board, prescinding from the apparent insufficiency of the allegations and supporting documents of their motion of March 12, 1972 to justify Comelec's ordering the examination of the 75 precinct books sought by them. Their supporting affidavits questioned only the returns in 25 of the 75 precincts and this is not to be of such extent as to alter the results insofar as Rasul is concerned, *supra*. [12]

Petitioners' contention that under the Comelec's instructions to the canvassing board, the duty to object to the election returns during the canvass and to appeal to the Comelec from the adverse ruling of the canvassing board is imposed on the "losing party" which could not apply to them as they were the prevailing party in the canvassing ingeniously disregards the clear text and mandate of such instructions that a party who challenges any return during the canvass must duly interpose his objection and that the "adverse party" who is aggrieved by the board's ruling — not necessarily the "losing party" — has the duty of appealing the board's ruling to Comelec.

In the cases at bar, Comelec expressly ruled while the canvassing was still going on that "all questions regarding the returns (should) be initially raised before the board during the canvass," per its resolution No. 78 of November 26, 1971, *supra*. [13]

As has been time and again stated by the Court, "(I)t 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." [14] As stated in *Lucman vs. Dimaporo*, [15] Comelec exercises appellate jurisdiction in passing upon questions raised to it on appeal from the canvassing board's action of say, denying exclusion of returns challenged by the petitioner-appellant. Thus, the Court emphasized, "petitioner could not legally raise before the commission in the exercise of its appellate jurisdiction any question not originally set up before said board."

The rule has been time-tested. To allow a respondent in the Comelec to raise belated questions concerning returns at any time during the pendency of the case on review before the Comelec notwithstanding that he has not originally raised such questions before the canvassing board and only when he finds his position endangered would mean undue and endless delays in pre-proclamation proceedings before the Comelec, contrary to the settled doctrine that "pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible." [16] The Court has stressed that Comelec and the

courts should guard both against proclamation-grabbing through tampered and spurious returns as well as attempts and machinations to paralyze canvassing and proclamation in order to prolong hold-overs by officials whose terms would have officially ended with the election and qualification of their successors.[17]

Accordingly, judgment is hereby rendered dismissing the petition and dissolving the temporary restraining order issued on April 5, 1972 by the Court. Following established precedents in cases involving election disputes, this decision shall be executory upon its promulgation. No costs.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.
Barredo, J., reserves his vote.

[1] Rollo, p. 22.

[2] Rollo, p. 28; italics supplied.

[3] Rollo, pp. 30-73.

[4] Rollo, p. 74.

[5] Rollo, at p. 91 et seq. and p. 137 et seq. 40 certifications were submitted with the answer in Case No. C-294 and 142 certifications were submitted with the answer in Case No. C-339.

[6] Rollo, p. 11.

[7] Idem.

[8] Rollo, at p. 11 and p. 288 et seq.

These 75 precincts were listed as follows:

Precincts 33, 33-A, 33-B, 10, 12, 12-A, and 11 Tapul; Precincts 5, 19, 20, 10, 10-A, 20 and 20-A of Talipao; Precincts 3, 3-A, 5, 5-A, 6, 7-A, 8-A, 10, 10-A, 12, 12-A, 13, 13-A, 14, 14-A Patikul; Precincts 11, 11-A of Indanan; Precincts 27 and 27-A Parang; Precincts 1-A, 14 and 17, South Ubian; Precinct 8, 7 and 11 Pata; Precincts 2, 2-A, 8 and 8-A Pangutaran; Precincts 2, 4, 4-A, 13-A, 16, 18-A, 19, 20-A and 21-A Simunul; and Precincts 1, 2, 3, 4, 4-A, 5, 5-A, 6, 6-A, 7-A, 7-B, 8, 8-A, 9, 10, 11, 12, 21, 22, 22-A, 26-A, 27, 28 and 29 Tandubas, Sulu.

[9] These are: 89 precincts of Siasi; 37 precincts of Tapul; 10 precincts of Parang; 6 precincts of Pata; 10 precincts of Panamao; 9 precincts of Indanan; and 3 precincts of Patikul.

[10] At page 553.

[11] Rollo, p. 334; italics supplied.

[12] At page 556.

[13] 13 At page 553.

[14] Moore vs. Comelec, 31 SCRA 60, 67 (Jan. 23, 1970) citing Ong vs. Comm. on Elections, L-28415, Jan. 29, 1968; Tagoranao vs. Comm. on Elections, L-28590, March 12, 1968; Abrigo vs. Comm. on Elections, L-31374, January 21, 1970.

[15] 33 SCRA 387, 407 (May 29, 1970) and a host of cases cited.

[16] Ilarde vs. Comelec, 31 SCRA 72 (Jan. 23, 1970) citing Alonto vs. Comelec, 22 SCRA 878 (Feb. 28, 1968).

[17] The Election Code of 1971 also tries to minimize such hold-over cases by providing in sec. 17, second paragraph that "should the local officer-elect die before assumption of office or fail to qualify, the officer-elect next in rank shall assume said office, but in the latter case he shall hold office only until the officer-elect qualifies." (Rep. Act No. 6388) Section 24 of the same Code, second paragraph further mandatorily ordains that "(E)very elected official shall take his oath of office on the day his term of office commences, or within ten days after his proclamation if said proclamation takes place after such day. His failure to take his oath of office as herein provided shall be considered forfeiture of his right to the new office to which he has been elected unless said failure is for cause or causes beyond his control."

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