

JOSE M. ESTANIEL, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE PROVINCIAL BOARD OF CANVASSERS OF COTABATO, MANIB MANAMPAN, ABDULRAHMAN BIDES, RITA BALTAZAR AND MUSIB BUAT,...

G.R. No. L-33453. November 29, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Petition for certiorari and prohibition to set aside the questioned resolution of the Comelec, for summarily having dismissed herein petitioner's petition with the Comelec "for failure to establish sufficient grounds for the rejection of the returns from Pikit, Pagalungan, Maganoy and Dinaig" in Cotabato province, affecting the tenth and last delegate seat of said province to the Constitutional Convention of 1971.

The questioned Comelec Resolution RR-899 dated April 29, 1971 recounts how after its hearing and resolving the referral of the provincial board of canvassers of the returns of the elections for constitutional convention delegates held in November, 1970, as disputed by the various candidates, the canvassing board on March 18, 1971, pursuant to its directive, proclaimed the first nine winning candidates, namely M. ADIL, A. VELASCO, D. SINSUAT, S. SAMBULAOAN, L. AMPATUAN, A. BADOY, Jr., M. CAMELLO, S. MASTURA and S. TOCAO.

What remains in contention is tenth place, i. e. who is entitled to be proclaimed as the tenth placer and last winning candidate, Cotabato being allotted ten (10) delegates to the Constitutional Convention under Republic Act No. 6132.

Three principal contenders from among the sixty-one (61) candidates (less the above-named nine acknowledged winners, or more accurately from the remaining 52 candidates) vied for this tenth and last winning place, namely, respondent Manib Manampan, petitioner Jose M. Estaniel and candidate A. Bagundang.

As per the tentative tabulation of the Comelec, Manampan would win this last and tenth winning spot, with Estaniel and Bagundang at 14th and 15th spots, respectively, among the first 15 front-winning candidates, as follows:

1. M. ADIL - 57,484
2. A. VELASCO - 52,967
3. D. SINSUAT - 45,769
4. S. SAMBULAOAN - 45,118
5. L. AMPATUA - 42,877
6. A. BADOY, Jr. - 42,289

7. M. CAMELLO - 40,880
8. M. MASTURA - 39,424
9. S. TOCAO - 38,948
10. MANAMPAN - 37,682
11. BIDES - 34,687
12. BALTAZAR - 34,015
13. BUAT - 32,624
14. ESTANIEL - 32,422
15. BAGUNDANG - 32,226

Both Bagundang and Estaniel had filed separate petitions with Comelec, whereby each of them likewise claimed to be entitled to the tenth winning spot. In Estaniel's case, were his petition to be sustained and should the handwriting and fingerprint examination bear out his allegations of "massive substitution of registered voters" with the consequent rejection and exclusion from canvass of the election returns from the four towns questioned by him, he would be raised to the tenth winning spot (without affecting the nine acknowledged winners) but the line-up and standings of the "magic ten" winners would be as follows:

NAME OF CANDIDATES VOTES GARNERED

1. VELASCO, A. 47,378
2. BADOY, A. JR. 39,543
3. ADIL, M. 38,615
4. CAMELLO, M. 37,422
5. SINSUAT, D. 34,596
6. AMPATUAN, L. 31,783
7. TOCAO, S. 31,137
8. MASTURA, M. 29,957
9. SAMBULAOAN, S. 29,088
10. ESTANIEL, J. 28,104[1]

Bagundang prayed for the exclusion from the canvass of the election returns from the five towns of Pikit, Pagalungan, Datu Piang, President Roxas and Magpet, "on the ground that said election returns did not reflect the will of the electorate as they were manufactured and had no relation to the votes found inside the ballot box.[2]

Petitioner Estaniel prayed for the exclusion from the canvass of the election returns from four towns, the same two towns of Pikit and Pagalungan questioned by Bagundang, besides two other towns of Maganoy and Dinaig. Estaniel expressly advanced "the ground that no true and expressive elections were therein held and if there be any, such were minimal or disregarded, as in all the towns in question ballots were either filled up by a few unauthorized hands or the returns accomplished as fancy gusto and scheme permitted. It is in fact even seriously doubted that ballots, lawfully or unlawfully filled up, can be found in the ballot boxes in these municipalities in

such pretensions and claims as written out in the corresponding tally sheets, if any there be and in the returns (all copies).[3] He also cited the "unlikely" and "highly suspicious" voting percentages in said towns, as follows:

- "1. PAGALUNGAN 98%
2. MAGANOY 89.03%
3. PIKIT 83.68%
4. DINAIG 88. 6%

(N. B. These percentages are more or less accurate, that is, not fractionally accurate. For Pagalungan, the computation is based on all 36 precincts except Precinct 5 which omits the entry; for Maganoy, on all 49 precincts except Precinct 3 which was not canvassed; for Pikit, on all 58 precincts except one unnamed precinct which was uncanvassed.)"[4]

Petitioner Estaniel also cited specific precincts therein, where "several contiguous precincts recorded 100% voting percentages," and "where the voting shows a pattern of dubious ilk, taking the four towns collectively or separately"[5] for the same set of ten to eleven candidates.

Petitioner Estaniel complains that after the Comelec conducted on January 15, 1971 in Manila the first and only hearing (which hearing was in connection with Pikit and Pagalungan alone, and was incomplete with only two witnesses being able to testify for candidate Bagundang) the Co-melec motu proprio and without explanation cancelled, until further notice, the continuation of the hearings it had scheduled for January 27-30, 1971 at Cotabato City (which were expressly ordered by it to be "intrans-ferable in character"), to hear the testimonies of the chairmen of the boards Of inspectors in the above questioned towns.

Petitioner Estaniel further complains that while the Comelec, as early as the lone hearing of January 15, 1971 had called for the precinct books of voters and the CE Form 39's in the questioned towns for examination and analysis by its and the NBI's handwriting and fingerprint experts and technicians, and such voting records are actually in its custody, (to determine whether the returns are manufactured, should the examination show that the "voting" was but by a few hands or by fake or fictitious voters, euphemistically called by the Comelec as "substitute voters"), the Comelec "unreasonably deviated from the standard procedure it has applied in cases of similar nature as in the Karomatan case; Sagada case; Cadiz case Sulu case; and Lanao case" and did not have such examination and analysis carried out.

Instead, the Comelec issued its questioned resolution of April 19, 1971, wherein it ordered the dismissals of both the petitions of Bagundang and Estaniel on the same ground of "failure to establish sufficient grounds for the rejection of the returns" from the towns respectively questioned by them.

The said resolution has become final as against candidate Bagundang who filed no appeal therefrom.

Estaniel, however, timely filed the present petition. Upon his motion, the Court issued on April 29, 1971 the writ of preliminary injunction restraining the reconvening of the Cotabato provincial canvassing board for the purpose of completing the canvass and proclaiming the tenth winning candidate for delegate from the province.

The Comelec justified its resolution dismissing the two petitions, as follows:

On Bagundang's petition, it held that "in the absence, therefore, of any strong and convincing evidence appearing on the face of the returns that said returns are manufactured and the figures therein were just prepared according to the fancy of the inspectors without regard to the contents of the ballot box, the Commission would not be justified in rejecting the returns as manufactured returns."[6]

Realizing, however, that its present procedure differed from that followed by it in the Karomatan and other cases, where it had not merely relied on the face of the returns, but had resorted to examination and analysis of the signatures and thumbprints to arrive at its conclusion that the elections were "sham" and the returns rejected as "manufactured re-turns", the Comelec sought to make the following distinction:

"The Commission would like to distinguish the present case and that of Karomatan where the Commission ruled the election returns were manufactured. The rationale of the decision of the Commission in the Karomatan case is that the election in the 42 precincts of Karomatan was sham and tantamount to no election at all since out of 9, 557 who voted in the 42 precincts, only 239 were found to be those of the registered voters in said 42 precincts. This finding of illegal voting was more than sufficient to overcome the presumptions of regularity and justified the rejection of the returns as manufactured returns. In the present case, we find no conclusive evidence to warrant a finding that the election returns should not be accorded any prima facie value because no elections were actually held. As a matter of fact, the allegation of BAGUNDANG that many of his votes were not counted but were read as votes for other candidates assumes that there was voting. How could he claim that he got at least 3 000 votes in each of the towns of Pikit, Pagalungan and in Datu Piang unless more than three thousand voted in these towns? In the final analysis, BAGUNDANG's thesis is actually one against the regularity of the counting of the votes, an incident of the election, and not one of 'no election' like what happened in Karomatan. This is a matter to be ventilated in an election protest." [7]

Resolving Estaniel's petition "as an incident or dependent upon Bagundang's petition", when as justifiably complained of by Estaniel, the two petitions "are separate and distinct from one another aside from containing substantially different allegations of facts," the Comelec dismissed Estaniel's petition, as follows:

"For the same reasons, the Commission finds the pe-tition of ESTANIEL to be without merit insofar as he ques-tioned the returns from Pagalungan and Pikit, the same towns included in the petition of BAGUNDANG. The result of upholding the returns from these two (2) towns would be that the returns from all the other towns questioned by ESTANIEL would no longer affect the result of the elections. The inclusion in the canvass of the returns from Pikit and Pagalungan would be fatal to the pretension of ESTANIEL of joining the winning candidates.

"Moreover, the Commission notes that the main con-tention of ESTANIEL is that the returns from Pikit, Pagalung-an, Maganoy and Dinaig were manufactured because of the high percentages of voting in these towns, namely: Pagalungan - 98%; Maganoy - 89. 03%; Pikit - 83.68%; and Dinaig - 88.6%. The returns, however, from said towns cannot be excluded from the canvass merely on said grounds for the doctrine of manu-factured returns based on statistical improbability as laid down, in the LAGUMBAY case is that all the candidates of one party had obtained 100%, either of all the registered voters or of the votes cast while all the candidates of the other party received uniformly zero. The Commission further doubts the application of the LAGUMBAY doctrine in the election for Constitutional delegates because of the fact that the participation of the political parties in said elections had been banned and that all candidates are supposed to be independent candidates running on their own without support from any political party or civic organization." [8]

The Court finds that the petition, based on the various complaints of petitioner as summarized above, has merit and should be granted.

1. The record amply shows that the Comelec, at the first and only hearing held by it on January 15, 1971 had directed the transfer to Manila of the voting records in the questioned towns and their examina-tion by its fingerprints division. Commissioner Patajo thus made it of record:

"COMMISSIONER PATAJO:

We cannot resume the hearing this afternoon.

ATTY. BAGUNDANG:

Yes.

COMMISSIONER PATAJO:

We will, therefore, resume this beginning January 27 to 30, 1970 in Cotabato City, and the Recording Secretary to issue subpoena to the Chairman of the Boards of Inspectors of Pagalungan, Dinaig, Pikit, Pres. Roxas, Maganoy, Magpet and also, to direct the transfer of the precinct books of voters of said municipalities and Form 39 to Manila so that they could be submitted for examination by the Fingerprints Division of the Com-mission. All parties are hereby notified and no further notices will be issued except to the candidates who are not present in this hearing. Notify the candidates who are not presented. We would ask that you will all be ready on January 27. We cannot give additional dates, You must be ready with the witnesses."[9]

And the Comelec chairman had likewise announced such examina-tion and that it would question the chairmen of the boards of inspectors of the questioned towns at the forthcoming hearings set in Cotabato City, since "you know that there have been anomalies committed in Cotabato every (time) during elections":

"CHAIRMAN:

You know that there have been anomalies committed in Cotabato every (time) during elections and we are suggesting that we hold the hearings in Cotabato City so that we can subpoenae the Chairmen of the Boards of Inspectors of these towns that are being questioned and we like to call for the precinct books of voters and Form 39 so that we can look into all of these."[10]

2. The Comelec has not established any sufficiently persuasive ground for cancelling the Cotabato City hearings and the examination and analysis by its handwriting and fingerprint experts of the voting records which have been in its custody since last January.

As against the Comelec's silence on the matter, petitioner has presented the certification dated June 26, 1971 of Atty. Wilfredo Bueno, officer-in-charge of the office of the provincial election supervisor in Cotabato City

"That this scheduled hearing never took place in Cotabato City since the COMELEC called this off acting on the Omnibus petition filed by Attys. Sergio Toca, Midpantao Adil, Sandiale Sambulawan, Michael Mastura and Mrs. Linda Ampatuan to reconsider its (COMELEC) order to hold hearing in Cotabato City, having among other things as a ground the unfavorable peace and order situation prevailing then at that time.

"That from the date the COMELEC called off the scheduled hearing the undersigned knows no knowledge of any further order, directive or notice to conduct a hearing or of any actual hearing on the same said petitions, that took place thereafter in Cotabato City."[11]

Nothing has been said as to why, notwithstanding that the peace and order situation presumably sufficiently improved afterwards, the continuation of the hearings has not been set and held, in order to give petitioner his day in court.

Neither has any valid reason been given by Comelec for its un-explained act of not implementing and in effect recalling sub rosa its own announced action of causing the examination and analysis of the voting records in the questioned towns and for abruptly considering the hearings terminated, when petitioner had not yet begun, much less sub-mitted his case.

3. Comelec's ground for dismissing Bagundang's petition (that Bagundang's "thesis is actually one against the regularity of the counting of the votes, an incident of the election, and not one of 'no elections') could not validly be invoked and used by it as the same ground for dis-missing petitioner Estaniel's petition, insofar as the returns

from the two towns of Pikit and Pagalungan commonly questioned by the two complainants were concerned.

Herein petitioner's thesis, as expressly averred in his verified petition before the Comelec, was that "no true and expressive elections were therein held and if there be any, such were minimal or disregarded, as in all the towns in question ballots were either filled up by a few unauthorized hands or the returns accomplished as fancy, gusto and scheme permitted" - which was but another way of alleging the existence of "massive substitute voting" held to be anathema by the Comelec, since it necessarily signifies that the returns are "manufactured returns" which should be entirely rejected.

Hence, the Comelec itself, on the strength thereof and of its own notice that "there have been anomalies committed in Cotabato every (time) during elections", had ordered the holding of hearings to question the chairmen of the boards of inspectors (as it had done in Karomatan, Sagada, etc.) and to have the signatures and fingerprints of the voting records examined and analyzed - which, however, it has failed to implement and carry out up to now.

This was concededly the main contention of petitioner Estaniel, and was so duly acted upon by the Comelec until it reversed itself per its questioned resolution. The unusually high percentage of voting in the questioned towns was not the main contention of Estaniel, as now erroneously stated in the resolution. As correctly stated in the present petition, petitioner "had invited (Comelec's) attention to these high voting percentages simply as an index to the failure of election or that substitute voters voted in these towns."

4. Comelec's principal defense in the present case, i. e. "that the examination of election records for purposes of determining irregularities in voting procedures is a matter of discretion on the part of the Commission on Elections depending upon the facts and circumstances of the case"[12] must necessarily fail. Here, Comelec did in fact exercise its discretion and order the examination and analysis of the voting records signatures and fingerprints as well as the questioning of the chairmen of the boards of inspectors, in order to determine the genuineness or falsity of the election returns. It cannot recall such exercise of discretion without valid reason and justification.

In the Sagada case resolver just now by the Court in *Diaz vs. Comelec*, L-33378, and likewise involving a delegate seat (from the Mountain Province for the Constitutional Convention under Republic Act No. 6132, the Court sanctioned the Comelec's procedure, upon establishment of a strong prima facie case, of causing the examination and analysis of the signatures and fingerprints of the precinct books of voters and the CE 39's and voting records, in order to determine whether the reported elections were sham and tantamount to no election at all and accordingly accord no prima facie value to the election returns and reject them as manufactured and false returns.

The Court, however, therein emphasized through Mr. Justice Reyes that "justice and equity imperatively demand that there should be no discrimination in the application of the rules by Comelec."

5. The abrupt cancellation of further hearings and the non-implementation of the announced examination and analysis of the voting records give strong weight to petitioner's submittal that he has not been afforded his right to due process and a fair and full hearing. Bagundang's concession in his petition of mere irregularity in the counting of the votes could not be extended to herein petitioner's own petition complaining of no elections and manufactured returns - by virtue of the maxim of *res inter alios acta alteri nocere non debet*. [13]

Much as the Court wishes to pronounce finis to this contest, (which must have been likewise the Comelec's well-meaning but erroneously implemented motivation for its questioned resolution), it is therefore constrained to remand the case to the Comelec, in the interest of the electorate of Cotabato as well as of the contending candidates, for the carrying out of the examination and analysis by Comelec's own and deputized fingerprint and

handwriting experts of the voting records in the four municipalities of Pikit, Pagalungan, Maganoy and Dinaig, and for the questioning of the chairmen of the boards of inspectors in said four towns, during the November, 1970 elections for Constitutional Convention delegates, to the extent necessary for Comelec to determine whether or not the elections therein were sham and the corresponding election returns should be rejected and excluded as manufactured returns and insofar as the results for tenth place winner would be affected thereby.

ACCORDINGLY, the writs of certiorari and prohibition are granted and the questioned Comelec resolution RR- 89 of April 19, 1971, specifically paragraphs 2 and 3 of its dispositive portion, is hereby annulled and set aside. The writ of preliminary injunction here-tofore issued against said resolution is hereby made permanent. The case is remanded to the Comelec for further proceedings not inconsistent with this decision, and particularly, as set forth in the preceding paragraph, whereafter the Comelec shall direct the provincial canvassing board to reconvene and proclaim whomsoever among the remaining fifty-two (52) candidates is the tenth place winner, in accordance with its findings, as to the inclusion or exclusion of the questioned returns from the four towns subject of petitioner Estaniel's petition. In view of the urgency of the case, involving as it does, the determination of who is entitled to be proclaimed and to discharge the functions of tenth delegate from Cotabato to the 1971 Constitutional Convention, this decision is hereby declared to be immediately executory. No pronouncement as to costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

[1] The total votes credited to him and his closest opponents for 10th spot in these four towns were as follows:

MANAMPAN 17, 145

BUAT 15, 173

BAGUNDANG 12, 932

BALTAZAR 10, 895

BIDES 9, 575

ESTANIEL 5, 318

[2] Comelec Resolution, Annex B, petition, p. 5.

[3] Estaniel's petition before Comelec, Annex A, petition, par. IV, emphasis furnished.

[4] Idem (Estaniel's petition before Comelec, par. IV).

[5] Idem.

[6] Emphasis furnished, Comelec Resolution, Annex B petition.

[7] Idem.

[8] Idem.

[9] T.s.n. Jan. 15, 1971, pp. 137-138; quoted in petitioner's memo; emphasis supplied.

[10] Idem, p. 135; note in parentheses and emphasis supplied.

[11] Annex C, petitioner's memorandum.

[12] Comelec answer, par. 2(a).

[13] "SEC. 25. Admission by third party. - The rights of a party cannot be prejudiced by an act, declaration, or omission of another, and proceedings against one cannot affect another, except as hereinafter provided." (Rule 130, Rules of Court)

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