

JOVITO O. CLAUDIO, PETITIONER, VS. HON. COMMISSION ON ELECTIONS, BOARD OF CANVASSERS OF PASAY CITY AND PABLO P. CUNETA, RESPONDENTS.

G.R. No. L-34434. December 23, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

In G. R. No. L-34434, Jovito Claudio vs. Comelec, et als., a petition for review of Comelec Resolution No. RR-105C dated December 4, 1971, filed by petitioner Jovito Claudio, candidate for reelection as Mayor of Pasay City against one of the opposing candidates, respondent Pablo Cuneta, and the Comelec and the Board of Canvassers of said city, praying that Comelec be ordered to instruct respondent Board of Canvassers to exclude from the canvass the election returns from certain precincts in Pasay City, on the ground that the same are "spurious" or "no returns" at all, which if done, the petitioner would appear to be the ostensible winner instead of respondent Cuneta, who appears to have, on the basis of the votes reported in said returns, obtained the plurality of the votes over petitioner; without prejudice to a more extended opinion, should the necessity therefor arise, the Court renders judgment modifying the questioned Comelec resolution, and respondent Board of Canvassers is hereby ordered to order the completion and/or correction of the returns mentioned hereunder, it appearing that the impugned election returns for Precincts 1, 3, 5, 17, 18, 49, 63, 101, 103, 127, 130, 124, 138, 141, 142, 151, 152, 176-A, 180, 185-A, 190-A, 192-A, 220, 232, 241, 247-A, 280 and 282, 116-A, 138, 188, 144-A, 154, 209 and 272, and 153, are incomplete or, plainly erroneous, as found by Comelec, as to the data or number of voters and ballots, and it is the plain duty of the Board of Canvassers under section 204 of the Election Code of 1971 to return the same to the respective Boards of Inspectors for completion of the details complained of in the petition which the respondents do not deny are actually unstated in the first twenty-eight returns above enumerated as well as the correction of the data regarding the number of ballots found in the compartment for valid ballots, in the last eight of said precincts, which Comelec found to be erroneous because of the mistaken interpretation of the inspectors of the true nature of the information required thereby; with the clarification that, since the respective ballot boxes have already been closed and to avoid that the boards of inspectors concerned may resort to plain memory in completing the returns in question, the corresponding ballot boxes should be opened, in the premises of the Comelec, in its presence and under its supervision after satisfying itself that the identity and the integrity of the ballot boxes have not been violated, and also in the presence of representatives of the parties in this case, for the sole purpose of securing the data needed to complete the said returns, but without recounting the votes of each candidate as they count the ballots actually used in voting (none of the ballots shall be read); it is further understood that the tallies of the votes shall also be closed by the signing by the inspectors in the spaces immediately after the end of the tallies, as required by Section 190 of the Election Code of 1971; and as regards the alleged irregularities in the returns for Precincts 140-A; 14, 17, 27-A, 64, 119, 126, 160-A and 22, which consist of discrepancies between the number of bars in the tallies, on the one hand and the words and figures referring to the number of votes received by petitioner and/or respondent Cuneta, and the excess of five (5) votes for the total number of votes cast for Mayor over the number of total votes actually cast by all the voters who

voted in Precinct 140-A there being no way to determine at this stage, whether or not the results of the disputed election will be affected by the irregularities alleged by petitioner, the Comelec resolution under review is affirmed, with-out prejudice to petitioner raising the same questions af-ter the proceedings of completion and correction above-ordered; and, finally, as to the objections raised by petitioner to the returns for Precincts 193, 247, 96 and 219, the Comelec resolution thereon is affirmed, the matter therein involved being appropriate for an election protest rather than a pre-proclamation proceeding, apart from the fact that they were not properly raised before the Comelec.

This decision is immediately executory.

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

Castro Castro, J., did not take part.

Teehankee, J., in the result.

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