

MANGACOP MANGCA, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND ALINADER DAGAR BALINDONG, RESPONDENTS.

G.R. Nos. L-58309-10. February 25, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This petition for certiorari with preliminary injunction seeks to set aside: (1) COMELEC resolution dated March 31, 1981 -- which: (a) revived the effects of COMELEC Minute Resolution No. 9520 (thus allowing Alinader Dagar Balindong and all of those who were proclaimed on March 18, 1980, by the Municipal Board of Canvassers of Sultan Gumander, Lanao del Sur, as winners in the January 30, 1980, local elections to sit as officials of that municipality); (b) dismissed PP Case No. 426 without prejudice to the filing of an election protest or quo warranto, whichever is proper, in the appropriate forum for ventilation; and (c) declared said resolution as immediately executory - and (2) COMELEC resolution dated September 16, 1981, which denied for lack of merit the motion for reconsideration of the March 31, 1981, resolution.

After the January 30, 1980, local elections were held, Alinader Dagar Balindong, the private respondent, and Mangacop Mangca, the petitioner, who were the official candidates for mayor of Sultan Gumander, Lanao del Sur, filed pre-proclamation cases with the Commission on Elections. PP Case No. 158 for the immediate counting of votes, canvass of election returns and proclamation of winning candidates was filed by Alinader Dagar Balindong (NP) on February 4, 1980, while PP Case No. 426 for the annulment of elections in Sultan Gumander was filed by Mangacop Mangca (KBL) on February 13, 1980. On March 10, 1980, the COMELEC issued in PP Case No. 158 Resolution No. 9520 ordering the counting and canvassing of votes and the proclamation of the winning candidates. Pursuant thereto, the votes cast for Sultan Gumander were counted and canvassed and on March 18, 1980, the Municipal Board of Canvassers of Sultan Gumander proclaimed respondent Balindong, who obtained a plurality vote of 2,057, as Mayor-elect, and issued its certificate of canvass of the votes cast and proclamation of the winning candidates. The next day, Balindong took his oath of office before Acting Municipal Circuit Judge Guimba Anan Mandi.

Meantime, petitioner Mangca filed with the COMELEC on March 13, 1980, a motion for reconsideration of Resolution No. 9520 praying that the COMELEC suspend implementation of the resolution and the proclamation of winning candidates, declare a failure of elections in Sultan Gumander, and order a special election when peace and order conditions allow. He also prayed that PP Case No. 158 and PP Case No. 426 be heard jointly.

On March 26, 1980, the COMELEC ordered the suspension of the effects of Resolution No. 9520.

On April 18, 1980, respondent Balindong filed a motion for reconsideration of the COMELEC order dated March 26, 1980, and on May 21, 1980, he filed a motion to intervene in PP Case No. 426 and an answer to the petition in said case. On May 22, 1980, the COMELEC issued a resolution admitting Balindong's intervention and answer and ordering an immediate raffle and hearing on the merits of the two cases.

On March 31, 1981, the Third Division of the Commission on Elections issued the contested resolution, the

dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, this Division resolves:

1. That the effects of COMELEC Minute Resolution No. (9520) be revived thus allowing Alinader Dagar Balindong and all of those who were proclaimed on March 18, 1980 as winners in the local elections in Sultan Gumander by the Municipal Board of Canvassers, headed by Atty. Zaman M. Marohomsar, to sit as municipal officials of Sultan Gumander;
2. That this decision shall be immediately executory pursuant to Sec. 175 of the Revised Election Code;
3. That PP Case No. 426 be dismissed without prejudice to the filing of an election protest or quo warranto, whichever is proper, in the appropriate forum for ventilation."

On April 27, 1981, petitioner Mangca filed a motion for reconsideration of the March 31, 1981, resolution claiming that the same did not express clearly and distinctly the facts and the law on which it is based and, therefore, null and void for being contrary to Art. X, Sec. 9 of the Constitution. He further contended that the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in failing to consider his evidence in PP Case No. 426 and the report of Regional Election Director Mamasapunod Aguam that there was failure of election in Sultan Gumander and that a special election should be held therein.

On May 7, 1981, the COMELEC issued an order holding in abeyance the implementation of the March 31, 1981, decision and temporarily restraining Balindong from assuming the position of mayor of Sultan Gumander pending resolution of Mangca's motion for reconsideration.

On September 16, 1981, the COMELEC issued the other contested resolution denying Mangca's motion for reconsideration for lack of merit, lifting the May 7, 1981, restraining order, and ordering the immediate execution of the March 31, 1981, resolution. The COMELEC likewise emphasized that it did not pass upon the merits of PP Case No. 426 since the pre-proclamation controversy should no longer be viable after the proclamation of Balindong and the other winning candidates in Sultan Gumander and that the issue of whether or not there was a valid election in said municipality can best be ventilated in an election protest or quo warranto, whichever is proper.

Hence, the present petition for certiorari with preliminary injunction.

The petitioner contends that the Commission on Elections gravely abused its discretion in issuing the resolution dated March 31, 1981, and September 16, 1981, on the following grounds:

- (1) That the March 31, 1981, resolution did not express clearly and distinctly the facts and the law on which it is based - in violation of Sec. 9, Art. X of the Constitution, which reads:

"No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based."

and Sec. 26, Rule XV of COMELEC Resolution No. 1450 dated February 26, 1980, which reads:

"In deciding contests, the Commission shall follow the procedure prescribed for the Supreme Court in Secs. 8 and 9, Art. X of the Constitution of the Philippines."

- (2) That the COMELEC did not consider petitioner's evidence, particularly the Memorandum-Report of Atty. Mamasapunod Aguam, Regional Election Director for Region XII, to the effect that there was failure of election in Sultan Gumander.

Petitioner's contention that the March 31, 1981, resolution is null and void for being violative of Sec. 9, Art. X of

the Constitution and Sec. 26, Rule XV of COMELEC Resolution No. 1450 is untenable. Firstly, both cited provisions are inapplicable to the case at bar since the constitutional requirement applies only to courts of justice which the COMELEC is not (*Lucman vs. Dimaporo*, L-31558, May 29, 1970, 33 SCRA 387) while COMELEC Resolution No. 1450, per Sec. 1 thereof, applies only to "election contests" and "quo warranto proceedings" which the pre-proclamation cases are not. Secondly, the questioned resolution has clearly and distinctly expressed the facts and the law on which it is based. The factual basis of the dismissal of PP Case No. 426 is the proclamation of Balindong and the other winning candidates of Sultan Gumander on March 18, 1980; while the legal basis thereof is the settled judicial doctrine that once a proclamation has been held, a pre-proclamation case should no longer be viable. Finally, the questioned resolution need not express factual findings relative to the issue of whether or not there was failure of election in Sultan Gumander since the COMELEC did not pass upon said issue and reserved resolution of the same in the election contest or quo warranto, whichever is proper, which petitioner Mangca may thereafter file.

We likewise hold as untenable the petitioner's contention that the COMELEC gravely abused its discretion when it did not resolve his claim that there was a failure of election in Sultan Gumander. In the first place, the report of Regional Election Director Mamasapunod Aguam that there was a failure of election in Sultan Gumander was not presented in evidence. In the second place, even if it had been presented the COMELEC had no duty to act on it considering that under the circumstances, the alleged failure of election was not a proper issue in a pre-proclamation case. It should be recalled that the COMELEC dismissed the pre-proclamation petition for annulment of the election (PP Case No. 426), without prejudice to the filing of an election protest or quo warranto, whichever is proper, in the appropriate forum for ventilation. The COMELEC's action is logical because settled is the doctrine that once a proclamation has been made, as in this case, a pre-proclamation controversy is no longer viable.

WHEREFORE, the petition for certiorari with preliminary injunction is hereby DISMISSED for lack of merit. Costs against the petitioners.

SO ORDERED.

Concepcion, Jr., Fernandez, Guerrero, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur.

Fernando, C.J., concurs on the basis of the ruling of this Court in *Aguinaldo v. Commission on Elections*, G.R. No. 53953, January 5, 1981.

Teehankee, J., concurs. The 10-day period for the petitioner to file any election protest (Sec 190, 1978 Election Code) should be deemed to commence from petitioner's receipt of the decision upholding respondent's proclamation.

Barredo, J., concurs but he note that Mangacop Mangca complaint was filed with the Comelec before the proclamation of Balindong, only that his ground is not proper to a pre-proclamation proceeding.

Makasiar, J., in the result.

Aquino, J., concurs but a 15-day period from notice should be fixed for the filing of the election protest or quo warranto proceeding.

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