

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. June 28, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Pending before the Court is petitioners' motion for reconsideration dated September 16, 1972 praying for reconsideration or modification of the decision of August 30, 1972 under which Resolution RR-1162 dated March 21, 1972 of the Comelec ordering the proclamation of Julkipli Anni and Santanina Rasul as two of the winning candidates for members of the provincial board of Sulu (since they could no longer be dislodged by the results of another pending case C-339 questioning the returns in 164 other precincts involving some 8,000 votes in some eleven other municipalities and affecting only the possible winner of the third and last board seat) was upheld, resulting in the proclamation and seating of said Julkipli Anni and Santanina Rasul, by virtue of the decision having been ordered to be executory upon promulgation.

The burden of the motion is that the Court's ratio decidendi that questions concerning alleged falsification or tampering of returns and asking for their exclusion in the canvass should first be raised before the canvassing board, subject to appeal from its decision to the Comelec (as specifically ordered by Comelec in its Resolution No. 78 of November 26, 1971 directing that all such questions should "be initially raised before the board during the canvass")* should equally apply to the 164 election returns sought to be questioned in pending Case C-339 of the Comelec.

The Court believes that this question is best raised and resolved in Case L-35918 entitled "Julasiri M. Anni vs. Muss Izquierdo, et al.," concerning the two principal protagonists for the third and last board seat and whose fate depends upon the Comelec action on the inclusion or exclusion of the questioned returns of said 164 precincts which is pending decision, with the express qualification that the question of whether the said 164 election returns could be ordered excluded by Comelec notwithstanding their not having been initially questioned before the provincial canvassing board was in no way resolved by the Court's decision of August 30, 1972 in the case at bar, since it was not directly in issue herein as far as the merits of the case are concerned, and Muss Izquierdo who would be directly affected by the Court's resolution of the question is not even a party and has not been heard herein.

The dismissal of the petition at bar could therefore be in no way construed to be an advance ruling of this Court on the question of propriety and validity of the examination ordered by Comelec in the same Resolution RR-1162 of the questioned 164 election returns which, as expressly stated in the decision had no materiality to the dispute here and could not "conceivably alter the winner status of Julkipli Anni and respondent Rasul." (at pp. 8-9).

ACCORDINGLY, the said motion for reconsideration shall be resolved in the Court's decision in Case L-35918.

Makalintal, C.J., Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

* At page 10, Decision.

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