

CIPRIANO PEÑAFLORIDA, PETITIONER, VS. COMMISSION ON ELECTIONS, NEW & SPECIAL PROVINCIAL BOARD OF CANVASSERS OF ILOILO AND RAMON DUREMDES, RESPONDENTS.

G.R. No. 101753. March 03, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A quick look at the three preceding cases elevated to this Court on Certiorari revolving around the elective position of Vice-Governor of Iloilo is in order.

1. In “Duremdes v. Provincial Board of Canvassers, COMELEC, and Penaflorida (G.R Nos. 86362-63, 27 October 1989, 178 SCRA 746), we upheld the COMELEC Decision ordering the Provincial Board of Canvassers of Iloilo (PBC) to immediately reconvene, include in the canvass the questioned election returns and prepare a new Statement of Votes, after we had found that DUREMDES’ proclamation was based on an incomplete canvass.

2. In “Penaflorida v. COMELEC and DUREMDES, (G.R. No. 93376, 19 July, 1990), the PBC did reconvene but because the COMELEC ordered the physical examination of the questioned election returns (PBC copy and other election returns copies). PENAFLORIDA sought to enjoin the conduct of said physical examination. The Court denied that plea and held that it was best that the physical examination of different copies of the questioned election returns be made to verify the number of votes in the election returns from which the Statement of Votes could be tabulated. The Court also directed the COMELEC to proceed with dispatch with the physical examination of the questioned election returns so that the true will of the electorate of Iloilo could be determined.

3. In Penaflorida v. COMELEC (G.R. No. 96760, 19 June 1991, 198 SCRA 454), Penaflorida charged the COMELEC with grave abuse of discretion for having conducted the physical examination without notice to him and in his absence, and prayed for the re-examination of all 110 contested election returns. We rejected the plea for re-examination but in order to afford PENAFLORIDA an opportunity to see for himself the discarded returns, we directed the COMELEC to allow him to examine, within a period of three (3) days, the forty-nine (49) questioned election returns which the COMELEC en banc “found to be fake, or substituted or systematically tampered with and no longer reflective of the true results of the election.”

Also assailed by PENAFLORIDA in this case was the COMELEC Order of 11 February 1991 declaring that it had completed the physical examination and comparison of the questioned election returns and found that of the 110 questioned election returns in nine (9) municipalities of Iloilo, forty-nine (49) returns from four (4) municipalities had been “systematically tampered” with or substituted. Thus, with respect to said forty-nine (49) questioned returns, the COMELEC ordered that the COMELEC copy or ballot box copy of said election returns be used for canvassing, instead of the usual PBC copy.

The same Order required the PBC to convene within five (5) days from notification and to complete the canvass, utilizing for the purpose the PBC copies for those precincts the returns of which were not questioned, and for

those which were, such election returns, per precinct, as specified in the Order.

After PENAFLORIDA had examined the aforesaid returns, the COMELEC issued a series of Orders, which eventually led to the filing of the fourth case, i.e.:

4. G.R. No. 101753 (the present case).

The first Order, dated 22 August 1991, directed the taking of the thumbprints of the Chairman and/or any Member of the Board of Election Inspectors of the questioned precincts for comparison with the thumbprints reflected in the election returns, “with prior notice to parties of the date and place of said fingerprint taking.” The Order was prompted by the “desire (of the COMELEC) to further determine the genuineness, authenticity and due execution of the election returns with conflicting entries” and in deference to the request of the new members who had not taken part in the previous deliberation namely, Chairman Monsod and Commissioner Maambong.

PENAFLORIDA moved for the immediate implementation of the 22 August 1991 Order in his Manifestation and Motion, dated 9 September 1991. In its Order, dated 12 September 1991, however, the COMELEC, after stating that the thumbprint taking had already been accomplished on September 1991, directed the thumbprint examiners “to immediately conduct a comparative examination of the thumbprints taken with those thumbprints appearing in the election returns.”

PENAFLORIDA thereafter filed a Manifestation, dated 13 September 1991, praying for a retaking of the thumbprints as it had received no prior notice with respect thereto. The COMELEC brushed aside that plea in its assailed Order, dated 18 September 1991, stating, among others, that said examination was but part of its internal procedure; and since the results of the “dactyloscopic examination” confirmed its original findings reflected in its Order of 11 February 1991, it directed the PBC, with prior notice to the parties, to reconvene within five (5) days, proceed with the canvass of the election returns and proclaim the winning candidate. The PBC set 2 October 1991 for the canvass and proclamation.

On 30 September 1991, PENAFLORIDA instituted the present Certiorari Petition praying that the COMELEC Order of 18 September 1991 be set aside for having been issued with grave abuse of discretion as the COMELEC had failed to notify him of the fingerprint taking in contravention of its earlier Order that the same be conducted with prior notice to the parties. He contends that the thumbprint taking was never meant by the COMELEC to be an “internal procedure” in its 22 August 1991 Order but that it was necessary in order to determine the genuineness and authenticity of the different copies of the questioned election returns. He then prays that, in equity, the COMELEC be ordered to conduct a recount of ballots in all the forty-nine (40) precincts and that a proclamation of the winning candidate be made on the basis of the results of the recounting.

We required Comments from all respondents and, as PENAFLORIDA had prayed for, we issued a Temporary Restraining Order on 1 October 1991 enjoining the PBC of Iloilo from reconvening on 2 October 1991 and the COMELEC from enforcing its questioned Order of 18 September 1991.

It appears that, as Respondent DUREMDES pointed out in his Comment, PENAFLORIDA had three (3) pending Motions before the COMELEC at the time he filed this Petition, (1) an “Urgent Motion for Recount of Ballots” filed on 18 September 1991; (2) a “Most Urgent Omnibus Motion” filed on 23 September 1991, the main thrust of which was the nullification of the thumbprint-taking conducted in Iloilo City on 5 September 1991 and the suspension of any action on the case until rulings therein had been rendered; and (3) an “Urgent Ex-Parte Motion to Resolve Pending Incidents” filed on 25 September 1991.

If for this alone, the Petition is dismissible on the ground of prematurity for failure to exhaust administrative remedies. However, with the end in view of putting a final termination to this protracted controversy, we will

nonetheless resolve the Petition on the merits.

PENAFLORIDA's submissions call for rejection.

The COMELEC Order, dated 22 August 1991, did state that the thumbprint taking was to be conducted with prior notice to the parties, thus:

“x x x x x x x x

“ACCORDINGLY, the Director, Election Records and Statistics Department is hereby directed to assign and send immediately fingerprint experts to Iloilo in coordination with the Provincial Election Supervisor to the fingerprints of the Chairman and/or any Member of the Board of Election inspectors the above named precincts, with prior notice to parties of the date and place of said fingerprint taking.” (Underscoring ours).

To be noted, however, is the fact that neither the Omnibus Election Code (B.P. Blg. 881) nor the Electoral Reforms Law (Rep. Act No. 6646), the governing legislation during the 18 January 1988 local elections, provide, much less, outline the procedure to followed for such an examination.

There is basis, therefore, for the COMELEC ruling in its Order of 18 September 1991 that the fingerprint taking was merely “part of its internal procedure.” Worthy of recall is that all the COMELEC had to do after this Court had promulgated the Decision in G.R. No. 96760, *supra*, was to have afforded PENAFLORIDA the opportunity to see for himself the election returns which were found to have been fake, substituted or tampered with, nothing more. There was really no compulsion for the COMELEC to order the thumbprint taking but it did so “in its desire to further determine the genuineness, authenticity and due execution of the election returns with questionable entries.”

Indeed, it was not PENAFLORIDA who asked for the thumbprint taking. That initiative came from the COMELEC itself, which “wanted to make sure that its previous ruling was indeed correct” (COMELEC Order, dated 30 September 1991, p. 10). That objective can be further gleaned from the fact that it was the newly appointed COMELEC Chairman and another new Member, Commissioner Maambong, both of whom had not participated in the earlier deliberations, who prevailed upon the other Members to allow the thumbprint taking (*ibid.*, p. 6) so that they could satisfy themselves of the authenticity of the copies of the election returns earlier chosen.

In effect, the thumbprint taking was conducted to assist the Commissioners in resolving the issue on the genuineness, authenticity and due execution of the forty-nine (49) election returns found to be fake, substituted or tampered with. Said fingerprint examination and the comparison made between the spec specimens taken by the fingerprint experts and those contained in the returns are actually part of the decision-making process. The parties, therefore, are not, as a matter of right, entitled to be present during the examination nor to confront the experts on the result of their work.

It should also be pointed out that no substantial rights were impaired by the absence of the parties in the thumbprint taking. Both PENAFLORIDA and DUREMDES were not notified thereof. There was no discrimination by the COMELEC in DUREMDES' favor to speak of, as PENAFLORIDA charges. Although PENAFLORIDA claims that Respondent DUREMDES was present during the thumbprint taking, the COMELEC has not confirmed the same.

Neither can it be successfully said that there were irregularities attendant to the thumbprint taking. No proof was adduced by PENAFLORIDA evidencing such alleged irregularities. On the contrary, Commissioner Maambong supervised the examination from beginning to end. The whole process itself was transparent. The procedure undertaken during the thumbprint taking, outlined in the COMELEC Order, dated 30 September 1991, speaks for

itself. Thus:

“The submitted reports of the process indicate that a Commissioner of the Comelec supervised the thumbprint taking. He was assisted by Regional Director Rodolfo B. Sarroza, Asst. Regional Director Jose G. Granada, and Provincial Election Supervisor Hector M. Masna, with a compliment of nine (9) personnel of the Iloilo Comelec Office. The thumbprints - two impressions of the right thumb for each subject - were impressed in prepared forms, and the taking was witnessed by the Supervising Commissioner and the two fingerprint examiners. The thumbprint impressions were then placed in sealed envelopes as they were brought to Manila. Likewise, the comparative examination in the Comelec Office in Manila was done by the fingerprint examiners who went to Iloilo City, in coordination with the different custodians of the election returns. x x x” (ibid, p. 11).

If any error can be attributed at all to the COMELEC, it would be its failure to notify the parties of the fingerprint examination despite its order to do so. At most, this is a procedural flaw, not a substantial defect, that can not be equated with grave abuse of discretion by reason of which Certiorari would lie. Errors of procedure or judgment are not correctible by Certiorari.

As correctly held by the COMELEC, even if a thumbprint re-taking is conducted, “a comparison of these thumbprints with those appearing in the different copies of the election returns will certainly yield the same results” since fingerprints cannot be forged. Besides, there is no change to the COMELEC Order of 11 February 1991 that the PBC copies for those precincts whose returns were not questioned were to be utilized, and for those questioned, the specified election returns, per precinct.

It behooves the COMELEC, however, particularly its personnel, to be more meticulous and painstaking in the execution and implementation of Orders. The Court notes that failure of notice of the conduct of physical examination was Petitioner PENAFLORIDA's same complaint in G.R. No. 96760, and which has contributed in no small measure to further delay in the final resolution of this controversy.

We now turn to PENAFLORIDA's urgings that at this late point in time, reliance on election returns is no longer justifiable and that a recount of the ballots in all the questioned precincts is the best equitable remedy.

We disagree. In the first place, there is no basis for a recount since the election returns are available. Secondly, in G.R. No. 86362-63, entitled “Duremdes v. Provincial Board of Canvassers,” (27 October 1989, 178 SCRA 746), the questioned election returns, 110 in all, had already been pinpointed and ordered included in the canvass. In G. R. No. 93376, entitled “Penaflorida v. COMELEC, (19 July 1990), this Court ordered the physical examination of the said questioned election returns. And in G. R. No. 96760 similarly entitled “Penaflorida v. COMELEC,” (19 June 1991, 198 SCRA 454), with the physical examination and comparison of questioned election returns accomplished, we upheld the COMELEC finding that of the 110 questioned election returns, forty-nine (49) returns had been systematically tampered with or substituted so that with respect to the latter the COMELEC copy or ballot box copy of said election return is to be used for canvassing instead of the usual PBC copy. With the affirmance by this Court of the aforesaid COMELEC rulings, the recount prayed for by Petitioner PENAFLORIDA is out of the question.

Parenthetically, Petitioner PENAFLORIDA's lawyers continually harp on the alleged erroneous ruling of this Court in G.R. No. 96760 (supra) that “particular copies of the (forty nine [49] questioned election returns) were found to be fake, substituted or systematically tampered with and no longer reflective of the results of the elections,” averring that there was no such finding by the COMELEC. While it may be that the COMELEC Order itself of 11 February 1991 did not specifically pinpoint a particular election return as fake, substituted or tampered with since confined itself to the particular copies of the election returns to be used in the canvass, yet, the basis for selecting the copies of the election returns other than the PBC copy, was well explained before this Court by

Commissioner Rama during the 21 February 1991 hearing in G.R. No. 96760, which Petitioner's counsel attended. Commissioner Rama precisely explained that the findings of the COMELEC when it examined the questioned election returns were that some of them were “fake” or “falsified” (TSN., pp. 83-88). Moreover, the notes or summary of the COMELEC findings relating to the questioned election returns were included by the Solicitor General in his Memorandum, dated 28 February 1991, submitted in the aforesaid case. Therein, reference was made to the finding that some of the returns were “systematically tampered” (p. 10) or “substituted” (p. 9). It is Petitioner, therefore who is in error when he states that there was no such finding made by the COMELEC. Besides, even assuming that those terms were not explicitly employed, the COMELEC observations during its physical examination of the election returns could not but lead to the use of the same terminologies.

Finally, the unassailable fact remains that Petitioner's counsel deliberately failed to inform this Court, at the time of the institution of this Petition, of their pending Motions before the COMELEC, treating practically of the same questions raised herein, to repeat: (1) an “Urgent Motion for Recount of Ballots” filed on 18 September 1991; (2) a “Most Urgent Omnibus Motion” filed on 23 September 1991; and (3) an “Urgent Ex-Parte Motion to Resolve Pending Incidents” filed on 25 September 1991. Recourse to this Court was, therefore, clearly premature. Counsel's justification that had they not filed this Petition, it would have been mooted and that Respondent Duremdes would have been erroneously proclaimed does not free them from culpability.

Lawyers owe candor, fairness and good faith to the Court (Canon 10, Code of Professional Responsibility). A finding, therefore, that Petitioner's lawyers have been remiss in this obligation is inevitable.

Considering that the term of office of the local officials elected during the 18 January 1988 elections is almost expiring, there is need for this Decision to be immediately executory.

WHEREFORE, the Petition for Certiorari is DENIED. The Temporary Restraining Order heretofore issued by this Court is LIFTED. The COMELEC may now proceed to implement its Orders of 11 February 1991 and 18 September 1991 directing the Provincial Board of Canvassers of Iloilo, with prior notice to the parties, to reconvene, within five (5) days from notice, proceed with the canvass and proclaim the winning candidate.

Petitioner's lawyers, Atty. Salvador S. Tayengco and Atty. Sixto S. Brillantes, Jr., are hereby directed to SHOW CAUSE within ten (10) days from notice, why they should not be administratively dealt with for their deliberate failure to exhaust administrative remedies before their recourse to this Court.

This Decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Paras, Feliciano, Padilla, Bidin, Medialdea, Regalado, Romero, and Nocon, JJ., concur.

Gutierrez, Jr., J., in the result.

Griño-Aquino and Davide, Jr., JJ., no part.

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