

JOSE L. ONG, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND WILMAR P. LUCERO, RESPONDENTS.

G.R. No. 105717. April 22, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Unsatisfied with Our Decision of December 23, 1992, public respondent Commission on Elections (COMELEC) and private respondent filed separate motions for reconsideration and clarification on January 13, 1993 and January 19, 1993, respectively.

In the aforesaid Decision, We decreed as follows:

"WHEREFORE, the petition for certiorari is granted and a writ of preliminary injunction is hereby ISSUED directing the COMELEC to CEASE and DESIST from implementing its order of June 2, 1992 and its resolution dated June 13, 1992 and the same are hereby declared NULLIFIED. Consequently, the election returns based on the recounted ballots from precinct 16 are hereby DISCARDED and in lieu thereof, authentic returns from said precinct should instead be made the basis to the canvassing. The Provincial Board of Canvassers of Northern Samar is hereby directed to PROCEED WITH DISPATCH in the canvassing of ballots until completed to PROCLAIM the duly elected winner of the congressional seat for the Second District of Northern Samar.

This decision is immediately executory.

SO ORDERED."

In its motion for reconsideration and clarification, respondent COMELEC contends that:

"(a) Section 3 of Article IX-C of the Constitution mandating that 'all such election cases shall be heard and decided in division' is not an absolute rule;

(b) the matter brought before the Commission in SPA 92-282, filed on May 25, 1992 is not a pre-proclamation controversy because as early as May 22, 1992 the Provincial Board of Canvassers of Northern Samar adjourned its session 'until further order from the Commission, Manila,' consequently, the petition to suspend 'would not have affected the proceedings of the board since what was prayed for thereunder was in the first place already a fait accompli:'

(c) the petition did not, contrary to the findings of this Court, contain pre-proclamation matters under Sections 233, 234, 235, and 236 of the Omnibus Election Code considering that:

(1) as regards precinct 13, no election was held as there was snatching of the ballot box the day before the elections:

(2) with respect to Precinct 16, the loss of all copies of the election returns does not fall within the purview of Sections 234, 235 and 236; it could fall within the contemplation of Section 233 which speaks of loss of a copy of the election returns intended for the board of canvassers:

(3) the same is true with respect to Precinct 7 where the Provincial Board of Canvassers' copy of the election returns was illegible.

(d) The Omnibus Election Code and Republic Act No. 7166 authorize the opening of the ballot box to recount the votes."

It further asks clarification on the following:

"(a) that portion of the dispositive portion of the Decision directing the Provincial Board of Canvassers to proceed with dispatch 'in the canvassing of ballots until completed and to proclaim the duly elected winner x x x,' considering that under Section 28(d) of R.A. No. 7166 the duty of the Provincial Board of Canvassers is to canvass certificates of canvass. It is the Board of Election Inspectors at the precinct level which is mandated by law to count the ballots. Besides, said directive virtually by-passed the COMELEC which is the agency granted by law with control and supervision over all boards of canvassers in every election; hence, it should be the COMELEC which should be directed.

(b) The Provincial Board of Canvassers would be in a quandary in the implementation of the above directive for the Decision does not state where the election returns for precincts 7, 13 and 16 needed by the Board to complete the canvass will come from since in the case of precinct 16 the returns prepared by the special board of election inspectors constituted by the COMELEC pursuant to the questioned orders was ordered 'DISCARDED;' with respect to precinct 7, it would be difficult to comply with the directive because while the COMELEC ordered the use of the COMELEC copy of the returns in its possession for purposes of the provincial canvass, the Decision nullified said order; and as regards Precinct 13, there was failure of election. Besides, this Court did not mention the step to be taken by COMELEC in respect to Precinct 13 in view of the failure of election. Under Section 4 of R.A. No. 7166, only the COMELEC en banc is empowered to declare a failure of election and to call a special election.

(c) The Decision makes the following findings of fact:

'On June 13, 1992 the COMELEC in an en banc resolution (a) denied Lucero's prayer for a correction of certificates of canvass from Las Navas equivalent to 20 votes. x x x'

however, four out of the seven Commissioners who signed it made the qualification, at the bottom of the signature page that they vote in favor of the resolution except that portion thereof denying the correction of the certificate of canvass for Las Navas; hence, the result is that the COMELEC granted the correction."

In his motion for reconsideration and clarification, private respondent also discusses the grounds relied upon by the public respondent, and adds that:

"(a) While the decision treats of the issue of special election sought by Lucero in Precinct 13 of Silvino Lobos, it makes no specific pronouncement on it:

(b) While the dispositive portion of the Decision declares NULLIFIED the COMELEC order of June 2, 1992 and its resolution dated 13 June 1992, it selectively upholds the implementation of the COMELEC resolution as regards Precinct 7 and selectively rejects the same as regards Precinct 16. Since it ruled 'that election cases which include pre-proclamation controversies must first be heard and decided by a division of the COMELEC, then it should have left all matters relating to Precincts 7 and 16 to a Division."

Petitioner traverses the motions for reconsideration and clarification in his Opposition and Comment and prays that the same be denied. He, nevertheless, recommends that in view of the COMELEC's clarificatory motion and his own comment, and in order to forestall any further delay in the final disposition of the present dispute, the Decision be modified to reflect very clearly the following:

"5.1.1. That after discarding the election returns based on the erroneously recounted ballots for Precinct 16,

referral to other authentic copies of the election returns should be dispensed with, there being none available. And that NO further RECOUNT should be conducted, as the same is not authorized.

5.1.2. That the results of Comelec copy of the election returns for Precinct 7, as canvassed by the special MBC of Silvino Lobos, and transposed into the Municipal Certificate of Canvass, which was also canvassed by the SPECIAL Provincial Board of Canvassers of Northern Samar be INCORPORATED into the previous totals. Additionally, it must be made clear that the canvass by the MBC [of the election return] and the PBC [of the Municipal Certificate of Canvass] is no longer APPEALABLE to the Comelec, being in the nature of a pre-proclamation controversy, disallowed under Section 15 of Rep. Act No. 7166.

5.1.3. That while acknowledging that power of the Comelec to call for special elections, it must be declared that in Precinct 13 of Silvino Lobos, such special election would be impractical, if not unnecessary, as the results will no longer be affected.

5.1.4. That the BODY that should reconvene to implement the decision of the Honorable Court must be specified as the SPECIAL Provincial Board of Canvassers of Northern Samar, created under Comelec Resolution No. 92-1813, composed of Atty. Felix Balalio, as Chairman; Atty. Manuel Conti and Atty. Moises Pernez, as members, considering that said SPECIAL PBC has effectively superseded the regular PBC of Northern Samar.

5.1.5. AND finally, with the annulment of the June 2, 1992 Order of the Comelec, that it must be reiterated the said SPECIAL PBC of Northern Samar reconvene immediately, proceed with dispatch tabulating the totals, and then PROCLAIM the duly elected winner for the congressional seat for the Second District of Northern Samar in the person of petitioner JOSE L. ONG, Jr.."

Private respondent filed a Rejoinder to the Opposition and Comment.

Deliberating on the motions for reconsideration and clarification, the comment thereon and the rejoinder to the latter, this Court finds the motions to partially impressed with merit.

1. A careful examination of the signature page (page 8) of the June 13, 1992 Resolution (Annex "B" of Petition) discloses that at the bottom thereof, particularly below the signatures of the Chairman and the six Commissioners there appears an entry which is followed by the signatures of a majority of the Commission, namely, Chairman Christian S. Monsod, Commissioners Haydee B. Yorac, Dario C. Rama and Regalado E. Maambong. Said entry reads, as follows:

"We vote in favor of this resolution except that portion which denied the correction of the Certificate of Canvass for Las Navas. Correction of the Certificate of Canvass for Las Navas is in order in view of the testimony of the election registrar of Las Navas to the effect that Wilmar Lucero garnered 2,537 votes for Las Navas and not 2,517. Petition for correction was duly filed by Lucero with the Provincial Board of Canvassers of Northern Samar on May 19, 1992. The Provincial Board of Canvassers of Northern Samar is wherefore directed to retabulate the total number of votes for Las Navas for Lucero and enter the same in the Provincial Certificate of Canvass."

It is evident that they thus voted to grant the correction.

Petitioner's contention in his Opposition and Comment that the above entry "was categorically denominated as an irregular INSERTION as the same was effected without the knowledge of the ponente, and after the Commissioners have already agreed to, and have signed the resolution of DENIAL of the correction," is implausible. It is to be observed that the petitioner annexed a copy of the Resolution to his petition without imputing any irregularity in the signing thereof. Thus, the resolution enjoys the presumption of regularity. Accordingly, the opening clause of the first paragraph of page 4 of the Decision should be corrected to read as

follows:

"On June 13, 1992, the COMELEC in an en banc resolution (a) GRANTED Lucero's prayer for correction of certificates of canvass from Las Navas equivalent to 20 votes; x x x"

2. Upon a further painstaking examination and review of the pleadings of the parties, we find that indeed, the petition filed by private respondent on May 25, 1992 (Annex "C" of Petition) is not exclusively confined to pre-proclamation controversies. This is borne out by its prayer which reads:

"WHEREFORE, it is respectfully prayed of this Honorable Commission that It:

A. Forthwith order Respondent Provincial Board of Canvassers for Northern Samar to suspend the proclamation of Private Respondent Jose L. Ong Jr.;

B. Direct Respondent Provincial Board of Canvassers for Northern Samar to correct the Certificate of Canvass (CEF 20) for Las Navas and, accordingly, to correct the total votes so far counted by it for Petitioner from 24,068 to 24,088, thus reducing the margin it found in favor of the Private Respondent Jose L. Ong Jr. from 204 to 184 votes only;

C. Order a special election in Precinct 13, Barangay Gusaran, Silvino Lobos pursuant to Section 6 of the Omnibus Election Code;

D. Order a recount of the votes for Representative of the Second District of Northern Samar in Precinct 16, Barangay Tubgon, and Precinct 7, Barangay Camayaan, both of Silvino Lobos, pursuant to Section 234 of the Omnibus Election Code;

E. Order a recount of the votes for Representative in the 52 precincts hereinabove enumerated in order to correct 'manifest errors' pursuant to Section 15 of Republic Act 7166 and for this purpose order the impounding and safekeeping of the ballot boxes of all said precincts in order to preserve the integrity of the ballots and other election paraphernalia contained therein; and

F. Grant such other and further reliefs as It shall consider just and proper in the premises."

The COMELEC itself did not consider the petition as a pre-proclamation controversy because it had docketed the case as a Special Action or SPA pursuant to Section 4(c) on Docket and assignment of numbers. Rule 7 of the COMELEC RULES OF PROCEDURE. Hence, the petition was docketed as SPA No. 92-282. The reason therefor could be that one of its causes of action relates to the supposed failure of election in Precinct 13 of Barangay Gusaran, Silvino Lobos, Northern Samar, and the necessity of holding a special election therein (par. 10 [b]). In fact, one of the remedies sought, as above shown, is for the holding of said special election. One of the Special Actions prescribed by the COMELEC RULES OF PROCEDURE is for the failure of election; the holding of a special election in such a situation is governed by Rule 26 thereof.

As a matter of fact, petitioner went even further when he unequivocally and vigorously asserted in his petition that there was no pre-proclamation dispute between the parties herein. He thus avers:

" 4.0

GROSS ERRORS Committed-Issue/s Raised:

4.1. On the questioned ORDER [Annex 'A'] -- Glaring on its face is the said Order directing the Provincial BOC-NS NOT TO RECONVENE, was based on a patently erroneous proposition... THAT there was a pending pre-proclamation controversy involving the congressional dispute between petitioner and private respondent.

4.1.1. Respondent COMELEC in directing the Provincial BOC-NS NOT to reconvene, predicated its Order on the supposed existence of a pre-proclamation controversy purported outstanding and PENDING. BUT this is entirely and totally INCORRECT, because factually and actually, there was NO such pre-proclamation dispute between the parties herein.

4.1.2. In fact, it is obvious that there can be NO pre-proclamation controversy pending, where the office involved is a NATIONAL office such as that of a congressman, as in the instant case.

x x x."

In view of our pronouncement to the contrary in the challenged decision, petitioner now stoutly maintains that SPA No. 92-282 involves pre-proclamation issues.

We are not bound by the expostulations of the parties. As we said earlier, SPA No. 92-282 does not solely involve pre-proclamation controversies. On its face, only the following appear to be pre-proclamation issues: (a) suspension of proclamation, (b) correction of the certificate of canvass of Las Navas, (c) recount of votes for Representative in the 52 precincts enumerated therein because the votes for "Lucero" were declared stray votes when they should have been credited to the private respondent, since the other candidate, Alice D. Lucero, was disqualified as a substitute for one Jesus C. Laodemio who had earlier withdrawn his candidacy and (d) the recount of votes in Precinct Nos. 7 and 16.

Over these pre-proclamation issues, the COMELEC, sitting en banc, has no original jurisdiction. Accordingly, we correctly voided its Order of June 2, 1992. However, as to the Resolution of June 13, 1992, our ruling thereon may be modified insofar as the matter of special election in Precinct No. 13 of Silvino Lobos is concerned since the calling or holding thereof is within the original jurisdiction of the COMELEC, sitting en banc.

Considering, moreover, that the parties explicitly admit that all copies of the election returns in Precinct No. 16 were lost, no canvassing of election returns for said precinct could have been validly and legally conducted by the Municipal Board of Canvassers. We, therefore, agree with the respondents that a recount of the ballots in said precinct is proper. In view of this special circumstance, we now rule that Sections 233, 234, 235 and 236 of the Omnibus Election Code are thus inapplicable since the instances therein contemplated do not obtain with respect to said Precinct No. 16. Otherwise stated, no viable pre-proclamation controversy may be said to have arisen therefrom. Consequently, with respect to said Precinct No. 16, the June 13, 1992 resolution is valid.

The correction of the certificate of canvass of Las Navas is likewise in order. Even though a pre-proclamation issue is Involved, the correction of the manifest error is allowed under Section 15 of R.A. No. 7166.

Logically then, this case should be remanded to the COMELEC which shall in turn refer SPA No. 92-282 to any of its Divisions, pursuant to its rule on raffle of cases for the resolution of the pre-proclamation issues therein raised.

IN VIEW OF ALL THE FOREGOING, the dispositive portion of the December 23, 1992 Decision is hereby MODIFIED to read as follows:

"WHEREFORE, THE PETITION IS GRANTED. THE JUNE 2, 1992 ORDER OF RESPONDENT COMMISSION ON ELECTIONS IN SPA NO. 92-282 IS HEREBY ANNULLED AND SET ASIDE. ITS JUNE 13, 1992 RESOLUTION THEREIN IS LIKEWISE ANNULLED AND SET ASIDE INSO FAR AS IT AFFECTS PRECINCT NO. 7 OF SILVINO LOBOS, THE RECOUNT OF VOTES IN THE 52 OTHER PRECINCTS AND THE CORRECTION OF THE CERTIFICATE OF CANVASS OF LAS NAVAS, BUT IS AFFIRMED WITH RESPECT TO THE ISSUE OF HOLDING A SPECIAL ELECTION IN PRECINCT NO. 13 AND THE RECOUNT OF THE BALLOTS IN PRECINCT NO. 16.

THE RESPONDENT COMMISSION ON ELECTIONS IS HEREBY DIRECTED TO ASSIGN SPA NO. 92-282 TO ANY OF ITS DIVISIONS PURSUANT TO ITS RULE ON RAFFLE OF CASES FOR IT TO RESOLVE THE PRE-PROCLAMATION ISSUES THEREIN TAKING INTO ACCOUNT THE ABOVE PRONOUNCEMENTS AND THE EXCEPTIONS PROVIDED FOR IN SECTION 15 OF R.A. NO. 7166.

WHENEVER WARRANTED BY THE CIRCUMSTANCES, THE COMMISSION MAY (A) CALL A SPECIAL ELECTION IN PRECINCT NO. 13 IN SILVINO LOBOS, NORTHERN SAMAR, AND (B) RECONVENE THE SPECIAL MUNICIPAL BOARD OF CANVASSERS AND THE SPECIAL PROVINCIAL BOARD OF CANVASSERS IT HAD EARLIER CONSTITUTED OR CREATE NEW ONES.

ALL THE FOREGOING SHOULD BE DONE WITH PURPOSEFUL DISPATCH TO THE END THAT THE WINNING CANDIDATE FOR CONGRESSMAN REPRESENTING THE SECOND CONGRESSIONAL DISTRICT OF NORTHERN SAMAR MAY BE PROCLAIMED AS SOON AS POSSIBLE.

This Resolution shall be immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Feliciano, J., dissenting opinion.

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