

**JOSE “PEPING” NAVARRO, PETITIONER, VS.
COMMISSION ON ELECTIONS AND JOSE “PEMPE”
MIRANDA, RESPONDENTS.**

G.R. No. 106019. December 17, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a special civil action for certiorari with a prayer for the issuance of a temporary restraining order or a preliminary mandatory injunction, to enjoin: (a) respondent Commission on Elections (COMELEC) from implementing its questioned Resolution dated June 29, 1992, and (b) the proclamation of private respondent as Mayor of Santiago, Isabela.

Petitioner Jose "Peping" Navarro and private respondent Jose "Pempe" Miranda were mayoralty candidates in Santiago, Isabela during the synchronized elections held on May 11, 1992.

Petitioner lost to private respondent.

On May 21, 1992, petitioner filed with the COMELEC an appeal under Section 245 of the Omnibus Election Code, in relation to Section 20 of R.A. No. 7166, to annul and set aside the rulings of the Board of Canvassers of Santiago, Isabela and the order of Manuel Agpalo, the acting Provincial Election Supervisor in the canvassing of votes in the mayoralty contest (SPC. No. 92-116). The petition alleged that:

- 1) The respondent Board erred in not issuing to the appellant a written notice of the canvassing that took place on May 12, 1992, in violation of Section 228 of the Omnibus Election Code;
- 2) The respondent Board erred in continuing with the canvassing of the election returns despite appellant's petition to disqualify Domingo Gorospe and Rodrigo Santos to sit in the board of canvassers, whose integrity have been assailed for obvious partiality towards the candidacy of Jose Miranda;
- 3) The respondent Board erred in continuing with the canvassing of contested returns despite verbal and written petitions to exclude, supported by clear and convincing evidence;
- 4) The respondent Board erred in continuing with the canvassing of contested election returns despite the filing of notices of appeal by appellant and for failure to observe the provisions of Section 20, 7166;
- 5) Respondent Agpalo erred in issuing an order setting aside appellant's notice of appeal, a denial of due process" (Rollo, pp. 188-189).

In his Answer/Opposition, private respondent alleged that:

- 1) Petitioner failed to make a timely objection to the 118 returns from the 118 precincts subject matter of the appeal (Rollo, p. 42).
- 2) The affidavits submitted by petitioner in support of his written objections to the 118 precincts do not make out a prima facie case showing the existence of fraud, irregularity or other circumstances constituting the

ground for the objection (Rollo, p. 44).

In his Supplemental Answer, private respondent further alleged: a) that like petitioner, he was not given a written notice by the Board of Canvassers of its initial meeting; b) that two lawyers appeared in representation of petitioner at the meeting of the Board of Canvassers; c) that said lawyers did not register their objections to the regularity of the proceedings; d) that also present at the meeting were several supporters of petitioner; and e) that, at any rate, such failure of the Board of Canvassers to give notice of the initial meeting was not his fault and a ground for a pre-proclamation controversy (Rollo, pp. 48-49).

In its Resolution dated June 29, 1992, the COMELEC en banc dismissed the petition without prejudice to the filing of a regular electoral protest (Rollo, pp. 37-51).

Hence, this petition which alleges that the COMELEC has gravely abused its discretion:

- 1) When it upheld the regularity of the canvassing of the election returns inspite of the lack of due notice thereof and the failure of the board of canvassers to attach the proof of service of notice to the records;
- 2) When it allowed the municipal board of canvassers to continue with the canvassing despite the filing of the motion to disqualify some of the members;
- 3) When it upheld the illegal composition of the board;
- 4) When it affirmed the anomalous membership of a fourth member of the board, who prepared the minutes under the Domingo board and Acierto board and erased from said minutes petitioner's participation during the proceedings; and
- 5) When it arbitrarily ruled that the grounds raised for excluding 118 returns are not grounds for pre-proclamation (Rollo, pp. 151-152).

The COMELEC found that petitioner failed to make timely objections to the alleged illegal acts committed by the Board of Canvassers, as well as to its composition and proceedings.

The COMELEC stated that:

"In the light of these conflicting claims, resort to the minutes of the respondent board is necessary.

Significantly, nothing in the said minutes will show any such objection by petitioner or his counsels of the said respondent Board's failure to send notices to the candidates or political parties as required under Section 228 of the Omnibus Election Code. Or that if such objections were raised, the same was pursued to the end. Neither is there in the Minutes any showing that petitioner's objection to the composition of respondent Board particularly Chairman Gorospe and Vice Chairman Santos was made pursuant to the procedural requirement provided for by Section 19, R.A. No. 7166. Failing thus, petitioner cannot now raise and pursue said objections for the first time in this appeal.

At this juncture, it needs re-stating that this instant appeal is on the various rulings of respondent Board on the following objections raised before it by the Petitioner, to quote:

1. Misreading of ballots;
2. Interchanging of results;
3. Tampering/falsification of election returns;
4. Discrepancies in the Returns;
5. Election Returns prepared under duress; threats, coercion or intimidations;

6. Substitute/fraudulent returns will materially affect the standing of the aggrieved candidate (Annex "I", "J" and "K").

Petitioner's injection therefore of matters related to the composition or proceedings of respondent Board in the discussion of the instant appeal is a failed attempt to resurrect an abandoned right. In fine, petitioner/appellant raised, although belatedly and at a time when estoppel had set in, grounds which could have been proper for a pre-proclamation controversy but for his failure to pursue it in the manner and within the period provided for by law. This is fatal.

Going over the grounds relied upon in the instant appeal, the Commission is not persuaded to consider the same as appropriate in a pre-proclamation case. Likewise, the evidence submitted does not warrant such a finding" (Rollo, pp. 49-51).

The main issue in this petition is whether or not petitioner made timely oral objections as to the alleged illegal proceedings and composition of the Board of Canvassers.

The finding that petitioner failed to make timely objections to the composition and the proceedings of the Board of Canvassers involves a question of fact, which is left to the determination of the COMELEC.

The Constitution did not intend to place the COMELEC - explicitly made independent by the Constitution itself - on a lower level than that of statutory administrative agencies, whose factual findings are generally not disturbed by the courts except when there is no substantial evidence to support such findings. Factual matters are not proper for consideration in proceedings brought either as an original action for certiorari or as an appeal by certiorari. The main issue in the former case is one of jurisdiction - lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction; while in the latter case, the issues are limited to the consideration of questions of law (*Padilla v. Commission on Elections*, 137 SCRA 424 [1985]).

In the absence of jurisdictional infirmity or error of law, the conclusion reached by the COMELEC on a matter that falls within its competence is entitled to utmost respect (*Pimping v. Commission on Election*, 140 SCRA 192 [1985]).

Petitioner, more particularly, failed to follow the procedure laid down in Section 244 of the Omnibus Election Code, which provides:

"Parties adversely affected by a ruling of the board of canvassers on questions affecting the composition or proceeding of the board may appeal the matter to the Commission within three (3) days from a ruling thereon. The Commission shall summarily decide the case within five days from the filing thereof."

and Section 7 of the COMELEC Rules of Procedure, which provides:

"Procedure before the Board of Canvassers when composition or proceedings of the board are contested.

a) When the composition or proceedings of the board of canvassers are contested, the board of canvassers shall, within 24 hours, make a ruling thereon with notice to the contestant who, if adversely affected, may appeal the matter to the commission within 5 days after the ruling with proper notice to the board of canvassers."

With respect to the alleged mistakes committed by the Board of Canvassers in the inclusion of certain returns, petitioner failed to follow the procedure laid down in Section 245 of the Omnibus Election Code. This provision requires that the party contesting the inclusion or exclusion in the canvass of any election returns should interpose his verbal objections to the Chairman of the Board of Canvassers at the time the questioned return is presented for inclusion or exclusion.

As to Zenaida Taguba, the alleged fourth member of the Board of Canvassers, there is nothing on record to show that she participated in the proceedings of the said Board. At most, she merely acted as a secretary, whose work involved the purely mechanical act of taking down notes of the discussion.

WHEREFORE, the Court Resolved to DISMISS the petition.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Puno, and Vitug, JJ., concur.

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