

**EDWIN V. SARDEA, EDELYN C. DELA PEÑA, ROBERTO P. ALQUIROS,
FRANCISCO C. ENEJOSA, PERFECTO GEQUINTO, TERESITA L.
MANIPOL, ROMMEL V. PANSACOLA, BLANQUITA M. RIVERA, JUAN
M. CALDER...**

G.R. No. 106164. August 17, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioners who are allegedly bona fide residents and voters of Mauban, Quezon, and who are "so numerous it is impractical to bring them all before the Honorable Court" (p. 2, Rollo), assail the Resolution promulgated on June 19, 1992, by the respondent Commission on Elections (COMELEC), in Special Action Case No. SPA 92-331, entitled: "In the Matter of the Petition to Declare a Failure of Election in Mauban, Quezon," denying their petition against the COMELEC, the Municipal Board of Canvassers of Mauban, Quezon, and the private respondents who were proclaimed the duly elected Mayor, Vice Mayor and Members of the Sangguniang Bayan of Mauban, Quezon.

The pertinent portion of the Resolution reads as follows:

"Irregularities such as fraud, vote-buying and terrorism are proper grounds in an election contest but may not as a rule be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through the misdeeds, precisely, of only a relatively few. x x x. (Grand Alliance for Democracy, GAD, et al. vs. Comelec, et al., G.R. 78302, 27 May 87, En Banc, Resolution.)

"xxx xxx xxx.

"x x x it is very clear that as early as May 14, 1992 petitioners were already not in consonance with the proceedings of the Board of Canvassers. Yet, from petitioner EDWIN SARDEA'S own admission, he only formally filed on May 18, 1992, his petition assailing the legality of the canvassing being held, contrary to the provisions of Sec. 17 and 19 of R.A. 7166.

"xxx xxx xxx.

"WHEREFORE, premises considered, the Commission hereby RESOLVES to DENY as it hereby DENIES this petition." (pp. 36-37, Rollo.)

Petitioners allege that respondent COMELEC "acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution, considering that it blatantly disregarded its own Rules of Procedure and, more importantly, it perpetuated (sic) a clear violation of election laws" (p. 85, Rollo).

The facts of the case are as follows:

On May 12, 1992, the respondent Municipal Board of Canvassers of Mauban, Quezon, convened at the Municipal Hall and canvassed the first batch of election returns for the just concluded May 11, 1992 elections in that

municipality.

At about 5:00 o'clock in the afternoon of May 13, 1992, while the canvassing of the election returns was going on, some sympathizers of petitioner Edwin Sardea, a defeated mayoralty candidate of LAKAS-NUCD, "stormed the municipal building" and "destroyed x x x all election materials and paraphernalia including, among others, the copies of election returns furnished to respondent Board x x x" (p. 86, Rollo).

On May 14, 1992, the respondent Municipal Board of Canvassers convened and assessed the extent of the damage wrought by the demonstrators. It discovered that the election returns in the possession of the MTC Judge of Mauban were intact, so it ordered the retrieval of said election returns for use in the canvass. However, due to the absence of certain forms needed for the canvass, the same was suspended and moved to May 17, 1992. Still, on said date, the canvassing was not resumed because the Board had to determine first the number of returns to be used in the canvass.

The Municipal Board of Canvassers reconvened on May 18, 1992, and informed the parties that it would continue the canvassing of the election returns based on the copies from the MTC of Mauban. Atty. Romeo Devera, counsel of LAKAS-NUCD, objected. Later, he filed a petition in behalf of petitioner Edwin Sardea to stop the proceedings of the Board of Canvassers on the ground that it had no authority from the COMELEC to use the copies of the election returns obtained from the MTC of Mauban. The Municipal Board of Canvassers overruled Attorney Devera's objection and denied Sardea's petition to stop the proceedings, citing the directive dated May 15, 1992 of the Provincial Election Supervisor, Atty. Adolfo Ilagan. The directive was based on the authority given by Acting Executive Director Resurreccion Bora of the COMELEC, "to order the Municipal Trial Court Judge of Mauban, Quezon to make available the copy of election returns, etc., in his possession for the use of the Municipal Board of Canvassers" (p. 86, Rollo). As Sardea manifested that he would appeal the ruling, the Board of Canvassers suspended the proceedings in order that he may formalize his appeal. On May 19, 1992, he filed a notice of appeal.

On May 22, 1992, the COMELEC held a special meeting and resolved "to authorize the Municipal Board of Canvassers of Mauban, Quezon to reconvene and use the copies of the election returns of the Municipal Trial Court Judge" (p. 87, Rollo).

On May 24, 1992, the Municipal Board of Canvassers reconvened and dismissed Sardea's appeal. The letter of Atty. Adolfo Ilagan dated May 15, 1992 and the minutes of the special meeting of the COMELEC on May 22, 1992, were deemed sufficient authority for it to use the MTC Judge's copies of the election returns. A copy of the excerpts of the minutes contained a written notation of a certain Cesario Perez addressed to the chairman of the respondent Board commanding him to "implement this resolution" and that "this is tantamount to denying the appeal to (sic) your ruling, which appeal was not received by this Commission" (p. 62, Rollo). The canvassing continued thereafter.

On May 26, 1992, Sardea filed a petition in the Office of the Election Registrar in Mauban, Quezon, assailing the composition of the Board of Canvassers and its proceedings. He also filed an Amended Notice of Appeal.

On May 27, 1992, the Municipal Board of Canvassers proclaimed the private respondents as the duly elected Mayor, Vice-Mayor and Members of the Sangguniang Bayan of Mauban, Quezon.

On June 10, 1992, petitioners filed Special Action Case No. SPA 92-331, seeking to declare a failure of election in Mauban, Quezon, based on the grounds that:

"I. The attendant facts and circumstance constitute substantial grounds to declare a failure of election in Mauban, Quezon.

"II. Respondent Board gravely abused its discretion amounting to lack or excess of jurisdiction in canvassing the impugned election returns without prior authority from the Honorable Commission." (p. 14, Rollo.)

On June 19, 1992, the COMELEC promulgated the challenged resolution, whereupon Sardea filed this petition for certiorari alleging that the COMELEC gravely abused its discretion:

1. in not annulling the proceedings of the Municipal Board of Canvassers of Mauban, Quezon, despite the failure of election in that municipality;
2. in considering the grounds raised by petitioners as proper for an election contest despite the nullity of the proceedings of the Municipal Board of Canvassers of Mauban, Quezon; and
3. in ruling that petitioner did not appeal on time the resolution of the Municipal Board of Canvassers of Mauban, Quezon.

The respondents asked for the outright dismissal of the petition based on Section 3, Rule 39 of the COMELEC Rules of Procedure which provides that decisions in special action cases "shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court" (p. 90, Rollo).

Petitioners, on the other hand, contend that the finality of COMELEC decisions or resolutions is indicated in Sec. 257 of B.P. 881, as amended (Omnibus Election Code) which provides that the decision, order or ruling of the Commission shall become final thirty (30) days after its promulgation.

Section 257 of the Omnibus Election Code provides:

"Sec. 257. Decision in the Commission. - The Commission shall decide all election cases brought before it within ninety days from the date of their submission for decision. The decision of the Commission shall become final thirty days after receipt of judgment. (Art. XII, C, Sec. 3, Const.; Art. XVIII, Sec. 193, 1978 EC)." (Underlining supplied.)

A perusal of our election laws shows that they do not explicitly provide for an appeal from the COMELEC to the Supreme Court. Section 7, Art. IX-A of the 1987 Constitution provides that: "unless otherwise provided by this Constitution or by law, any decision, order or ruling of each [Constitutional] Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty [30] days from receipt of a copy thereof." The petition for certiorari shall be filed under Rule 65 of the Rules of Court (*Rivera vs. COMELEC*, 199 SCRA 178; *Galido vs. COMELEC*, 193 SCRA 79; *Dario vs. Mison*, 176 SCRA 84; *Pedalizo vs. Mariano*, UDK--9819, March 15, 1990).

Since no constitutional provision or law fixes a shorter period, the reglementary period within which a petition for certiorari may be filed in the Supreme Court against the COMELEC is thirty (30) days from receipt of a copy of the COMELEC's order, decision, or ruling.

Respondents did not correctly invoke Sec. 3, Rule 39 of the COMELEC Rules of Procedure because this is a petition for certiorari under Rule 65 of the Rules of Court, hence, it falls under Sec. 1, Rule 39 of the COMELEC Rules of Procedure and Sec. 257 of the Omnibus Election Code. This petition was therefore seasonably filed on July 23, 1992, within thirty (30) days after the petitioner received the COMELEC resolution on June 23, 1992.

Nevertheless, it must fail because we find the grounds of the petition to be without merit.

The facts show that Sardea's two (2) complaints/petitions involved pre-proclamation controversies which are defined as:

"Sec. 241. Definition. - A pre-proclamation controversy refers to any question pertaining to or affecting the

proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." (Art. XX Omnibus Election Code; emphasis supplied.)

Sardea's first May 18, 1992 complaint questioned the use of the Municipal Trial Court Judge's copies of the election returns as basis for the canvass.

His second complaint on May 27, 1992, filed with the Election Registrar, assailed the composition and proceedings of the Municipal Board of Canvassers. Both complaints definitely raised pre-proclamation controversies.

We have already ruled in *Gallardo vs. Rimando*, 187 SCRA 463; *Salvacion vs. COMELEC*, 170 SCRA 513; *Casimiro vs. COMELEC*, 171 SCRA 468, that pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidates have been proclaimed and assumed office. The proper remedy of the aggrieved party is an election contest in the Regional Trial Court as provided in Sec. 250 of B.P. 881 and Sec. 2(2), Art. IX-C of the Constitution.

In this case, since the authenticity and Completeness of the returns were never questioned and the winning candidates had been proclaimed on May 27, 1992, Sardea's pre-proclamation complaint in the COMELEC ceased to be viable.

The COMELEC correctly dismissed Sardea's petition on the ground that it was proper for an election contest.

But its holding that petitioners' appeal from the resolution of the Municipal Board of Canvassers was late, is erroneous.

Section 17, R.A. 7166 deals with the commencement of pre-proclamation controversies while Sec. 19 provides that "parties adversely affected by a ruling of the Board of Canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon."

The petitioners properly filed their objection to the use of the election returns from the MTC during the canvassing on May 18, 1992, based on Sec. 20 of R.A. 7166. Said section provides that persons objecting to the inclusion in the canvass of any election returns "shall submit their oral objection to the chairman of the Board of Canvassers at the time the questioned return is presented for inclusion in the canvass." (Underlining ours.)

By presenting his verbal objection, and subsequently filing a formal objection, on May 18, 1992, Sardea acted in accordance with Sec. 20 of R.A. 7166. His notice of appeal was verbally denied on May 24, 1992 by the Board of Canvassers. He filed a notice of appeal to the Commission on May 26, 1992, or within three (3) days after the denial of his notice of appeal by the Board of Canvassers.

This issue on the timeliness of the petitioners' appeal to the Commission is actually moot and academic because said appeal could not survive after the winning candidates were proclaimed.

The lone remaining issue is whether the COMELEC gravely abused its discretion in denying the petition to declare a failure of election in Mauban, Quezon province.

Section 6 of the Omnibus Election Code, which is identical to Section 2, Rule 26 of the COMELEC Rules of Procedure, reads as follows:

SEC. 6. Failure of election. - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the

transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect. (Sec. 7, 1978 EC)."

In *Usman vs. COMELEC* (42 SCRA 667, 690), we held that the pre-conditions for declaring a failure of election are: "(1) that no voting has been held in any precinct or precincts because of force majeure, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections. The language of the law clearly requires the concurrence of the[se] two circumstances to justify the calling of a special election."

The destruction and loss of the copies of the election returns intended for the Municipal Board of Canvassers on account of violence committed on May 13, 1992 is not one of the causes that would warrant the declaration of a failure of election because voting actually took place as scheduled on May 11, 1992 and other valid election returns still existed. Moreover, the incident did not affect the result of the election.

The power to throw out or annul an election should be exercised with the utmost care and only under circumstances which demonstrate beyond doubt either that the disregard of the law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise (20 C.J., pars. 179-181; *Capalla vs. Tabiana*, 63 Phil. 95).

The election is to be set aside when it is impossible from any evidence within reach, to ascertain the true result - when neither from the returns nor from other proof, nor from all together can the truth be determined (Law on Public Officers and Election Law by Hector S. De Leon, p. 381, 1990 Ed., citing *A Treatise on the Law of Public Offices and Officers*, by F. MECHEM, note 1 at p. 143).

There is a failure of elections only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected.

Since in this case copies of the election returns submitted to the MTC of Mauban, Quezon were extant, and their authenticity was not questioned, they were properly used as basis for the canvass. This is expressly authorized by Section 233 of the Omnibus Election Code (B.P. 881) which provides that "if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission x x x." (Underlining ours.)

Thus did we rule in an earlier case:

"While it is true that in local elections, the original copy of the election returns is to be delivered to the city or municipal board of canvassers as a body for its use in the city or municipal canvass, there is no provision in the Omnibus Election Code stating that the canvass should be based only on the original copy of the election returns. Besides, the duplicate copy of election returns that were used in the canvass of votes were not only authentic copies or certified copies but duplicate originals. Moreover, petitioner failed to show or even make an allegation that the use of the duplicate originals of the returns had in some definite manner caused him prejudice, like uncounted votes in his favor or alteration of an election result otherwise in his favor." (G.R. No. 82674, *In Re: Protest of Atty. Alberto de la Rosa, etc. vs. Comelec and City Board of Canvassers of Zamboanga City*, Resolution en banc dated November 3, 1988.)

There is no merit in the argument of the petitioners that inasmuch as B.P. 881 has been amended/modified by R.A. 7166[1], the copies of the election returns in the possession of the MTC may not be used for the canvass but merely for comparison purposes to determine the authenticity of other copies of said election returns as provided in Section 27, par. b(5) of R.A. 7166[2]. The repealing clause of R.A. 7166 enumerates the sections of the Omnibus Election Code which it specifically repeals. Sec. 233 is not among them.

Since B.P. 881 and R.A. 7166 are statutes in pari materia, they should be so construed as to harmonize with each other and with other laws on the same subject matter, as to form a complete, coherent and intelligible system (Valera vs. Tuason, 80 Phil. 823). Prior statutes relating to the same subject matter are to be compared with the new provisions, and if possible by reasonable construction, both to be construed that effect may be given to every provision of each (C&C Commercial Corp. vs. NWSA, 21 SCRA 984, citing Sutherland, Statutory Construction, Vol. 2, pp. 530-532).

Section 233 of B.P. 881 ought to be harmonized with Section 27, par. b(5) of R.A. 7166. Section 27, par. b(5) of R.A. 7166 presupposes that other copies of the election returns are existent and may be compared with the copies of the MTC. It does not preclude the use of such authentic copies in the canvass when the copies submitted to the Board of Canvassers have been lost or destroyed. The letter of Provincial Election Supervisor Atty. Adolfo Ilagan dated May 15, 1992 and the minutes of the special meeting of respondent COMELEC held on May 22, 1992 constitute sufficient authority for the use of such returns in the canvass.

In light of all the foregoing, the use by the Municipal Board of Canvassers of Mauban, Quezon of the election returns in the possession of the MTC Judge of Mauban, was not contrary to law, and was in fact the best possible recourse under the circumstances in order to give life to the will of the electorate. The COMELEC did not abuse its discretion when it issued the assailed resolution denying the petition to declare a failure of election in Mauban, Quezon.

WHEREFORE, the petition for certiorari is DENIED, with costs against the petitioners.

SO ORDERED.

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

[1] Synchronized Election Law of 1991.

[2] x x x. Said copy may be opened only during the canvass upon order of the board of canvassers for purposes of comparison with other copies of the returns whose authenticity is in question.

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