

IRMA C. ALFONSO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE CITY BOARD OF CANVASSERS OF THE CITY OF MANILA, AND ALBERTO A. DOMINGO, RESPONDENTS.

G.R. No. 107847. June 02, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari, assailing the Resolution of the Commission on Elections (COMELEC) dated November 6, 1992, which denied petitioner's demand for a recount of the ballots under Article 234 of the Omnibus Election Code and the Resolution dated November 13, 1992, which denied her motion for reconsideration.

We dismiss the petition.

I

In the May 11, 1992 elections, Pedro Alfonso ran for councilor in the First District of Manila, which is entitled to elect six councilors.

On the eve of the elections, Pedro Alfonso died. At about 2:45 A.M. of May 11, 1992, his daughter Irma Alfonso, petitioner herein, filed her certificate of candidacy in substitution for her deceased father.

After the canvassing of the election returns by respondent City Board of Canvassers, the results of the elections for councilors for the First District of Manila were announced as follows:

- 1) Nieva, Ernesto - 60,101
- 2) Gonzales, Gonzalo - 44,744
- 3) Lopez, Honorio - 35,803
- 4) Alfonso, Pedro - 34,648
- 5) Cailian, Avelino - 32,462
- 6) Ocampo, Roberto - 31,264
- 7) Domingo, Alberto - 28,715

(Rollo, p. 6).

Apparently, the respondent City Board of Canvassers added the votes of Pedro Alfonso to those of petitioner's thereby placing her in the fourth slot. Consequently, private respondent questioned such action in a petition filed on May 29, 1992. He prayed that the votes cast for Pedro Alfonso be declared as stray votes and that, accordingly, he be proclaimed as the sixth winner for councilor in the First District of Manila.

On June 3, 1992, the COMELEC resolved private respondent's petition as follows:

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- 1) To GRANT the petition and to DECLARE all votes cast in favor of Pedro Alfonso as stray votes;
- 2) To CREDIT in favor of respondent Irma Alfonso only those votes cast with the name "ALFONSO" or IRMA ALFONSO; and
- 3) To DIRECT the City Board of Canvassers for the First District of Manila, to reconvene the canvass and proclaim the winning candidate/s for the position of city councilors for the First District of Manila (Rollo, p. 46).

Petitioner thereby questioned said resolution before this Court in G.R. No. 105577, entitled "Irma Alfonso, as a substitute of candidate Pedro Alfonso v. COMELEC."

On June 16, 1992, the Court dismissed the aforesaid petition in a minute resolution, after finding no grave abuse of discretion on the part of the COMELEC.

Similarly, respondent City Board of Canvassers filed a Motion for Clarification to the COMELEC en banc, asking that:

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- 1) it should clarify its resolution of June 3, 1992 by stating whether the City Board of Canvassers and/or the Board of Election Inspectors shall conduct a recount of the ballots or not;
- 2) the Honorable Commission should instruct the City Board of Canvassers on how to implement par. 2 of the dispositive portion of the resolution of June 3, 1992 (Rollo, p. 53).

COMELEC then clarified its resolution in an Order dated November 4, 1992, to wit:

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"RESOLVED to clarify the Resolution of the Commission of June 3, 1992 as follows:

1. To grant the petition and to declare all votes cast in favor of Pedro Alfonso as stray votes;
- 2) To credit in favor of respondent Irma Alfonso only those votes cast with the name "Alfonso" or Irma Alfonso;
- 3) To direct the City Board of Canvassers for the First District of Manila, to reconvene, canvass the election returns submitted by the board of election inspectors, without opening any ballot box containing the official ballots and proclaim the winning candidate for the sixth position of city councilor in the First District of the City of Manila; and
- 4) Let the Law Department implement this resolution" (Rollo, p. 20).

Petitioner moved for a partial reconsideration of the said order, invoking Section 234 of the Omnibus Election Code and asking that all votes cast in favor of Pedro Alfonso be credited as the votes of Irma "Pete" Alfonso.

On November 23, 1992, COMELEC denied petitioner's motion for partial reconsideration and directed respondent City Board of Canvassers to implement the Order dated November 4, 1992.

On December 1, 1992, petitioner instituted the present action, questioning the denial of her motion for a recount of the ballots pursuant to Section 234 of the Omnibus Election Code. On December 10, 1992, we issued a temporary restraining order.

Meanwhile, respondent City Board of Canvassers re-convened to implement the COMELEC's Order, obtaining the following results:

ALFONSO, IRMA - 7,588

ALFONSO, PEDRO - 23,644

DOMINGO, ALBERTO - 25,825

In the course of the canvass, petitioner sought to exclude or set aside 740 election returns on the grounds that her name and votes were omitted therein.

On December 8, 1992, respondent City Board of Canvassers issued a resolution, denying the motion and resolving that:

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"IN VIEW OF THE FOREGOING, the Board, conformably with the provisions of the second paragraph of Section 233 of the Omnibus Election Code, in relation to Sec. 27, paragraph (h) of Comelec Resolution No. 2413 dated April 15, 1992 and acting pursuant to Resolutions, respectively dated November 4, 1992 and November 23, 1992, hereby finds that candidate ALBERTO DOMINGO appears to be the winning candidate for the Sixth position of City Councilor in the First District of the City of Manila.

ACCORDINGLY, let the proclamation of candidate-elect ALBERTO DOMINGO be held on DECEMBER 14, 1992 at 10:00 A.M. at Office of the Election Officer, Philippine Geriatrics Foundation Bldg., I, Lions Road, Arroceros Street, Manila (pp. 3-4, *ibid*)" (Rollo, p. 165).

On the same date, petitioner filed a notice of appeal to the COMELEC.

Considering that a temporary restraining order was issued by this Court on December 10, 1992 in the instant petition, petitioner did not pursue her appeal to the COMELEC.

Petitioner submits for our resolution, the following issues:

1

WHETHER OR NOT PETITIONER MAY STILL QUESTION RESPONDENT COMELEC'S RULING THAT THE VOTES CAST IN FAVOR OF DECEASED PEDRO ALFONSO SHOULD BE CONSIDERED STRAY VOTES.

2

WHETHER OR NOT RESPONDENT COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR A RECOUNT OF THE BALLOTS.

3

WHETHER OR NOT THE ISSUES RAISED ARE RIPE FOR JUDICIAL DETERMINATION.

The instant petition must fail.

II

Anent the first issue, there is no question that the votes in favor of Pedro Alfonso shall be declared as stray votes and only those votes cast with the name "Alfonso" or "Irma" shall be counted in favor of petitioner as ruled by the COMELEC in its Resolution dated June 3, 1992. This was the holding of this Court in the Resolution issued on

June 16, 1992 in G.R. No. 105577 entitled "Irma Alfonso, as a substitute candidate of Pedro Alfonso v. Comelec." Finding no grave abuse of discretion on the part of the COMELEC in issuing its resolution dated June 3, 1992, the Court thereby dismissed the petition. This issue can not be raised anew in the present petition. There is, therefore, no merit with the assertion that the votes cast in favor of Pedro Alfonso must be counted in favor of petitioner.

Invoking Section 234 of the Omnibus Election Code, petitioner claims that a recount or reopening of the ballots boxes is necessary, considering that in some election returns, her name was omitted and that of her father was not deleted. She argues that it would be difficult to determine which votes should be credited in her favor by a mere re-canvass.

At the outset, petitioner's prayer for a reopening of the ballots is not a proper issue for a pre-proclamation controversy. The issues raised by petitioner should be threshed out in election protest. The case of Chavez v. Comelec, 211 SCRA 315 (1992), citing Sanchez v. Comelec, 153 SCRA 67 (1987) is quite instructive on the matter. In said case, we held:

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"Sanchez anchors his petition for recount and/or reappreciation on Section 243, paragraph (b) of the Omnibus Election Code in relation to Section 234 thereof with regard to material defects in canvassed election returns. He contends that the canvassed returns discarding Sanchez' votes as stray were incomplete' and therefore warrant a recount or reappreciation of the ballots under Section 234.

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xxx The fact that some votes written solely as Sanchez' were declared stray votes because of the inspectors' erroneous belief that Gil Sanchez had not been disqualified as a candidate, involves an erroneous appreciation of the ballots. It is established by the law as well as jurisprudence x x x that errors in the appreciation of ballots by the board of inspectors are proper subject for election protest and not for recount or reappreciation of ballots.

2. The appreciation of the ballots cast in the precincts is not a 'proceeding of the board of canvassers' for purposes of pre-proclamation proceedings under Section 241, Omnibus Election Code, but of the boards of election inspectors who are called upon to count and appreciate the votes in accordance with the rules of appreciation provided in Section 211, Omnibus Election Code. Otherwise stated, the appreciation of ballots is not part of the proceedings of the board of canvassers. The function of ballots appreciation is performed by the boards of election inspectors at the precinct level.

3. The scope of pre-proclamation controversy is limited to the issues enumerated under Sec. 243 of the Omnibus Election Code. The enumeration therein of the issues that may be raised in pre-proclamation controversy is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (sec. 234), appear to have been tampered with, falsified or prepared under duress (sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents, Sanchez' petition must fail. The complete election returns whose authenticity is not in question, must be prima facie considered valid for the purpose of canvassing the same and proclamation of the winning candidates.

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7. The ground for recount relied upon by Sanchez is clearly not among the issues that may be raised in pre-proclamation controversy. His allegation of invalidation of Sanchez' votes intended for him bear no relation to the correctness and authenticity of the election returns canvassed. Neither the Constitution nor

statute has granted the Comelec or the board of canvassers the power in the canvass of election returns to look beyond the face thereof, once satisfied of their authenticity (Abes v. Comelec, 21 SCRA 1252, 1256)."

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We can not over-emphasize the public policy involved in the rule that pre-proclamation controversies shall be resolved in summary proceedings. The public interest requires that:

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"xxx that the position for the filing of which the election was held should be filled as promptly as possible, even if the proclamation of the winning candidates be provisional in nature, in the sense that such would be subject to the results of the election protest or protests that may be expected to be filed. The Court is bound by high duty and responsibility to give effect to this public policy which is enshrined in statutory norms (infra). Petitioners' principal remedy is to file election protests before the appropriate agency of government-i.e., the Comelec (Article IX[C] [2] [2], 1987 Constitution)- and there to litigate all the issues raised by them in as much detail as they might deem necessary or appropriate xxx" (Dimaporo v. Comelec, 186 SCRA 769 [1990]).

WHEREFORE, the petition is DISMISSED for lack of merit. The Temporary Restraining Order issued on December 8, 1992 is LIFTED.

SO ORDERED.

Feliciano, Padilla, Bidin, Davide, Jr., Romero, Bellosillo, Melo, and Vitug, JJ., concur.
Narvasa, C.J., Cruz, Regalado, Puno, and Kapunan, JJ., no part.

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