

DATU PIKE T. MENTANG, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND ALI BERNAN, RESPONDENTS.*G.R. No. 110347. February 04, 1994*

Ponente: VITUG, J.

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Assailed in this petition for certiorari, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction, is the Resolution of public respondent Commission on Elections ("COMELEC") En Banc, dated 08 July 1993, (a) holding that it has jurisdiction to decide a "Petition to Correct Manifest Error and Annul the Proclamation of Respondent (herein petitioner) and/or Suspend the Effects of Such Proclamation" and (b) directing the implementation of the COMELEC's Order of 23 April 1993 for the re-tabulation of the votes for the herein petitioner and the private respondents as reflected in the copies of the "Statement of Votes by Precinct Per Municipality" in the ten municipalities of Maguindanao and as transmitted to the COMELEC, the Regional Board of Canvassers, and the Provincial Board of Canvassers of Maguindanao.

Pursuant to Section 1 of Republic Act ("R.A.") No. 7647, entitled "AN ACT PROVIDING FOR THE DATE OF REGULAR ELECTIONS FOR REGIONAL GOVERNOR, VICE-GOVERNOR AND MEMBERS OF THE REGIONAL LEGISLATIVE ASSEMBLY OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO ("ARMM") AND FOR OTHER PURPOSES," the ARMM regular elections were scheduled for, and held on, 25 March 1993. Among the contenders for one of the elective positions in the Regional Legislative Assembly were herein petitioner Datu Pike Mentang and private respondent Datu Ali Bernan. After the elections and the canvassing of the election returns by the Provincial Board of Canvassers of Maguindanao, the petitioner and the private respondent were locked for the third slot in the Regional Assembly of the Second District of Maguindanao.

In the evening of 25 March 1993, the Provincial Board of Canvassers ("PBC") initiated the canvassing of the election returns. On 28 March 1993, the final tabulation of the votes for all the candidates in the first and second districts of Maguindanao was concluded. On even date, the PBC certified that the petitioner was the third and last winning candidate for Regional Assemblyman in the Second District of Maguindanao with 55,212 votes as against private respondent's 52,808 votes.[1] The petitioner was then proclaimed among the duly elected members of the Regional Legislative Assembly.[2] On 31 March 1993, he took his oath of office.[3]

The private respondent came to know of petitioner's proclamation on 28 March 1993 (a Sunday). The following day, 29 March 1993, he went to the Office of the Provincial Board of Canvassers for the purpose of showing his personal tally sheets which revealed that he should be credited with 57,248 votes and not just 52,808 votes. Unfortunately, only the Acting Provincial Election Supervisor, Arturo Cocjin, was available since the PBC Chairman and its two (2) members had already departed from Maguindanao.

On 02 April 1993, or on the fifth day following the proclamation, the private respondent sent two (2) FAX messages[4] to COMELEC Chairman Christian Monsod and to Commissioner Regalado Maambong, who was

specifically in-charge of the elections in Maguindanao, to the effect that he (the private respondent) was going to file a "Petition for Correction of Error and To Set Aside the Proclamation" of the petitioner on the ground that the Statement of Votes by Precinct indicated that he garnered more votes than petitioner's 55,212 votes. It was only on 5 April 1993, however, when the private respondent was able to finally file with the COMELEC his petition, denominated as a "Petition to Correct Manifest Error and Annul the Proclamation of the Respondent (herein petitioner) and/or Suspend the Effects of such Proclamation" and docketed as SPC No. 93-004. In his above petition, the herein private respondent contended that he garnered a total of 57,248 while the herein petitioner was correctly credited with 55,212 votes, based on the statement of votes by precinct per municipality (Serial No. CEF 20-A), viz:

Municipality of

Serial No. CEF 20-A

No. of Precincts canvassed

Votes

BERNAN

Obtained

MENTANG

1. Datu Paglas

780603

4,943

221

780604

56

3,898

248

2. Gen. SK

780617

3,464

476

Pendatun

780618

63

2,864

260

3. Maganoy

780621

466

740

780622

1,417

1,927

780623

1,530

2,061

780624

1,413

1,908

780625

158

1,212

1,678

4. Pagalungan

780634

2,214

1,018

780633

4,472

1,483

780632

3,169

2,759

780631

119

2,840

3,442

5. South Upi

780639

567

651

780640

61

361

429

6. Buluan

780600

1,807

138

780599

3,434

197

780598

85

2,618

420

7. Datu Piang

780611

587

2,976

780612

571

2,901

780613

912

2,226

780614

901

2,215

780615

540

2,076

780729

5

95

780616

170

382

580

8. Sultan sa Barungis

780646

1,782

1,285

780647

1,785

1,693

780648

79

402

684

9. Ampatuan

780587

244

697

780588

914

1,707

780589

1,295

627

780590

103

303

113

10. Talayan

780653

1,563

5,483

780654

506

4,614

780655

1,577

4,291

780656

104

290

893

T o t a l

998

57,248

55,212

Asserting that there was just a clear mathematical mistake in the computation of his votes by the Provincial Board of Canvassers, the private respondent asked the COMELEC, in fine, to annul the proclamation of the petitioner and to have him (the private respondent) proclaimed instead as being among the three winning candidates for Assemblymen in the 25th March 1993 elections.

The petitioner, in his answer filed on 22 April 1993, questioned the COMELEC's jurisdiction to hear and decide the petition for having been filed late on 05 April 1993. He averred that the private respondent's petition with the COMELEC, being a pre-proclamation case that relates to the correction of manifest errors in the certificate of canvass, should have been filed within the reglementary period of five (5) days counted from the petitioner's

proclamation on 28 March 1993.

On 23 April 1993, COMELEC Chairman Christian Monsod issued an order, directing the re-tabulation of the votes. The implementation of the said order, however, was held in abeyance by a subsequent order of 27 April 1993 of Chairman Monsod pending the COMELEC's ruling on the issue of jurisdiction raised by the petitioner.

On 08 June 1991, the COMELEC, following an en banc hearing, rendered the challenged resolution, containing the following dispositions:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Commission holds that the petition to annul proclamation on the ground of mistake in the addition of votes was filed on time. Accordingly, the Commission has jurisdiction over the same in the exercise of its broad administrative powers over the conduct of elections.

"The Clerk of the Commission is thus directed to immediately cause the implementation of the Order, dated 23 April 1993, for the retabulation of the votes reflected in the three (3) copies of the Statement of Votes by Precinct Per Municipality - copies for the Provincial Board of Canvassers/Regional Board of Canvassers/Commission on Elections - of the ten (10) municipalities of the Second District of the Province of Maguindanao, and for the three canvassing committee organized under said Order to report to the Commission the results of their retabulation within three (3) days from receipt of this Resolution. Thereafter, the Commission will resolve the main petition."

The above resolution was reached by a majority vote. Chairman Christian Monsod, Commissioners Magdara Dimaampao, Regalado Maambong and Manolo Gorospe voted affirmatively while Commissioners Remedios Fernando and Graduacio Claravall dissented. Commissioner Vicente De Lima, on his part, opined that while the petition was filed beyond the five-day period, he was, nevertheless, voting for COMELEC's assumption of jurisdiction and treating the petition as a regular election protest.

On 14 June 1993, the present petition was filed. A temporary restraining order was issued by this Court on 17 June 1993, directing the public respondent "to cease and desist from implementing and/or executing its resolution of 08 June 1993 issued in SPC No. 93-004." [5]

The threshold issue is whether or not the COMELEC has committed grave abuse of discretion in holding that it has lawful jurisdiction to decide the "petition to correct manifest error and annul the proclamation of (petitioner) and/or suspend the effects of such proclamation."

The petitioner contends that the petition submitted to the COMELEC is a pre-proclamation controversy, which should have been filed within five (5) days after his proclamation, conformably with Section 5, Rule 27, of the Comelec Rules of Procedure. He insists that the petition refers to corrections of manifest errors in the certificate of canvass, and not to an annulment of his proclamation, by the Provincial Board of Canvassers of Maguindanao.

In holding, however, that it has validly assumed jurisdiction over the petition, the COMELEC has explained, thus:

"x x x (A) reading of the petition shows that it is not a petition for correction of manifest errors. While it is designated as 'Petition to Correct Manifest Error and Annul the Proclamation of the Respondent and/or Suspend the Effects of such Proclamation,' in reality, it is a petition for annulment of proclamation alleging mistake in addition.

"Correction of manifest errors, has reference to errors in the election returns, in the entries of the statement of votes by precinct per municipality, or in the certificate of canvass.

"In the instant case, no error has been alleged in any of the three election documents. The certificate of canvass and proclamation contains only the votes of the three (3) Regional Assemblymen who were proclaimed

winners for the Second District of Maguindanao. Naturally, the name and votes of the petitioner is not reflected therein because he was not one of those proclaimed.

"If there is error at all as alleged it cannot be seen from the face of these election documents because allegedly it is error in addition which could only be made manifest if a mathematical computation of all the votes is undertaken on the basis of statement of votes by precinct of the ten (10) municipalities, submitted in evidence.

"The distinction between a petition for annulment of proclamation and a petition to correct manifest errors is relevant because a petition for correction of manifest errors is time-bound by a reglementary period - not later than five (5) days following the date of proclamation - if filed directly with the Commission in an applicable situation.

"On the other hand, a petition, for annulment of proclamation (more correctly, a petition for declaration of nullity of proclamation) is not delimited by the five-day rule. In fact, there is nothing in the law or the Comelec rules which prescribe the reglementary period for such a petition.

"Surely, however, it should be filed within a reasonable time. If a losing party in an election has ten (10) days from proclamation within which to file an election protest or a quo warranto petition, such a period is reasonable enough for filing a petition to annul (or declare as nullity) a proclamation.

"Thus, in the *Solidum* case, decided under the election law then in force in 1969, the Supreme Court ruled that the remedy of mandamus for the purpose of correcting an election return which may be authorized by a competent court (or the Comelec), to compel a board of canvassers to reassemble and make a correct canvass of all returns, may be availed of 'within the two-week period (now within ten [10] days after the proclamation of the results of the election) within which an election may be contested' and that this period is jurisdictional, for the reason that after the lapse of that period 'the right of the candidate proclaimed to the office is deemed vested.' x x x.

x x x x x

"If proclamations are annulled because of mistakes in election returns, or because of incomplete returns, with more reason should a proclamation be annulled, as in this case, where there is a mistake in the addition of votes which do not even require a correction of any election document." (Footnotes omitted.)

We find no error, let alone grave abuse of discretion, on the part of COMELEC in its above pronouncements. While the petition has prayed for the correction of mathematical or mechanical errors, such errors, however, are not attributed to incorrect entries in any of the election returns, statement of votes and certificate of canvass but in the mere computation of the votes reflected in those election documents. The petition, evident by its caption and substance, has truly sought the declaration of nullity of petitioner's proclamation. The filing of the petition on 05 April 1993, following petitioner's proclamation on 28 March 1993, is well within the ten-day period required for the purpose. This Court has held that the filing of a petition to annul a proclamation suspends the running of the ten-day period within which to file an election protest or a petition for quo warranto,[6] provided that there are allegations which, when proved, will render the proclamation null and void.[7] Such petition may be filed directly with the COMELEC even as a pre-proclamation controversy provided that it is done within ten (10) days following the proclamation.

The petitioner argues that after proclamation and assumption of office, a pre-proclamation controversy is no longer viable. Indeed, we are aware of cases holding the pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidate has been proclaimed.[8] This rule, however, is premised on an assumption that the proclamation is valid. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to make such declaration of nullity.[9]

The petitioner insists that Section 3 of Republic Act No. 7647 prohibits the filing of a pre-proclamation case for annulment of proclamation in the ARMM elections. The law reads:

"SEC. 3. Pre-Proclamation Cases. - No pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody, and appreciation of election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body, *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

"Questions affecting the composition or proceeding of the board of canvassers may be initiated in the board or directly with the Comelec in accordance with Section 19 of Republic Act No. 7166.

"Any objection on the election returns before the provincial board of canvassers or certificate of canvass before the regional board of canvassers, shall be specifically noted in the minutes of their respective proceedings."

The abovequoted section neither expressly nor impliedly disallows the filing of a petition for annulment of proclamation. On the contrary, Section 5 thereof (R.A. 7647) has expressed the applicability to it of the provisions of the Election Code.

Not to be missed is the following observation made by COMELEC, thus –

"x x x Parenthetically, there was no categorical denial on record of the allegation that petitioner (herein private respondent) garnered more votes than the respondent. Both respondent and his counsel simply refused to comment on the truth or falsity of the allegation of the petitioner except to say that they rely on the accuracy of the tabulation of the Provincial Board of Canvassers of Maguindanao which was the basis of respondent's proclamation. But precisely, the correctness of the tabulation of the petitioner's votes has been put in issue. Confronted with the fact that his wife secured photocopies of the statement of votes by precinct of the ten (10) municipalities of the Second District of Maguindanao (PBC copy) with the consent of the Provincial Election Supervisor of Maguindanao respondent, upon queries from the Commission, informed that he did not know whether his wife tabulated the votes of the petitioner (herein private respondent), and he did not know the result of the tabulation if any was made. Such answer runs counter to human nature and reflects lack of candor, an attitude deserving only of reproof.

"Both respondent and his counsel are, however, one in saying that the Commission has no jurisdiction because the petition to correct manifest errors has been filed out of time. This position is not particularly abhorrent, given the Comelec rules relied upon, but they should be reminded that like court actions, election matters should not be treated as 'games of technicalities in which one more deeply schooled and skilled in the subtle act of movements and position, entraps and destroys the other' or like 'a duel (to be) won by a rapier's thrust.'

x x x

"Given the manifest injustice to the petitioner if his allegation of mistake in addition is indeed true, the Commission even considered the exercise of its power to suspend its rules under the provisions of Rule 1, Section 4 of the Comelec Rules of Procedure in much the same way that the Supreme Court can suspend its own rules or to except a particular case from its operation whenever the purposes of justice require it. Under this authority, the Commission is similarly enabled to cope with all situations without concerning itself about procedural niceties that do not square with the need to do justice, in any case without further loss of time, provided that the right of the parties to a full day in court is not substantially impaired." (Footnotes omitted.)

We take further note that the reports[10] submitted to Chairman Monsod by Dir. Romeo Cacamindin, Dir. Resurreccion Borra and Dir. Ernesto Herrera, in implementing the re-tabulation order of 23 April 1993 (made prior to the issuance of a temporary restraining order by this Court), show the private respondent to have actually obtained 57,371 votes, against petitioner's 55,212 votes.

In *Tatlonghari vs. COMELEC*,^[11] citing *Juliano vs. Court of Appeals*,^[12] the Court, through Mr. Justice Abdulwahid A. Bidin, reiterated:

"Election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. x x x Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case, the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate."

Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.

WHEREFORE, the petition is DISMISSED for failure to show grave abuse of discretion on the part of the Commission on Elections. The case is thus REMANDED to the said public respondent to proceed with dispatch in resolving the main petition in SPC No. 93-004. The temporary restraining order heretofore issued by this Court is LIFTED. No costs.

SO ORDERED.

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

Nocon, J., on leave.

Kapunan, J., no part.

[1] Annex "B", Petition, Rollo, 43.

[2] Annex "C", Ibid., 44.

[3] Annex "D", Petition, Rollo, 45.

[4] Annexes "1" and "2", Comment of the Private Respondent, Rollo, 91-92.

[5] Rollo, 66-69.

[6] Section 248, Omnibus Election Code; *Macias, II vs. COMELEC*, 182 SCRA 137, 140; see also *Gallardo vs. Rimando*, *supra*.

[7] *Aguam vs. COMELEC*, 23 SCRA 883; *Mutuc vs. COMELEC*, 22 SCRA 662; *Pacis vs. COMELEC*, 22 SCRA 539.

[8] *Gallardo vs. Rimando*, *supra*; *Salvacion vs. COMELEC*, 170 SCRA 513; *Casimiro vs. COMELEC*, 171 SCRA 468.

[9] *Aguam vs. COMELEC*, *supra*; *Agbayani vs. COMELEC*, 186 SCRA 484.

[10] Annexes "C", "D", and "E", Comment of the Solicitor-General, Rollo, 114-120.

[11] 199 SCRA 849, 858-859.

[12] 20 SCRA 808.

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