

**ANTONIO V. A. TAN, PETITIONER, VS. COMMISSION ON ELECTIONS,
RUSTICO T. ILAGAN, REGIONAL ELECTION DIRECTOR, COMMISSION
ON ELECTIONS, REGION XI, DAVAO CITY, AND SENFORIANO B.
ALTE...**

G.R. No. 112093. October 04, 1994

Ponente: VITUG, J.

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VITUG, J.:

On 10 May 1992, petitioner, as incumbent City Prosecutor of Davao City, was designated by the Commission on Elections ("COMELEC") as Vice-Chairman of the City Board of Canvassers of Davao City for the 11th May 1992 synchronized national and local elections conformably with the provisions of Section 20(a) of Republic Act No. 6646 and Section 221(b) of the Omnibus Election Code (B.P. Blg. 881).

On the basis of the votes canvassed by the Board of Canvassers, Manuel Garcia was proclaimed the winning candidate for a congressional seat to represent the Second District of Davao City in the House of Representatives.

Private respondent Alterado, himself a candidate for the position, filed a number of cases questioning the validity of the proclamation of Manuel Garcia and accusing the members of the City Board of Canvassers of "unlawful, erroneous, incomplete and irregular canvass." Meanwhile, the electoral protest of private respondent Alterado was dismissed by the House of Representatives Electoral Tribunal ("HRET"). The criminal complaint for "Falsification of Public Documents and Violation of the Anti-Graft and Corrupt Practices Act" before the Office of the Ombudsman was likewise dismissed on the ground of lack of criminal intent on the part of therein respondents. Still pending is an administrative charge, the case now before us, instituted in the COMELEC against the City Board of Canvassers, including herein petitioner, for "Misconduct, Neglect of Duty, Gross, Incompetence and Acts Inimical to the Service."

Petitioner moved to dismiss the administrative complaint against him for alleged lack of jurisdiction of the COMELEC thereover, he being under the Executive Department of the government. The COMELEC denied petitioner's motion to dismiss.

Hence, the instant petition.

Petitioner contends that the COMELEC has committed grave abuse of discretion and acted without jurisdiction in continuing to take action on the administrative case. He argues that -

"1) Petitioner is the City Prosecutor of Davao City. His office belongs to the executive branch of the government, more particularly to the Department of Justice. As such, he is under the administrative jurisdiction of the said department and not of respondent COMELEC.

"2) The Civil Service Law provides that department heads 'shall have jurisdiction to investigate and decide matters involving disciplinary action against officers under their jurisdiction' (Section 47[b], P.D. 807).

"3) Section 2, Article IX of the 1987 Constitution which authorizes respondent COMELEC to deputize public officers belonging to the executive department is for the purpose of insuring free, orderly and honest elections. It does not include and comprehend administrative disciplinary jurisdiction over officials belonging to the executive branch of government. That jurisdiction over deputized executive officers cannot be deemed to include such powers as would allow encroachment into the domain of the executive branch under guise of administering laws relative to elections.

"4) Section 38 of P.D. 807 cited by respondents COMELEC and Ilagan as basis for their authority to investigate petitioner (Annex G) offers no help to said respondents. The said provision merely lays down the procedure for administrative cases against non-presidential appointees. Petitioner here, the city prosecutor for Davao City is a presidential appointee."[1]

We find ourselves being unable to sustain the petition.

The COMELEC's authority under Section 2(6-8), Article IX, of the Constitution is virtually all encompassing when it comes to election matters. In respect particularly to sanctions against election offenses, we quote:

"SEC. 2. The Commission on Elections shall exercise the following powers and functions:

"xxx xxx xxx.

"(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

"xxx xxx xxx.

"(8) Recommend to the President the removal of any officer or employee it has deputized or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision."

Additionally, Section 52, Article VII, of the Omnibus Election Code, provides:

"SEC. 52. Powers and functions of the Commission on Elections. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly and honest elections, and shall:

"a. Exercise direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government required by law to perform duties relative to the conduct of elections. In addition, it may authorize CMP Cadets eighteen years of age and above to act as its deputies for the purpose of enforcing its orders.

"The Commission may relieve any officer or employee referred to in the preceding paragraph from the performance of his duties relating to electoral processes who violates the election law or fails to comply with its instructions, orders, decisions or rulings, and appoint his substitute. Upon recommendation of the Commission, the corresponding proper authority shall suspend or remove from office any or all of such officers or employees who may, after due process, be found guilty of such violation or failure."

It should be stressed that the administrative case against petitioner, taken cognizance of by, and still pending with, the COMELEC, is in relation to the performance of his duties as an election canvasser and not as a city prosecutor. The COMELEC's mandate includes its authority to exercise direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government, required by law to perform duties relative to the conduct of elections. In order to help ensure that such duly deputized officials and employees of government carry

out their respective assigned tasks, the law has also provided that upon the COMELEC's recommendation, the corresponding proper authority (the Secretary of the Department of Justice in the case at bar) shall take appropriate action, either to suspend or remove from office the officer or employee who may, after due process, be found guilty of violation of election laws or failure to comply with instructions, orders, decisions or rulings of the COMELEC.

Unavoidably, the COMELEC, prior to making its recommendation, must first satisfy itself that there indeed has been an infraction of the law, or of its directives issued conformably therewith, by the person administratively charged. It also stands to reason that it is the COMELEC, being in the best position to assess how its deputized officials and employees perform or have performed in their duties, that should conduct the administrative inquiry. To say that the COMELEC is without jurisdiction to look into charges of election offenses committed by officials and employees of government outside the regular employ of the COMELEC would be to unduly deny to it the proper and sound exercise of such recommendatory power and, perhaps more than that, even a possible denial of due process to the official or employee concerned.

Observe, nevertheless, that the COMELEC merely may issue a recommendation for disciplinary action but that it is the executive department to which the charged official or employee belongs which has the ultimate authority to impose the disciplinary penalty. The law then does not detract from, but is congruent with, the general administrative authority of the department of government concerned over its own personnel.

Petitioner's assertion that private respondent Alterado has resorted to forum-shopping is unacceptable. The investigation then being conducted by the Ombudsman on the criminal case for falsification and violation of the Anti-Graft and Corrupt Practices Act, on the one hand, and the inquiry into the administrative charges by the COMELEC, on the other hand, are entirely independent proceedings. Neither would the results in one conclude the other. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution (Office of the Court Administrator vs. Enriquez, 218 SCRA 1), or vice versa. So, also, the dismissal by the COMELEC of SPC Case No. 92-232 on the ground that the case constituted an electoral protest within the jurisdiction of the HRET and not of the COMELEC (affirmed by this Court in G.R. No. 106452) does not necessarily foreclose the matter of possible liability, if warranted, of those who might have improperly acted in the canvass of votes.

There are other issues, mainly factual, that are raised and averred to show petitioner's innocence from the administrative charges. Petitioner's allegations may well be true but this petition at bench may not preempt the determination of those factual matters yet to be passed upon in the pending administrative proceedings.

WHEREFORE, the instant petition is DISMISSED. No costs.

SO ORDERED.

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

Padilla and Bidin, JJ., on leave.

[1] Rollo, pp. 211-212.

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