

JOSE M. BULAONG, PETITIONER, VS. COMMISSION ON ELECTIONS AND LUIS VILLAFUERTE, RESPONDENTS.

G.R. No. 116206. February 07, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari seeking the annulment of four orders issued by the Commission on Elections in EPC No. 92-37. The first order, dated June 7, 1994, denied petitioner's motion for further extension of time to make a technical examination of election documents.

The second order, dated June 20, 1994, admitted all exhibits of private respondent, consisting of revision results and other official documents.

The third order, dated June 27, 1994, gave petitioner a limited period of 15 days to present his evidence in the form of affidavits of witnesses and thereafter another period of 15 days within which to make an offer of evidence and submit his memorandum.

The fourth order, dated July 7, 1994, denied "with finality" petitioner's motion for reconsideration of the June 20, 1994 resolution, which admitted the exhibits of private respondent, as well as petitioner's motion to have his witnesses examine the election documents before executing their affidavits or, in the alternative, to allow them to testify before the Commission instead of submitting their affidavits.

Petitioner contends that there is "an abnormally huge and unexplained discrepancy" between the results shown in the election returns and tally sheets, on the one hand, and the results of the actual count and that he has a right to show that this was due to the substitution of ballots after the canvass. He claims that because of the Commission's orders in question, he was deprived of the right to prove his allegations.

The facts are as follows:

Petitioner Jose M. Bulaong and private respondent Luis R. Villafuerte were candidates for Provincial Governor of Camarines Sur in the elections held on May 11, 1992, private respondent being, at the time, the incumbent Governor. Petitioner was proclaimed elected by the Provincial Board of Canvassers. A total of 184,654 votes were credited to him, against 155,359 votes for private respondent.

On July 9, 1992, private respondent filed an election protest, alleging fraud and other irregularities in 594 precincts located in 10 municipalities and one city (Iriga City) of Camarines Sur. He prayed that a revision of the ballots and other election documents and their technical examination be ordered, that the results of the elections be annulled and that he be declared the duly elected Governor of Camarines Sur.

Petitioner filed his answer denying that any irregularity attended the conduct of the elections.

On motion of private respondent the Commission on Elections ordered the revision of the ballots to be held in Manila. Petitioner questioned the order but this Court, on March 31, 1993, upheld the Commission's order. [1]

The revision of ballots then proceeded. Commenced on January 12, 1994, the revision was finished on February 7, 1994. The revision of ballots in 594 precincts resulted in a reversal of the results. Private respondent Luis R. Villafuerte received 171,577 votes, while petitioner Jose M. Bulaong received 170,361.

Petitioner then filed a motion for the technical examination of the election documents alleging that there had been tampering of the ballots between the time the ballot boxes were brought to Manila and the time the revision began. His motion was granted by the Commission in its order of March 14, 1994, which limited the period for the examination to one month. The period of revision was later set from April 4, 1994 to May 4, 1994.

On April 30, 1994, petitioner asked for 45 more days to complete the technical examination of the ballots. In the beginning, the Commission denied his motion but, on petitioner's motion for reconsideration, the Commission granted him 25 days (from May 17, 1994 to June 10, 1994) within which to finish the technical examination of the election documents.

On June 6, 1994, petitioner filed a Motion for Another Extension of Time to Complete Technical Examination. In its order dated June 7, 1994, the Commission denied the request on the ground that petitioner had had enough time to finish the technical examination of the ballots. This is the first order questioned.

Hearing was thereupon held on June 13, 1994, during which private respondent made a Formal Offer of Documentary Exhibits. The exhibits consisted of the reports of the Revision Committee, the Minutes of the Proceedings, a Manifestation on Typographical and/or Transposition Errors in the Revision Reports, Summary of Classified Objections, and Summary of Ballots.

Petitioner asked for 30 days within which to submit his Comments or Objections. However, the Commission granted him only 5 days (until June 18, 1994) and set the hearing for the presentation of petitioner's testimonial evidence on June 20, 1994.

It appears that petitioner had sent his Comments/Objections by mail from Naga City on June 17, 1994. Because of this they were not received at the Commission by the time the case was called for hearing on June 20, 1994. Petitioner argued that the Commission could not rule on the admissibility of private respondent's documentary evidence pending receipt of his objections. The Commission nevertheless went ahead with its ruling. In its order dated June 20, 1994 (the second order questioned) the Commission admitted Exhibits A to H "as official documents and for whatever [they] may be worth." It also admitted Exhibits I, J and K "for whatever [they] may be worth, noting however, the comments and objections of protestee."

The Commission then ordered petitioner to present his evidence. As he was not ready, the Commission set another hearing on June 27, 1994, with the warning that it would consider the case submitted for decision if petitioner would still not be ready on that date to present his testimonial evidence.

At the hearing on June 27, 1994, petitioner again manifested that he was not ready to present his testimonial evidence. He asked instead to be allowed to submit the affidavits of his witnesses. For this purpose he asked for 45 days from June 27, 1994 within which to secure their affidavits, make an offer of exhibits and file his memorandum, after which, he agreed, the case could be considered submitted for resolution.

Noting that the next election was less than a year away, the Commission granted petitioner only 15 days, from June 27, 1994 (up to July 12, 1994) within which to submit the affidavits of his witnesses and after that another period of 15 days (up to July 27, 1994) within which petitioner should make his formal offer of exhibits and submit his memorandum. This directive was contained in an order dated June 27, 1994, the third order questioned. Altogether, petitioner was granted a period of 30 days.

Petitioner thereafter filed two motions in succession.

On June 30, 1994, he filed a motion to allow his witnesses to examine and identify ballots and other election documents before giving their affidavits. He asked that subpoenas be issued to them to come to Manila for the purpose. He alleged that these witnesses were public school teachers who composed the Board of Elections Inspectors in the last election and that they would state in their affidavits that the signatures on the reverse side of some ballots were not genuine; that the ballots found in the ballot boxes were not the same ballots which they had counted in May 1992; that the printed stickers pasted on some of the questioned ballots were not there at the time of counting; and that the election returns and tally sheets which were used in the canvass and deposited in the ballot boxes reflected the true results of the counting of the ballots. Petitioner claimed that the examination of ballots by the witnesses was "absolutely necessary" for his witnesses to be able to execute their affidavits. In the alternative, petitioner asked that his witnesses be allowed to give oral testimonies instead of affidavits. [2]

The next day, July 1, 1994, petitioner filed a motion for reconsideration of the order of June 20, 1994 which admitted the exhibits offered by private respondent without the benefit of petitioner's comments and objections.

In its order dated July 7, 1994 (the fourth order questioned), the Commission denied "with finality" petitioner's Motion for Reconsideration of the June 20, 1994 order, stating that until then (July 7, 1994) it had not yet received petitioner's comments/objections. It likewise denied petitioner's motion for the examination of the ballots by witnesses on the ground that he had already been given sufficient time to present his evidence.

At the hearing held on July 12, 1994, which was the last day of the period granted to him for submitting the affidavits of witnesses, petitioner was able to submit the affidavit of only one witness, namely Consuelo B. Gonzales, who was the Chairman of the Board of Election Inspectors of Precinct No. 61, San Nicolas, Iriga City in the May 11, 1992 elections. Petitioner explained that because the witnesses had not been able to see the ballots, he was not able to obtain their statements. For this reason he was not ready to submit his evidence. He reiterated his request for the issuance of subpoenas to his witnesses.

Private respondent objected to petitioner's motion and asked that the order of June 27, 1994, giving petitioner until July 27, 1994 within which to submit his formal offer of evidence and file his memorandum and thereafter considering the case submitted for resolution, be fully enforced.

The Commission reserved resolution of this matter.

Petitioner failed to make an offer of his evidence and file his memorandum. Instead he filed the instant petition for certiorari alleging that the Commission gravely abused its discretion in issuing the orders of June 7, 20, 27 and July 7, 1994. Petitioner reiterates his contention that his witnesses be given time to examine the ballots and election documents before requiring them to execute affidavits; that three additional precincts subject of his comments/objections to the order on private respondent's formal offer of evidence be excluded; and that the technical examination of the ballots by NBI experts be completed.

The issue in this case is whether the Commission committed a grave abuse of discretion in

(1)

denying petitioner's motion for a further extension of the time within which to complete the technical examination of ballots;

(2)

admitting all of private respondent's documentary exhibits without considering petitioner's comments and objections;

(3)

giving petitioner only 15 days, instead of 45 days as prayed for by him, within which to submit the affidavits of his witnesses; and

(4)

denying petitioner's motion to allow his witnesses to view/examine ballots and other election documents before executing their affidavits.

Petitioner contends that there are "huge, abnormal and un-explained discrepancies" between the election results reflected in the tally sheets and election returns, on the one hand, and the result of the revision of the ballots, on the other hand, and that he, as "aggrieved party," has a right to show (1) that the ballots found in the ballot boxes are not the ballots cast and canvassed on election day and (2) that there was "massive, large-scale and fraudulent substitution/switching of ballots after election day." [3] Petitioner claims that he can prove these points through the testimonies of the chairmen of the board of election inspectors in the 174 precincts where there were "massive reversals" of results but he was prevented from doing so by reason of the orders in question of the Commission; particularly the order of July 7, 1994 denying petitioner's motion to allow his witnesses to view, examine and identify ballots.

Private respondent disputes petitioner's assertions. He denies that the Commission committed an abuse of its discretion which he contends must not only be grave but also patent to justify the issuance of the writ of certiorari. He further argues that certiorari does not lie in this case, because petitioner failed to file motions for reconsideration of the orders in question before filing the present petition.

Private respondent's contention is well taken.

As the above recital of facts shows, petitioner had been given sufficient time to prove his allegations. The grant of further extension to him would be inconsistent with the summary nature of the proceedings, especially given the proximity of the May 1995 elections. Petitioner's request to have his witnesses examine and identify the ballots appears to be actually an attempt to circumvent the first order dated June 7, 1994 which denied his motion for additional time to finish the technical examination of the ballots and other election documents. Petitioner had been given, at first, a period of 30 days (April 4 to May 4, 1994) and, then, 25 more days (from May 17 to June 10, 1994) for the technical examination of election documents. Altogether he was given 55 days to complete the technical examination of election documents. Despite this, however, he still wanted further extension.

Various reasons were given for petitioner's failure to complete the technical examination of the ballots, i.e., that the xerox machine to be used for the technical examination had not been delivered by the company from which he had purchased it; that the mother of petitioner's counsel, Atty. Alfredo C. Lim, passed away while the latter's partner, Atty. Augusto Pardalis, could not come to Manila because of pending cases in Bicol; and that although petitioner was granted further time from May 17, 1994 to June 10, 1994, the technical examination could not resume until on May 23, 1994 because the NBI did not want to proceed unless shown the Commission's order granting extension. These reasons, as the Commission ruled, did not justify the request for further extension, because they were not attributable to it or to private respondent.

The Commission likewise granted petitioner reasonable time to prove his allegation. At the hearing on June 20, 1994 he was required to present his evidence but he refused to proceed, insisting on a prior ruling by the Commission on his objections to private respondent's exhibits. But he could not present his written objections which he said he had sent through the mail from Naga City on June 17. He could have produced a copy of his objections, or he could have made his oral objections, but he did not. The fact is that even as late as July 7, 1994,

when the Commission denied his request to have his witnesses examine and identify the ballots, his written objections had not yet been received by the Commission.

Consequently, the Commission proceeded to rule on the offer of evidence of private respondent, even as it gave petitioner another chance to present his evidence. For this purpose it reset the hearing on June 27. Still, petitioner was in no position to present his evidence. At his request he was allowed to present the affidavits of witnesses. He was granted 15 days (June 27-July 12, 1994). In addition, he was granted another period of 15 days (July 12-July 27, 1994) within which to make an offer of evidence and submit his memorandum. But again he failed to present his evidence. There is no basis for his allegation that he was "practically forced" to agree to submit the affidavits of witnesses in lieu of their testimonies, considering that it was his own failure twice to present them which "forced" him to agree to submit instead their affidavits. It was, therefore, contrary to his own undertaking for him to demand later that his witnesses be first allowed to view, examine and identify the ballots before they gave their affidavits, or that they be allowed to testify.

For the foregoing reasons we hold that the Commission did not commit any abuse of its discretion in issuing its order of June 7, 1994 denying petitioner's motion for further time to have a technical examination of the ballots, its order of June 27, 1994 requiring petitioner to submit the affidavits of witnesses in lieu of their oral testimonies and its order of July 7, 1994, denying "with finality" petitioner's request for his witnesses to examine the election documents or to testify personally at a hearing.

It is insisted, however, that it is absolutely necessary for petitioner to have the Chairmen of the Board of Election Inspectors of 174 precincts go over the ballots because of the discrepancy between the result of the canvass and those of the revision of ballots. According to petitioner, in 174 precincts, the tally sheets and election returns credited him with 16,322 votes but in the revision of ballots he was credited with only 2,631 votes, thus reducing his votes by 13,700. On the other hand, he says, while the tally sheets and election returns gave private respondent only 5,068 votes, the result of the revision of ballots showed that he obtained 21,269 votes, thus increasing his votes by 16,001. Petitioner argues that although generally the best evidence of the result of the election are not the election returns but the result of the revision of the ballots, [4] the rule does not apply if it is shown that the ballots were substituted or altered after the election. In such a case it is the election returns which must prevail.

Petitioner's contention assumes the very fact in dispute. Whether the ballots in this case were indeed tampered with, is a question which the petitioner has to prove. That there is a "huge discrepancy" between the result of the canvass and that of the revision is no proof that the Commission committed a grave abuse of discretion in denying his request for additional time to conduct a technical examination of election documents and to have his witnesses examine the ballots before requiring them to make their affidavits. For as already stated, he was given sufficient time to present proof of tampering or substitution of ballots but he failed to do so. Petitioner thus begs the question when he claims that because the ballots have been tampered with, the elections returns constitute the best evidence of the result of the election.

Moreover, the converse also appears to be true: There were also sharp discrepancies between what the election returns, which were used in the canvass at the municipal/city level, contained and what the certificates of canvass used by the Provincial Board of Canvassers at the provincial level showed. Thus, private respondent charges that:

To illustrate, during the revision proceeding for Precinct 11-A, Municipality of Cabusao, the election return showed that Petitioner Bulaong obtained 86 votes. However, in the statement of votes for the same precinct, which was the basis of the Municipal Certificate of Canvass used at the Provincial Board of Canvassers the votes for Petitioner Bulaong was already made into 106 votes, but when the ballots for the same precinct were recounted during the revision, Petitioner Bulaong was discovered to have obtained only 85 votes. [5]

Anyway the question whether there has been substitution of ballots and what the actual result of the election is, will still be determined by the Commission when it undertakes its own independent evaluation and appreciation of the contested ballots and election documents. As we have held, handwriting experts, while probably useful, are not indispensable in examining or comparing handwriting; this can be done by the COMELEC itself. As for the allegedly fake ballots, no better authority than the COMELEC can determine their authenticity, having itself ordered and supervised the printing of all the official ballots. [6] We cannot overemphasize the fact that the Commission on Elections under the Constitution is the agency vested with exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election contests involving elective municipal and barangay officials. Unless the Commission is shown to have committed a grave abuse of discretion, its decision and rulings will not be interfered with by this Court. [7]

Nor did the Commission commit a grave abuse of its discretion in issuing its order of June 20, 1994 admitting private respondent's documentary exhibits and order of July 7, 1994, denying petitioner's motion for reconsideration. Petitioner alleges that the Commission's ruling on the offer of evidence of private respondent was made with undue haste and without the Commission even considering his comments and objections. He claims he was prejudiced because certain exhibits pertaining to Precinct Nos. 77, 84-B and 99 in Iriga City, which had previously been excluded by the Commission on March 14, 1994, were offered by private respondent and admitted by the Commission.

The contention has no merit. As the Commission explained:

On June 20, 1994, the scheduled date of hearing, the deadline for protestee to submit his comment and/or objections to protestant's offer of exhibits, protestee appeared but did not personally file the said comment and/or objections. He manifested that the same was mailed to the Commission on June 17, 1994 from Naga City. To date, the Commission (First Division) has not received said Comment and/or Objections allegedly sent thru the mail by protestee from Naga City. [8]

The exhibits of private respondent consisted mainly of the official revision results. As they are official documents forming part of the official records of the Commission itself, it was not even necessary for the Commission to rule upon their admissibility. Furthermore, the Commission admitted them "for whatever they may be worth," without ruling upon their relevance and materiality to the issues in the case. Petitioner's apprehension that his comments and objections were not considered by the Commission is, therefore, unfounded.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

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

[1] Bulaong v. COMELEC, 220 SCRA 745 (1993).

[2] Rollo, pp. 92-95.

[3] Petition, pp. 17-19.

[4] Geromo v. COMELEC, 118 SCRA 165 (1982).

[5] Respondent's Supplementary Comment, p. 18.

[6] Bocobo v. COMELEC, 191 SCRA 576 (1990).

[7] Lucman v. Dimaporo, 144 Phil. 102 (1970). Cf. Galido v. COMELEC, 193 SCRA 78 (1991); Rivera v. COMELEC, 199 SCRA 178 (1991).

[8] Order, July 7, 1994. Rollo, p. 98.

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