

BENJAMIN R. ERNI, PETITIONER, VS. COMMISSION ON ELECTIONS AND FRANCIS N. TOLENTINO, RESPONDENTS.

G.R. No. 116246. April 27, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to annul the resolution dated July 25, 1994 of the Commission on Elections en banc in EPC No. 92-15, affirming the resolution of the Commission's First Division which set aside the proclamation of petitioner-protestee Benjamin R. Erni and declared respondent-protestant Francis N. Tolentino the duly elected mayor of Tagaytay City in the election of May 11, 1992. Petitioner-protestee contends that he was deprived of due process by the resolution in question of the Commission en banc.

The facts are as follows:

Petitioner-protestee Benjamin R. Erni was proclaimed by the City Board of Canvassers as the duly elected mayor of Tagaytay City in the May 11, 1992 elections, with 4,811 votes against 4,365 votes garnered by his opponent, herein respondent-protestant Francis N. Tolentino.

On June 4, 1992, respondent Tolentino filed an election protest,[1] questioning 1,141 ballots out of 1,808 ballots cast in favor of petitioner-protestee in 14 out of 78 actual precincts in Tagaytay City. Among other things, he alleged that there was rampant substitution of votes and that ballots were in groups written by one or a few persons. He prayed that a revision of the ballots be ordered and that he be declared the duly elected mayor of Tagaytay City.

The case, docketed as EPC No. 92-15, was assigned to the First Division of the Commission, which, in its session on May 5, 1993, gave the parties until May 14, 1993 within which to submit their respective position papers. On the same day, the Commission's First Division created a revision committee with Atty. Ernesto Verdejo as chairman and the following members: Armando Mallorca, as utility; Manuel Tabug as recorder; Esther Badilla as clerk-typist; Baltazar Rosuello as respondent-protestant's revisor; and Atty. Hilarion Azura as petitioner-protestee's revisor.

The revision of ballots was conducted from May 24, 1993 until June 3, 1993. On June 9, 1993 the committee submitted its final report to the First Division.[2]

Hearings were thereafter conducted by the First Division beginning July 5, 1993, during which respondent-protestant presented as evidence the contested ballots, while petitioner-protestee presented the testimonies of several witnesses. Upon the termination of the hearing on August 9, 1993, petitioner-protestee was ordered to make a formal offer of his evidence. Petitioner-protestee asked for leave to photocopy the revised ballots.

On August 16, 1993 he filed an omnibus motion in which he charged that the contested ballots as revised had been substituted with spurious ones purporting to be those for petitioner-protestee.[3] Petitioner-protestee prayed

that:

- (1) An investigation be conducted concerning the suppression of the revised official ballots voted for protestee in the fourteen (14) precincts subject of this case and their substitution with the spurious ballots now before the Commission;
 - (2) A technical examination be conducted by experts concerning the spurious ballots;
 - (3) The above-captioned case [EPC No. 92-15] be reopened for reception of further evidence for the protestee;. . .
- Respondent-protestant opposed the motion.[4]

On August 19, 1993 the First Division summoned the Chairman of the Revision Committee, Ernesto D. Verdejo, and two members of his staff, Manuel Tabug and Armando Mallorca, to answer questions regarding the condition of the ballots during and after the revision, as well as steps taken by the Committee to ensure the security and safety of the ballot boxes. At the hearing, the First Division ordered the boxes containing the envelopes in which the contested ballots were kept to be opened in the presence of the parties' counsel. The ballots were exposed and the members of the Revision Committee were asked to examine the ballots again. They were later required to submit a written report of their examination of the ballots.[5]

On August 23, 1993, the members of the Revision Committee submitted separate reports in which they confirmed that the initials and markings appearing on the contested ballots were genuine, being the markings and initials which they had made during the revision.[6] The First Division itself found all ballot boxes, envelopes, paper seals, padlocks, self-locking metal seals and the security marks intact and in excellent condition.

Accordingly, the First Division proceeded with the appreciation of the contested ballots. It found only 160, out of 1,141, contested ballots in favor of petitioner-protestee Erni, to be valid. It found the other 981 ballots to have been by groups, the ballots in each group having been written by one person. For this reason the First Division invalidated them. On the other hand, out of the 393 ballots counter-protested by petitioner-protestee, 28 ballots cast in favor of respondent-protestant were declared invalid, while 365 were declared valid. The 6 ballots claimed by him under the "neighborhood and readjudication" rule were found to be invalid, while out of the 26 ballots claimed by petitioner--protestee under the same rule, 7 ballots were considered in his favor, thus bringing the total number of valid votes in his favor to 167.

After adding the results of the 14 contested precincts to the ballots in the 64 uncontested precincts, the First Division found respondent-protestant Tolentino to have garnered a total of 4,264 votes (365 + 3,899), and petitioner--protestee Erni to have obtained a total of 3,661 votes (167+ 3,494). On the basis of these results the Commission's First Division issued a resolution on January 28, 1994, the dispositive portion of which reads:

ACCORDINGLY, the Commission (First Division) hereby renders judgment:

- (a) ANNULING and SETTING ASIDE the proclamation of protestee Benjamin R. Erni as Mayor of Tagaytay City in the May 11, 1992 elections;
- (b) DECLARING protestant Francis N. Tolentino as the lawful and duly elected Mayor of Tagaytay City having garnered a total of 4,264 votes as against the 3,661 votes of the protestee or a margin of 603 votes;
- (c) DIRECTING protestee to VACATE the Office of Mayor of Tagaytay and to RELINQUISH said position to the protestant after this Resolution becomes final and executory; and
- (d) DENYING protestee's claims for damages and other indemnities for insufficiency of evidence.

Petitioner-protestee filed a motion for reconsideration before the Commission en banc. He insisted that after their

revision, the groups of contested ballots cast for him were substituted with fake ones, in which the entries were allegedly made to appear as having been made by only one person in order to substantiate the specific objection of respondent-protestant. Petitioner-protestee contended that the First Division erred in denying his motion for a technical examination of the ballots to determine possible substitution of the ballots before the examination and in relying solely on the testimonies of the members of the Revision Committee in ruling on the integrity of the ballots.

Noting that petitioner-protestee's claims "raised questions on the integrity of the people involved and the Commission itself and to serve the ends of substantial justice," the Commission en banc decided to take a "second look at the matter" and, for this purpose, gave due course to petitioner's motion for reconsideration.[7]

On February 9, 1994, petitioner-protestee moved for an investigation of the alleged substitution of genuine ballots with "fabricated" ones after revision and for the technical examination of the ballots. He charged that by affirming his initials on the ballots, Atty. Ernesto Verdejo, the Revision Committee Chairman, in effect admitted participation in the fabrication of ballots.[8] Petitioner-appellee sought a deferment in the meantime of the consideration of the motion for reconsideration.

Petitioner-protestee was required to present direct proof of substitution of genuine revised ballots with fake ones. Counsel manifested, however, that petitioner-protestee did not have direct, but only circumstantial, evidence to offer to establish that the ballots had been replaced with fake ones after revision.[9]

The parties were then directed to submit their respective memoranda on or before February 15, 1994. Meanwhile, the Commission en banc made its own investigation. It asked the NBI to look into the existence of an alleged conspiracy in the Commission, substituting ballots with fake ones. In addition, the Commission en banc asked its document examiners to determine the authenticity and genuineness of the contested ballots and summoned twelve (12) chairpersons of Boards of Election Inspectors (BEIs) to identify their initials, markings and signatures on the ballots. The Commission itself examined the ballots.

On July 25, 1994, the Commission en banc rendered its decision, denying petitioner-protestee's motion for reconsideration. It found that the ballots which had been examined by the First Division were the same ones which had been revised and that there was "sufficient reason to believe that there was no substitution after revision, contrary to the allegation of the protestee." [10] Hence this petition for certiorari and a supplemental petition later filed.

Petitioner contends that there should have been an examination of the ballots by government handwriting experts. He contends that in interviewing the chairpersons of the Boards of Election Inspectors in order to determine the genuineness of their initials and the signatures on the contested ballots and having document examiners of the Commission examine the genuineness of the revisor's initials, without giving petitioner-protestee the opportunity to participate in the investigation, the Commission committed a grave abuse of its discretion. Petitioner-protestee further claims that the Commission gravely abused its discretion in refusing to order an investigation of the existence in the Commission of a syndicate allegedly responsible for the substitution of genuine ballots with spurious ones after revision.

We find the petition to be without merit.

First. With respect to the contention that a technical examination of the ballots should have been ordered to determine whether they had been written by two or more persons, or in groups written by only one hand, we hold that the Commission en banc did not commit an abuse of its discretion in denying petitioner-protestee's request. The rule is settled that the Commission itself can make the determination without the need of calling handwriting

experts.[11]

Nor was evidence aliunde necessary to enable the Commission to determine the genuineness of the handwriting on the ballots, an examination of the ballots themselves being sufficient,[12] although as already stated, the Commission en banc asked the chairpersons of twelve Boards of Election Inspectors (BEIs) to examine the ballots and see if the signatures, initials and markings thereon were theirs. The twelve did as required and later affirmed that the signatures, initials and markings were theirs.

Second. Petitioner-protestee claims that he was denied due process because the Commission en banc interviewed twelve BEI chairmen and ordered the ballots examined by document examiners without giving him the opportunity to cross-examine the parties concerned.

What happened is that in view of the manifestation of petitioner's protestee's counsel that he had no direct evidence to prove how the substitution of ballots had allegedly been done, the Commission decided to conduct its own investigation. The investigation was more an internal process designed "to clear doubts regarding the integrity of the people in the Commission and the entire Commission itself." [13] The Commission had the power to make such investigation. In *Penaflorida v. Commission on Elections*, [14] petitioner alleged that the Commission committed a grave abuse of its discretion in conducting "fingerprint taking" and thereafter directing examiners to make a comparative examination of the thumbprints taken with those on the election returns without the presence of the parties. Rejecting the petitioner's contention, this Court held that the steps taken were "actually part of the decision-making process" to which the parties "[were] not, as a matter of right, entitled to be present during the examination nor to confront the experts on the result of their work." [15] Indeed, the BEI chairpersons were teachers who were deputies of the Commission under its supervision and control, and there was no reason why it could not call them to identify the signatures on the contested ballots.

Petitioner-protestee submitted the affidavits of three BEI chairpersons to rebut their previous claims that the signatures, initials and markings on the ballots were theirs. In their affidavits, these persons claimed that they had been forced by a Commission official to admit the initials on the ballots as theirs. [16] However, apart from the fact that they did not identify who the Commission official was, one of these chairpersons, Corazon Lascano, repudiated her affidavit. In an affidavit executed on July 1, 1994, Lascano stated that she had been forced by petitioner-protestee to execute the earlier affidavit and affirmed that the initials on the contested ballots were hers, [17] as she had previously told the Commission en banc.

Third. As to the charge that there was in the Commission a syndicate substituting ballots with spurious ones, especially after revision, we think that sufficient opportunity to prove this charge had been given to petitioner-protestee but the latter failed to do so. Petitioner-appellee's counsel, Atty. Emmanuel P.J. Tamase, admitted that he did not have direct evidence to support his allegation that there was substitution of ballots. [18] Petitioner-protestee relied primarily on affidavits constituting circumstantial evidence which is inconclusive or at any rate insufficient to overcome the presumption of regularity in the performance of official duties.

Anyway, as a result of petitioner-protestee's charge that there was a syndicate substituting ballots with spurious ones in the Commission, the Commission en banc asked the NBI to investigate the charge. The NBI, however, found the charge to be without any basis. In addition, as previously noted, the Commission en banc asked its document examiners to examine the ballots but the examiners likewise found the charge to be without any basis. It is equally settled that the Commission is the best judge of the authenticity of ballots. Having ordered and supervised their printing, there is no better authority for determining the authenticity of ballots than the Commission itself. [19]

Petitioner-protestee argues that the Commission en banc should have at least held in abeyance the resolution of

his appeal in view of the filing by him of administrative and criminal case based on the same charges in this case.[20] Two of the affidavits submitted to the Assistant City prosecutor were submitted to the Commission to support petitioner-protestee's motion.

The Office of the City Prosecutor, however, has no jurisdiction over the criminal case and, therefore, the Commission correctly denied petitioner--protestee's motion. At any rate, this point is now moot and academic in view of the resolution of December 8, 1994 of Assistant City Prosecutor Carmelita Gutierrez-Fruelda, dismissing the criminal case on precisely the ground that the authenticity of the ballots had already been resolved by the Commission which has the exclusive jurisdiction to conduct preliminary investigation of election offenses and thereafter to prosecute them. This was also the basis of the dismissal by the Commission of the administrative case against Atty. Verdejo.

Nor was it an abuse of discretion for the Commission en banc to rely more on its own finding as to the authenticity of the ballots than on the affidavits submitted in that criminal case. One of these affidavits was that of Ritchillier Matias in which he stated:

5. Alam ko din po na ang grupo namin, sa pangunguna ni Rodolfo Eres, Jr. at Mang Ben Geneciran ang gumawa ng paraan upang si Mr. Francis Tolentino ay magtagumpay sa kanyang protesta. Ang totoo po nito noong ang grupo ay nagrerevise ng mga balota sa COMELEC, nasabi sa akin ni Rodolfo Eres, Jr. na sila ang may pakana o trabaho ng pagpapalit ng huwad o fake ballots para kay Mr. Tolentino.

6. Sa katunayan, noong maaksidente po si boss Rodolfo Eres, Jr. noon Sept. 4, 1993, nasaksihan ko po na si Francis Tolentino ay pinatawagan ni Virgie Saraspe at nakita ko ring nagabot si Tolentino ng pera kay Eres para ibayad sa gastos sa ospital.

7. Dahil malapit ako kay Rodolfo Eres at Zosimo Gabriel, may ilang beses pa na nasabi sa akin ni Jun Eres na si Mang Ben Geneciran ang kumuha sa kanya para tulungan si Francis Tolentino at nasabi rin po niya na si Francis Tolentino ang aming big boss.

8. Alam ko rin po na ilang beses nabanggit sa akin ni Jun Eres na tapos na ang kanilang trabaho para kay Tolentino at tiyak na ang ating panalo.

9. Nais ko rin pong sabihin na alam ko rin na noong panahon na nagrerevised sila ng balota sa case ni Tolentino doon po sila sa bahay ni Jun Eres ginawa ang botohan kaya tiniyak po ni Jun Eres na panalo na si Francis Tolentino.

10. Alam ko rin po na ang balotang ginamit sa revision sa case ni Francis Tolentino against Mayor Erni ay huwad at fake ballots na ipinalit sa genuine ballots na lahat po ay sa utos ni Francis Tolentino.

11. Alam ko rin po na si Jun Eres, sa tuwing operasyon sa COMELEC ay laging may dalang isang bag ng susi, baril at vault cutter at isang malaking pardible para mabuksan ang "self-locking metal seal."

12. Alam ko rin po na ang aming kasabwat sa COMELEC ay ang mga sumusunod: Rene (30-40 years old, nakatira sa Blumentritt, matangkad, nakakalbo, medyo maputi), Buboy (20-30 years old, matangkad, kulot ang buhok, singkit), Mang "Putol" (maliit, matanda, puti ang buhok at putol ang isang hinlalaki), Bert (may malaking nunal sa pisngi) at Franklin (medyo maitim, may bigote, taga-repair ng makinilya sa COMELEC).[21]

As will be noted, Ritchillier Matias' affidavit is not really based on his own knowledge but only on what he was allegedly told by Rodolfo Eres, Jr. The affidavit is therefore based on hearsay. Nor was any effort made by petitioner--protestee to present him to the Commission en banc.

Matias was the principal witness in HRET Adm. Case No. 93-001 against Federico U. Cruz, Benjamin B.

Geneciran, Alberto de Vera, Jr. and Gregorio T. Castro, Sr., which led to the discovery of a syndicate responsible for stealing ballots to reduce the number of ballots of a party or for marking ballots so that they would be invalidated. But the difference between that case and the present one is that in the HRET case there was a full blown hearing during which overwhelming evidence of ballot-stealing or tampering was adduced. Matias' credibility was high, considering that he was a self-confessed member of the syndicate. On the other hand, in this case his affidavit is based mainly on what he was allegedly told by Rodolfo Eres, Jr. Matias does not claim any part in the operation of the alleged syndicate.

With respect to the affidavit of Mauna, we think the Commission en banc correctly gave no weight to it considering that it referred to an admission allegedly made by Atty. Verdejo before he submitted his report to the Commission's First Division. In this report Verdejo affirmed that the initials on the ballots were his. To discredit Verdejo's report, Mauna claimed in his affidavit that he had arranged a meeting between Atty. Verdejo and the lawyers of petitioner-protestee at the Jade Vine Restaurant in Manila "sometime in August 1993;" that he was present during that meeting; that Atty. Verdejo had been shown photocopies of the contested ballots; that after examining the photocopies Atty. Verdejo denied that the initials on the photocopies of ballots were his. Assuming that Verdejo had really said that the initials on the photocopies were not his, he must be deemed to have subsequently retracted his statement because, after examining the originals themselves on August 19, 1993, he affirmed that the initials were his. In his report dated August 23, 1993 to the First Division of the Commission, Atty. Verdejo reiterated that the initials on the contested ballots were his. It is noteworthy that Atty. Verdejo was not confronted with any prior inconsistent statements allegedly made to petitioner--protestee's counsels, Attorneys Hilarion Azura and Emmanuel P.J. Tamase. It is to be remembered that the investigation was called on August 19, 1993 precisely to investigate petitioner-protestee's allegation that there was ballot-switching.

Indeed Mauna's claim that Atty. Verdejo had allegedly previously denied his initials on the contested ballots is rendered doubtful by the fact that in filing an Omnibus Motion in which he charged that there was ballot-switching after revision, petitioner-protestee never mentioned the affidavit of Mauna or the alleged statement of Atty. Verdejo.

Fourth. Circumstantial evidence was submitted by petitioner to show that there was ballot-switching. The evidence consisted of the affidavit of the City Treasurer of Tagaytay City that all unused and excess genuine official ballots had been accounted for and surrendered to the Commission with their attached upper and lower stubs and the observations of nuns and priests in the Parish Pastoral Council for Responsible Voting that the elections in Tagaytay City were relatively peaceful, orderly and clean. But, as the Commission en banc noted, the PPCRV report was an assessment of the overall conduct of election in Tagaytay City, which did not preclude the possibility that fraud or anomalies might have been committed during the elections.[22] Indeed, Father Vicente Tiam of the PPCRV admitted that there might have been cheating although the election in Tagaytay City on May 11, 1992 was generally peaceful and "relatively" clean. He testified:[23]

Com. Fernando:

In your report you made use of the word orderly, generally peaceful and relatively clean and you miss the word honest, how come you miss the word honest, father?

Father Tiam:

Yeah, because we felt that we were not in a position to state honest since the charges were there specially the rumors of vote buying was there and specially when we hear rumors as to the occurrence of such irregularities so that was how far we went with the use of the word honest.

Reviewing the steps taken during election (i.e., the delivery of official ballots to the City Treasurer, their

distribution to the BEIs, the measures taken before ballots were cast, such as the signature, thumbprint and indelible ink by voters, the actual casting of votes and the counting of votes and the preparation of election returns), petitioner-protestee argues that it was inconceivable that he and his men could have obtained genuine ballots for his men to fill out or to have made groups of voters go to different precincts to cast their votes more than once. Petitioner-protestee contends that the only explanation why the ballots were in groups, written by the same hand, was that this was done after the revision of the ballots and before their appreciation by the Commission's First Division.

Serious charges such as the existence of a syndicate inside the Commission substituting ballots with spurious ones after revision should be given consideration only upon the most convincing proof and not on mere speculations and conjectures such as those made by petitioner. As already stated, the evidence presented by petitioner is insufficient to overcome the presumption that official duties have been regularly performed. The Commission en banc was convinced, from its own investigation, that the ballot boxes and the ballots they contained were intact. It interviewed parties who had taken part in the canvassing and the revision of contested ballots. In the absence of clear and convincing evidence, the revision and the appreciation of the contested ballots and the declaration of respondent-protestant Francis N. Tolentino as the duly elected Mayor of Tagaytay City by the Commission's First Division must be upheld.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., Feliciano, Regalado, Davide, Jr., Romero, Bellosillo, Quason, Puno, and Vitug, JJ., concur.
Padilla, J., no part; private respondent having worked in his former Law Office.
Melo, Kapunan, and Francisco, JJ., on leave.

[1] COMELEC Records, Vol. I, p. 1.

[2] COMELEC Records, Vol. I, p. 154-A.

[3] COMELEC Records, Vol. II, p. 313.

[4] COMELEC Records, Vol. II, p. 327.

[5] COMELEC Records, Vol. II, pp. 341-342.

[6] COMELEC Records, Vol. II, pp. 345-348.

[7] COMELEC en banc Resolution, July 25, 1994, p. 8.

[8] Petitioner-protestee filed separate administrative and criminal cases against Atty. Verdejo, both of which were, however, dismissed.

[9] TSN, pp. 14 & 71, Feb. 10, 1994.

[10] COMELEC en banc resolution, July 25, 1995, p. 14.

[11] *Geromo v. COMELEC*, 118 SCRA 165 (1982); *Bocobo v. COMELEC*, 191 SCRA 576 (1990); *Bulaong v. COMELEC*, G.R. No. 116206, February 7, 1995.

[12] *Bocobo v. COMELEC*, supra.

[13] COMELEC en banc Resolution, July 25, 1994, p. 8.

[14] 206 SCRA 754 (1992).

[15] *Id.*, p. 759.

[16] COMELEC Records, Vol. III, pp. 1021-24.

[17] *Id.*, pp. 1027-28.

[18] TSN, pp. 14 and 71, Feb. 10, 1994.

[19] *Bocobo v. COMELEC*, *supra* note 11.

[20] Adm. Case No. M-94-8, against Ernesto Verdejo, for gross misconduct, gross neglect of duty and gross inefficiency, and I.S. No. 94D-09073, against Francis Tolentino, Rodolfo Eres, Benjamin C. Geneciran, Ernesto Verdejo, Rosuello Baltazar and John Does, for falsification of public and official documents.

[21] Annex H of Supplemental Petition, p. 188, Rollo.

[22] COMELEC Resolution, July 25, 1994, pp. 14-15.

[23] TSN, pp. 46, Aug. 9, 1993.

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