

BENJAMIN U. BORJA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, PATEROS MUNICIPAL BOARD OF CANVASSERS AND JOSE T. CAPCO, JR., RESPONDENTS.

G.R. No. 120140. August 21, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner Benjamin U. Borja, Jr. questions the authority of respondent Commission on Elections en banc to hear and decide at the first instance a petition seeking to declare a failure of election without the benefit of prior notice and hearing.

During the May 8, 1995 elections, Borja and private respondent Jose T. Capco vied for the position of Mayor of the Municipality of Pateros which was won by Capco by a margin of 6,330 votes. Capco was consequently proclaimed and has since been serving as Mayor of Pateros.

Alleging lack of notice of the date and time of canvass, fraud, violence, terrorism and analogous causes, such as disenfranchisement of voters, presence of flying voters, and unqualified members of the Board of Election Inspectors, Borja filed before the COMELEC a petition to declare a failure of election and to nullify the canvass and proclamation made by the Pateros Board of Canvassers.

Concluding that the grounds relied upon by Borja were warranted only in an election contest, the COMELEC en banc dismissed the petition in its resolution dated May 25, 1995. It declared that "forced majeure, violence, terrorism, fraud and other analogous causes . . . are merely the causes which may give rise to the grounds to declare failure of elections." These grounds, which include (a) no election held on the designated election date; (b) suspension of election before the hour fixed by law for the closing of voting; and (c) election in any polling place resulted in a failure to elect, were not present in Borja's petition.

Aggrieved by said resolution, petitioner elevated the matter to this Court, arguing the same matters while claiming that the COMELEC committed grave abuse of discretion in issuing the questioned resolution of May 25, 1995. He avers that the COMELEC en banc does not have the power to hear and decide the merits of the petition he filed below because under Article IX-C, Section 3 of the Constitution, all election cases, including pre-proclamation controversies, "shall be heard and decided in division, provided that motions for reconsideration of decision shall be decided by the Commission en banc."

After a careful scrutiny of petitioner's arguments, this Court finds the same to be untenable. The petition must inevitably be dismissed.

In order to resolve the threshold issue formulated at the outset, there must first be a determination as to whether a petition to declare a failure of election qualifies as an election case or a pre-proclamation controversy. If it does, the Constitution mandates that it be heard and adjudged by the COMELEC through any of its Divisions. The COMELEC en banc is only empowered to resolve motions for reconsideration of cases decided by a Division for

Article IX-C, Section 3 of the Constitution expressly provides:

"SEC 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration shall be decided by the Commission en banc."

In the case at bar, no one, much less the COMELEC, is disputing the mandate of the aforequoted Article IX-C, Section 3 of the Constitution. As Borja himself maintained, the soundness of this provision has already been affirmed by the Supreme Court in a number of cases, albeit with some dissent.[1] In *Ong*, the Court declared that if a case raises "pre-proclamation issues, the COMELEC, sitting en banc, has no original jurisdiction" over the same. Accordingly, said case should be remanded to the COMELEC which, in turn, will refer the same to any of its Divisions for proper disposition.

A petition to declare a failure of election is neither a pre-proclamation controversy as classified under Section 5(h), Rule 1 of the Revised COMELEC Rules of Procedure, nor an election case.

It must be remembered that Capco was duly elected and proclaimed as Mayor of Pateros. "Such proclamation enjoys the presumption of regularity and validity." [2] To destroy the presumption, Borja must convincingly show that his opponent's victory was procured through extra-legal means. This he tried to do by alleging matters in his petition which he thought constituted failure of election, such as lack of notice of the date and time of canvass; fraud, violence, terrorism and analogous causes; disenfranchisement of voters; presence of flying voters; and unqualified members of the Board of Election Inspectors. These grounds, however, as correctly pointed out by the COMELEC, are proper only in an election contest but not in a petition to declare a failure of election and to nullify a proclamation. Section 6 of the Omnibus Election Code lays down the instances when a failure of election may be declared. It states thus:

"SEC. 6. Failure of Election. -- If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice, and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect."

The same provisions are reiterated under Section 2, Rule 26 of the Revised COMELEC Rules. In other words, the COMELEC can call for the holding or continuation of election by reason of failure of election only when the election is not held, is suspended or results in a failure to elect. The latter phrase, in turn, must be understood in its literal sense, which is "nobody was elected." None of these circumstances is present in the case at bar. At best, the "grounds" cited by Borja are simply events which give rise to the three consequences just mentioned.

In reality, Borja's petition was nothing but a simple election protest involving an elective municipal position which, under Section 251 of the Election Code, falls within the exclusive original jurisdiction of the appropriate Regional Trial Court. Section 251 states:

"Section 251. Election contests for municipal offices. -- A sworn petition contesting the election of a municipal officer shall be filed with the proper regional trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the

election." (*Italics supplied*)

The COMELEC in turn exercises appellate jurisdiction over the trial court's decision pursuant to Article IX-C, Section 2(2) of the Constitution which states:

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

xxx xxx xxx

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable."

The COMELEC, therefore, had no choice but to dismiss Borja's petition, not only for being deficient in form but also for having been filed before the wrong tribunal. This reason need not even be stated in the body of the decision as the same is patent on the face of the pleading itself. Nor can Borja claim that he was denied due process because when the COMELEC en banc reviewed and evaluated his petition, the same was tantamount to a fair "hearing" of his case. The fact that Capco was not even ordered to rebut the allegations therein certainly did not deprive him of his day in court. If anybody here was aggrieved by the alleged lack of notice and hearing, it was Capco whose arguments were never ventilated. If he remained complacent, it was because the COMELEC's actuation was favorable to him.

Certainly, the COMELEC cannot be said to have committed abuse of discretion, let alone grave abuse thereof, in dismissing Borja's petition. For having applied the clear provisions of the law, it deserves, not condemnation, but commendation.

WHEREFORE, the instant petition is hereby DISMISSED. The Resolution of the Commission on Elections dated May 25, 1995 is hereby AFFIRMED. No pronouncement as to cost.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Torres, Jr., JJ., concur.

Hermosisima, Jr., J., on leave.

[1] *Ong, Jr. v. Commission on Elections*, 221 SCRA 475 (1993); *Sarmiento v. Commission on Elections*, 212 SCRA 309 (1992).

[2] *Bince, Jr. v. Commission on Elections*, 218 SCRA 782 (1993).

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