

**RICARDO "BOY" CANICOSA, PETITIONER, VS.
COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS
OF CALAMBA LAGUNA AND SEVERINO LAJARA, RESPONDENTS.**

G.R. No. 120318. December 05, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RICARDO "BOY" CANICOSA and SEVERINO LAJARA were candidates for mayor in Calamba, Laguna, during the 8 May 1995 elections. After obtaining a majority of some 24,000 votes^[1] Lajara was proclaimed winner by the Municipal Board of Canvassers. On 15 May 1995 Canicosa filed with the Commission on Elections (COMELEC) a Petition to Declare Failure of Election and to Declare Null and Void the Canvass and Proclamation because of alleged widespread frauds and anomalies in casting and counting of votes, preparation of election returns, violence, threats, intimidation, vote buying, unregistered voters voting, and delay in the delivery of election documents and paraphernalia from the precincts to the Office of the Municipal Treasurer. Canicosa particularly averred that: (a) the names of the registered voters did not appear in the list of voters in their precincts; (b) more than one-half of the legitimate registered voters were not able to vote with strangers voting in their stead; (c) he was credited with less votes than he actually received; (d) control data of the election returns was not filled up in some precincts; (e) ballot boxes brought to the Office of the Municipal Treasurer were unsecured, i.e., without padlocks nor self-locking metal seals; and, (f) there was delay in the delivery of election returns. But the COMELEC en banc dismissed the petition on the ground that the allegations therein did not justify a declaration of failure of election.

Indeed, the grounds cited by Canicosa do not warrant a declaration of failure of election. Section 6 of BP Blg. 881, otherwise known as the Omnibus Election Code, reads:

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.

Clearly, there are only three (3) instances where a failure of election may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or (c)

after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.

None of the grounds invoked by Canicosa falls under any of those enumerated.

Canicosa bewails that the names of the registered voters in the various precincts did not appear in their respective lists of voters. But this is not a ground to declare a failure of election. The filing of a petition for declaration of failure of election therefore is not the proper remedy. The day following the last day for registration of voters, the poll clerk delivers a certified list of voters to the election registrar, election supervisor and the COMELEC, copies of which are open to public inspection. On the same day, the poll clerk posts a copy of the list of registered voters in each polling place. Each member of the board of election inspectors retains a copy of the list which may be inspected by the public in their residence or in their office during office hours.[2]

Fifteen (15) days before the regular elections on 8 May 1995 the final list of voters was posted in each precinct pursuant to Sec. 148 of RA No. 7166. Based on the lists thus posted Canicosa could have filed a petition for inclusion of registered voters with the regular courts. The question of inclusion or exclusion from the list of voters involves the right to vote [3] which is not within the power and authority of COMELEC to rule upon. The determination of whether one has the right to vote is a justiciable issue properly cognizable by our regular courts. Section 138, Art. XII, of the Omnibus Election Code states:

Sec. 138. Jurisdiction in inclusion and exclusion cases. - The municipal and metropolitan trial courts shall have original and exclusive jurisdiction over all matters of inclusion and exclusion of voters from the list in their respective municipalities or cities. Decisions of the municipal or metropolitan trial courts may be appealed directly by the aggrieved party to the proper regional trial court within five days from receipts of notice thereof, otherwise said decision of the municipal or metropolitan trial court shall decide the appeal within ten days from the time the appeal was received and its decision shall be immediately final and executory. No motion for reconsideration shall be entertained by the courts (Sec. 37, PD 1896, as amended).

On the other hand, Canicosa could have also filed with the COMELEC a verified complaint seeking the annulment of the book of voters pursuant to Sec. 10, of RA No. 7166:

Sec. 10. Annulment of the List of Voters. - Any book of voters the preparation of which has been affected with fraud, bribery, forgery, impersonation, intimidation, force or any other similar irregularity or which is statistically improbable may be annulled after due notice and hearing by the Commission *motu proprio* or after the filing of a verified complaint: Provided, that no order, ruling or decision annulling a book of voters shall be executed within sixty (60) days before an election.

If indeed the situation herein described was common in almost all of the 557 precincts as alleged by Canicosa,[4] then it was more expedient on his part to avail of the remedies provided by law in order to maintain the integrity of the election. Since Canicosa failed to resort to any of the above options, the permanent list of voters as finally corrected before the election remains conclusive on the question as to who had the right to vote in that election, although not in subsequent elections.[5]

Canicosa also avers that more than one-half (1/2) of the legitimate registered voters were not able to vote, instead, strangers voted in their behalf. Again, this is not a ground which warrants a declaration of failure of election. Canicosa was allowed to appoint a watcher in every precinct. The watcher is empowered by law to challenge any illegal voter. Thus, Secs. 199 and 202, Art. XVII, of the Omnibus Election Code, provide:

Sec. 199. Challenge of illegal voters. - (a) Any voter, or watcher may challenge any person offering to vote for not being registered, for using the name of another or suffering from existing disqualification. In such case, the board

of election inspectors shall satisfy itself as to whether or not the ground for the challenge is true by requiring proof of registration or identity of the voter x x x x

Sec. 202. Record of challenges and oaths. - The poll clerk shall keep a prescribed record of challenges and oaths taken in connection therewith and the resolution of the board of election inspectors in each case and, upon the termination of the voting, shall certify that it contains all the challenges made x x x x

The claim of Canicosa that he was credited with less votes than he actually received and that the control data of the election returns was not filled up should have been raised in the first instance before the board of election inspectors or board of canvassers. Section 179, Art. XV, of the Omnibus Election Code clearly provides for the rights and duties of watchers -

Sec. 179. Rights and duties of watchers. - x x x x The watchers x x x shall have the right to witness and inform themselves of the proceedings of the board of election inspectors x x x to file a protest against any irregularity or violation of law which they believe may have been committed by the board of election inspectors or by any of its members or by any persons, to obtain from the board of election inspectors a certificate as to the filing of such protest and/or of the resolution thereon x x x and to be furnished with a certificate of the number of votes in words and figures cast for each candidate, duly signed and thumbmarked by the chairman and all the members of the board of election inspectors x x x x

To safeguard and maintain the sanctity of election returns, Sec. 212, Art. XVIII, of the Omnibus Election Code states -

Sec. 212. Election returns. - x x x x Immediately upon the accomplishment of the election returns, each copy thereof shall be sealed in the presence of the watchers and the public, and placed in the proper envelope, which shall likewise be sealed and distributed as herein provided.

Furthermore, it is provided in Sec. 215 of the Omnibus Election Code that -

Sec. 215. Board of election inspectors to issue a certificate of the number of votes polled by the candidates for an office to the watchers. - After the announcement of the results of the election and before leaving the polling place, it shall be the duty of the board of election inspectors to issue a certificate of the number of votes received by a candidate upon request of the watchers. All members of the board of election inspectors shall sign the certificate.

Supplementing the preceding provisions, Secs. 16 and 17 of RA No. 6646 also require -

Sec. 16. Certification of votes. - After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly accredited watchers x x x x

Sec. 17. Certificate of Votes as Evidence. - The provisions of Secs. 235 and 236 of Batas Pambansa Blg. 881 notwithstanding, the certificate of votes shall be admissible in evidence to prove tampering, alteration, falsification or anomaly committed in the election returns concerned x x x x

From the foregoing provisions, it is clear that in case of inconsistency as to the number of votes written in the election returns and the certificate of votes, a petition for correction of election returns must immediately be filed with COMELEC by all or a majority of the members of the board of election inspectors or any candidate affected by the error or mistake. In order to make out a case for correction of election returns, there must be an error and at least a majority of the members of the board of election inspectors agrees that such error existed. Canicosa never mentioned that he petitioned for the correction of the election returns before the COMELEC

Canicosa complains that the election returns were delivered late and the ballot boxes brought to the Office of the

Municipal Treasurer unsecured, i.e., without padlocks nor self-locking metal seals. These bare allegations cannot impel us to declare failure of election. Assuming that the election returns were delivered late, we still cannot see why we should declare a failure to elect. The late deliveries did not convert the election held in Calamba into a mockery or farce to make us conclude that there was indeed a failure of election.

In fine, the grounds cited by Canicosa in his petition do not fall under any of the instances enumerated in Sec. 6 of the Omnibus Election Code. In *Mitmug v. Commission on Elections* [6] we ruled that before COMELEC can act on a verified petition seeking to declare a failure of election, at least two (2) conditions must concur: (a) no voting has taken place in the precincts on the date fixed by law, or even if there was voting, the election nevertheless resulted in failure to elect; and, (b) the votes that were not cast would affect the result of the election. From the face of the instant petition, it is readily apparent that an election took place and that it did not result in a failure to elect.[7]

Canicosa finally insists that it was error on the part of COMELEC sitting en banc to rule on his petition. He maintains that his petition should have first been heard by a division of COMELEC and later by the COMELEC en banc upon motion for reconsideration, pursuant to Sec. 3, Art. IX-C, of the Constitution.[8]

But this provision applies only when the COMELEC acts in the exercise of its adjudicatory or quasi-judicial functions and not when it merely exercises purely administrative functions. To reiterate, the grounds cited by Canicosa in his petition are that: (a) the names of the registered voters did not appear in the list of voters in their respective precincts; (b) more than one-half of the legitimate registered voters were not able to vote with strangers voting in their stead; (c) he was credited with less votes than he actually received; (d) the control data of the election returns was not filled up in some precincts; (e) ballot boxes brought to the Office of the Municipal Treasurer were unsecured, i. e., without padlocks nor self-locking metal seals; and, (f) there was delay in the delivery of election returns.

Clearly, all these matters require the exercise by the COMELEC of its administrative functions. Section 2, Art. IX-C, of the 1987 Constitution grants extensive administrative powers to the COMELEC with regard to the enforcement and administration of all laws and regulations relative to the conduct of elections. Likewise, Sec. 52 of BP Blg. 881, otherwise known as the Omnibus Election Code, states:

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 ensuring free, orderly and honest elections x x x x

Quite obviously, it is only in the exercise of its adjudicatory or quasi-judicial powers that the COMELEC is mandated to hear and decide cases first by Division and then, upon motion for reconsideration, by the COMELEC en banc. This is when it is jurisdictional. In the instant case, as aforesaid, the issues presented demand only the exercise by the COMELEC of its administrative functions.

The COMELEC exercises 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. Its power of direct supervision and control includes the power to review, modify or set aside any act of such national and local officials. [9] It exercises immediate supervision and control over the members of the boards of election inspectors and canvassers. Its statutory power of supervision and control includes the power to revise, reverse or set aside the action of the boards, as well as to do what the boards should have done, even if questions relative thereto have not been elevated to it by an aggrieved party, for such power includes the authority to initiate *motu proprio* or by itself

such steps or actions as may be required pursuant to law.[10]

Specifically, Canicosa alleged that he was credited with less votes than he actually received. But he did not raise any objection before the Municipal Board of Canvassers; instead, he went directly to the COMELEC. He now claims, after the COMELEC en banc dismissed his petition, that it was error on the part of COMELEC to rule on his petition while sitting en banc.

We have already disposed of this issue in *Castromayor v. Commission on Elections* [11] thus should be pinpointed out, in this connection, that what is involved here is a simple problem of arithmetic. The Statement of Votes is merely a tabulation per precinct of the votes obtained by the candidates as reflected in the election returns. In making the correction in computation, the MBC will be acting in an administrative capacity, under the control and supervision of the COMELEC. Hence, any question pertaining to the proceedings of the MBC may be raised directly to the COMELEC en banc in the exercise of its constitutional function to decide questions affecting elections.

Moreover, it is expressly provided in Rule 27, Sec. 7, of the Comelec Rules of Procedure that any party dissatisfied with the ruling of the board of canvassers shall have a right to appeal to the COMELEC en banc:

Sec. 7. Correction of Errors in Tabulation or Tallying of Results by the Board of Canvassers. - (a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or tallying or election returns, or certificates of canvass, during the canvassing as where (1) a copy of the election returns of one precinct or two or more copies of a certificate of canvass were tabulated more than once, (2) two copies of the election returns or certificate of canvass were tabulated separately, (3) there was a mistake in the adding or copying of the figures into the certificate of canvass or into the statement of votes by precinct, or (4) so-called election returns from non-existent precincts were included in the canvass, the board may motu proprio, or upon verified petition by any candidate, political party, organization or coalition of political parties, after due notice and hearing, correct the errors committed x x x (h) The appeal shall be heard and decided by the Commission en banc.

In *Tatlonghari v. Commission on Elections* [12] it was made to appear in the Certificate of Canvass of Votes and Proclamation of the Winning Candidates that respondent therein received 4,951 votes or more than what he actually obtained. In resolving the case we ruled that the correction of the manifest mistake in mathematical addition calls for a mere clerical task of the board of canvassers. The remedy invoked was purely administrative. In *Feliciano v. Lugay* [13] we categorized the issue concerning registration of voters, which Canicosa cited as a ground in his petition for declaration of failure of election, as an administrative question. Likewise, questions as to whether elections have been held or whether certain returns were falsified or manufactured and therefore should be excluded from the canvass do not involve the right to vote. Such questions are properly within the administrative jurisdiction of COMELEC, [14] hence, may be acted upon directly by the COMELEC en banc without having to pass through any of its divisions.

WHEREFORE, finding no grave abuse of discretion committed by public respondent Commission on Elections, the petition is DISMISSED and its Resolution en banc of 23 May 1995 dismissing the petition before it on the ground that the allegations therein did not justify a declaration of failure of election is AFFIRMED.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Francisco, Panganiban, and Martinez, JJ., concur.

Mendoza, J., on leave.

[1] See Comment of private respondent Severino Lajara filed 29 November 1995.

[2] Sec. 135, Art. XII, Omnibus Election Code.

[3] Agpalo, Ruben E., Comments on the Election Code, 1992 Ed., p. 80.

[4] See Petition, p. 5; Rollo, p. 6.

[5] Sec. 13, Rule 20, COMELEC Rules of Procedure; *Abendante v. Rebato*, 94 Phil. 8 (1953).

[6] G.R. Nos. 106270-73, 10 February 1994, 230 SCRA 54.

[7] See Petition of Canicosa, p. 7; Rollo, p. 8.

[8] 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 of decisions shall be decided by the Commission en banc.

[9] See Note 3, p. 76.

[10] *Id.*, p. 77.

[11] G.R. No. 120426, 23 November 1995, 250 SCRA 304.

[12] G.R. No. 86645, 31 July 1991, 199 SCRA 849.

[13] 93 Phil. 744 (1953).

[14] *Pungutan v. Abubakar*, No. L- 33541, 20 January 1972, 43 SCRA 1.

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