

NICOLAS C. CASTROMAYOR, PETITIONER, VS. COMMISSION ON ELECTIONS AND THE MUNICIPAL BOARD OF CANVASSERS OF CALINOG, ILOILO, RESPONDENTS.

G.R. No. 120426. November 23, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari, prohibition, and mandamus seeking to set aside a resolution of the Commission on Elections (COMELEC) which directs the Municipal Board of Canvassers of Calinog, Iloilo to reconvene for the purpose of annulling the proclamation of petitioner Nicolas C. Castromayor as councilor of that municipality and of proclaiming the winner after a recomputation of the votes.

Petitioner was a candidate for a seat in the eight-member Sangguniang Bayan of the municipality of Calinog, Iloilo in the elections held on May 8, 1995.

After the votes had been cast, the Municipal Board of Canvassers (MBC) convened at 6:00 p.m. of that day and began the canvass of the election returns from the different precincts in the municipality. The canvassing lasted well into the night of May 9, 1995. The totals of the votes cast were checked by the Municipal Accountant who acted as recorder of votes.[1]

On May 10, 1995, the winners were proclaimed on the basis of the results of the canvass which showed that petitioner received 5,419 votes and took eighth place in the election for members of the Sangguniang Bayan.[2]

However, when Alice M. Garin, Chairman of the MBC, rechecked the totals in the Statement of Votes the following day, she discovered that the number of votes cast for Nilda C. Demorito, as member of the Sangguniang Bayan, was 62 more than that credited to her. As Garin later explained to the Provincial Election Supervisor, the returns from one precinct had been overlooked in the computation of the totals.[3] Two employees of the Treasurer's Office, who were assigned to post the returns on the tally board outside the municipal building, also discovered the error and reported it to Garin.

As matters stood, therefore, the total number of votes cast for Demorito was 5,470, or 51 more than the 5,419 votes cast for petitioner.[4]

Garin reported the matter to the Regional Election Director, Atty. Rodolfo Sarroza, who advised her to request authority from the COMELEC to reconvene for the purpose of correcting the error.

On May 13, 1995, a fax letter was sent to the Law Department of the COMELEC in Manila. The letter explained the problem and asked for authority for the MBC to reconvene in order to correct the error, annul the proclamation of petitioner and proclaim Demorito as the eighth member of the Sangguniang Bayan.

A formal letter was later sent to the COMELEC on May 17, 1995.

On May 23, 1995, the COMELEC issued the following resolution:

95-2414.

In the matter of the Fax-letter dated 13 May 1995 from Election Officer Alice M. Carin [sic], requesting for an authority to reconvene the MBC of Calinog, Iloilo to annul the proclamation of Nicolas Castromayor for the No. 8 place for councilor and to proclaim Nilda C. Demorito as the duly elected number eight (8) SB member of said municipality,

RESOLVED:

1)

To direct the Municipal board of Canvassers of said municipality to reconvene to annul the proclamation of Nicolas C. Castromayor for the number 8 place for councilor; and

2)

To proclaim the winning number eight (8)councilor, and to submit compliance hereof within five (5) days from receipt of notice.[5]

On May 25, 1995, not yet apprised of the resolution of the COMELEC en banc, Garin sent a letter to petitioner Castromayor, informing him of the error in the computation of the totals and of the request made by the MBC for permission to reconvene to correct the error.

Petitioner protested the proposed action in a letter dated June 5, 1995 to COMELEC Executive Director Resurreccion A. Borra. He questioned the legality of the actuaciones of Garin as stated in her letter.[6]

On June 9, 1995, the MBC was informed by fax of the COMELEC's action on its request.[7]

Accordingly on June 14, 1995, the MBC sent notices to the parties concerned that it was going to reconvene on June 22, 1995, at 10:00 a.m., at the Session Hall of the Sangguniang Bayan, to make a correction of errors.

Hence this petition to annul COMELEC Resolution No. 95-2414.

Petitioner complains that the COMELEC en banc issued the resolution in question without notice and hearing, solely on the basis of the fax letter of the MBC. He claims that even if the matter were treated as a preproclamation controversy, there would nonetheless be a need for hearing, with notice to him and an opportunity to refute any contrary argument which might be presented. He invokes the ruling of this Court in *Bince, Jr. v. COMELEC*[8] that the COMELEC is "without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing."

Petitioner's contention is well taken. That is why upon the filing of the petition in this case, we issued a temporary restraining order against respondents enjoining them from enforcing the resolution of the COMELEC. Public respondents, through the Solicitor General, now claim, however,

that said resolution merely stated the purpose of the reconvening of respondent Board, and that the process and hearing for the annulment of petitioner's proclamation, due to mistake in computing the votes of Sangguniang Bayan candidate Nilda Demorito, will formally take place when respondent Board reconvenes, at which time and place, petitioner was already informed of (see Annex E, Petition).

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In the aforesaid reconvening, petitioner would have been free to interpose all his objections, and discuss his position regarding the matter.[9]

To be sure, the COMELEC did not itself annul the proclamation of petitioner, but, by "direct[ing] the Municipal Board of Canvassers of said municipality to reconvene to annul the proclamation of Nicolas C. Castromayor," the COMELEC in effect did so. After all, the authority of the COMELEC was sought because, without such authority, the MBC would not have the power to annul the proclamation of petitioner.

Be that as it may and in order to obviate the necessity of remanding this case to the COMELEC for further proceedings in accordance with due process, we will accept this representation of the public respondents that what the COMELEC resolution contemplates is a hearing before the MBC at which petitioner will be heard on his objection and that only if warranted will the MBC be authorized to set aside the proclamation of petitioner previously made on May 10, 1995. We find this to be the expedient course of action to take, considering that, after all, in its notice to the candidates, the MBC did not state that it was going to reconvene to annul petitioner's proclamation and make a new one but only that it was going to do so "for the correction of the errors noted in the Statement of Votes Per Precinct/Municipality." [10]

The proceedings before the MBC should be summary. Should any party be dissatisfied with the ruling of the MBC, the party concerned shall have a right to appeal to the COMELEC en banc, in accordance with Rule 27, §7 of the COMELEC Rules of Procedure, which provides as follows:

§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 of 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.

(b) The order for correction must be made in writing and must be promulgated.

(c) Any candidate, political party, organization or coalition of political parties aggrieved by said order may appeal therefrom to the Commission within twenty-four (24) hours from the promulgation.

(d) Once an appeal is made, the board of canvassers shall not proclaim the winning candidates, unless their votes are not affected by the appeal.

(e) The appeal must implead as respondents the Board of Canvassers concerned and all parties who may be adversely affected thereby.

(f) Upon receipt of the appeal, the Clerk of Court concerned shall forthwith issue summons, together with a copy of the appeal, to the respondents.

(g) The Clerk of Court concerned shall immediately set the appeal for hearing.

(h) The appeal shall be heard and decided by the Commission en banc.

Although this provision applies to preproclamation controversies and here the proclamation of petitioner has already been made, there is nothing to suggest that it cannot be applied to cases like the one at bar, in which the validity of the proclamation is precisely in question. On the contrary, in *Duremdes v. COMELEC*, [11] this Court

sustained the power of the COMELEC en banc to order a correction of the Statement of Votes to make it conform to the election returns in accordance with a procedure similar to the procedure now embodied in Rule 27, §7. If the Rule was not applied, it was only because it was adopted after that case had arisen. Otherwise, as we said there, this procedure "best recommends itself specially considering that the Statement of Votes is a vital component in the electoral process."

Indeed, since the Statement of Votes forms the basis of the Certificate of Canvass and of the proclamation, any error in the statement ultimately affects the validity of the proclamation. It begs the question, therefore, to say that this is not a preproclamation controversy and the procedure for preproclamation controversies cannot be applied to the correction in the computation of the totals in the Statement of Votes.

It should be pointed 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.

What has just been said also disposes of petitioner's other contention that because his proclamation has already been made, any remedy of the losing party is an election protest. As held in the *Duremdes* case:

It is *DUREMDES'* further submission that his proclamation could not be declared null and void because a pre-proclamation controversy is not proper after a proclamation has been made, the proper recourse being an election protest. This is on the assumption, however, that there has been, a valid proclamation. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation. (*Agum vs. COMELEC*, L-28955, 28 May 1968, 23 SCRA 883).[12]

WHEREFORE, the petition is DISMISSED and the Temporary Restraining Order previously issued is hereby LIFTED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.

[1] Rollo, p. 52.

[2] Petition, Annex A, Rollo, p. 19.

[3] Rollo, p. 53.

[4] *Id.*, p. 24.

[5] Excerpt from the Minutes of the Regular En Banc Meeting of the Commission on Elections held on May 23, 1995. Rollo, p. 30.

[6] Rollo, p. 25.

[7] Rollo, p. 54.

[8] 218 SCRA 782 (1993).

[9] Respondent COMELEC's Comment, p. 5.

[10] Petition, Annex E, Rollo, p. 29.

[11] 178 SCRA 746 (1989).

[12] *Id.*, at 757

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