

HADJI HAMID PATORAY, PETITIONER, VS. COMMISSION ON ELECTIONS, (NEW) MUNICIPAL BOARD OF CANVASSERS OF TAMPARAN, LANAOS DEL SUR AND TOPAAN D. DISOMIMBA, RESPONDENTS.

G.R. No. 120823. October 24, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari and prohibition for the annulment of the resolution, dated June 30, 1995, of the Second Division of the Commission on Elections and the resolution, dated July 12, 1995, of the COMELEC en banc, ordering the exclusion of two election returns from the canvass for the mayoralty of the Municipality of Tamparan, Lanao del Sur.

Petitioner and private respondent were among the candidates for mayor of Tamparan in the election of May 8, 1995. During the canvassing of votes by the Municipal Board of Canvassers (MBC), private respondent objected to the inclusion of the election returns from Precinct Nos. 16, 17, 19 and 20-A on the grounds that the returns had been "prepared under duress, threats, coercion, and intimidation" and that they were "substituted, fraudulent and obviously manufactured returns." [1]

On May 31, 1995, the MBC, after receiving the evidence of the parties, denied private respondent's objections and included the four (4) questioned election returns, noting that they appeared to be "clean, genuine and regular on [their] faces."

On June 3, 1995, private respondent filed an appeal (docketed as SPC No. 95-266) from the rulings of the MBC. Among the record transmitted to the COMELEC was the report of the MBC on the canvass of the election returns from 45 precincts, which showed, among the other things, the total number of votes received by each of the parties as follows:

Hadji Hamid Patoray 3,778 votes

Topaan Disomimba 3,753 votes

Difference 25 votes

On June 30, 1995, the Second Division of the COMELEC, after hearing, affirmed the ruling of the MBC with respect to the election returns from Precinct Nos. 17 and 19 but reversed it with respect to the election returns from Precinct Nos. 16 and 20-A. The Second Division ordered these returns excluded from the count. [2] As petitioner alleges, this ruling would erase his margin of twenty-five (25) votes and give private respondent instead a lead of 193 votes, thus:

Petitioner

Private

Respondent

Votes credited before
exclusion

3,778

3,753

Less: Precinct No. 16

(237)

(107)

Precinct No. 20-A

(122)

(34)

TOTAL

3,419

3,612

On July 3, 1995, petitioner filed a motion for reconsideration, but the COMELEC en banc denied his motion in its resolution of July 12, 1995, even as the COMELEC en banc granted private respondent's motion for the constitution of a new MBC to implement the Second Division's resolution.[3]

Hence, this petition.

In ordering the exclusion of the two returns, the Second Division held: (1) that the status of the two election returns as prima facie evidence of the results of the elections had been overcome by the affidavits of the chairpersons of the Board of Inspectors of Precinct Nos. 16 and 20-A to the effect that the election returns contained different number of votes from what they had tallied and therefore the returns in question should be considered "manufactured, substituted or falsified;" (2) that contrary to the finding of the MBC that the election returns were "clean, genuine and regular on [their] faces," Election Return No. 661290 from Precinct No. 16, according to the minutes of the MBC, showed a discrepancy between the "totals" and the written figures, while Election Return No. 661295 from Precinct No. 20-A lacked data as to provincial and congressional candidates; and (3) that the Certificates of Votes cast in the two precincts, which showed different number of votes, constitute evidence of tampering, alteration, and falsification as provided in §17 of R.A. No. 7166.

Petitioner contends that the COMELEC excluded from canvass the questioned returns without examining other authentic copies of the questioned returns or ordering the opening of the ballot boxes solely on the basis of the affidavits of the BEI chairpersons whose recollection of the votes obtained by the parties herein was at best unreliable.

Petitioner claims that it was not possible to commit any falsification in the preparation of the returns since this was done in the presence of the parties' pollwatchers. He contends that election returns are prima facie evidence of

their genuineness and due execution whereas the affidavits presented by private respondent to show that the copy of the return given to the MBC was manufactured came from biased sources.

He argues that the COMELEC should have ordered other authentic copies of the election returns to be used or directed a recount of the votes to determine private respondent's claim, as provided in §§235 and 236 of the Omnibus Election Code.

Private respondent, on the other hand, defends the use of the Certificates of Votes and affidavits of the BEI chairpersons on the ground that all copies of the election returns in question (i.e., those for the COMELEC, the Provincial Board of Canvassers, the Municipal Treasurer and the Municipal Trial Court) had been delivered to the Election Officer, who had the election returns in his possession for eight days, from May 18 to 26, 1995, until the MBC, of which he was the chairperson, used them. Private respondent implies that all copies of the election returns could have been substituted by spurious ones because of the opportunity which the Election Officer had and that therefore it was futile for the COMELEC to use the other copies of the election returns.

For its part the COMELEC cites R.A. No. 6646, §17 which provides that notwithstanding the provisions of §§235-236 of the OEC, Certificates of Votes may be used to prove "tampering, alteration, falsification or any other anomaly committed in the election returns concerned" and maintains that on the basis of the affidavits of the BEI chairpersons the election returns in question were unquestionably manufactured and substituted for the genuine returns.

We hold that the COMELEC's Second Division correctly ordered the exclusion of Election Return No. 661290 (Precinct No. 16), it appearing that it contained a discrepancy between the "taras" and the written figures. In addition, however, the COMELEC's Second Division should have ordered a recount of the ballots or used the Certificate of Votes cast in the precinct in question to determine the votes for each of the parties in this case.

Thus §236 of the Omnibus Election Code provides:

SEC. 236. Discrepancies in election returns. — In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned. (*Italics added*)

On the other hand, §17 of R.A. No. 6646 (Electoral Reforms Law of 1987) provides:

SEC. 17. Certificate of Votes as Evidence. — The provisions of Sections 235 and 236 of Batas Pambansa Blg. 881 notwithstanding, the certificate of votes shall be admissible in evidence to prove tampering, alteration, falsification or any anomaly committed in the election returns concerned, when duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate: Provided, That failure to present any certificate of votes shall not be a bar to the presentation of other evidence to impugn the authenticity of the election returns.

The Certificate of Votes is evidence not only of tampering, alteration, falsification or any other anomaly in the preparation of election returns but also of the votes obtained by candidates. (See *Balindong v. COMELEC*, 27 SCRA 567 (1969)) The Certificate of Votes in Precinct No. 16[4] shows that petitioner Hadji Hamid Patoray received 207 votes (not 237 as indicated in the election return), while private respondent obtained 137 (not 107 as

indicated in the election return). The difference could thus affect the result of the voting for mayor. The COMELEC's Second Division could also have ordered a recount of the votes cast after determining that the ballot box has not been tampered with in accordance with §236 of the OEC. The failure of COMELEC to do either, after excluding the election return will result in the disfranchisement of the voters in Precinct No. 16.

On the other hand we hold that the COMELEC's Second Division erred in ordering the exclusion of Election Return No. 661295 on the basis of the Certificate of Votes cast in Precinct No. 20-A and the affidavit of the chairperson of the BEI of Precinct No. 20-A. As already stated, the COMELEC's Second Division ordered the exclusion of the election return from this precinct for being incomplete in the sense that it lacked data as to provincial and congressional candidates. This is, therefore, not a case of discrepancy in an election return, justifying resort to the Certificate of Votes under §236 of the OEC, in relation to R.A. No. 6646, §17, but one involving material defects in an election return under §234 of the OEC. Consequently, the case does not come within the purview of R.A. No. 6646, §17. Rather, the applicable provision is §234 of the OEC which states:

SEC. 234. Material defects in the election returns. — If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

Moreover, the Certificate of Votes cast in Precinct No. 20-A cannot be used even if R.A. No. 6646, §17 were applicable, because it was signed only by the chairperson of the BEI. R.A. No. 6646, §16 requires that it be signed and thumbmarked by each member of the BEI which issued the certificate.

Consistently with the summary nature of the proceedings, what the COMELEC's Second Division could have done was simply to order a recount of the votes cast in the two precincts and direct the proclamation of the winner accordingly.

WHEREFORE, the questioned resolutions of the Commission on Elections are set aside and the Commission is ordered to issue another one in accordance with this decision.

SO ORDERED.

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

[1] Rollo, pp. 30, 34, 37 and 40.

[2] Rollo, p. 26.

[3] Rollo, p. 28.

[4] Petition for Certiorari and Prohibition, Annex C-3.

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