

FELIPE L. LAODENIO, PETITIONER, VS. COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF MAPANAS, NORTHERN SAMAR AND ROGELIO LONGCOP, RESPONDENTS.

G.R. No. 122391. August 07, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

FELIPE L. LAODENIO, petitioner, and ROGELIO LONGCOP, respondent, were candidates for the position of Mayor of Mapanas, Northern Samar, during the 8 May 1995 elections. On 15 May 1995 Longcop was proclaimed winner by the Municipal Board of Canvassers.

On 20 May 1995 Laodenio filed a petition with respondent Commission on Elections (COMELEC) to annul the proclamation of Longcop and to declare illegal the constitution of the Municipal Board of Canvassers as well as its proceedings. He alleged in his petition that -

During the canvass, respondent board of canvassers adjourned repeatedly starting May 9, 1995, after the poll clerk of precinct no. 7-A testified before the Board that the election returns for the said precinct was tampered with and falsified to increase the total votes cast in favor of respondent Longcop from 88 to 188.

On 10 May 1995, the Board resumed its canvass but it adjourned again at past 5:00 o'clock in the afternoon as it has (sic) not yet decided on what to do with the election returns for precinct (sic) nos. 7-A and 5-A. When it adjourned on May 10, 1995 it announced that it will (sic) only resume canvass on 12 May 1995 at the capital town of Catarman, Northern Samar. The Board however reconvened on 12 May 1995 in Mapanas and proceeded with the canvass. The respondent board thereafter adjourned and surreptitiously reconvened on 15 May 1995, with a new chairman who was allegedly appointed by the Provincial Election Supervisor.

When the election returns from Precinct (sic) Nos. 5-A and 7-A were (sic) about to be canvassed, petitioner manifested his oral objections thereto and likewise submitted his written objections on the same day, 12 May 1995.

The respondent board however did not give the petitioner opportunity to file an appeal (from?) its decision to proceed with the canvass of the election returns from precinct (sic) nos. 7-A and 5-A.

The respondent board of canvassers was informed by Elie Acquiat (poll clerk) that the election returns from precinct no. 7-A was tampered, and the votes for the respondent Longcop was increased from 88 to 188. Similarly, the BEI Chairman of Precinct 5-A Arnulfo Nueva and the third member Dolor Rowela informed the board of canvassers that the election returns from precinct 5-A was tampered by increasing the votes for the respondent Longcop from 117 to 173. With the testimony of those witnesses, the board should have proceeded in accordance with Section 235 of the Omnibus Election Code but the board disregarded the clear mandate of the law and closed its eyes to the overwhelming evidence of falsification and lent its hand to the consummation by canvassing the falsified election returns.[1]

On 25 May 1995 petitioner filed an election protest before the Regional Trial Court.

On 28 August 1995 respondent COMELEC dismissed the petition of Laodenio for lack of merit.[2] It was of the view that the adjournments were justified and were not improperly prolonged as claimed by petitioner; he was in fact deemed to have acquiesced to the new composition of the Municipal Board of Canvassers when he actively participated in the proceedings therein; there was no showing that he manifested on time his intent to appeal the rulings of the Board, neither was there any proof that he appealed therefrom; and, on the authority of *Padilla v. Commission on Elections*[3] the pre-proclamation controversy was no longer viable since Longcop had already been proclaimed and had assumed office. On 23 October 1995 the motion for reconsideration was denied.[4]

Petitioner raises these issues: (1) The direct filing of a petition with COMELEC to contest the illegal conduct of the Board of Canvassers is allowed under Rule 27, Sec. 4, of the COMELEC Rules of Procedure; and, (2) The pre-proclamation controversy was not rendered moot and academic by the filing of an ordinary election protest.

Laodenio claims that a petition may be filed directly with COMELEC pursuant to Rule 27, Sec. 4, of the COMELEC Rules of Procedure when, as in this case, the issue involves the illegal composition of the Board of Canvassers or the canvassing was a ceremony that was pre-determined and manipulated to result in nothing but a sham proceeding and there was disregard of manifest irregularities in the questioned returns. In particular, petitioner argues that the Board was illegally constituted on 15 May 1995 since the new Chairman was appointed merely by the Provincial Election Supervisor and not by respondent COMELEC, in clear contravention of Sec. 10 of COMELEC Resolution No. 2756. Also, the Board proceeded illegally when it canvassed tampered election returns unmindful of Sec. 235 of the Omnibus Election Code which refers to election returns that appear to be tampered with or falsified.

This argument is devoid of merit. Apparently, it emanates from a misapprehension of the applicability of certain election laws. Sec. 17 of R.A. 7166[5] provides -

Sec. 17. Pre-proclamation Controversies: How Commenced. - Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

As evidenced by the Minutes of the Board, petitioner indeed raised the matter of illegal composition of the Board at the first instance before said Board when his counsel questioned the authority of the new Chairman. However, after seeing the notice of the Provincial Election Supervisor, his counsel agreed to the opening of the canvassing. In fact, petitioner thereafter actively participated in the proceedings. Consequently, COMELEC concluded that -

x x x x Such acts could be justifiably taken as acquiescence to the new composition of the Board. Otherwise, had he felt aggrieved thereby, he should have elevated the issue on appeal to the Commission x x x x [6]

Particularly, Sec. 19 of R.A. 7166 provides -

Sec. 19. Contested Composition or Proceedings of the Board; Period to Appeal; Decision by the Commission. - Parties adversely affected by a ruling of the board of canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon
x x x x

Although Sec. 17 of R.A. 7166 and Sec. 5, par. (a)(1) (not Sec. 4 as erroneously cited by petitioner), of Rule 27 of the COMELEC Rules of Procedure also allow filing of a petition directly with respondent COMELEC when the issue involves the illegal composition of the Board, Sec. 5, par. (b), of the same Rule requires that it must be filed immediately when the Board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the Board, or immediately at the point

where the proceedings are or begin to be illegal. In the present case, the petition was filed five (5) days after respondent Longcop had been proclaimed by the Board. At any rate, the real issue appears to be - not what it appears to petitioner - whether he can still dispute the composition of the Board after having actively participated in the proceedings therein. In this regard, we sustain respondent COMELEC.

Section 20 of R.A. 7166 (not Sec. 235 of the Omnibus Election Code as mistakenly invoked by petitioner) outlines the procedure in the disposition of contested election returns -

Sec. 20. Procedure in Disposition of Contested Election Returns. - (a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

x x x x

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection x x x x The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms x x x x

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass x x x x

(f) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

The Minutes of the Board revealed the following facts -

May 10, 1995 - The Board resumes at 8:00 a.m. Precinct 7-A, Jubasan, was received by the Board. While the Board was about to open said returns, a written protest was filed by Laodenio. The protest was for two precincts; precinct 7-A and precinct 5-A; informing the board to stop counting on the ground that the returns are (sic) tampered. Although the protest was not in proper form, the Board deferred the canvass of said return to give protestant enough time to present his evidence.

After a thorough discussion of the two legal counsel, the members of the board of canvassers denied the objections of Laodenio on the ground that an oral objection should simultaneously be filed with a written objection in a proper form. Majority of the board voted for the inclusion of the returns from precinct 7-A on the ground that the protest was not in proper form. The parties were notified of the ruling of the Board in open session. The Chairman of the Board start(ed?) to open the envelope of precinct no. 7-A and the same was examined by counsel of both parties.[7]

The Board, upon examination of the returns from precinct 7-A, found it to be inside an envelope with serial no. 073983 signed by all the members of the Board and with paper seal no. 516478 likewise signed by all of them. The returns bore the respective signatures and thumbmarks of the poll clerk, the third member and all six

watchers. The Minutes disclosed further -

May 12, 1995, at 2:00 p.m., the members of the Board resume to canvass the election returns for precinct 7-A. It was supposed to canvass last May 10, 1995, but was deferred because the Board waited for protestant Laodenio to file his appeal from our ruling on May 10, 1995. Since there was no appeal, the Board proceeded with the canvass of precinct 7-A.

At 2:37 p.m., Laodenio filed his protest in proper form but the board denied the protest on the ground that it was filed out of time. The protest was filed after the canvass of the election returns was completed.[8]

With regard to the action of the Board on the election returns from precinct 5-A, the Minutes narrated as follows -

Precinct 5-A. - An envelope with serial no. 073973 signed by all the members of the board with paper seal. The envelope is in good condition. The election returns was properly signed by all members of the board with their thumbmarks and the watchers have also their signatures and thumbmarks in the corresponding spaces. An oral protest was filed by petitioner. At 4:49 p.m., a protest in prescribed form was filed. At 8:00 p.m., the Board of Canvassers voted as follows: The chairman for exclusion and the two members for inclusion because on its face the election returns does not have any sign of tampering and that when the election returns copy for the Municipal Trial Court was opened to compare with the contested returns the entries are (sic) the same. The parties were informed of the ruling in open session. After the ruling, the protestant did not indicate his intention to appeal.[9]

Clearly, the proceedings of the Board were in accordance with law.

Petitioner argues next that the election protest was filed ad cautelam or as a precautionary measure to preserve his rights which did not thereby oust respondent COMELEC of jurisdiction. He invokes *Samad v. COMELEC*[10] where it was held that, as a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto all questions relative thereto will have to be decided in the case itself and not in another proceeding, otherwise, there will be confusion and conflict of authority. Conformably therewith, we have ruled in a number of cases that after a proclamation has been made a pre-proclamation case before the COMELEC is, logically, no longer viable.[11] The rule admits of exceptions, however, as where: (a) the board of canvassers was improperly constituted; (b) quo warranto was not the proper remedy; (c) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; (d) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and, (e) the proclamation was null and void.

Petitioner relies on the fourth exception and invokes *Agbayani v. Commission on Elections*[12] where the Court found that petitioner's real intention in filing the election protest ad cautelam was to insure the preservation of all the ballot boxes used in the local elections. Thus -

Under COMELEC Res. No. 2035 dated September 7, 1988, all such ballot boxes would be made available for the then forthcoming barangay elections as long as they were not involved in any pre-proclamation controversy, election protest or official investigation. As the above-mentioned cases involved only nine precincts, it was only prudent for the petitioner to file his protest ad cautelam in case the pre-proclamation controversy was ultimately dismissed and it becomes necessary for him to activate his protest. The protest would involve all the precincts in the province. If he had not taken this precaution, all the other ballot boxes would have been emptied and their contents would have been burned and forever lost.

But, a distinction must be drawn between *Agbayani* and the instant case. Petitioner here simply alleges that the

election protest was filed as a precautionary measure to preserve his rights without bothering to elaborate thereon. There is no reason at all for the exception to apply in the case before us. Rather, COMELEC's reliance on Padilla is the more appropriate remedy.[13] Respondent Longcop having been proclaimed and having assumed office -

x x x x pre-proclamation controversy is no longer viable at this point of time and should be dismissed x x x x
Pre-proclamation proceedings are summary in nature. There was no full-dress hearing essential to the task of adjudication with respect to the serious charges of 'irregularities,' etc., made by petitioner. An election contest would be the most appropriate remedy. Instead of the submission of mere affidavits, the parties would be able to present witnesses subject to the right of confrontation, etc. Recourse to such remedy would settle the matters in controversy "conclusively and once and for all."

In the absence of any jurisdictional infirmity or error of law, the conclusion reached by respondent COMELEC on a matter that falls within its competence and primary jurisdiction is entitled to utmost respect.[14]

WHEREFORE, the petition is DISMISSED. The Resolution of respondent Commission on Elections of 28 August 1995 dismissing the pre-proclamation controversy as well as its Resolution denying reconsideration thereof is AFFIRMED.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Romero, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur. Davide, Jr., Melo and Panganiban, JJ., in the result.
Hermosisima, Jr., and Torres, Jr., JJ., on leave.

[1] Rollo, pp. 92-93.

[2] Id., p. 99.

[3] G.R. Nos. 68351-52, 9 July 1985, 137 SCRA 424.

[4] Rollo, pp. 111-112.

[5] "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations therefor, and Other Purposes."

[6] Rollo, p. 95.

[7] Rollo, pp. 96-97.

[8] Ibid.

[9] See Note 7.

[10] G.R. No. 107854, 16 July 1993, 224 SCRA 631.

[11] Gallardo v. Rimando, G.R. No. 91798, 13 July 1990, 187 SCRA 463; Casimiro v. COMELEC, G.R. Nos. 84462-63, 29 March 1989, 171 SCRA 468; Salvacion v. COMELEC, G.R. Nos. 84673-74, 21 February 1989, 170 SCRA 513; Padilla v. COMELEC, G.R. Nos. 68351-52, 9 July 1985, 137 SCRA 424.

[12] G.R. Nos. 87440-42, 13 June 1990, 186 SCRA 484.

[13] See Note 3.

[14] Navarro v. Commission on Elections, G.R. No. 106019, 17 December 1993, 228 SCRA 596.

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