

MICHAEL O. MASTURA, PETITIONER, VS. COMMISSION ON ELECTIONS (SECOND DIVISION), THE NEW MUNICIPAL BOARD OF CANVASSERS OF MATANOG, MAGUINDANAO, THE NEW PROVINCIAL BOARD OF CANVASS...

G.R. No. 124521. January 29, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This Petition for Certiorari, Prohibition and Mandamus with prayer for preliminary injunction and/or restraining order seeks to reverse, annul or set aside: (a) the 29 February 1996 Order of public respondent Commission on Elections (COMELEC) which annulled and set aside the canvass made by the original Municipal Board of Canvassers of Matanog, Maguindanao, created a new set of municipal and provincial boards of canvassers and directing them to recanvass the votes using the COMELEC copy of the election returns and to proclaim the duly elected Member of the House of Representatives, First District of Maguindanao; (b) the 5 March 1996 Order of the COMELEC Second Division which merely noted the Urgent Motion to Examine and Verify the Canvassed MBC Copies of Election Returns, COMELEC Copy of the Certificate of Canvass and the accompanying Statement of Votes; (c) the 14 March 1996 Order denying the Urgent Motion to Defer Implementation of the 29 February 1996 Order; and, (d) the 20 March 1996 order denying Mastura's Motion for Reconsideration of the 29 February 1996 Order.

Petitioner Michael O. Mastura and private respondent Didagen P. Dilangalen were congressional candidates for the first district of Maguindanao during the 8 May 1995 elections. In the canvassing of votes, Dilangalen objected to the inclusion of the Certificate of Canvass of the Municipality of Matanog on the ground that the same was allegedly tampered. Acting on the objection, the COMELEC Second Division ordered the production and examination of the election returns of the Municipality of Matanog. In the course of the examination four (4) ballot boxes were produced and opened. Ballot Box No. 1 contained the MTC Judge copy of the election returns, Ballot Box No. 2 the Provincial Board of Canvassers copy of the election returns, Ballot Box No. 3 the COMELEC copy of the election returns, and Ballot Box No. 4 the Provincial Board of Canvassers copy of the municipal Certificate of Canvass of Matanog with its supporting Statement of Votes.

Upon examination and comparison of the copies of the election returns of the MTC Judge and the COMELEC, the COMELEC Second Division found that, indeed, the Certificate of Canvass of the Municipality of Matanog had been tampered with. Consequently, the COMELEC Second Division issued the herein assailed Order of 29 February 1996 annulling the Certificate of Canvass of Matanog thus -

After comparing the fifty-seven (57) election returns, Municipal Trial Court copy (Judge copy) with the Comelec copy as to the number of votes obtained by candidates Didagen P. Dilangalen and Michael O. Mastura, both in words and figures and the taras x x x the Second Division, finding that no inconsistencies exist between the two (2) copies of the election returns, and finding further that the Statement of Votes submitted by the Municipal Board of Canvassers of Matanog, Maguindanao is not reflective of the true votes

obtained in the election returns per verification, hereby annuls the canvass made by the Municipal Board of Canvassers of Matanog, Maguindanao.

WHEREFORE, the canvass conducted by the Municipal Board of Canvassers for the position of Member, House of Representatives (First District) is hereby ANNULLED and SET ASIDE.

A new Municipal Board of Canvassers for the Municipality of Matanog, Maguindanao is hereby constituted x x x to conduct a new recanvassing at the Comelec Session Hall at Intramuros, Manila, prepare a new Certificate of Canvass using the Comelec copy of the election returns and, thereafter, to immediately submit the new Certificate of Canvass to the new Provincial Board of Canvassers as herein constituted x x x x[1]

The following day, Mastura filed an Urgent Motion to Examine and Verify the Canvassed MBC Copies of the Election Returns and the COMELEC Copy of the Certificate of Canvass and Accompanying Statement of Votes. The COMELEC Second Division merely noted the motion in view of the 29 February 1996 Order.[2]

Thereafter Mastura filed an Urgent Motion to Defer Implementation of the 29 February 1996 Order. Mastura argued that the 29 February 1996 Order was issued precipitately and prematurely considering that some other documents, particularly the Certificate of Canvass of Matanog which he considered necessary for the resolution of the issue, was yet to be produced and examined. The COMELEC Second Division denied the motion -

x x x (I)t appearing that when the Commission opened the election returns for Matanog, Maguindanao, particularly the Judge copy and the Comelec copy and made comparison thereof to ascertain the actual votes of candidates Didagen P. Dilangalen and Michael O. Mastura per precinct which consists of fifty-seven (57) precincts, in compliance with the Supreme Court resolution, the results thereof, fully convinced the Commission of the manifest irregularity committed in the Statement of Votes by precincts. Thus, it annuls the canvass made by the Municipal Board of Canvassers of Matanog, Maguindanao.

Clearly, on the basis of the results of the primary documents, there is no need for the examination and opening of other documents mentioned in the motion of private respondent. Besides, the opening of other documents will entail more delay in the proclamation of the rightful winner for the position of Member, House of Representatives, First District of Maguindanao.[3]

Meanwhile, the new Municipal Board of Canvassers convened and recanvassed the votes. During the proceedings Mastura objected to the inclusion of fifty (50) out of the fifty-seven (57) election returns on the ground that the COMELEC copy of the election returns was not reflective of the true results unless compared with the copy of the original Municipal Board of Canvassers. But the new Municipal Board of Canvassers believed otherwise; hence, it included in the canvass the fifty (50) election returns objected to by Mastura who thereafter walked out while the new Municipal Board of Canvassers continued with the canvassing.

After the proceedings in the Municipal Board of Canvassers, the Provincial Board of Canvassers convened and prepared the Certificate of Canvass and Statement of Votes of the Municipality of Matanog. As a result, private respondent Dilangalen was proclaimed the duly elected member of the House of Representatives, First District of Maguindanao.

Mastura now comes to us imputing to public respondent COMELEC Second Division grave abuse of discretion amounting to lack of jurisdiction in issuing its Orders of 29 February 1996, 5 March 1996, 14 March 1996, and 20 March 1996.

We find no grave abuse of discretion on the part of respondent COMELEC. It is settled jurisprudence that COMELEC can suspend the canvass of votes pending its inquiry whether there exists a discrepancy between the various copies of election returns from the disputed voting centers. Corollarily, once the election returns were found to be falsified or tampered with, the COMELEC can annul the illegal canvass and order the Board of

Canvassers to reconvene and proclaim the winners on the basis of the genuine returns or, if it should refuse, replace the members of the board or proclaim the winners itself.[4]

This was exactly what happened in the instant petition. Dilangalen objected to the inclusion of the Certificate of Canvass of the Municipality of Matanog and, acting on the objection, COMELEC ordered the production and examination of the MTC Judge copy and the COMELEC copy of the election returns. Based on the comparison, the COMELEC Second Division found and concluded that indeed the Certificate of Canvass of the Municipality of Matanog was tampered with. Consequently, it ordered its annulment and created a new set of Municipal and Provincial Boards of Canvassers to recanvass the votes. After the recanvassing, Dilangalen emerged as the winner and was thereafter proclaimed the duly elected member of the House of Representatives, First District of Maguindanao.

That the Certificate of Canvass of the Municipality of Matanog was tampered with is a factual finding of the COMELEC. Absent any showing of abuse of discretion amounting to lack of jurisdiction, this Court should refrain from reviewing the same, and must accord it instead the respect it deserves. The rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC - created and explicitly made independent by the Constitution itself - on a level higher than statutory administrative organs. The COMELEC has broad powers to ascertain the true results of the election by means available to it. For the attainment of that end, it is not strictly bound by the rules of evidence.[5]

Pursuant to its administrative functions, the COMELEC exercises direct supervision and control over the proceedings before the Board of Canvassers. In *Aratuc v. Commission on Elections*[6] we held -

While nominally, the procedure of bringing to the Commission objections to the actuations of boards of canvassers has been quite loosely referred to in certain quarters, even by the Commission and by this Court x x x as an appeal, the fact of the matter is that the authority of the Commission in reviewing such actuations does not spring from any appellant jurisdiction conferred by any specific provision of law, for there is none such provision anywhere in the Election Code, but from the plenary prerogative of direct control and supervision endowed to it by the above-quoted provisions of Section 168. And in administrative law, it is a too well settled postulate to need any supporting citation here, that a superior body or office having supervision and control over another may do directly what the latter is supposed to do or ought to have done x x x x

Also in *Lucman v. Dimaporo*[7] we ruled -

The function of a canvassing board in the canvass of the returns is purely ministerial in nature. Equally ministerial, therefore, is the function of the Commission on Elections, in the exercise of its supervisory power over said Board, pursuant to our Constitution and laws. So long as the election returns have been accomplished in due form, the Board, and on appeal therefrom, the Commission on Elections must include said returns in the canvass.

In *Abes v. Commission on Elections*[8] we emphasized -

x x x (T)he board of canvassers is a ministerial body. It is enjoined by law to canvass all votes on election returns submitted to it in due form. It has been said, and properly, that its powers are limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained. Comelec is the constitutional body charged with the duty to enforce all laws relative to elections, duty bound to see to it that the board of canvassers perform its proper function.

Pertinent rulings of this Court have since defined Comelec's powers in pursuance of its supervisory or administrative authority over officials charged with specific duties under the election code. It is within the legitimate concerns of Comelec to annul a canvass or proclamation based on incomplete returns, or on incorrect or tampered returns; annul a canvass or proclamation made in an unauthorized meeting of the board of canvassers either because it lacked a quorum or because the board did not meet at all. Neither Constitution nor statute has granted Comelec or board of canvassers the power, in the canvass of election returns, to look beyond the face thereof, once satisfied of their authenticity.

The assailed Orders having been issued pursuant to COMELEC's administrative powers and in the absence of any finding of grave abuse of discretion, judicial interference is therefore unnecessary and uncalled for. Consequently, the questioned Orders must perforce be upheld.

Additionally, Secs. 27, 28 and 29 of R.A. No. 7166[9] provide -

Sec. 27. Number of Copies of Election Returns and Their Distribution. - The board of election inspectors shall prepare in handwriting the election returns in their respective polling places, in the number of copies herein provided and in the form to be prescribed and provided by the Commission.

The copies of the election returns shall be distributed as follows: (a) In the election of x x x members of the House of Representatives: 1) The first copy shall be delivered to the city or municipal board of canvassers; 2) The second copy, to the Congress, directed to the President of the Senate; 3) The third copy, to the Commission; 4) The fourth copy, to the provincial board of canvassers; 5) The fifth copy, to x x x the city or municipal treasurer; 6) The sixth copy shall be given to the city or municipal trial court judge or in his absence to any official who may be designated by the Commission. The city or municipal trial court judge or the official designated by the Commission shall keep his copies of the election returns sealed and unopened. Said copy may be opened only during the canvass upon order of the board of canvassers for purposes of comparison with other copies of the returns whose authenticity is in question; and, 7) The seventh copy shall be deposited inside the compartment of the ballot box for valid ballots x x x x

Sec. 28. Canvassing by Provincial, City, District and Municipal Boards of Canvassers. - (a) The city or municipal board of canvassers shall canvass the election returns for x x x members of the House of Representatives and/or elective provincial and city or municipal officials. Upon completion of the canvass, it shall prepare the certificate of canvass for x x x Members of the House of Representatives x x x x

Sec. 29. Number of Copies of Certificate of Canvass and their Distribution. - (a) The certificate of canvass for x x x Members of the House of Representatives x x x shall be prepared in seven (7) copies by the city or municipal board of canvassers and distributed as follows: 1) The first copy shall be delivered to the provincial board of canvassers x x x x; 2) The second copy shall be sent to the Commission; 3) The third copy shall be kept by the chairman of the board; 4) The fourth copy shall be given to the citizens arm designated by the Commission to conduct a media-based unofficial count; and, 5) The fifth, sixth and seventh copies shall be given to the representatives of any three (3) of the six (6) major political parties in accordance with the voluntary agreement of the parties x x x x

In the instant petition, petitioner Mastura argues that the COMELEC Second Division should have made use of the Municipal Board of Canvassers copy of the election returns for the simple reason that it is the original copy. This is a misconception. All the seven (7) copies of the election returns are all original copies, although the copy for the Municipal Board of Canvassers is designated as the first copy. This designation is only for the purpose of distribution and does not in any way accord said copy the status of being the only original copy. Consequently, it was properly within the exercise of its discretion when COMELEC ordered the production and examination of the MTC Judge copy and the COMELEC copy of the election returns. COMELEC is not required to retrieve and examine all the seven (7) copies of the election returns.

Additionally, Sec. 15 of R.A. No. 7166 does not in any way specify that the COMELEC should use the Municipal Board of Canvassers copy in correcting manifest error. COMELEC is in fact given enough leeway in this regard -

Sec. 15. Pre-Proclamation Cases Not Allowed in Elections for President, Vice-President, Senator and Member of the House of Representatives. - For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificate of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it x x x x

There is another reason for denying the instant petition. When petitioner's motion for reconsideration of the 29 February 1996 Order was denied for being interlocutory in nature, petitioner should have sought prior recourse from the COMELEC en banc before coming to this Court, pursuant to Sec. 3, Art. IX-C, of the Constitution.

WHEREFORE, finding no grave abuse of discretion committed by public respondent COMMISSION ON ELECTIONS Second Division, the instant petition is DISMISSED. The assailed Orders of 29 February 1996, 5 March 1996, 14 March 1996 and 20 March 1996 of the COMELEC Second Division are AFFIRMED.

SO ORDERED.

Narvasa, CJ., Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Martinez, JJ., concur.

Panganiban, J., No part. Former counsel of a party.

[1] 29 February 1996 Order of the COMELEC Second Division, Annex "A," Rollo, pp. 36-44.

[2] 5 March 1996 Order of the COMELEC Second Division, Annex "B," Rollo, pp. 45-46.

[3] 14 March 1996 Order of the COMELEC Second Division, Annex "C," Rollo, pp. 48-50.

[4] Agpalo, Ruben E., Comments on the Omnibus Election Code, pp. 78-79.

[5] *Id.*, pp. 86-87.

[6] Nos. L-49705-06, 8 February 1979, 88 SCRA 251.

[7] No. L-31558, 29 May 1970, 33 SCRA 388.

[8] No. L-28348, 15 December 1967, 21 SCRA 1255.

[9] The Synchronized Elections and Electoral Reforms Law of 1991.

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