

**CIPRIANO B. PEÑAFLORIDA, AND CATALINO CORDERO,
PETITIONERS, VS. THE HONORABLE COMMISSION ON ELECTIONS,
ANGELES SIMORA, ALICE VARGAS, AND MELCHOR TRONCO, IN
THEIR CAPACITY AS MEM...**

G.R. No. 125950. November 18, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a special civil action for certiorari to annul the resolution dated July 25, 1996 of the Commission on Elections en banc, dismissing the petition filed by herein petitioners and affirming the order of its First Division, considering petitioners' pre-proclamation case terminated.

Petitioners Cipriano Peñaflorida and Catalino Cordero were candidates for mayor and vice mayor, respectively, of Pototan, Iloilo in the May 8, 1995 elections. On May 10, 1995, they filed with the municipal board of canvassers a petition questioning its composition and seeking the nullification of the canvass on the ground that the board had been illegally constituted and the canvass irregularly conducted.[1] The Board of Canvassers did not act on the petition, however, prompting petitioners to file a "Petition-Appeal" with the COMELEC on May 14, 1995. The case, docketed SPC Case No. 95-059, was, however, one of 923 cases declared terminated in the Omnibus Resolution dated June 29, 1995 of the COMELEC en banc in view of the beginning of the term of office of elective officials the next day.

The resolution in question, entitled Omnibus Resolution on Pending Cases, states:

1. All cases which were filed by private parties without timely payment of the proper filing fee are hereby dismissed;
2. All cases which were filed beyond the reglementary period or not in the form prescribed under appropriate provisions of the Omnibus Election Code, Republic Acts No. 6646 and 7166 are hereby likewise dismissed;
3. All other pre-proclamation cases which do not fall within the class of cases specified under paragraphs (1) and (2) immediately preceding shall be deemed terminated pursuant to Section 16, R.A. 7166. Hence, all the rulings of boards of canvassers concerned are deemed affirmed. Such boards of canvassers are directed to reconvene forthwith, continue their respective canvass and proclaim the winning candidates accordingly, if the proceedings were suspended by virtue of pending pre-proclamation cases;
4. All petitions for disqualification, failure of elections or analogous cases, not being pre-proclamation controversies and, therefore, not governed by Sections 17, 18, 19, 20, 21, and particularly, by the second paragraph of Sec. 16, Republic Act No. 7166, shall remain active cases, the proceedings to continue beyond June 30, 1995, until the issues therein are finally resolved by the Commission; and
5. All remaining pre-proclamation cases, which on the basis of the evidence thus far presented, appear meritorious and/or are subject of orders by the Supreme Court or this Commission in petitions for certiorari

brought respectively to them thereby requiring the proceedings therein to continue beyond 30 June 1995, until they are finally resolved.

Petitioners filed a motion for reconsideration but their motion was denied by the First Division of the COMELEC, in its order of August 2, 1995. The COMELEC's First Division reiterated the Omnibus Resolution of the COMELEC en banc considering petitioners' pre-proclamation case terminated and the ruling of the board of canvassers to have been affirmed, without prejudice to the filing by petitioners of an election protest.

On August 11, 1995 petitioners moved for a reconsideration, arguing that their case did not fall within the terms of the resolution and that in any event it was not their fault that their case had been unresolved until it was overtaken by the issuance of the Omnibus Resolution on Pending Cases. Petitioners claimed that the fact was that their petition had been pending before the board of canvassers since May 14, 1995.

The First Division referred the motion to the COMELEC en banc although expressing its opinion that petitioners' remedy was to file an election protest as the winners had already been proclaimed.

On July 25, 1996, the COMELEC en banc affirmed the First Division's order and considered SPC Case No. 95-059 terminated pursuant to its Omnibus Resolution on Pending Cases dated June 29, 1995. Hence, this special civil action.

Petitioners charge the COMELEC with having gravely abused its discretion in considering their case terminated, contending that in fact it was the COMELEC's First Division which failed to resolve their case within five days as provided in §19 of R.A. No. 7166 and that because of its inaction their case was overtaken by the promulgation of the Omnibus Resolution on Pending Cases. Petitioners claim that this was a denial of due process and constituted grave abuse of discretion by the COMELEC.

The contention is without merit.

The resolution in question of the COMELEC was adopted pursuant to §16 of R.A. No. 7166 which provides as follows:

§16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices.- Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the Office involved and the rulings of the board of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order had been issued by the Supreme Court in a petition for certiorari.

This provision reflects the nation's deep concern that pre-proclamation disputes be not abused. For just as unscrupulous candidates can grab the proclamations and prolong election contest, thus leading the lawmaking authority to provide for the pre-proclamation cases, so can equally unscrupulous candidates prejudice those who won by the indiscriminate filing of pre-proclamation controversies in order to prevent the proclamation of winners. In the end it is the expression of popular will which is frustrated. Hence the provision of §16 of R.A. No. 7166 was enacted to balance Art. XX of the Omnibus Election Code (B.P. No. 881).

In the case at bar, there is no showing that the Omnibus Resolution was adopted by the COMELEC in order to render moot and academic pre-proclamation cases covered by it. Rather it was because the term of office of elective officials was about to begin and, unless the several pre-proclamation controversies were terminated, the

result would be that many offices would have no incumbents.

Petitioners claim that they filed their complaint on May 14, 1995, 47 days before the Omnibus Resolution in question was adopted on June 29, 1995. They contend that the board of canvassers could have resolved their petition before the resolution was adopted and it should have done so because as required by §19 of R.A. No. 7166 it had to act on it within five (5) days. Section 19 provides:

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. The Commission shall summarily decide the case within five (5) days from the filing thereof.

Petitioners have not shown that the board deliberately sat on their petition. For aught we know, the board had to decide other equally pressing matters as petitioners' case. At all events, if petitioners thought that the board was dragging its feet, they should have filed a petition for mandamus with the COMELEC to compel it to decide their case within the time prescribed by §19 of R.A. No. 7166, but petitioners did not. Following the termination of petitioners' case, the winners were proclaimed. Consequently, petitioners' pre-proclamation case became moot and academic. As we have held in another case,[2] "a pre-proclamation controversy ceases and is no longer viable at this point and should be dismissed, the proper remedy of the aggrieved party being an election protest."

Nonetheless it is contended that petitioners' case should have been considered as falling under the last sentence of §16 of R.A. No. 7166 providing that "proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue. . . ." In the first place, whether a pre-proclamation proceeding should continue or not lies within the sound discretion of the COMELEC. Here, as already stated, it has not been shown that the COMELEC abused its discretion in considering petitioners' case terminated. In the second place, there was no evidence presented — or, at any rate, none had yet been presented, — to show that petitioners' allegations were true. The saving clause of §16 refers to cases in which there is "evidence thus far presented" from which the COMELEC can determine that the petition is meritorious. Anyway petitioners can file an election protest and prove their claim in the appropriate forum.

WHEREFORE, the petition is DISMISSED for lack of merit, without prejudice to petitioners' filing of an election protest in the proper court.

SO ORDERED.

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

Narvasa, C.J., on leave.

[1] Petitioners alleged that at about 2:30 p.m. on May 9, 1995, during the canvassing of election returns, their counsel Atty. Virgilio Sindico asked the board to suspend its proceedings on the ground that those conducting it were neither the regular members nor the latter's duly authorized substitutes; that it took sometime before the members of the board, namely, the municipal treasurer, the election registrar, and the district school supervisor arrived; that ballot boxes had been delivered to the municipal election registrar unaccompanied by any watcher of the petitioners; that at 4 p.m. that day (May 9, 1995) Mayor Guido Parcon arrived with bodyguards and threatened Atty. Sindico with physical harm; that after the mayor had left, Atty. Sindico asked the board to enter the incident in the minutes but Mrs. Simora, the election registrar, refused, claiming she had not heard a word uttered by Mayor Parcon; that petitioners' watchers objected to the canvass of certain election returns on the ground of

alleged discrepancies in the words and figures in the votes cast for Mayor Parcon and because they were not sealed but the board continued canvassing these in violation of §245 of the Omnibus Election Code.

[2] *Baterina v. COMELEC*, 205 SCRA 1, 8 (1992).

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