

AQUILINO Q. PIMENTEL, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, LIGAYA SALAYON, ANTONIO LLORENTE, AND REYNALDO SAN JUAN, RESPONDENTS.

G.R. No. 133509. February 09, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before Us is a petition for certiorari under Rule 65 seeking the invalidation of the Resolutions, dated January 8, 1998[1] and March 10, 1998,[2] issued by public respondent Commission on Elections (COMELEC) dismissing, for lack of probable cause, petitioner Aquilino Pimentel's complaint[3] against private respondents Attys. Ligaya Salayon and Antonio Llorente, Chairman and Vice-Chairman, respectively, of the City Board of Canvassers for Pasig City, and Reynaldo San Juan, Campaign Manager of senatorial candidate Juan Ponce Enrile, for decreasing petitioner's votes in the Statement of Votes (SoVs) per precinct and in the City Certificate of Canvass (CoC)[4] for Pasig City.

The following facts are not in dispute:

On May 8, 1995, petitioner ran in the national elections as a candidate for senator. Among others, Anna Dominique M. Coseteng, Juan Ponce Enrile, Marcelo B. Fernan, Gregorio Honasan, Ramon V. Mitra, and Rodolfo G. Biazon also ran as senatorial candidates.

Based on the election returns from all the precincts in Pasig City, the total votes[5] garnered by petitioner and the other abovementioned candidates are as follows:

Biazon 86,068

Coseteng 66,498

Enrile 54,396

Fernan 69,910

Honasan 60,974

Mitra 55,823

Pimentel 72,377

Said election returns were turned over to the City Board of Canvassers of Pasig City for canvassing.

The Certificate of Canvass (CoC) for Pasig City showed the same aforementioned candidates to have each garnered a different number of votes, viz.:

Biazon 83,731

Coseteng 54,126

Enrile 91,798

Fernan 69,712

Honasan 62,159

Mitra 56,097

Pimentel 68,040

Said CoC was certified as to the correctness of the entries made therein, by private respondents Salayon and Llorente who signed the same[6] and affixed their thumbmarks[7] thereto.

The same private respondents, in their capacity as Chairman and Vice-Chairman of said board, prepared the Statement of Votes (SoVs) for every precinct in Pasig City. Likewise, they certified as to the correctness of the entries made in the SoVs by signing the same and affixing their thumbmarks thereto.

When totalled, the votes reflected in said SoVs as having been garnered by the same candidates above, add to a yet different result, viz.:

Biazon 87,214

Coseteng 67,573

Enrile 90,161

Fernan 72,031

Honasan 62,077

Mitra 56,737

Pimentel 67,936

In sum, the total votes garnered by said candidates as recorded in the election returns, the CoC, and the SoVs for Pasig City, are as follows:

Candidates

Election Returns

Certificate of Canvass

Statement of Votes

Biazon

86,068

83,731

87,214

Coseteng

66,498

54,126

67,573

Enrile

54,396

91,798

90,161

Fernan

69,910

69,712

72,031

Honasan

60,974

62,159

62,077

Mitra

55,823

56,097

56,737

Pimentel

72,377

68,040

67,936

Based on the election returns, the following increase or decrease in the total number of votes garnered by said

candidates is evident:

Candidates

Election Returns

Certificate of Canvass

Increase/ Decrease

Statement of Votes

Increase/ Decrease

Biazon

86,068

83,731

-2,337

87,214

+1,146

Coseteng

66,498

54,126

-12,372

67,573

1,075

Enrile

54,396

91,798

+37,402

90,161

+35,765

Fernan

69,910

69,712

-198

72,031

+2,121

Honasan

60,974

62,159

+1,185

62,077

+1,103

Mitra

55,823

56,097

+274

56,737

+914

Pimentel

72,377

68,040

-4,337

67,936

-4,441

Significantly, the total number of votes for senatorial candidate Enrile showed a substantial increase of 35,765 while that for petitioner showed a substantial decrease of 4,337 in the CoC and 4,441 in the SoVs. The same pattern was revealed in the way the number of Enrile votes per precinct in some 101 precincts in Pasig City exceeded the total number of voters who actually voted in the May 8, 1995 elections. Only 9,031 voters actually voted, as recorded in the SoVs of said precincts, but the Enrile votes totalled 11,255, broken down as follows:

SOV Precinct Number

Precinct Number

Number Who Voted

Enrile votes appearing in SOV

14336

401

100

115

14336

403-A

74

90

14336

402-A

81

90

14336

400

87

98

14338

273-A

11

15

14338

268-B-1

7

15

14340

56

114

120

14340

46

136

150

14340

503-A-1

70

96

14340

391-B

80

101

14342

311-A

105

140

14342

299

107

122

14342

296

107

170

14342

294-B

115

183

14342

339-A

59

142

14342

351-A

82

142

14384

290-A-1

33

40

14384

495-A

82

98

14384

290-D-1

84

95

14384

385-A-1

86

92

14384

293

98

99

14424

324-A

116

147

14424

323-A

121

140

14424

326-A

90

91

14426

114
104
127
14426
130
107
145
14426
125
108
149
14426
442-B
108
151
14426
129-A
115
155
14426
131-A
120
139
14426
440-A
122
138
14426
101-A
141
144

14426

137

144

145

14426

123

146

152

14428

46-A-D-1

28

88

14428

493-A

103

119

14428

457

121

125

14428

384-A

65

76

14428

286

68

71

14428

378-A

72

79

14428

288-A-D-1

92

105

14428

291-B

97

190

14430

191-A-1

27

91

14430

273-B-1

103

110

14430

223

105

111

14430

270

108

110

14430

267

11

20

14430

264-A

119

120

14430

263

67

70

14430

221-A

84

95

14430

224-A

89

94

14430

273-A-D-1

94

102

14430

271

96

100

22793

432-A

67

84

22831

495-A-1

113

125

22833

50-A

121

124

22835

465-B

105

125

22835

465

109

132

22835

452-B

115

121

22835

382-B

84

101

22835

471-A-1

91

99

22841

397-A

165

180

22841

350-A

97

125

22841

466-A

160

165

22843

290-A

62

80

22845

379-A-D-1

42

120

22845

380-A-1

110

118

22845

292-A-1

120

128

22845

384

43

55

22845

288-D-1

45

90

22845

287-B

64

69

22845

381-D-1

69

92

22845

382-A

75

85

22845

492-A

77

134

22845

286-B

78

90

22845

378-A

84

140

22845

382-A-1

90

98

22845

377

93

98

22911

63-A-D-1

160

165

22911

367

67

111

22911

372

70

101

22911

356-A

84

98

22911

499

88

120

22948

161-A

50

89

22948

155

51

95

22948

158

59

89

22948

522

76

125

22948

167

91

127

22949

21-A-1

80

95

22949

5

96

105

5685

300

114

12

5685

320-A

69

126

5685

372-A-D-1

72

115

5685

373-A

77

99

5693

327

114

156

5693

325

114

127

5694

357

69

123

5694

360

75

133

5694

294-A

82

83

5694

341-A

89

129

5694

330-A

96

142

Total

9,031

11,255

On September 17, 1996, citing the above discrepancies, petitioner filed with the COMELEC, a Complaint-Affidavit charging private respondents with violation of Section 27 (b) of Republic Act (R.A.) No. 6646, otherwise known as the Electoral Reforms Law of 1987. Petitioner therein alleged, thus:

"x x x

"3. A comparison of the COMELEC'S copy of the election returns for the various precincts in Pasig City and the SoVs per precinct for Pasig City reveals that the votes for senatorial candidates Enrile, Coseteng, Honasan, Fernan, Mitra and Biazon, among others, were illegally increased, while my votes were reduced x x x.

"x x x

"4. A perusal of the x x x SoVs shows that padded votes were written in the spaces corresponding to certain precincts regardless of the actual votes reflected in the election return concerned;

"x x x

"In addition, Enrile's votes in 101 precincts exceeded the total number of voters who actually voted in the May 8, 1995 elections in the said precincts xxx;

"7. These illegal acts of padding the votes of the senatorial candidates were willfully committed as clearly evidenced by the magnitude of the totals padded in 575 precincts out of a total of 1,263 as appearing in the SoVs, which in the case of Enrile increased by 35,903 more votes than what he had actually received. By no means can these illegal acts be attributed to mere random 'clerical errors' or due to fatigue;

"8. In fact, the existence of a conspiracy to pad the votes of various senatorial candidates, particularly that of Enrile, is shown, among other things, by the following:

"a) On May 20, 1995, during the national canvassing at the PICC, a letter was sent by one of my staff members to x x x Pasig City Treasurer Victor B. Endriga, with the endorsement of Dir. Mejorada of the Comelec, NCR, requesting for certified copies of the Treasurer's copy of the SoVs;

"x x x

"b) Later we learned that the letter was forwarded from the office of x x x Pasig City Treasurer Endriga to respondent Dr. Reynaldo R. San Juan, Campaign Manager of senatorial candidate Enrile of the Justice, Peace and Equality Movement with the acronym JPE (for Juan Ponce Enrile), whose office is located at the JAKA I Building, then national campaign headquarters of Enrile.

"c) Respondent Dr. Reynaldo San Juan in fact wrote a note dated May 31, 1995, to Atty. Armando M. Marcelo, a lawyer of Senator Enrile, which reads:

"May 31, 1995

Dear Atty. Marcelo,

Please take care of Mr. Sean Olaer's problem with the office of Sen. Nene Pimentel.

Signed

"x x x

"The import of the message written on the JPE stationary and the fact that x x x Endriga furnished our letter to the campaign manager of Enrile may show the existence of a conspiracy to pad the votes of Enrile as well as to alter

the votes of other candidates;

"9. The padding of the votes in such magnitude could not have been done without the indispensable cooperation of all the respondents – the Board members, who certified the correctness of the entries made x x x therein and by other persons including x x x Endriga and San Juan." [8]

The complaint was docketed as E.O. 96-1132. All private respondents filed their respective counter-affidavits denying any knowledge of or participation in the recording of vote totals in the CoC and the SoVs that did not match those appearing in the election returns.

On January 8, 1998, the COMELEC promulgated a Resolution dismissing the complaint in this wise:

"RESOLVED:

"1. To dismiss the complaint of Mr. Aquilino Q. Pimentel, Jr., against respondents Ligaya P. Salayon, Antonio Llorente, Victor Endriga, and Reynaldo San Juan for insufficiency of evidence to establish a probable cause;

"2. To dismiss the subject complaint against Ceferino Adamos for being moot and academic by reason of his death and for lack of probable cause; and

"3. To give stern warning to Ligaya P. Salayon, Election Officer, Pasig City, and Over-All Chairman of the City Board of Canvassers of Pasig City in the 1995 elections that repetition of the same negligent act in any election exercise will be dealt with severely." [9]

On February 4, 1998, petitioner filed a motion for reconsideration of the foregoing resolution. However, in Minute Resolution No. 98-0819 dated March 10, 1998, the COMELEC denied said motion.

Hence this recourse to Us via the special civil action of certiorari.

Certiorari lies.

First. Private respondents Salayon and Llorente, in their respective counter-affidavits, did not dispute the conflicting figures reflected in the election returns, the CoC, and the SoVs and instead explained that the discrepancy or error was the result of an honest mistake or oversight due to fatigue and that they only based the entries that they made in the CoC, in turn, on the entries made by the subcommittees in the SoVs. [10]

There is a limit, We believe, to what can be construed as an honest mistake or oversight due to fatigue, in the performance of official duty. The sheer magnitude of the error, not only in the total number of votes garnered by the aforementioned candidates as reflected in the CoC and the SoVs, which did not tally with that reflected in the election returns, but also in the total number of votes credited for senatorial candidate Enrile which exceeded the total number of voters who actually voted in those precincts during the May 8, 1995 elections, renders the defense of honest mistake or oversight due to fatigue, as incredible and simply unacceptable.

At any rate, We already ruled in *Pimentel, Jr. v. Commission on Elections* [11] that the merit of defenses such as honest mistake, simple error, good faith, and the mere performance of ministerial duties, as interposed by persons charged with the election offense of tampering, increasing or decreasing of votes received by a candidate in any election, are best ventilated in the trial proper than at the preliminary investigation.

Second. Section 27 (b) of R.A. No. 6646 which reads, viz.:

"x x x [T]he following shall be guilty of an election offense:

x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers, increases or decreases

the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes,"

penalizes two (2) acts: first, the tampering, increasing, or decreasing of votes received by a candidate in any election; and second, the refusal, after proper verification and hearing to credit the correct votes or deduct such tampered votes.[12] The first obtains in this case.

Petitioner categorically charged private respondents Salayon and Llorente with "illegal acts of padding the votes of the senatorial candidates"[13] amounting to "violations of the Omnibus Election Code, as amended and Sec. 27 of R.A. 6646." [14] They never denied that the total number of votes for senatorial candidate Enrile as appearing in the CoC and SoVs is significantly and considerably higher by 37,402 and 35,765, respectively, than that appearing in the election returns, while the total number of votes for petitioner was substantially decreased by as much as 4,441.

These circumstances, in themselves, constitute probable cause that justifies the belief that more likely than not, the election offense was committed and was committed by private respondents Salayon and Llorente. Probable cause is based neither on clear and convincing evidence of guilt nor evidence establishing absolute certainty of guilt.[15] It is merely based on opinion and reasonable belief, and so it is enough that there exists such state of facts as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[16] Considering that private respondents Salayon and Llorente, in invoking the defenses of honest mistake, oversight due to fatigue, and performance of ministerial duties, virtually admitted the existence of the discrepancies in the total number of votes garnered by petitioner and other senatorial candidates, which discrepancies by no stretch of the imagination could be dismissed as negligible or inconsequential, there is not merely a strong suspicion that they actually committed the election offense with which they are charged. The burden of proof appears to have shifted to them to prove that the said discrepancies cannot be considered illegal and criminal.

However, We entertain serious reservation as to the existence of probable cause to indict private respondent San Juan. The only evidence against him is a letter which he wrote and signed on a sheet of the official stationery of the Justice, Peace and Equality Movement which conducted the campaign for senatorial candidate Enrile for the May 1995 elections. The letter reads:

"May 31-95

Dear Atty. Marcelo,

Please take care of Mr. Sean Olaer's problem with the office of Sen. Nene Pimentel.

(Sgd.) Reynaldo R. San Juan"

Significantly, the letter is dated May 31, 1995. Whatever private respondent San Juan meant by asking Atty. Marcelo[17] to "take care of Mr. Sean Olaer's problem with the office of Sen. Nene Pimentel" is not clear. The alleged conspiracy that this letter may, at most, imply, is that private respondent San Juan, Atty. Marcelo and their connections at the COMELEC would be "taking care" of the problem of Olaer regarding acquisition of carbon or certified photocopies of statement of votes per precinct.[18] If at all, the suspicion this letter might have engendered could only be considered a bare,[19] not strong[20] suspicion which is not a sufficient basis for a finding of probable cause as against respondent San Juan.

WHEREFORE, the instant petition is granted. Respondent COMELEC's Minute Resolution No. 98-0047 dated January 8, 1998 dismissing the petitioner's complaint, docketed therein as E.O. No. 96-1132, and Resolution No. 98-0819 dated March 10, 1998 denying petitioner's motion for reconsideration, are hereby ANNULLED and SET

ASIDE.

Respondent COMELEC is hereby ordered to file forthwith with the proper Regional Trial Court the necessary criminal information for violation of Section 27(b) of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987, against private respondents Ligaya Salayon and Antonio Llorente.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Melo, Puno, and Vitug, JJ., in the result.

Pardo, J., no part in the deliberations. Was COMELEC Chairman at the time.

[1] Annex "A" of the Petition dated May 8, 1998, Rollo, pp. 28-34. The Resolution was approved for release by Chairman Bernardo P. Pardo and Commissioners Remedios A. Salazar-Fernando, Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liacco Flores and Japal M. Guiani.

[2] Annex "B", supra, id. p. 35. The Resolution was approved for release by Chairman Bernardo P. Pardo and Commissioners Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liacco Flores, Japal M. Guiani, Evalyn I. Fetalino and Amado M. Calderon.

[3] Docketed as E.O. Case No. 96-1132.

[4] Annex "C", supra, id., p. 36.

[5] Complaint-Affidavit of petitioner dated September 16, 1996 marked as Annex "E" of the Petition, supra, Rollo, pp. 41-47. The election returns which listed the total votes were attached to said complaint as annexes copies of which, however, do not appear in the Rollo. In any case, respondents did not dispute these figures.

[6] Certificate of Canvass for Pasig City dated May 11, 1995, p. 2, Rollo, p. 37.

[7] Ibid.

[8] Pls. see note no. 5.

[9] Excerpt from the Minutes of the Regular En Banc Meeting of the Commission on Elections Held on January 8, 1998 marked as Annex "A" of the Petition supra, pp. 6-7, Rollo, pp. 33-34.

[10] Par. 17 of the Counter-Affidavit dated October 5, 1996 of private respondent Ligaya P. Salayon, Rollo, p. 53; Par. 26 of the Counter-Affidavit dated December 5, 1996 of private respondent Antonio M. Llorente, Rollo, p. 65.

[11] 289 SCRA 586, 598, 600 (1998)

[12] Id., p. 598.

[13] Par. 7 of the Affidavit-Complaint dated September 16, 1996 of petitioner, Rollo, p. 45.

[14] Par. 1 of the Affidavit-Complaint, supra, id., p. 41.

[15] Pimentel, Jr. v. Commission on Elections, 289 SCRA 586, 601 (1998)

[16] Pilapil v. Sandiganbayan, 221 SCRA 349, 360 (1993); Olivarez v. Sandiganbayan, 248 SCRA 700, 712 (1995)

[17] Atty. Armando M. Marcelo, one of the law partners at what used to be the Ponce Enrile Cayetano Reyes and Manalastas Law Offices.

[18] Pls. see par. 8 (a) of the quoted portion of petitioner's Affidavit-Complaint.

[19] Webb v. De Leon, 247 SCRA 652, 676 (1995)

[20] Pilapil v. Sandiganbayan, supra; Olivarez v. Sandiganbayan, supra.

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