

JOSEPH PETER S. SISON, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. No. 134096. March 03, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Before this Court is a petition for certiorari under Rule 65 of the Revised Rules of Court which impugns the Resolution[1] of public respondent Commission on Elections (COMELEC) dated June 22, 1998 that dismissed petitioner Joseph Peter S. Sison's earlier petition[2] in SPC No. 98-134, entitled "In the Matter of the Petition to Suspend the Canvassing of Votes and/or Proclamation in Quezon City and to Declare a Failure of Elections."

It appears that while the election returns were being canvassed by the Quezon City Board of Canvassers but before the winning candidates were proclaimed, petitioner commenced suit before the COMELEC by filing a petition seeking to suspend the canvassing of votes and/or proclamation in Quezon City and to declare a failure of elections. The said petition was supposedly filed pursuant to Section 6[3] of the Omnibus Election Code (Batas Pambansa Blg. 881, as amended) on the ground of "massive and orchestrated fraud and acts analogous thereto which occurred after the voting and during the preparation of election returns and in the custody or canvass thereof, which resulted in a failure to elect." [4]

In support of his allegation of massive and orchestrated fraud, petitioner cited specific instances which are summarized and set forth below:

- The Board of Canvassers announced that election returns with no inner seal would be included in the canvass;
- Board of Election Inspectors brought home copies of election returns meant for the City Board of Canvassers;
- Petitioner, through counsel, raised written objections to the inclusion in the canvass of election returns which were either tampered with, altered or falsified, or otherwise not authentic;
- According to the minutes of the City Board of Canvassers, there were precincts with missing election returns;
- Several election returns with no data on the number of votes cast for vice mayoralty position;
- Highly suspicious persons sneaking in some election returns and documents into the canvassing area;
- Concerned citizen found minutes of the counting, keys, locks and metal seal in the COMELEC area for disposal as trash;
- Board of Election Inspectors have volunteered information that they placed the copy of the election returns meant for the City Board of Canvassers in the ballot boxes deposited with the City Treasurer allegedly due to fatigue and lack of sleep;
- Ballot boxes were never in the custody of the COMELEC and neither the parties nor their watchers were allowed to enter the restricted area where these boxes passed through on the way to the basement of the City Hall where they were supposedly kept; and

- In the elections in Barangay New Era, there was a clear pattern of voting which would show that the election returns were manufactured and that no actual voting by duly qualified voters took place therein.

While the petition was pending before the COMELEC, the City Board of Canvassers proclaimed the winners of the elections in Quezon City, including the winning candidate for the post of vice mayor. On June 22, 1998, the COMELEC promulgated its challenged resolution dismissing the petition before it on the ground (1) that the allegations therein were not supported by sufficient evidence, and (2) that the grounds recited were not among the pre-proclamation issues set fourth in Section 17 of Republic Act No. 7166.[5]

Hence, this petition.

Alleging that COMELEC overstepped the limits of reasonable exercise of discretion in dismissing SPC No. 98-134, petitioner argues in the main that the electoral body failed to afford him basic due process, that is, the right to a hearing and presentation of evidence before ruling on his petition. He then proceeded to argue that the election returns themselves, as well as the minutes of the canvassing committee of the City Board of Canvassers were, by themselves, sufficient evidence to support the petition.

Upon a meticulous study of the parties' arguments together with the pertinent statutory provisions and jurisprudence, this Court is of the opinion that there is no compelling reason why we should withhold our imprimatur from the questioned resolution.

At the outset, we notice that petitioner exhibits an ambivalent stand as to what exactly is the nature of the remedy he availed of at the time he initiated proceedings before the COMELEC in SPC No. 98-134. At the start, he anchors his initiatory petition under Section 6[6] of the Omnibus Election Code regarding failure of elections but he later builds his case as a pre-proclamation controversy which is covered by Sections 241-248 of the Omnibus Election Code, as amended by R.A. No. 7166.[7] In this respect, the rule is, what conjointly determine the nature of a pleading are the allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same.

In any case, petitioner nonetheless cannot succeed in either of the remedies he opted to pursue. Recently, in *Matalam v. Commission on Elections*,[8] we have already declared that a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections, founded as they are on different grounds.

Under the pertinent codal provision of the Omnibus Election Code, there are only three (3) instances where a failure of elections may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.[9] (Underscoring supplied) We have painstakingly examined petitioner's petition before the COMELEC but found nothing therein that could support an action for declaration of failure of elections. He never alleged at all that elections were either not held or suspended. Furthermore, petitioner's claim of failure to elect stood as a bare conclusion bereft of any substantive support to describe just exactly how the failure to elect came about.

With respect to pre-proclamation controversy, it is well to note that the scope of pre-proclamation controversy is only limited to the issues enumerated under Section 243[10] of the Omnibus Election Code, and the enumeration therein is restrictive and exclusive.[11] The reason underlying the delimitation both of substantive ground and procedure is the policy of the election law that pre-proclamation controversies should be summarily decided,

consistent with the law's desire that the canvass and proclamation be delayed as little as possible.[12] That is why such questions which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.[13]

However, with the proclamation of the winning candidate for the position contested, the question of whether the petition raised issues proper for a pre-proclamation controversy is already of no consequence since the well-entrenched rule in such situation is that a pre-proclamation case before the COMELEC is no longer viable, the more appropriate remedies being a regular election protest or a petition for quo warranto.[14] We have carefully reviewed all recognized exceptions[15] to the foregoing rule but found nothing that could possibly apply to the instant case based on the recitations of the petition. What is more, in paragraph 3 of the COMELEC's Omnibus Resolution No. 3049 (Omnibus Resolution on Pending Cases) dated June 29, 1998, it is clearly stated therein that "All other pre-proclamation cases x x x shall be deemed terminated pursuant to Section 16, R. A. 7166.[16] (Underscoring supplied). Section 16 which is referred to in the aforecited omnibus resolution refers to the termination of pre-proclamation cases when the term of the office involved has already begun, which is precisely what obtains here. We are, of course, aware that petitioner cites the said omnibus resolution in maintaining that his petition is one of those cases which should have remained active pursuant to paragraph 4 thereof. That exception, however, operates only when what is involved is not a pre-proclamation controversy such as petitions for disqualification, failure of elections or analogous cases. But as we have earlier declared, his petition, though assuming to seek a declaration of failure of elections, is actually a case of pre-proclamation controversy and, hence, not falling within the ambit of the exception. In any case, that omnibus resolution would not have been applied in the first place because that was issued posterior to the date when the herein challenge resolution was promulgated which is June 22, 1998. There was no provision that such omnibus resolution should have retroactive effect.

Finally, as to petitioner's claim that he was deprived of his right to due process in that he was not allowed to present his evidence before the COMELEC to support his petition, the same must likewise fail.

First, we note that his citation of Section 242 of the Omnibus Election Code as basis for his right to present evidence is misplaced. The phrase "after due notice" refers only to a situation where the COMELEC decides and, in fact, takes steps to either partially or totally suspend or annul the proclamation of any candidate-elect. *Verba legis non est recedendum*. From the words of the statute there should be no departure. The statutory provision cannot be expanded to embrace any other situation not contemplated therein such as the one at bar where the COMELEC is not taking any step to suspend or annul a proclamation.

Second, presentation of evidence before the COMELEC is not at all indispensable in order to satisfy the demands of due process. Under the amendment introduced by R.A. No. 7166, particularly Section 18 thereof, all that is required now is that the COMELEC shall dispose of pre-proclamation controversies "on the basis of the records and evidence elevated to it by the board of canvassers." This is but in keeping with the policy of the law that cases of this nature should be summarily decided and the will of the electorate as reflected on the election returns be determined as speedily as possible. What exactly those records and evidence are upon which the COMELEC based its resolution and how they have been appreciated in respect of their sufficiency, are beyond this Court's scrutiny. But we have reason to believe, owing to the presumption of regularity of performance of official duty and the precept that factual findings of the COMELEC based on its assessments and duly supported by gathered evidence, are conclusive upon the court, that the COMELEC did arrive at its conclusion with due regard to the available evidence before it. That this is so can, in fact, be gleaned from petitioner's own allegation and admission in his petition that "the election returns themselves as well as the minutes of the Canvassing Committees and the City Board of Canvassers x x x are in the possession of the COMELEC." [17] He even cites paragraph (g), Section

20 of the Omnibus Election Code to validate such allegation. Hence, it is not really correct to say that the COMELEC acted without evidentiary basis at all or that petitioner was deprived of his right to due process.

WHEREFORE, finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Commission on Elections (COMELEC), the instant petition is hereby DISMISSED. Consequently, the resolution of COMELEC in SPC No. 98-134 dated June 22, 1998 is AFFIRMED.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Quisumbing, Purisima, Buena, and Gonzaga-Reyes, JJ., concur.

Vitug, J., on official business abroad.

Panganiban, J., on leave.

Pardo, J., no part.

[1] Rollo, pp. 23-28.

[2] Ibid., pp. 37-43.

[3] Section 6. Failure of election.--If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect. (Sec. 7, 1978 EC).

[4] Id., p. 5.

[5] Entitled "AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES." Approved: November 26, 1991.

[6] See note 3.

[7] See note 5.

[8] 271 SCRA 733 (1997).

[9] *Canicosa v. Commission on Elections*, 282 SCRA 512 (1997). In *Mitmug v. Commission on Elections*, 230 SCRA 54, we have declared that before the COMELEC can act on a verified petition seeking to declare a failure of election, two conditions must concur: (1) no voting has taken place in the precincts on the date fixed by law or even if there was voting, the election nevertheless results in failure to elect; and (2) the votes not cast would affect the result of the election.

[10] Section 243. Issues that may be raised in pre-proclamation controversy.--The following shall be proper issues

that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

[11] *Sanchez v. Commission on Elections*, 153 SCRA 68 (1987), reiterated in *Matalam v. Commission on Elections*, *supra*.

[12] *Salih v. Commission on Elections*, 279 SCRA 19 (1997).

[13] *Abella v. Larrazabal*, 180 SCRA 509.

[14] *Laodenio v. Commission on Elections*, 276 SCRA 705 (1997); *Torres v. Commission on Elections*, 270 SCRA 583 (1997).

[15] *Laodenio v. Commission on Elections*, *supra*. These exceptions are: (1) the board of canvassers was improperly constituted; (2) quo warranto was not the proper remedy; (3) what was filed was not really a petition for quo warranto or an election protest but a petition to annul the proclamation; (4) 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 (5) the proclamation was null and void.

[16] The SUPREME COURT, in *Penaflorida v. COMELEC*, 282 SCRA 241 (1997), justified the omnibus resolution's validity in this wise: "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."

[17] *Rollo*, p. 12.

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