NASSER IMMAM, PETITIONER, VS. COMMISSION ON ELECTIONS AND HADJI YUSOPH LIDASAN, RESPONDENTS.

G.R. No. 134167. January 20, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner Nasser Immam filed this petition for certiorari under Rule 65 of the Revised Rules of Court, alleging that public respondent Commission on Elections en banc ("COMELEC") committed grave abuse of discretion when it issued order dated June 29, 1998, to wit:[1]

CONSOLIDATED ORDER

> Without prejudice to the issuance at a later time of a formal Resolution in these cases, but based on the pleadings, the evidence adduced during the hearing, the allegations uncontroverted by the parties and facts established therein, the effects and consequences of the proclamation for the position of Municipal Mayor per Certificate of Canvass of Votes and Proclamation with SN 12471426 issued by the Municipal Board of Canvassers of Matanog, Maguindanao is hereby suspended. As a corollary consequence, Nasser Imam is directed to cease and desist from taking his oath of office as Municipal Mayor and from discharging the functions of said office.

The facts are undisputed.

Petitioner Nasser Immam and private respondent Hadji Yusoph Lidasan were both candidates for Mayor of Matanog, Maguindanao in the May 11, 1998 elections.

On election day, fifty-five (55) precincts, manned by their respective board of election inspectors were opened in the municipality.[2]

On May 16, 1998 the COMELEC (Office of the Election Officer, Matanog, Maguindanao) issued a certification that only the votes cast in forty-one (41) out of the fifty-five (55) precincts were counted. The COMELEC certified that fourteen (14) ballot boxes consisting of 2,398 registered voters failed to function. Seven (7) of the fourteen (14) ballot boxes were deposited in the office of the provincial election supervisor, Cotabato City, while the other seven (7) were deposited for safe-keeping with the 1506th (405) Provincial Mobile Group Parang, Maguindanao.[3]

On May 22, 1998 private respondent filed with the COMELEC, a "Petition to Count the Ballots Cast on May 11, 1998[4] and for Holding of Special Elections[5]. . . with Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction"[6] which was docketed as SPA Case No. 98-348. The petition alleged that election inspectors of fourteen (14) precincts left the polling places due to "violence, terrorism, and armed threats perpetrated by armed men, hence the continuation of voting did not take place."[7]

On May 29, 1998, while the petition was still pending with the COMELEC, the Municipal Board of Canvassers of Matanog issued a Certificate of Canvass of Votes and proclaimed petitioner as the duly elected mayor garnering a

total of one thousand six hundred twenty four (1,624) votes.[8]

On June 1, 1998, Election Officer III, Abas A. Saga submitted a report to the COMELEC hereinunder quoted in full:[9]

> Hon. Commission-In-Charge
> for Regions IX & XII
> Commission on Elections Manila
>
> Subject: Report on the Result of Elections
>
> in Matanog, Maguindanao
>
> Sir:
>
> The municipality of Matanog has 55 precincts. Only 41 precincts have functioned during the May 11, 1998 elections. Fourteen were not included in the counting due to the incidence of violence for the 7 boxes and no election was actually held in the 7 other boxes as BEIs reported.
>
> On May 13, 1998 I reported the matter to the Commission and together requested for the special elections in the 14 precincts that failed to function. Unfortunately, until May 26, 1998 no petition was filed by any candidate moving for special election. Now, although the Matanog problem was among the subjects of the Commission Minutes-Resolution dated May 26, 1998, it was not however among the places where special elections shall be held on May 30, 1998.
>
> Considering this time delay, threats of my life from among the candidates has become obvious. This is the thing, aside from the fact that there has been no Comelec Resolution and pending petition, has become the catalyst towards considering the Urgent Motion filed by petitioner Imam and proceeded to the mandates of the law to determine from the Statement of the Votes by Precinct as to who are the winners and proclaimed.
>
> Relative to the said proclamation may I furnish the herein copies of COC & Proclamation with SN 12471426, Minutes of the MBC and the Urgent Motion for the MBC to reconvene filed by the petitioner's counsel.
>
> I shall appreciate your kind consideration hereof.
>
> Very truly yours,
>
> (Sgd.) ABAS A. SAGA
> Election Officer III

On June 3, 1998, private respondent again filed a petition with the COMELEC docketed as SPC Case No. 98-223, praying that the proclamation of petitioner be declared void and that all acts emanating from the said proclamation also be voided.[10]

Despite the pendency of the aforesaid petitions, petitioner took his oath of office on June 25, 1998.[11]

On June 29, 1998, the COMELEC issued its assailed order which suspended the effects and consequences of petitioner's proclamation pending its resolution of SPA Case No. 98-348 and SPA Case No. 98-223.[12]

Petitioner is now before this Court praying for the issuance of a temporary restraining order directing the COMELEC to cease and desist from enforcing and implementing the questioned order.[13]

On July 21, 1998, this Court issued a Resolution directing the parties to maintain the status quo ante and ordering the COMELEC in the meantime to desist from implementing its June 29, 1998 order and to allow petitioner to continue to discharge his functions as mayor of Matanog, Maguindanao.[14] On August 11, 1998, upon

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petitioner's urgent motion,[15] this Court clarified that under the July 21, 1998 Resolution, petitioner was allowed to "discharge his functions as Mayor of Matanog, Maguindanao, until the validity of the Commission on Elections' Order is resolved by this Court."[16]

We shall discuss the petitioner's arguments against the COMELEC order of June 29, 1998 seriatim.

First. Petitioner claims it is unfair that he is the only candidate whose proclamation was suspended considering that all other officials of the local government of Matanog were proclaimed on the basis of the same Certificate of Canvass and Election Returns. Petitioner asks, "How could a proclamation be valid for some and be invalid for (him) x x x?"[17]

We are not persuaded.

To be sure, the order does not deal with the validity or invalidity of the proclamations of petitioner and of the other officials. It merely suspended the effects and consequences of the proclamation of petitioner "without prejudice to the issuance at a later time of a formal resolution in these cases (SPA Case No. 98-348 and SPC Case No. 98-223)."[18] The order does not decide the two petitions on the merits.

The validity or invalidity of the election of petitioner and the other candidates are still subject to the determination of SPA Case No. 98-348 and SPC Case No. 98-223.

If the special election and counting of ballots were to be held only for the position of mayor, then unfairness would result. In Tupay T. Loong v. Commission in Elections and Abdusakur Tan,[19] we held that a special election only for the position of Governor cannot be sanctioned since other officials already serving their terms were proclaimed on the basis of the same manually counted votes. Thus, to hold a special election only for one position would be discriminatory and violative of the private respondent's right to equal protection of the laws. Such is not the case here.

Moreover, while it is true that only petitioner's proclamation was affected by the assailed order, we note that he was singled out by private respondent who filed the petitions and not by public respondent COMELEC. Since he was the only one impleaded, then only his proclamation was suspended.

Second. Petitioner argues that it was error on the part of public respondent COMELEC to suspend the effects of petitioner's election as it would create a hiatus in government service. According to the petition, "It will be totally unfair to petitioner and the rest of the electorate of Matanog, Maguindanao to be deprived of a Mayor just because of the indecisiveness and inaction of respondent COMELEC on the issue of whether or not to hold special election in these fourteen (14) precincts."[20]

Petitioner's argument lacks merit.

While it may be true that Matanog will be temporarily deprived of a mayor, greater unfairness would result if the voters were disenfranchised. A greater evil occurs when one not properly voted for sits in a position of power without the clear mandate of the people.

Jurisprudence provides that all votes cast in an election must be considered, otherwise voters shall be disenfranchised.[21] A canvass cannot be reflective of the true vote of the electorate unless and until all returns are considered and none is omitted.[22] In this case, fourteen (14) precincts were omitted in the canvassing.

Even the hiatus which would allegedly result is imagined. The Local Government Code provides a solution in case of a temporary vacancy in the office of the mayor.[23] This provision may be applied in this case of a temporary suspension of the effects and consequences of petitioner's proclamation as Mayor of Matanog, Maguindanao.

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Hence, we find no grave abuse in the COMELEC's suspension of petitioner's proclamation.

Third. Petitioner contends that the COMELEC had no jurisdiction to order petitioner to "cease and desist" from taking his oath of office as Mayor of Matanog considering that there was no pending pre-proclamation issue.

Records show that on May 16, 1998 a certification was issued by the Office of the Election Officer, Matanog, Maguindanao, stating:[24]

> "Considering the number of voters whose precincts failed to function will materially affect the total results of elections, NO proclamation will be made until such time proper and legal to do so."

Despite the certification, the municipal board of canvassers proceeded to proclaim petitioner as the mayoral winner.

At the time the proclamation was made, the COMELEC had not yet resolved the Petition for Canvassing of Votes and Petition for Special Elections filed on May 22, 1998. Pursuant to Sections 245[25] and 238[26] of the Omnibus Election Code, the Board of Canvassers should not have proclaimed any candidate absent the authorization from the COMELEC. Any proclamation made under such circumstances is void ab initio.[27]

An incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation.[28] A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted.[29] This is true when the election returns missing or not counted will affect the results of the election.[30]

We note that the votes of petitioner totaled one thousand nine hundred and sixty one (1,961) while private respondent garnered a total of one thousand nine hundred thirty (1,930) votes. The difference was only thirty-one (31) votes. There were fourteen (14) precincts[31]unaccounted for whose total number of registered voters are two thousand three hundred and forty eight (2,348).[32] Surely, these votes will affect the result of the election. Consequently, the non-inclusion of the 14 precincts in the counting disenfranchised the voters.

We therefore find that COMELEC had sufficient reason to suspend the proclamation of petitioner.

Fourth. Petitioner alleges that the questioned order was issued without any motion for its issuance and without notice and hearing. Thus, he claims, his right to due process was violated. He alleges that the order was issued in an apparent haste "to beat the deadline of noon of June 30, 1998 - the start of the term of elective local officials as provided under the 1991 Local Government Code."[33]

The accusation imputed on COMELEC must fail as there is a presumption of good faith and regularity in the performance of official duty which petitioner miserably failed to rebut.

On the question of due process, we likewise reject petitioner's argument.

The essence of due process is the opportunity to be heard.[34] The right to be heard does not only refer to the right to present verbal arguments in court. A party can be heard through the pleadings he submits.[35]

In Jardiel v. Commission on Elections,[36] petitioner controverted the complaint of respondents with affidavits. In that case, we ruled that with substantial evidence from both parties on hand, the Commission on Elections can consider the case submitted for decision.

In the case at bar, petitioner was heard by the COMELEC through the memorandum he submitted.

Fifth. Petitioner assails the order issued by the COMELEC en banc. The consolidated cases[37] were originally heard by the COMELEC's First Division. Petitioner contends that his right to due process was violated when the case was transferred to the COMELEC en banc without notice to him.

We note that it is petitioner himself who prayed that petition SPA 98-348 be heard by the Commission en banc.[38] And rightly so. The law provides that petitions for a special election must be addressed to the COMELEC sitting en banc. Section 6 of the Omnibus Election Code should be read in relation to Section 4 of R.A. No. 7166 which provides:

> Sec. 4. Postponement, Failure of Election and Special Elections - The postponement, declaration of failure of elections and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after casting of votes or on the day of the election.

The grounds for failure of election (force majeure, terrorism, fraud or other analogous cases) involve questions of fact which can only be determined by the COMELEC en banc after due notice and hearing to the parties.[39]

The fact that petitioner was not given notice specifically stating that the case was transferred to the en banc did not affect the legality of the order. In administrative proceedings, technical rules of procedure and evidence are not strictly applied. Administrative process cannot be fully equated with due process in the strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard.[40]

WHEREFORE, the instant petition for Certiorari is DISMISSED finding no grave abuse of discretion on the part of public respondent COMELEC. Accordingly, our status quo ante order contained in the Resolution dated July 21, 1998 is LIFTED.

No costs.

SO ORDERED.

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

Panganiban, J., in the result.

Pardo, J., no part.

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[1] Rollo, pp. 23-24.

[2] Rollo, p. 27.

[3] Rollo, p. 87.

[4] In Precincts Nos. 2-A-7 and 2-* (Clustered); 2-A-l0, 2-A-6, 2-A-2a-l, 2A-l, 2-A-9, 2A-11, l-A, lAl, lA3, lA4 and 4A7.

[5] In Precincts Nos. 1A-2 and 6A-1, all in the Municipality of Matanog, Maguindanao.

[6] Rollo, pp. 28-32.

[7] Rollo, p. 28.

[8] Rollo, p. 25.

[9] Rollo, p. 27.

[10] Rollo, p. 33.

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[11] Rollo, p. 26.

[12] Rollo, pp. 23-24.

[13] Rollo, p. 17.

[14] Rollo, p. 66.

[15] Rollo, p. 92.

[16] Rollo, p. 90; italics provided.

[17] Rollo, p. 4.

[18] Rollo, pp. 23-24.

[19] G.R. No. 133676, April 14, 1999.

[20] Rollo, p. 5.

[21] Mutuc v. Commission on Elections, 22 SCRA 662 (1968)

[22] Datu Sinsuat v. Pendatun, 33 SCRA 630 (1970)

[23] Section 46 (a) of the Local Government Code provides, "When the governor, city or municipal mayor or punong barangay is temporarily incapacitated to perform his duties for physical or legal reasons such as but not limited to, leave of absence, travel abroad, and suspension from office, the vice governor, city or municipal vice mayor, or the highest ranking sangguniang barangay member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

[24] Rollo, p. 87.

[25] "...The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party and any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election."

[26] "If, after the canvass of all the said returns, it should be determined that the returns which have been set aside will affect the result of the election, no proclamation shall be made except upon orders of the Commission after due notice and hearing. Any proclamation made in violation hereof shall be null and void."

[27] Ramon D. Duremdes v. Commission on Elections, 178 SCRA 747 (1989)

[28] Datu Sukarno Samad v. Commission on Elections, 224 SCRA 631, 642 (1993)

[29] Duremdes v. Commission on Elections, 178 SCRA 746 (1989)

[30] Emilio Caruncho III v. Commission on Elections, et al., G.R. No.135996, September 30, 1999.

[31] The fourteen (14) precincts unaccounted for consisted of:

BARANGAY PRECINCT NO. NUMBER OF REGISTERED
VOTERS

Bayanga Sur 2-A 200

2-A1 200

27A & 2A8 244

2A10 101

2A6 200

2A9 200

2A11 200

Norte 1A 200

lA1 200

1A2 200

1A3 101

1A4 101

Bugasan Sur Sapad 4A5 200

6A1

TOTAL 2348

[32] Rollo, p. 47.

[33] Rollo, pp. 6-7.

[34] Ernesto A. Domingo, Jr. v. Commission on Elections and Benjamin D. Abalos, Jr., G.R. No. 136587, August 30,1999.

[35] Bautista v. Commission on Elections, G.R. No. 133840, November 13, 1998.

[36] 124 SCRA 690 (1983)

[37] Election Matter No. 98-051, SPA No. 98-348 and SPC No. 98-223.

[38] Rollo, p. 41.

[39] Tupay T. Loong v. Commission in Elections and Abdusakur Tan, G.R. No. 133676, April 14, 1999.

[40] Ferdinand Trinidad v. Commission on Elections and Manuel Sunga, G.R. No. 135716, September 23, 1999.

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