

FRANCISCO D. OCAMPO, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF STA. RITA, PAMPANGA AND ARTHUR L. SALALILA, RESPONDENTS.

G.R. No. 136282. February 15, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The case before us hinges on the question of whether or not to include in the canvass the contested election returns.

The facts are as follows:

Francisco D. Ocampo and Arthur L. Salalila were candidates for Mayor in the Municipality of Sta. Rita, Province of Pampanga during the May 11, 1998 elections. There were 78 precincts in said municipality. During the canvassing of the election returns which started on May 12, 1998 and ended on May 14, 1998 petitioner moved for the exclusion of the election returns in 8 precincts from Barangay Basilia considering that the turnout of votes was allegedly lopsided against his favor. The results were as follows:

Precinct No.

VOTES RECEIVED BY

OCAMPO

SALALILA

1. 88-A-1

0

165

2. 89-A-1

0

104

3. 90-A & 90-A-1

3

192

4. 92-A

0

152

5. 93-A & 94-A

7

236

6. 99-A & 100-A

7

205

7. 104-A

5

155

8. 105-A

3

115[1]

25 votes

1,324 votes

The grounds for the exclusion of the election returns in the aforementioned precincts were: i.e: (1) that the same were obviously manufactured; (2) they were defective for they contained no data on the number of registered votes in the precinct, actual number of votes cast and the number of valid votes cast; and (3) other alleged discrepancies in the data on votes cast and total number of registered voters and excess ballots.[2]

Finding the contested election returns to be genuine and authentic and without merit, the Municipal Board of Canvassers (MBC) ruled to order the inclusion in the canvass of the contested election returns.[3]

On May 16, 1998, petitioner went to see the Chairman of the MBC at his office to file his Notice of Appeal. Since the latter was not present, petitioner instead filed said notice with Board Members Nelia Salvador and Diosdado L. Amio who, however, refused to accept the same in line with the Board's earlier ruling not to receive anymore the Notice of Appeal. Upon request, a Certification to that effect was issued by Nelia Salvador and Disodado Amio on the same date.[4]

On May 18, 1998, petitioner went to the COMELEC and filed a formal appeal.[5] This was docketed as SPC No. 98-056. On June 29, 1998, the COMELEC Second Division, rendered a Resolution stating the following:

x x x

Respondent MBC should have at least suspended its canvass in so far as the question or contested election returns were concerned. x x x x

In precinct 88-A-1 the election return is lacking in material data as there were no entries as to the number of registered voters in the precinct, the actual number of votes cast and the number of valid votes cast. In such a situation it is incumbent upon the MBC to call the members of the Board of Election Inspectors (BEI) to complete the data which failed to do so.

In precinct 89-A-1 there was a discrepancy in the figure of the total number of valid votes cast and the number of votes received by private respondent Salalila. Moreover, two (2) member (sic) of the BEI did not affixed (sic) their thumbmark in the questioned election returns rendering their authenticity doubtful. There is material discrepancy in the election return as it is (sic) states therein that there were 197 voters who actually voted. And also it was also stated therein that there were 22 excess ballots and therefore the number of voters who actually voted will be 219 in excess of the 215 total number of registered voters for the precinct.

In precincts 92-A the return states that there were 153 voters who actually voted and private respondent Salalila received 152 votes while petitioner got zero (0), one (1) vote therefore is clearly missing.

In 93-A and 94-A there were an excess of the number of voters who actually voted. The election returns shows that there were 245 voters who actually voted yet there were 27 excess ballots found in the ballot box, but the number of voters in the precinct is only 272, meaning there was a one hundred per cent (100%) turn-out of voters for those precinct but the election return states that there were only 245 who actually voted.

In precinct 99-A, 100-A and 104-A there were also no entries on the data of voters and ballots. Again the MBC should have at least called the members of the BEI to complete the data in the election return and explain why they failed to do the same.

In precinct 105-A it is obvious that there were discrepancies in the material data in that the total number of registered voters in the precinct is 141 while the total number accordingly of the voters who actually voted is 121 but found out inside the ballot box were 144 valid ballots which obviously in excess of three (3) from the total number of the registered voters for the precinct.

But more than the above findings what is significant is that in Precincts 93-A and 94-A there were erasures in the election return which accordingly was made to reflect the correct votes received by petitioner and private respondent. According to the Chairman of BEI, private respondent received 96 votes while, petitioner received

4 votes instead of 97 yet the election returns states that petitioner received only three votes instead of four as claimed but (sic) the Chairman of the BEI. Such erasures manifest (sic) on the election return puts the authenticity of the same in issue and should have been excluded in the canvass.

While it is true that the Board of Canvassers is essentially a ministerial body and has no power to pass upon questions of whether there are illegal voters or other election frauds. (*Dizon v. Provincial Board*, 52 Phil 47; *Sangki v. Comelec*, 21 SCRA 1392), it is also true that in case of patent irregularity in the election returns, such as patent erasures and super-impositions in words and figures on the face of the returns submitted to the board, it is imperative for the board to stop the canvass of such returns so as to allow time for verification. A canvass and proclamation made withstanding such patent defects in the returns which may affect the result of the election, without awaiting remedies, is null and void. (*Purisima v. Salonga*, 15 SCRA 704).

WHEREFORE, the Commission (Second Division) resolves to GIVE DUE COURSE to the appeal and the eight (8) contested election returns are hereby ordered excluded from the canvass for the position of the municipal mayor of Sta. Rita, Pampanga.

The proclamation made by respondent MBC on May 14, 1998 proclaiming private respondent as duly elected Mayor of Municipality of Sta. Rita, Pampanga is hereby SUSPENDED.

Respondent MBC is hereby directed to reconvene and issue a new certificate of canvass of votes excluding the election returns subject of this appeal and on the basis of which proclaim the winning candidate for Mayor of the Municipality of Sta. Rita, Pampanga.

SO ORDERED.[6]

On July 3, 1998, private respondent Salalila filed a motion for reconsideration.[7]

On November 19, 1998, the COMELEC en banc promulgated the questioned Resolution reversing the findings of the Comelec Second Division. The decretal portion of which states:

WHEREFORE, in view of the foregoing, the Resolution promulgated by this Commission (Second Division) on 29 June 1998 is hereby reversed and set aside. The suspension of the effects of the proclamation of the respondent/appellee, ARTHUR L. SALALILA, is hereby lifted. His proclamation as MAYOR of the municipality of Sta. Rita, Pampanga on 14 May 1998 is hereby confirmed.

SO ORDERED.[8]

Hence, petitioner Ocampo filed the instant petition citing the grave abuse of discretion committed by the COMELEC en banc in reversing the findings of the COMELEC Second Division. A temporary restraining order was also prayed for to enjoin the effects of private respondents Salalila's proclamation as municipal mayor.

On December 15, 1998, this Court issued a Temporary Restraining Order directing the COMELEC to cease and desist from enforcing its Resolution, dated November 19, 1998 in SPC No. 98-056.

Meanwhile, on March 1, 1999, petitioner filed a separate petition before this Court to cite private respondent Salalila for contempt. This was docketed as G.R. No. 137470. In this petition, petitioner claimed that despite the issuance of a Temporary Restraining Order by this Court on December 15, 1998 in G.R. No. 136282, private respondent Salalila continued to act as the Mayor of Sta. Rita, Pampanga.

Petitioner would like to impress upon this Court that the returns in the subject precincts (25 votes with zero 0 votes in three precincts, as against private respondents Salalila's 1,333 votes) were statistically improbable considering that he was a re-electionist and with assigned watchers therein. Although he admits that the precincts were private respondent Salalila's bailiwick, precedence dictates that every election document coming from a candidate's bailiwick must be carefully scrutinized.

Petitioner claims that the election returns did not contain data as required in Section 212 of the Omnibus Election Code which reads:

The returns shall also show the date of the election, the polling place, the barangay and the city or municipality in which it was held, the total number of ballots found in the compartment for valid ballots, the total number of valid ballots withdrawn from the compartment for spoiled ballots because they were erroneously placed therein, the total number of excess ballots, the total number of marked or void ballots, and the total number of votes obtained by each candidate, writing out the said number in words and figures and, at the end thereof, the board of election inspectors shall certify that the contents are correct. The returns shall be accomplished in a single sheet of paper, but if this is not possible, additional sheets may be used which shall be prepared in the same manner as the first sheet and likewise certified by the board of election inspectors.

x x x

Petitioner further contends that these data on voters and ballots are just as important as the data on votes credited to the candidate on the same election returns. The absence such data without any explanation or correction on the part of the Board of Election Inspectors who prepared those election documents renders them invalid. Violations of Sections 234 and 235 relating to material defects in the election returns and tampered or falsified election returns are considered election offenses under Section 262 of the Omnibus Election Code.[9]

The pertinent provisions read as follows:

Sec. 234. Material defects in the election returns.- If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction. Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

Sec. 235. When election returns appear to be tampered with or falsified. - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass. (Sec. 173, 1978 EC).

The petition must fail.

It must be borne in mind that we are persuaded strongly by the principle that the findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[10] The COMELEC, as an administrative agency and a specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, has more than enough expertise in its field that its findings or conclusions are generally respected and even given finality.[11] We do not find the instant case an exception to this avowed rule.

In order to allay any suspicion of gravely abusing its discretion, the COMELEC made a careful examination of the contested election returns. "To check and double check" if it were true that the contested election returns were tampered with, altered or falsified, the COMELEC en banc examined two separate copies of the election returns: (1) the copy for the Municipal Board of Canvassers and (2) the COMELEC copy. Thus, the following findings were made:

In the election returns for precinct 88-A-1, only formal defects are present, there being no entries on the requisite data as to the number of registered voters in the precinct, the actual number of votes cast and the number of valid votes cast. However, the number of votes credited to the petitioner and private respondent and the taras therein do not contain any erasure or alteration as to bring the number of votes obtained by the petitioner and private respondent within the realm of controversy. We, therefore, rule for the inclusion of the election returns for this precinct.

The election returns for precinct 89-A-1 was ruled excluded by the Second Division for several reasons. It was alleged (1) that there is a discrepancy in the total number of valid votes cast and number of votes received by private respondent Salalila; (2) that two (2) members of the Board of election Inspectors did not affix their thumb mark in the questioned election returns; and (3) that the elections returns states that there were 197 voters who actually voted while there were 22 excess ballots which means that the number of voters who actually voted will be 219 in excess of the 215 total number of registered voters in the precinct. An examination of this election returns shows that all pages of the election returns have been signed and thumb marked by the chairman and members of the board of election inspectors except on page 3 where the members did not thumb mark but the chairman did and on page 4 where the chairman had no thumb mark but the members did have. This is a mere oversight and it did not vitiate the validity of the votes credited to each candidate nor did it destroy the integrity of the election return. A perusal of the election returns for the mayoral candidates shows that Salalila got one hundred four (104) votes while petitioner/appellant Ocampo received zero (0). The fact that private respondent/appellee got almost all the votes cast in this precinct is not necessarily proof of fraud for there is nothing in the returns to show that it was tampered or altered. The election returns itself reflects with clarity the votes obtained by Salalila and Ocampo. It bears no sign whatsoever of tampering or alteration. Moreover, contrary to the findings of the Second Division, the election returns for this precinct did not state that there were 197 voters who actually voted and that there were 22 excess ballots but rather, the number of voters who actually voted is only 105 out of 115 total registered voters in this precinct and the excess ballots is zero. We, therefore, rule for the inclusion in the canvass of the election returns for this precinct.

In the election returns for precinct 92-A, it was ruled excluded on the ground that one (1) vote is missing therein, 153 voters having actually voted and private respondent Salalila received 152 votes while petitioner got zero (0). We overrule. The fact that Salalila got one hundred fifty two (152) votes out of 153 voters who actually voted while Ocampo got zero (0), does not necessarily mean that one (1) vote is missing. One (1) voter in this precinct might have desisted from casting his vote for the mayor or may have voted but the vote was not credited because it was stray or just illegible. But the missing vote cannot be a ground for exclusion.

Hence, We rule for the inclusion of the election returns in the canvass.

In the election returns for clustered precincts 93-A and 94-A, an examination of the returns shows that it is complete with entries of the requisite data and that it had been signed by all the members of the board of election inspectors. It also discloses that it is not true there was one hundred percent (100%) turn-out of voters for this clustered precincts as there were only two hundred forty five (245) voters who actually voted out of the two hundred seventy two (272) registered voters. Hence, there is nothing mysterious about the 27 excess but unused ballots found in the ballot box. Similarly, we saw no erasures or alteration on the face of the election returns, specifically the portion showing the number of votes. If at all, there were superimposition made on the faintly written names of the candidates to make the same easily readable. Such superimposition on the names of candidates did not in any manner render the number of votes garnered by the candidates subject to doubt as to bring the same within the realm of controversy. Moreover, We find intriguing the finding that chairman of the board of election inspectors claimed that private respondent received 96 votes instead of 97 while petitioner received 4 votes yet the election returns states that petitioner received only three votes instead of four. We find nothing in the records to support it. The election returns itself shows that Salalia obtained two hundred thirty six (236) votes while Ocampo got seven (7) votes. We, therefore, rule for the inclusion in the canvass of said election returns.

In the election returns for clustered precincts 99-A and 100-A, and precinct 104-A, only formal defects are present, there being no entries of the requisite data as to the number of registered voters in the precincts, the actual number of votes cast, and the number of valid votes cast. However, the number of votes credited to the petitioner/appellant and respondent/appellee as reflected by the taras show correctness of count. There were no erasures or alteration as to put the same into question. We therefore, likewise rule for the inclusion in the canvass of this election returns.

In the election returns for precinct 105-A, it was ruled excluded because of alleged discrepancies in the material data in that the total number of registered voters in the precinct is 141 while the total number of the voters who actually voted is 121 but found out inside the ballot box were 144 valid ballots which is excess of three (3) from the total number of registered voters for the precinct. The three (3) "excess" ballots are in reality not excess ballots. The precinct ratio on ballot distribution adopted by the Commission in the 11 May 1998 elections is one (1) ballot for every registered voter plus four (4) ballots. At any rate, an examination of the questioned election returns shows that the defects are only formal and not material as to warrant the outright exclusion from canvass of the questioned election returns. The number of votes credited to petitioner/appellant who got three (3) votes and private respondent/appellee who received one hundred fifteen (15) votes was undisturbed and does not bear any sign of alteration as to put the result of the election into question. We, therefore, likewise rule for the inclusion in the canvass of the election returns for this precinct.[12]

Notably, the COMELEC en banc merely sustained the findings and rulings of the Municipal Board of Canvassers who, at the first instance, found the contested election returns to be genuine and authentic and the objections to be without merit. Moreover, the COMELEC en banc did not meet any oppositions or dissent from any of the Commissioners who have rendered the resolution[13] reversing the decision of the MBC. This only goes to show that there was a painstaking review and examination of the returns by the COMELEC en banc which does not warrant a different conclusion from this Court.

That the election returns were obviously manufactured must be evident from the face of said documents.[14] In the absence of a strong evidence establishing spuriousness of the returns, the basic rule that the election returns shall be accorded prima facie status as bona fide reports of the results of the count of the votes for canvassing and proclamation purposes must perforce prevail.[15] The COMELEC en banc did not find any signs of alterations or tampering on the election returns nor did the petitioner present any hard evidence of such irregularity. The only thing which we surmise came too close to such a change was the written superimposition made on the family names of the candidates in the election returns of the clustered precincts 93-A and 94-A. This was certainly not an

alteration or tampering since the COMELEC en banc found that such superimposition was necessarily done in order to make the names readable. Nonetheless, petitioner failed to deduce evidence to the contrary. The other thing which petitioner considered the returns to be "obviously manufactured" was the fact that petitioner garnered zero (0) votes in three (3) precincts which was allegedly statistically improbable. To this claim, the case of *Sanki v. COMELEC*[16] is worth reiterating:

x x x Indeed, the bare fact that candidates for public office had received zero votes is not enough to make the returns statistically improbable. In the *Lagumbay* decision itself, Chief Justice Cesar Bengzon, who delivered the majority opinion, did not say that when one candidate receives nothing in an election return; such a circumstance alone will make said return statistically improbable. x x x

x x x

x x x we can not, with certainty, conclude from the facts before us that the returns questioned were "not true returns of legal votes actually cast, but simply manufactured evidences of an attempt to defeat the popular will.

To be sure, it cannot be said here - as this Court did intimate in *Lagumbay* - that respondent board of canvassers may legally deny "prima facie recognition to such returns on the ground that they are manifestly fabricated or falsified;" or that "the fraud is so palpable from the return itself (*res ipsa loquitur* - the thing speaks for itself)", such that "there is no reason to accept and give it prima facie value."

The factual background of this case suggests that we should not unduly expand the reach of the statistically improbable doctrine carved out of the facts obtaining in *Lagumbay*. Rather, we should say that respondent board of canvassers - sustained by *Comelec* - in refusing to reject canvass of the returns from the disputed precincts, properly performed the functions allocated to it by law. It did well in not overstepping its authority.

x x x

Anent the objection as to the omitted data in the election returns, a close reading of Section 234 of the Omnibus Election Code shows that nothing in said provision provides for the exclusion of the election returns.

Moreover, such omitted data are merely formal defects and not so material as to affect the votes the candidates obtained in the election. We find the case of *Baterina vs. Commission on Elections*[17] similar to the case at bar, where the Court elucidated that:

[T]he grounds raised by petitioners for the exclusion of the election returns from the canvassing, as stated in their "Appeal Memorandum", before the COMELEC (Rollo, p. 92), refer to the failure to close the entries with the signatures of the election inspectors; lack of inner and outer paper seals; canvassing by the BOARD of copies not intended for it; lack of time and date of receipt by the BOARD of election returns; lack of signatures of petitioners' watchers; and lack of authority of the person receiving the election returns.

While the aforesaid grounds may, indeed, involve a violation of the rules governing the preparation and delivery of elections returns for canvassing, they do not necessarily affect the authenticity and genuineness of the subject election returns as to warrant their exclusion from the canvassing. The grounds for objection to the election returns made by petitioner are clearly defects in form insufficient to support a conclusion that the election returns were tampered with or spurious. "A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution and only upon the most convincing proof. x x x

For as long as the election returns which on their face appear regular and wanting of any physical signs of tampering, alteration or other similar vice, such election returns cannot just be unjustifiably excluded. To look beyond or behind these returns is not a proper issue in a pre-proclamation controversy as in the case at bar.[18]

WHEREFORE, the petition for certiorari in G.R. No. 136282 is hereby DISMISSED for its failure to show grave

abuse of discretion amounting to lack or excess of jurisdiction on the part of the Commission on Elections (COMELEC) in rendering the assailed Resolution, dated November 19, 1998. G.R. No. 133470 is, likewise, DISMISSED. The Temporary Restraining Order issued on December 15, 1998 is hereby LIFTED.

SO ORDERED.

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

Pardo, J., no part.

[1] Rollo, p. 7.

[2] Id., at 27-28.

[3] Id., at 28.

[4] Id., at 69.

[5] Id., at 49-66.

[6] Id., at 44-45.

[7] Id., at 99-112.

[8] Id., at 38.

[9] Id., at 14.

[10] Malonzo v. COMELEC, 269 SCRA 380 (1997)

[11] Grego v. COMELEC, 274 SCRA 481 (1997)

[12] Rollo, pp. 32-35.

[13] Justice Pardo was appointed to the Supreme Court.

[14] Dipatuan v. COMELEC, 185 SCRA 86 (1990)

[15] Malalam v. COMELEC, 271 SCRA 733 (1997)

[16] 21 SCRA 1392 (1967)

[17] 205 SCRA 1 (1992)

[18] Salih vs. COMELEC, 279 SCRA 19 (1997)

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