HADJI HUSSEIN MOHAMMAD, PETITIONER, VS. COMMISSION ON ELECTIONS AND ABDULAJID ESTINO, RESPONDENTS.

G.R. No. 136384. December 08, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for certiorari under Rules 64 and 65 of the 1997 Rules of Civil Procedure assailing the Resolutions dated October 27, 1998 and December 8, 1998, respectively, of the Commission on Elections (COMELEC) in Election Protest Case (EPC) No. 96-2.

The facts that matter are as follows:

The petitioner and the private respondent were among the candidates during the September 9, 1996 elections for the Regional Legislative Assembly of the Autonomous Region for Muslim Mindanao ("ARMM") representing the Second District of the Province of Sulu.

On September 10, 1996, petitioner was proclaimed as the third winning Assemblyman with a total of 31,031 votes. Private respondent garnered a total of 29,941 votes, giving the petitioner a winning margin of 1,090 votes.

Since only three positions for Assemblymen were open, private respondent filed an election protest with the COMELEC alleging rampant substitution of voters, miscounting and/or misreading of ballots by the automated counting machine, and the inclusion in the counting of obviously marked ballots in Precinct Nos. 1, 1A, 2, 10, and 13B of the Municipality of Pata; Precinct Nos. 3, 4, 7, 9, 9A, 9B, 9C, 9D, 10, 10A, 10B, 11, 12, 21, 21A, 22C, and 22D of the Municipality of Luuk; Precinct Nos. 8, 10, 14, 15, 18, 20, 22, 23, 27, and 28 of the Municipality of Panamao; Precinct Nos. 1, 1A, 2, 4, 5, 5A, 6, 7, 8, 10, 11, 11A, 14 and 14A of the Municipality of Tongkil; and Precinct Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10 and 16 of the Municipality of Pandami. Docketed as Election Protest Case No. 96-2, the case was raffled to the Second Division of the COMELEC. Thereafter, petitioner filed his answer with counter-protest questioning the election results in all the precincts of the Municipalities of Panglima Estino, Lugus, Tapul, and Precinct Nos. 2, 2B, 3, 5, 6, 7, and 8 of the Municipality of Kalinggalan Caluang.

On September 11, 1997, the COMELEC (Second, formerly First Division) issued an Order directing the Election Records and Statistics Department to undertake a technical examination of the signatures and thumbprints of the voters in the Voter's Registration Records (VRR/CEF No. 1) and the List of Voters with Voting Records or Computerized Voters List (CVL/CEF No. 2) involving the protested and the counter-protested precincts. The examination yielded the following results:

RESULTS OF EXAMINATION FOR PROTESTANT[1] (protested precincts):

> "A. No. of Voters whose thumbprints in CEF-1/VRR are identical with their thumbprints in CVL (CEF-2) . . . . . .
>
> 907

B. No. of Voters whose thumbprints in CEF No. 1/VRR are not identical with their thumbprints in CVL (CEF No. 2) . . . . . .

7,951

C. No. of Voters whose thumbprints in CEF No. 1/VRR or CVL (CEF No. 2) cannot be analyzed because they are either blurred, smudged, faint or without sufficient basis for comparison, some have no thumbprints no opinion. . . . . .

9,935

D. No. of voters in every precinct, divided into groups whose thumbprints in CVL (CEF No. 2) are identical to each other using different names . . . . . .

4,043"

RESULTS OF EXAMINATION FOR PROTESTEE[2] (counter-protested precincts):

"A. No. of voters whose thumbprints in CEF 1/VRR are identical with their thumbprints in CVL (CEF 2) - -- -- -- -- -- -- -- -- -- -- -- --

611

B. No. of voters whose thumbprints in CEF No. 1/VRR are not identical with their thumbprints in CVL (CEF No. 2) -- -- -- -- -- --- -- --

6,892

C. No. of voters whose thumbprints in CEF No. 1/VRR or CVL (CEF No. 2) cannot be analyzed because they are either blurred, smudged, faint or without sufficient basis for comparison, some have no thumbprints no opinion -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- ---- -- -- -- --

6,449

D. No. of voters in every precinct, divided into groups whose thumbprints in CVL (CEF No. 2) are identical to each other using different names-- -- -- -- -- -- -- --

3,224"

On October 27, 1998, on the basis of the aforesaid results of the technical examination, the COMELEC Second Division[3] issued a Resolution[4] which decreed:

"WHEREFORE, premises considered, the Commission (Second Division) hereby renders judgment ANNULLING the election and proclamation of protestee HADJI HUSSEIN MOHAMAD as the third winning candidate for the position of Member of the Regional Legislative Assembly of the Autonomous Region of Muslim Mindanao representing the Second District of the Province of Sulu.

ACCORDINGLY, protestee is hereby DIRECTED to VACATE and RELINQUISH said position to the

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protestant ABDULAHID ESTINO upon finality of this Resolution."

On October 30, 1998, petitioner presented a Motion for Reconsideration of the said Resolution. However, the COMELEC En Banc,[5] in its Resolution[6] of December 8, 1998, disposed thus:

"After due deliberation, the Commission (en banc), finding no sufficient arguments which would warrant a reversal of this Commission's (Second Division) resolution, the instant motion for reconsideration is hereby DISMISSED for lack of merit. The decision subject of said motion is hereby affirmed."

With the denial of his Motion for Reconsideration, petitioner found his way to this Court via the present petition, contending that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction, in issuing the assailed Resolutions.

The issues presented for resolution are:

I
WHETHER THE QUESTIONED COMELEC RESOLUTIONS EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH THEY ARE BASED.

II
WHETHER THE TECHNICAL EXAMINATION OF THE FINGERPRINTS IN THE VOTING RECORDS WAS THE PROPER METHOD OF RESOLVING PRIVATE RESPONDENT'S ELECTION PROTEST.

III
WHETHER THE COMELEC COMMITTED AN ERROR IN APPRECIATING THE RESULTS OF THE TECHNICAL EXAMINATION OF THE VOTING RECORDS.

On the first issue, the Court rules that the Resolutions under attack express clearly and distinctly the facts and the law upon which the same were based. It is readily apparent from the Resolution promulgated on October 27, 1998 that it was anchored on the results of the technical examination of the handwritings and fingerprints of the voters in the protested precincts, to wit:

"Peripherals aside, the case at bench entails merely the technical examination of the handwritings and fingerprints of the voters in the questioned precincts by going over these details in the Lists of Voters [CEF-2] vis-a-vis the Voter's Registration Records [CEF-1] in order to ascertain the truth or falsity of the allegations of both protestant and protestee. The procedure laid down by the Commission is not a novelty nor an experiment. In Estaniel vs. Commission on Elections, 42 SCRA 436, and Pimping vs. Commission on Elections, 140 SCRA 192, the Honorable Supreme Court explicitly ruled that a protest case may be decided based on the election documents presented before the Commission without recourse to the ballots. In fact, in a Resolution promulgated on January 31, 1995 by the Commission (First Division) and affirmed by the Commission En Banc in the Resolution of April 27, 1995, both on unanimous vote, the Commission decided EPC No. 93-11 [Estino vs. Burahan] in accordance with the aforestated pronouncement. The decision in said case was subsequently affirmed by the Supreme Court in G.R. No. L-119846 dated November 2, 1995. Conversely, the Commission is not inclined to discuss the merits of the revision of ballots, the counting thereof having been done by the automated counting machine.

In keeping with these precedents and the prayer of the parties to subject the election documents to the usual technical examination, the Commission (First Division) issued an Order on September 11, 1997 directing the Election Records and Statistics Department to undertake said task with the instruction to submit its report thereon upon termination thereof. The results of the technical examination are as follows:

FOR THE PROTESTANT [protested precincts]:

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A. No. of Voters whose thumbprints in CEF - 1/VRR are identical with their thumbprints in CVL (CEF-2). . .

907

B. No. of Voters whose thumbprints in CEF No. 1/VRR are not identical with their thumbprints in CVL (CEF No. 2) . . . . . .

7,951

C. No. of Voters whose thumbprints in CEF No. 1/VRR or CVL (CEF No. 2) cannot be analyzed because they are either blurred, smudged, faint or without sufficient basis for comparison, some have no thumbprints no opinion . . . . . .

9,935

D. No. of voters in every precinct, divided into groups whose thumbprints in CVL (VEF No. 2) are identical to each other using different names . . .

4,043

FOR THE PROTESTEE [counter-protested precincts]:

A. No. of voters whose thumbprints in CEF 1/VRR are identical with their thumbprints in CVL (CEF 2) . . . . . .

611

B. No. of voters whose thumbprints in CEF No. 1/VRR are not identical with their thumbprints in CVL (CEF No. 2) . . . . . .

6,892

C. No. of voters whose thumbprints in CEF No. 1/VRR or CVL (CEF No. 2) cannot be analyzed because they are either blurred, smudged, faint or without sufficient basis for comparison, some have no thumbprints no opinion . . . . . .

6,449

D. No. of voters in every precinct, divided into groups whose thumbprints in CVL (CEF No. 2) are identical to each other using different names . . .

3,224

As can be gleaned therefrom, the findings of the technical division of the Election Records & Statistics Department clearly show that in the protested precincts, 7,951 thumbprints are fraudulent and/or fictitious because the fingerprints in CEF No. 1/VRR [Voter's Registration Records] do not conform or are not identical with the

prints found in the CVL [Computerized Voters' List] (CEF No. 2) and 4,943 thumbprints in groups are likewise fraudulent and/or fictitious because the voters have used different names. The same conclusion holds true in the counter-protested precincts with 6,892 and 3,224 thumbprints, respectively, with the same infirmities in the election documents examined.

Translated into votes, protestee suffers a diminution of 11,994 votes while protestant is deducted a total of 10,116 votes. Conflicting figures, however, have been alleged by the parties. Protestant avers in his petition that he obtained 30,174 votes and the protestee garnered 31,232 votes. In his answer, protestee insists that he was credited with the same number of 31,232 votes and the protestant with only 29, 977 votes. The Statement of Votes by Precincts on the other hand, credits protestee with 31,031 votes and the protestant with 29,941 votes. Considering that the tally indicated in the Statement of Votes by Precincts is the more authoritative count of the votes obtained by the parties, protestee is adjudged to have a remaining total of 19,037 [31,031 less 11,994] votes and the protestant with 19,825 [29,941 less 10,116] votes or a margin of 788 votes by the latter over the former."

The Resolution of October 27, 1998 had, as factual basis, the results of the technical examination and, as legal basis, decisions of the Supreme Court in Estaniel v. Commission on Elections[7] and Pimping v. Commission on Elections.[8]

The basis of the Resolution of December 8, 1998 is the want of merit of petitioner's motion for reconsideration. There is no need for an extended disquisition with respect to said Resolution of October 27, 1998 as the bases thereof were detailed therein.

As regards the second issue, it is petitioner's stand that a revision and examination of the ballots, rather than a technical examination of the fingerprints in the voting records, is the proper method for the COMELEC to adopt in resolving the election dispute. Petitioner contends that only through a revision of ballots may the spurious and fraudulent votes be identified.

Petitioner's contention is untenable. Firstly, petitioner is not really contesting the method of the COMELEC in conducting a technical examination, but only the correctness thereof, petitioner theorizing double deductions in the appreciation of the results. But petitioner is estopped from adopting inconsistent positions. He cannot contest the method of dispute resolution, while at the same time affirm the validity thereof. It is worthy to note that the petitioner is contesting only the correctness of the report and not the method of dispute resolution. Then too, the Court has already sanctioned the method of technical examination of the thumbprints of voters, over revision of ballots, where a recount or revision of the ballots will not be reflective of the sovereign will due to the irregularities committed during the elections:

> "Where due to the stated serious irregularities, there has been, as in this instance, a consequent declaration of nullity of the election itself and the election returns in the voting centers mentioned, no fault whatsoever may be attributed to the action of the Comelec in declining to order a revision of the ballots cast in those election centers. A recount or revision of the ballots in those election centers can no longer possess any significance due to the nullity of the election itself in said places.
>
> xxx xxx xxx
>
> It is, therefore, quite apparent that a revision of ballots is not always mandatory in election protest cases because such revision should be granted by the Commission only when, in the opinion of the Commission, the interest of justice so demands or that the allegations of the parties in the protest cases so warrant the same."[9]
>
> "xxx of course, there may be election protests which may be disposed of without a recount of the ballots cast. There may be cases where, by reason of the fraudulent manner on which the entire election was conducted, the Court would be justified in annulling and setting the election aside without an examination of the ballots. There

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may be cases also where all the ballots used at the election need not be examined."[10]

The election during which the petitioner and the private respondent were candidates was marred by fraud and irregularities that a revision and recount of the ballots cast in the elections would prove futile in determining the true will of the electorate. This is evident from the result of the technical examination of the fingerprints which revealed the following:

FOR THE PROTESTANT --

1. That of the total number of registered voters (20,819), only four percent (4%) thereof, or 907 voters, had identical thumbprints in CEF-1/VRR (Voters Affidavits) and CEF-2/CVL (Computerized Voters List).

2. That of the total number of registered voters (20,819), thirty-eight percent (38%) thereof, or 7,951 voters, had thumbprints in CEF-1/VRR which are not identical with their thumbprints in CEF-2/CVL.

3. That of the total number of registered voters (20,819), forty-eight percent (48%) thereof, or 9,935 voters, had thumbprints which cannot be analyzed because they were either blurred, smudged, faint, or without sufficient basis for comparison.

4. That of the total number of registered voters (20819), nineteen percent (19%) thereof, or 4,043 voters, had thumbprints identical with each other using different names.

FOR THE PROTESTEE --

1. That of the total number of registered voters (14,833), only four percent (4%) thereof, or 611 voters, had identical thumbprints in CEF-1/VRR (Voters Affidavits) and CEF-2/CVL (Computerized Voters List).

2. That of the total number of registered voters (14,833), forty-six percent (46%) thereof, or 6,892 voters, had thumbprints in CEF-1/VRR which are not identical with their thumbprints in CEF-2/CVL.

3. That of the total number of registered voters (14,833), forty-three percent (43%) thereof, or 6,449 voters, had thumbprints which cannot be analyzed because they were either blurred, smudged, faint, or without sufficient basis for comparison.

4. That of the total number of registered voters (14,833), twenty-two percent (22%) thereof, or 3,224 voters, had thumbprints identical with each other using different names.

Since a revision and recount of the votes cast will unearth nothing except the fraudulent and spurious result of the elections, the COMELEC was justified in ordering a technical examination of the thumbprints of the voters based on the voters affidavits and the Computerized Voters List. The COMELEC was well within its authority to order such approach considering the circumstances obtaining in the election dispute.

Anent the last issue, petitioner claims that the COMELEC effected double deduction in appreciating the results of the technical examination:

"8. The October 27, 1998 resolution of the Second Division which was affirmed by the Comelec En Banc in the latter's resolution of December 8, 1998, shows that it added the `number of voters whose thumbprints in CEF No. 1/VRR are not identical with their thumbprints in CVL (CEF No. 2)' to the `Number of voters in every precinct, divided into groups whose thumbprints in CVL (CEF No. 2) are identical to each other using different names.' (Please refer to Items `B' and `D' of the Report under the heading `Results of Examination'). This is highly erroneous. It only shows that even respondent Comelec was itself confused on how to appreciate the figures reported by its own technical examiners. By adding these two (2) items together, it resulted in DOUBLE DEDUCTIONS because the voters who were divided into groups in every precinct `whose thumbprints are identical to each other using different names' came from the SAME voters whose thumbprints

in CEF 1 are not identical with their thumbprints in CEF 2. Without such DOUBLE DEDUCTIONS which was erroneously made by the respondent Comelec, petitioner herein would still emerge victorious by a comfortable margin as he will discuss later in this petition. xxx

xxx xxx xxx

9. Hence, granting arguendo that the results of the aforesaid technical examination were correct, petitioner should not be deducted `4,043' votes appearing in Item `D' of the Report from the protested precincts because the same was already included in Item `B' of the same report. By the erroneous double deductions made by respondent Comelec by adding Items `B' and `D' of the Report on the protested precincts, it resulted to a loss of `4,043' votes for the petitioner in the protested precincts which votes should not have been deducted from the same having been already included in the category of voters whose thumbprints are not identical with their thumbprints in CEF 2. Without the aforesaid `double deductions', from the protested and counter-protested precincts, petitioner would still emerge victorious by a slim margin of '31' votes, thus:

Petitioner

Respondent

Votes credited upon proclamation

31,031

29,941

Less: Not identical prints (Item `B' of Reports)

7,951*

6,892**

NET RESULTS

23,080

23,049

VOTE-LEAD OF PETITIONER

31

votes

*From Report on the protested precincts

**From Report on the counter-protested precincts."

The Court discerns no substantiation of petitioner's claim of double deduction. The inference that the voters in Item D, whose thumbprints are identical to each other, using different names, came from the same set of voters in Item B, whose thumbprints in CEF No. 1/VRR are not identical with their thumbprints in CEF No. 2/CVL, has no rational basis. It should be noted that Item B is a comparison of the thumbprints between CEF No. 1/VRR and CEF No. 2/CVL while Item D involves only an examination of the thumbprints in CEF No. 2/CVL. It is possible that double deduction may occur, but absent any specific showing by petitioner of double deduction, the Court cannot grant the relief prayed for. Findings of fact of the COMELEC supported by substantial evidence shall be

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final and non-reviewable.[11] Factual findings of the COMELEC based on its own assessments and duly supported by evidence, are conclusive upon this Court, more so, in the absence of a substantiated attack on the validity of the same.[12] The COMELEC, as the government agency tasked with the enforcement and administration of election laws, is entitled to the presumption of regularity of official acts with respect to the elections. Having the expertise and skill of enforcing and implementing election laws, the COMELEC could not have erred as to allow double deductions, thereby frustrating the will of the people.

In fine, the Court holds that the COMELEC did not act with grave abuse of discretion in issuing the challenged Resolutions. An election protest with flimsy averments cannot prosper; otherwise, the whole election process will deteriorate into an endless stream of crabs pulling each other, racing to disembark from the water.[13]

WHEREFORE, the petition is DISMISSED, and the Resolutions, dated October 27, 1998 and December 8, 1998, respectively, of the Commission on Elections, UPHELD. No pronouncement as to costs.

SO ORDERED.

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

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[1] Rollo, pp. 45-46.

[2] Ibid., pp. 47-48.

[3] Composed of Commissioners Julio F. Desamito, Japal M. Guiani, and Abdul Gani Marohombsar, Al Hadj.

[4] Rollo, pp. 21-25.

[5] Composed of Commissioners Luzviminda G. Tancangco, Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liacco Flores, Japal M. Guiani, Abdul Gani Marohombsar, Al Hadj.

[6] Rollo, p. 26.

[7] 42 SCRA 436.

[8] 140 SCRA 191.

[9] Pimping v. Comelec, 140 SCRA 192, 220, 222.

[10] De la Merced v. Comelec, 40 Phil. 190.

[11] See Section 5, Rule 64, 1997 Rules of Civil Procedure.

[12] Malonzo v. Commission on Elections, 269 SCRA 380; see also Matalam v. Commission on Elections, 271 SCRA 733.

[13] Pena v. House of Representatives Electoral Tribunal, 270 SCRA 340.

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