

ABDULAKARIM D. UTTO, PETITIONER, VS. COMMISSION ON ELECTIONS, DATU ALMANSA B. ANGAS AND THE NEW MUNICIPAL BOARD OF CANVASSERS OF SULTAN SA BARONGIS, RESPONDENTS.

G.R. No. 150111. January 31, 2002

Ponente: PARDO, J.

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PARDO, J.:

In this petition for certiorari and prohibition, petitioner seeks to annul the resolutions[1] of the Commission on Elections (Comelec) en banc, affirming in toto the resolution of the Comelec (First Division)[2] directing the inclusion of five (5) election returns excluded by the municipal board of canvassers during the canvass of votes for the May 14, 2001 election in the municipality of Sultan sa Barongis, Maguindanao and finding petitioner's proclamation to be illegal and void ab initio.

Petitioner Abdulkarim D. Utto and respondent Datu Almanza B. Angas were candidates for the position of the mayor of the municipality of Sultan sa Barongis, Maguindanao in the May 14, 2001 election.

For the canvassing of votes of the May 14, 2001 election returns, the original municipal board of canvassers was composed of Nena Alid as chairman, and Maceda Lidasan Abo and Noron Gonina, as members. During the canvassing on May 16, 2001, election returns in Precinct Nos. 15A, 25A/26A, 66A, and 68A/69A were presented.

On May 18, 2001, respondent filed a petition to inhibit Alid and Abo, which resulted in the suspension of the canvassing. Alid and Abo inhibited themselves from the proceedings.

On May 24, 2001, Bai Haidy D. Mamalinta took over as chairperson, with Roihaida Khalid and Noron Gonina, as members of the municipal board of canvassers. The canvassing was again suspended when both Khalid and Gonina also inhibited themselves from participating in the proceedings.

On May 27, 2001, the provincial election supervisor designated Rufden Mangelen and Tamano Diolanen as members of the municipal board of canvassers. In an affidavit executed on May 31, 2001, Tamano Diolanen stated that at around 6:00 in the morning of that day, chairperson Mamalinta called him up and informed him that she would convene the board of canvassers, with instruction for him not to attend because he was already replaced. He further stated that on May 28, 2001, Rufden Mangelen called him up to tell him of his (Mangelen) decision to inhibit himself as member of the board of canvassers due to pressure exerted by chairperson Mamalinta.[3]

In the morning of May 31, 2001, the municipal board of canvassers convened with chairperson Mamalinta and member Asuncion Corazon Reneido present.[4] The other member, Mowakiram Samuang was absent.[5] Before the start of the canvass, chairperson Mamalinta distributed to the parties present a report on the status of canvassing. Out of the 98 precincts, the municipal board of canvassers issued four (4) separate rulings excluding the above-cited five (5) election returns. Particularly, the municipal board of canvassers ruled that:

“With respect to 67A, the copy of the ER for local position is not original. At the instance of the interested

parties, the same was excluded from the canvass.

“With respect to 15A, the ER is not the Board copy and the data on the votes of the candidates are manifestly tampered by touch and go and not initialed by the BEI. The votes in taras, words and figures are different.

“With respect to 25A and 26A, the ER is Ballot Box copy and from the testimony of the BEI, it could not be determined as to where are the Board copies. The Ballot Box copy is originally signed by the BEI and the watchers instead of reflected in carbon copy.

“With respect to 66A, the envelope has no outer seal. The Election Officer admitted that when the envelope was received by him, it was already opened. The ER contained in the envelope has no inner seal. The ER is two times exposed to substitution or switching.

“With respect to 68A and 69A, the outer seal appeared to be deliberately cut. The Election Officer confirmed that the outer seal was deliberately cut. There is no inner seal, exposing two times the ER.

“With respect to 126A and 127A, the Board copy is only for the Party List, none for other returns. The BEI could not determine where are the other copies.”[6]

At this point, respondent orally manifested his intention to appeal the ruling,[7] and simultaneously filed a verified notice of appeal, which Bai Haidy D. Mamalinta (chairperson of the municipal board of canvassers) refused to accept.[8]

Meanwhile, despite respondent’s manifestation, the municipal board of canvassers proceeded with the proclamation of the candidates for municipal offices. The board proclaimed petitioner as the duly elected mayor of the municipality.[9]

On June 1, 2001, Corazon Reniedo sent a letter to Atty. Wynne Asdala, acting provincial election supervisor of Maguindanao irrevocably resigning as member of the municipal board of canvassers of Sultan sa Barongis, Maguindanao in connection with the canvass of the election returns because she was being pressured to proclaim mayoralty candidate Abdulkarim Utto in gross violation of Section 20, Republic Act No. 7166 and Section 38 (9), Comelec Resolution No. 3848.[10] Based on the canvass of 93 election returns, petitioner obtained a margin of 149 votes over respondent. The total number of registered voters from the five excluded election returns is 944. Clearly, the results of the municipal election would be adversely affected by the uncanvassed returns.[11]

On June 4, 2001, respondent filed a verified appeal[12] with Comelec raising the issue of (1) whether the exclusion of four (4) returns in Precinct Nos. 15A, 25A/26A, 66A and 68A/69A was justified or not; and (2) whether the returns of Precinct No. 126A/127A would be included in the canvass since there was a ruling directing its exclusion from the canvass.[13]

On June 7, 2001, respondent filed with Comelec a motion to annul pendente lite petitioner’s proclamation,[14] contending that such proclamation violated Section 20 (i), Republic Act No. 7166.[15] In spite of the law’s mandate to suspend the canvassing and await the decision of the Comelec on the appeal, the municipal board of canvassers proceeded with the proclamation. The questioned election returns rejected by the municipal board of canvassers would materially affect the results of the municipal election. The number of registered voters by precinct is:

“Precinct No. No. of Voters

15A 142

25A/26A 233

66A 120

68A/69A 206

126A/127A 243

TOTAL 944”[16]

On June 14, 2001, vice-mayorality candidate Roger L. Mamalo and Sangguniang Bayan candidates Ayongan Kaidum M. Sali, Frias S. Mamalo, and Khasmer S. Balutinik, who, together with petitioner, were proclaimed by the municipal board of canvassers on May 31, 2001 filed with Comelec motions for intervention[17] contending that their proclamation would not be affected by the five (5) election returns. Hence, it should be upheld.[18]

On June 23, 2001, Comelec sent petitioner via telegram summons with notice of hearing attaching thereto a copy of respondent’s verified appeal.[19] Comelec gave petitioner three (3) non-extendible days from receipt to file a verified answer. The case was set for hearing on June 29, 2001, at 9:00 in the morning at the session hall of Comelec, Intramuros, Manila.

When the case was called for hearing on June 29, 2001, before the Comelec, First Division, only counsel for respondent and intervenor vice-mayor appeared.[20] Considering that petitioner had not filed an answer, Comelec (First Division) issued an order[21] re-setting the hearing to July 6, 2001, at 10:00 in the morning. In the same order, the Comelec declared the motion to annul proclamation submitted for resolution.[22] Petitioner was notified via telegram of the re-setting of the hearing.[23]

On June 30, 2001, Comelec (First Division) promulgated a resolution ordering the inclusion of the uncanvassed election returns, and setting aside petitioner’s proclamation.[24] The Comelec (First Division) found petitioner’s proclamation to be illegal. Upon the filing of the verified notice of appeal, the board of canvassers must submit the appropriate report to the Comelec en banc elevating therewith the complete records and evidence submitted during the canvassing and suspend the proclamation. Any proclamation made is void ab initio. The dispositive portion of the resolution reads:

“In view of the foregoing, the Commission First Division resolves as follows:

- the rulings of the MBC directing the exclusion of the four (4) returns of Precinct Nos. 15A, 15A/26A, 66A, 68A/69A are hereby reversed and the same are hereby ordered included in the canvass. The proclamation of the respondent Abdulkarim D. Utto as alleged elected mayor of Sultan sa Barongis made on 31 May 2001 is hereby annulled and set aside;
- the returns of Precinct No. 126A/127A is hereby included in the canvass. The Board of Canvassers shall use the copies of the Provincial Board of Canvassers, the COMELEC copy, or the ballot box copy whichever of the returns is available;
- a new Municipal Board of Canvassers for Sultan sa Barongis is hereby created composed of lawyers from the main office in COMELEC, Manila and are hereby ordered to reconvene in the city of Manila to re-canvass the five (5) election returns ordered included in accordance with this decision and thereafter proclaim the winning candidate for Mayor; and
- the new Municipal Board of Canvassers shall also re-canvass the results of the election for the position of Members of the Sangguniang Bayan in accordance with this decision.

SO ORDERED.”[25]

Meanwhile, petitioner took his oath at noon of the same day and immediately assumed office as mayor of the municipality of Sultan sa Barongis, Maguindanao.[26]

On July 5, 2001, petitioner filed with Comelec, First Division, a motion to reconsider the resolution of June 30, 2001, assailing it as contrary to law and the evidence and issued without affording him notice and opportunity to be heard as he was not impleaded as a party to the petition.[27] In support thereof, petitioner cited *Sandoval v. Comelec*,[28] reiterating the ruling that Comelec shall comply with the twin requirement of prior notice and hearing in the annulment of the proclamation. Petitioner prayed that the inclusion of the uncanvassed return be set aside and the case remanded to the Comelec (First Division) for the amendment of the petition to include all indispensable parties.[29]

On October 5, 2001, the COMELEC en banc promulgated a resolution, the dispositive portion of which reads:

“IN VIEW OF ALL THE FOREGOING, the Motion for Reconsideration is hereby DENIED for lack of merit and the Resolution of June 30, 2001 of the First Division is hereby AFFIRMED. Accordingly, a new Board of Canvassers is hereby created composed of Atty. Jubail Surmeida as Chairman and Atty. Nelia Aureus and Abner Cabisuelas as members. This new Board is ordered to immediately convene at the Session Hall, Comelec, Manila to canvass and proclaim the winning candidates in Sultan sa Barongis, Maguindanao.

SO ORDERED.”[30]

In its ruling, the COMELEC en banc adopted the findings of the First Division, thus:

“1. The election returns of Precinct No. 25A/26A was excluded simply because what was retrieved from the envelope containing the election returns and submitted to the MBC was the ballot box copy of the returns. The Board clearly erred. The ballot box copy is an authentic copy of the election returns and could be used as basis for the canvass. Likewise, it appears that no oral or written objection was presented for its exclusion. There being no objection, it should have been canvassed outright. The BEI Chairman appeared before the Board of Canvassers and explained why they signed anew the ballot box copy. The Chairman testified that the signatures of the BEI were not clearly visible and so the BEI members signed anew over and above their carbonized signatures.

“2. The election returns of Precinct No. 68A/69A and precinct No. 66A--- The returns of Precinct No. 68A/69A was excluded because the envelope containing the returns did not have a paper seal. That of Precinct No. 66A was rejected because the paper seal attached to the envelope containing the returns was broken. The grounds relied upon by the MBC are formal defects that do not affect the genuineness of the election returns. [*Ocampo vs. Comelec*, G. R. No. 136282 & 137470, February 15, 2000 citing *Baterina vs. Comelec*, 205 SCRA 1]

“3. The election returns of Precinct No. 15A-- This particular election return was excluded by the Board on the ground that what was submitted to the Board was not the copy of the MBC and that the data on the votes of the candidates are manifestly tampered with touch and go and not initialed by the BEI. The MBC also ruled that the votes in taras, words and figures are different. But there is no showing that the alleged tampered votes are those for the position for Mayors. In his appeal, appellant says that what was submitted to the Board is the copy for the Municipal Board of Canvassers. He also submitted the copy of the returns for the dominant majority party. An examination of the same showed that there was no tampering with or alterations in the votes of the mayoralty candidates. The alterations appear to be in the position for Councilors particularly for the candidates Sayana Mamalo and Frias Mamalo.

“4. The election returns of Precinct No. 126A/127A-- There is no ruling either by the original Board or the Board headed by Mamalinta directing the exclusion of the returns of Precinct No. 126A/127A. This returns had to be included in the canvass otherwise the canvass would be incomplete. When the envelope containing the returns was opened, only the returns for the party-list was found. The returns for the national, provincial, and local officials were not found inside the envelope. The situation is covered by the provision of Sec. 233 of the Omnibus Election Code. The Board was under obligation to summon the BEI and if the election returns have

been lost or destroyed, the authority of the Commission must be obtained to use in the canvass the other authentic copies of the election returns. Here, the MBC ignored the provisions of Sec. 233 of the Omnibus Election Code providing that:

‘Sec 233. When election returns are delayed, lost or destroyed.-- In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.’ (Omnibus Election Code)

“The MBC is ordered to use the COMELEC copy, the PBC copy, or the ballot box copy for the purpose of determining the results of Precinct No. 126A/127.”[31]

On October 16, 2001, petitioner filed with the Supreme Court the instant petition for certiorari and prohibition with prayer for temporary restraining order.[32]

On October 23, 2001, the Court issued a temporary restraining order, effective immediately, and ordering Comelec to cease and desist from implementing the resolutions of June 30, 2001 and October 5, 2001 in SPC No. 01-253.[33]

We deny the petition.

Petitioner claims that respondent by “skillful strategy” made it appear that he (petitioner) was a party in the appeal proceedings by filing a motion to annul proclamation in the same proceedings and naming him party respondent without obtaining prior leave of the Comelec.

Citing *Velayo v. Comelec*,[34] petitioner averred that his right to due process was violated due to his “non-inclusion as respondent and lack of notice of the proceedings in the Comelec which resulted in the cancellation of his proclamation”.[35] Without the required notice and hearing, petitioner contended that his proclamation cannot be annulled.

In reviewing administrative decisions, the Supreme Court generally respected the findings of fact of administrative agencies as long as they are supported by substantial evidence.[36] Such findings of fact of administrative agencies, being considered experts in their field are binding on the Supreme Court.[37]

There was substantial evidence that petitioner was duly notified of the appeal and annulment proceedings. On June 23, 2001, the clerk of the Comelec sent petitioner via telegram, summons with notice of hearing attaching thereto a copy of respondent’s verified appeal.[38] Respondent furnished him, by registered mail, a copy of the appeal[39] and position paper in support of the appeal and motion to annul the proclamation,[40] received by petitioner’s daughter on June 20, 2001 as certified by Saabudin P. Daud, acting postmaster of Sultan sa Barongis, Maguindanao.[41] Likewise, on the same date petitioner received copy of the motion to annul proclamation sent through registered mail.[42]

The factual circumstances in the instant petition are far different from that obtaining in *Velayo*. [43] Hence, the ruling enunciated therein is not applicable to petitioner’s situation.

In administrative proceedings, the essence of due process is simply an opportunity to be heard, or an opportunity to explain one’s side or opportunity to seek a reconsideration of the action or ruling complained of.[44] At the hearing before the Comelec en banc of petitioner’s motion for reconsideration, petitioner was given full opportunity to present his case. He did not present controverting evidence to justify the exclusion of the five (5)

election returns.

Considering that at the time respondent filed the motion to annul proclamation no responsive pleading had been served, amendment of the appeal was still a matter of right. Rule 9, Section 1, 1993 Comelec Rules of Procedure explicitly provides:

“Section 1. When Amendments Allowed as a Matter of Right.- A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within five days after it is served.”

Hence, petitioner’s contention that the amendment was illegal in the absence of prior leave of court is erroneous.

Assuming arguendo that petitioner was not given notice or an opportunity to be heard, the petition would still be denied. The twin-requirement of notice and hearing in annulment of proclamation is not applicable because of the illegality of petitioner’s proclamation.

Section 38 (9), Comelec Resolution No. 3848[45] provided the procedure in the disposition of contested election returns and certificate of canvass. The Comelec precludes the board of canvassers from proclaiming any candidate as winner, except upon its authorization after it has ruled on the appeal of the losing party. Any proclamation made in violation thereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election. This provision is mandatory and requires strict observance.

Section 20 (i), Republic Act No. 7166 where Comelec Resolution No.3848 finds basis further states:

“SEC. 20. Procedure in Disposition of Contested Election Returns.--(a) x x x

(i) 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. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.”

Consequently, petitioner’s proclamation was null and void. It was made on May 31, 2001 after respondent manifested his intention to appeal the ruling of the board of canvassers. On the day of the proclamation, respondent attempted to file a verified notice of appeal, but the chairperson of the municipal board of canvassers refused to accept the appeal. Within the reglementary period for filing an appeal, respondent went to the Comelec. Pursuant to Section 20 (i), Republic Act No. 7166, the municipal board of canvassers may not proclaim any candidate without waiting for the authorization of the Comelec. Considering that petitioner had a very small margin of 149 votes over respondent, and there were 944 registered voters from the five excluded election returns, the results of the municipal election would be undoubtedly adversely affected by the contested returns. The proclamation thus made is void ab initio.[46]

It is now settled that an incomplete canvass of votes is illegal and cannot be the basis of a proclamation.[47] A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted.[48] When the municipal board of canvassers disregarded the five (5) election returns, it in effect disenfranchised the voters of the excluded precincts.[49]

Thus, the Comelec did not abuse its discretion for convening a new board of canvassers and directing the inclusion of the uncanvassed election returns and, thereafter proclaiming the winning candidate for mayor and other municipal officials.

Time and again, the Court has given its imprimatur on the principle that Comelec is with authority to annul any

canvass and proclamation illegally made.[50] The fact that a candidate illegally proclaimed has assumed office is not a bar to the exercise of such power. It is also true that after proclamation, the remedy of a party aggrieved in an election is an election protest.[51] This is on the assumption, however, that there has been a valid proclamation. Where a proclamation is null and void, the proclaimed candidate's assumption of office cannot deprive Comelec of the power to declare such proclamation a nullity.[52]

The reason behind the view herein expressed is as aptly elucidated in Aguam, to wit:

“We draw from past experience. A pattern of conduct observed in past elections has been the ‘pernicious grab-the-proclamation-prolong-the-protest-slogan’ of some candidates or parties.’ Really, were a victim of a proclamation to be precluded from challenging the validity thereof after that proclamation and the assumption of office thereunder, baneful effects may easily supervene. It may not be out of place to state that in the long history of election contests in this country, as observed in *Lagumbay vs. Climaco*,[53] a successful contestant in an election protest often wins but ‘a mere pyrrhic victory, i. e., a vindication when the term of office is about to expire or has expired.’ Protests, counter-protests, revisions of ballots, appeals, dilatory tactics, may well frustrate the will of the electorate. And what if the protestant may not have the resources and an unwavering determination with which to sustain a long drawn-out election contest? In this context therefore all efforts should be strained—as far as is humanly possible—to take election returns out of the reach of the unscrupulous; and to prevent illegal or fraudulent proclamation from ripening into illegal assumption of office.”[54]

WHEREFORE, the Court hereby DENIES the petition for certiorari and AFFIRMS in toto the October 5, 2001 Comelec en banc resolution in SPC No. 01-253. The temporary restraining order issued on October 23, 2001 is hereby set aside.

This decision is immediately executory.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] In SPC. No. 01-253, dated June 30, 2001 and October 5, 2001.

[2] Promulgated on June 30, 2001, Commissioner Tancangco, ponente and Commissioner Javier, concurring. Commissioner Borra, no part.

[3] Annex “F”, Comelec Records, pp. 27-28.

[4] Comelec (First Division) Resolution, Rollo, pp. 22-27, at p. 23.

[5] But Mowakiram Samuang's signature appeared on the certificate of canvass of votes and proclamation of the winning candidates for municipal officers., Annex “C”, Rollo, p. 35.

[6] Annex “G”, Comelec Records, pp. 29-34, at pp. 32-33.

[7] Annex “A”, Comelec Records, p. 19.

[8] Comelec Records, p. 53.

[9] Annex “C”, Rollo, p. 35.

[10] Sec. 38. Procedure in the disposition of contested Election Returns and Certificate of Canvass- The following procedure is mandatory and shall be strictly observed by the Boards: x x x

- The Board shall not proclaim any candidate as winner unless authorized by the Comelec after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns/certificate will not adversely affect the results of the election.

x x x.

[11] Annex "B", Comelec Records, p. 94.

[12] Docketed as SPC. No. 01-253, and raffled off to the First Division of the COMELEC.

[13] Annex "A", Rollo, pp. 22-27, at p. 23.

[14] Annex "F", Rollo, pp. 55-60.

[15] Section 20. Procedure in disposition of Contested Election Returns.-

x x x

(i) 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. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.

[16] Comelec Records, pp. 110-112.

[17] Comelec Records, pp. 103-109.

[18] Comelec Resolution promulgated on June 30, 2001, Rollo, pp. 22-23.

[19] Comelec Records, p. 148.

[20] Minutes of the Session of June 29, 2001, Records, pp. 163-164.

[21] Issued in behalf of the Division by Presiding Commissioner Resurreccion Z. Borra.

[22] Order, Comelec Records, pp. 174-175.

[23] Telegram Transmission, Comelec Records, p. 169.

[24] Promulgated on June 30, 2001 by the COMELEC (First Division) composed of Commissioner Tancangco, ponente, and Commissioner Javier, member. Commissioner Borra had no part. Resolution, Records, pp. 178-182.

[25] Comelec (First Division) Resolution, Rollo, pp. 22-26, at p. 26.

[26] Annex "C", Petition, Rollo, pp. 35.

[27] Motion for Reconsideration, Records, pp. 184-189, at p. 184.

[28] 323 SCRA 403 [2000].

[29] Motion for Reconsideration, Records, at p. 188.

[30] Rollo, p. 32.

[31] Rollo, pp. 361-363.

[32] Under Rule 64, in relation to Rule 65, Revised Rules of Court, Petition, Rollo, pp. 3-21.

[33] Rollo, p. 73.

[34] 327 SCRA 713 [2000].

[35] Petition, Rollo, p. 16.

[36] Lo v. Court of Appeals, 321 SCRA 190 [1999].

[37] Golden Thread Knitting Industries, Inc. v. National Labor Relations Commission, 364 Phil. 215, 222 [1999].

[38] Comelec Records, p. 148.

[39] Registry Return Card No. 78117.

[40] Registry Receipt No. 1203

[41] Comelec Records, p. 216.

[42] Registry Receipt No. 1201

[43] Supra, Note 34.

[44] Audion Electric Co., Inc. v. National Labor Relations Commission, 308 SCRA 340 [1999].

[45] Which took effect on April 8, 2001.

[46] Duremdes v. Comelec, 178 SCRA 746, 758 [1989].

[47] Mutuc v. Comelec, 130 Phil. 663, 669 [1968].

[48] Duremdes v. Comelec, supra, Note 46, citing Sinsuat v. Pendatun, 144 Phil. 729 [1970].

[49] Mutuc v. Comelec, supra, Note 47, at p. 670.

[50] Aguam v. Comelec, 132 Phil. 353, 357 [1968].

[51] Torres v. Comelec, 337 Phil. 270, 275 [1997].

[52] Duremdes v. Comelec, supra, Note 46, at p. 757.

[53] 122 Phil. 1274 [1966].

[54] Supra, Note 50, at pp. 357-358.

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