

**DIMALUB P. NAMIL, ABDULNASSER TIMAN, TERESITA G. AKOB,
MALIGA AMILUDIN AND EPAS GUIAMEL, PETITIONERS, VS.
COMMISSION ON ELECTIONS, PUBLIC RESPONDENT.**

G.R. No. 150540. October 28, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, to set aside the November 6, 2001 Resolution No. 4615,[1] promulgated by the Commission on Elections (COMELEC) en banc[2] installing the private respondents as members of the Sangguniang Bayan of Palimbang, Sultan Kudarat, although the petitioners had already taken their respective oaths and assumed offices in the same elective positions.

The antecedents are as follows:

On May 14, 2001, the election for the members of the Sangguniang Bayan was held in Palimbang, Sultan Kudarat.

On May 20, 2001, the Municipal Board of Canvassers of Palimbang issued Certificate of Canvass of Votes and Proclamation (COCVP) No. 8031108[3] which contained, inter alia, the petitioners and the Sangguniang Bayan winning candidates:

- NOREN B. APIL
- MALOD B. MOSADI
- DIMALUB P. NAMIL
- ABDULNASSER A. TIMAN
- TERESITA G. AKOB
- MABANING P. SAMAMA
- EPAS T. GUIAMEL
- MALIGA M. AMILUDIN

The above-named candidates took their oath, and assumed their offices on June 30, 2001[4] as members of the Sangguniang Bayan of Palimbang.

The next day, May 21, 2001, the Municipal Board of Canvassers of Palimbang issued COCVP No. 8031109 which listed the private respondents as winners, namely:

- JOENIME B. KAPINA

- MONIB B. WALINGWALING
- MAULANA G. KARNAIN
- ABDULGAPHAR M. MUSATAPHA
- MALOD B. MOSADI
- ABDULRAKMAN A. TALIKOP
- WILSON K. SABIWANG
- MABANING P. SAMAMA

Thereafter, private respondent Joenime B. Kapina wrote the COMELEC requesting that she and the others who were proclaimed as winners on May 21, 2001 be recognized as the winning candidates and the new members of the Sangguniang Bayan of Palimbang, Sultan Kudarat. Appended to said letter was a certification issued by Regional Election Director Clarita N. Callar, Region XII, Cotabato City, that the private respondents named in the COCVP No. 8031109, issued on May 21, 2001, were duly proclaimed as the winning candidates for the said municipality. When apprised of the said letter, the Commissioner-in-Charge for Region XII, Mehol K. Sadain, conducted an investigation on the matter of having two (2) sets of winning candidates as members of the Sangguniang Bayan for Palimbang. He issued Memorandum No. 2001-09-005 requiring the Law Department, the Regional Election Registrar and the Provincial Election Supervisor to submit their respective reports/comments on the letter. The said officers submitted their respective memorandum, thus:

- Memo dated September 11, 2001 of Atty. Jose Balbuena, Director Law Department, to the effect that, "our Comelec field officials in Region XII who directly participated in the canvassing who were named in (Memo No. 2001-09-001) could best provide the needed explanation and information" on the double proclamation of Sangguniang Bayan winners in Palimbang, Sultan Kudarat.
- Memo dated September 6, 2001 of Atty. Clarita Callar, Regional Election Director, Region XII, to the effect that the Election Assistant Amy Laguda who issued the certification on the proclamation based on Certificate No. 8031109 dated May 21, 2001 verified the genuineness of her signature on the said certification, and further said that at the time she issued the certification the PES had not yet received a copy of Certificate No. 8031108 dated May 20, 2001. Further, Atty. Callar referred to the verification of Ms. Celia Romero that per records of the RSD, "the names appearing as elected members of the Sangguniang Bayan for the Municipality of Sultan Kudarat ... are those proclaimed in Certificate of Canvass of Votes & Proclamation No. 8031109." Incidentally, Ms. Romero also issued a certification that the serial numbers of the Certificates of Canvass of Votes and Proclamation were 8031108 for Lambayong, SK and 8031109 for Palimbang, SK.
- Memo filed on September 6, 2001 by Atty. Lintang H. Bedol, PES, Sultan Kudarat, recommending that the parties should file the appropriate case/s before the Commission, instead of coursing their redress through the PES of Sultan Kudarat or the RED of Region XII.
- A confidential certification of EO Malic Sansarona dated September 12, 2001 to the effect that "the Certificate of Canvass of Votes and Proclamation ... No. 8031109 dated June 21, 2001 is [the] genuine and valid proclamation of elected Municipal Officials of the Municipality of Palimbang, Sultan Kudarat," and that the other proclamation [No. 8031108] "is fictitious and falsified.

Acting on the said Memoranda, Commissioner Sadain submitted his Recommendation[5] to the COMELEC, thus:

- Finds that there was a VALID PROCLAMATION of the winning candidates for positions of Members of the Sangguniang Bayan of Palimbang, Sultan Kudarat as contained in Certificate of Canvass of Votes and Proclamation No. 8031109;

- That there being a VALID PROCLAMATION, there is NO NEED for adjudication on this matter; and therefore

- Respectfully RECOMMENDS to the Commission En Banc, the adoption of the following recommendation [Annex "D"] of Atty. Jose P. Balbuena, Dir., Law Department and Atty. Gregorio T. Saraos, Attorney II, IPD, Law Department.

PREMISES CONSIDERED, the Law Department RECOMMENDS to issue an Order for the immediate installation of the winning members of the Sangguniang Bayan [of Palimbang, Sultan Kudarat], namely: JOENIME B. KAPINA, MONIB B. WALINGWALING, MAULANA G. KARNAIN, ABDULGAPHAR M. MUSTAPHA, MALOD B. MOSADI, ABDULRAKMAN A. TALIKOP, WILSON K. SABIWANG, AND MABANING P. SAMAMA... and for said purpose, to direct the Brigade Commander, 60 1st Brigade Pulutana of General Santos City, Sarangani Province, to effect and enforce the said Order and to submit his compliance within five (5) days from notice hereof.

Acting on the recommendation of Commissioner Sadain, the public respondent issued on November 6, 2001 the assailed Resolution No. 4615. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the Commission RESOLVED, as it hereby RESOLVES, (1) that the proclamation of the winning candidates contained in Certificate of Canvass of Votes and Proclamation No. 8031109 is a valid proclamation; (2) to adopt the recommendation of the Law Department which is in accordance with the result of the investigation conducted by the Commissioner-in-Charge; and herein orders the immediate installation of JOENIME B. KAPINA, MONIB B. WALINGWALING, MAULANA G. KARNAIN, ABDULGAPHAR M. MUSTAPHA, MALOD B. MOSADI, ABDULRAKMAN A. TALIKOP, WILSON K. SABIWANG, AND MABANING P. SAMAMA as the duly elected members of the Sangguniang Bayan of Palimbang, Sultan Kudarat.[6]

The petitioners contend that the public respondent's Resolution No. 4615 is null and void since it was issued without according them due notice and hearing, contrary to the enshrined principle of due process. The public respondent thus committed a grave abuse of discretion amounting to lack or excess of jurisdiction.

The petitioners allege that they were never accorded the chance to present their side in connection with the investigation that was purportedly conducted by Commissioner Sadain and on the memoranda/report of the public respondent's officers. The public respondent simply approved the recommendation of Commissioner Sadain. The petitioners were kept in the dark, learned about the controversy only when they were notified of the assailed resolution of the public respondent.

The public respondent, through the Office of the Solicitor General, as well as the private respondents, asserts that the petitioners failed to file a motion for reconsideration of the assailed decision before instituting this action with this Court; hence, the petition is premature. It is pointed out that the public respondent has broad powers to enforce all election laws, it has the power to control and supervise the proceedings of the board of canvassers, and the power to suspend or annul proclamation. When it learned about the two (2) sets of winning candidates as members of Sangguniang Bayan of Palimbang, Sultan Kudarat, the public respondent required an investigation to be conducted by one of the commissioners, who required the election officers in the place concerned to submit their reports on the matter. After a study of the various reports, it was ascertained that COCVP (C.E Form No. 25) No. 8031108 was null and void, fictitious and falsified. The public respondent made a finding that the genuine COCVP was that one bearing Serial No. 8031109, intended for the Municipality of Palimbang, Sultan Kudarat. It was thus incumbent upon the public respondent to order the immediate installation of the winning candidates on the basis of the genuine COCVP to give effect to the will of the electorate, conformably to its mandate under Section 242 of the Omnibus Election Code and the ruling of this Court in *Aguam vs. Commission on Elections*. [7]

The public respondent further asserts that the twin requirement of notice and hearing in annulment of proclamation is not applicable when the proclamation is null and void, citing *Utto vs. Commission on Elections*.^[8]

The petition is meritorious.

While it is true that the COMELEC is vested with a broad power to enforce all election laws, the same is subject to the right of the parties to due process. In this case, the petitioners had been proclaimed as the winning candidates and had assumed their office. Since then, they had been exercising their rights and performing their duties as members of the Sangguniang Bayan of Palimbang, Sultan Kudarat. Their proclamation on May 20, 2001 enjoys the presumption of regularity and validity since no contest or protest was even filed assailing the same. The petitioners cannot be removed from office without due process of law. Due process in the proceedings before the public respondent exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, we also ruled in *Fariñas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing.^[9]

In this case, the public respondent nullified the proclamation of the petitioners and ousted them from their office as members of the Sangguniang Bayan of Palimbang, based solely on the recommendations of its law department and of Commissioner Sadain, and on the memoranda of its officers. The petitioners were not accorded a chance to be heard on the said recommendations and the memorandum of Regional Election Director Clarita Callar, certification of Celia Romero, and certification of Election Officer Malic Sansarona dated September 12, 2001 before it issued the assailed resolution.

The conclusion of the public respondent that the basis of the petitioners' proclamation was a fictitious and falsified document was grounded, inter alia, on a "confidential certification" of Election Officer Malic Sansarona dated September 12, 2001.^[10] However, it appears that a certification^[11] was earlier issued by the same election officer on June 25, 2001, stating that the petitioners whose names were listed as winning candidates as Sangguniang Bayan members in the COCVP (C.E. Form No. 25) No. 8031108, the very certificate declared by the public respondent in its Resolution No. 4615 as fictitious and falsified document, won in the elections.

In the case of *Caruncho III vs. Commission on Elections*,^[12] this Court has held that due process in quasi-judicial proceedings before the COMELEC requires due notice and hearing. The proclamation of a winning candidate cannot be annulled if he has not been notified of any motion to set aside his proclamation. This Court also ruled in *Sandoval vs. Commission on Elections*^[13] that:

... Although the COMELEC is clothed with jurisdiction over the subject matter and issue of SPC No. 98-143 and SPC No. 98-206, we find the exercise of its jurisdiction tainted with illegality. We hold that its order to set aside the proclamation of petitioner is invalid for having been rendered without due process of law. Procedural due process demands prior notice and hearing. Then after the hearing, it is also necessary that the tribunal show substantial evidence to support its ruling. In other words, due process requires that a party be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the case. The facts show that COMELEC set aside the proclamation of petitioner without the benefit of prior notice and hearing and it rendered the questioned order based solely on private respondent's allegations. We held in *Bince, Jr. vs. COMELEC*:

Petitioner cannot be deprived of his office without due process of law. Although public office is not property under Section 1 of the Bill of Rights of the Constitution, and one cannot acquire a vested right to public office, it is, nevertheless, a protected right. Due process in proceedings before the COMELEC, exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC

possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, We had ruled in *Farinas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing.

The public respondent's reliance on the ruling of this Court in *Utto vs. Commission on Elections*[14] is misplaced. The Court, in that case, held that the twin-requirement of notice and hearing in an annulment of proclamation is not applicable because of the illegality of petitioner's proclamation.[15] The factual circumstances in the instant petition are far different from those obtaining in *Utto*. In the *Utto* case, a notice of appeal was filed questioning the ruling of the board of canvassers but, the latter proceeded in proclaiming *Utto* as the winning candidate. This made the proclamation illegal. In the present case, nobody questioned the petitioners' proclamation.

We rule that the petition in this case was not prematurely filed. Generally, a motion for reconsideration is a pre-requisite to the viability of a special civil action for certiorari. However, there are exceptions to the rule. The aggrieved party is not obliged to first file a motion for reconsideration of the assailed resolution before filing a petition under Rule 65 of the Rules of Court, as amended where, as in this case, (1) the question is purely legal, (2) judicial intervention is urgent; (3) its application may cause great and irreparable damage; and (4) the controverted acts violate due process.[16]

The private respondents cannot invoke Section 242 of the Omnibus Election Code to fortify their cause, because the said law specifically refers to pre-proclamation controversies, thus:

Sec. 242. Commission's exclusive jurisdiction of all pre-proclamation controversies. - The Commission shall have exclusive jurisdiction of all pre-proclamation controversies. It may *motu proprio* or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding section.[17]

Even the fact that the public respondent initiated the proceedings for the partial or total annulment of an illegal proclamation would not dispense with the requirements of notice and hearing. This was made clear in *Sandoval vs. Commission on Elections*: [18]

Citing Section 242 of the Omnibus Election Code, private respondent argues that the COMELEC is authorized to annul an illegal proclamation even without notice and hearing because the law states that it may *motu proprio* order a partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made. ...

...

The phrase "*motu proprio*" does not refer to the annulment of proclamation but to the manner of initiating the proceedings to annul a proclamation made by the board of canvassers. The law provides two ways by which annulment proceedings may be initiated. It may be at the own initiative of the COMELEC (*motu proprio*) or by written petition. In either case, notice and hearing is required. This is clear from the language of the law.[19]

IN THE LIGHT OF THE FOREGOING, the petition is GRANTED. The assailed Resolution No. 4615 of the public respondent COMELEC en banc dated November 6, 2001, is hereby REVERSED and SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

Vitug, J., in the result.

Ynares-Santiago, J. on leave.

[1] Rollo, pp. 18-21.

[2] Commissioner Alfredo L. Benipayo (Chairman), Commissioners Luzviminda G. Tancangco, Rufino S.B. Javier, Ralph C. Lantion, Mehol K. Sadain, Resurreccion Z. Borra, and Florentino A. Tuason, Jr. (members).

[3] Rollo, pp. 24, 25-29.

[4] Id. at 24.

[5] Id. at 20.

[6] Id. at 21.

[7] 132 Phil. 353 (1968).

[8] 375 SCRA 523 (2002).

[9] Bince, Jr. vs. Commission on Elections, 218 SCRA 782 (1993).

[10] Supra.

[11] Rollo, p. 44.

[12] 315 SCRA 693 (1999).

[13] 323 SCRA 403 (2000).

[14] Supra.

[15] Supra,

[16] See Severino S. Tabios, Annotation on Failure to Exhaust Administrative Remedies as a Ground for Motion to Dismiss, 165 SCRA 352 (1988); Jariol vs. Comelec, 270 SCRA 255 (1997).

[17] Underscoring supplied.

[18] Supra.

[19] Supra.

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