

IN THE MATTER OF THE PETITION TO EXCLUDE ELECTION RETURNS CONTAINED IN NINE (9) BALLOT BOXES, ETC.

G.R. No. 150799. February 03, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court which seeks to set aside the Commission on Elections (COMELEC) En Banc Resolution[1] denying petitioner's petition for exclusion of election returns.

The antecedent facts of the case are as follows:

Amelita S. Navarro (petitioner) and Jose C. Miranda (private respondent) were candidates for mayor of Santiago City, Isabela in the May 14, 2001 elections.[2]

On May 15, 2001, the City Board of Canvassers (BOC) convened for the canvassing of the election returns.[3] Upon opening of the envelope containing the first return, counsel for petitioner objected on the ground that the return was not properly sealed in accordance with the Omnibus Election Code.[4] Also alleging that in fact 95% of the returns in the first ballot box was not properly sealed, petitioner objected to the inclusion thereof.[5]

The following day or on May 16, 2001, petitioner filed before the BOC a petition[6] to exclude the election returns contained in 9 ballot boxes on the ground that they were not secured with the required 3 padlocks.[7] On account of the filing of such petition, the BOC suspended the canvassing.[8]

By Decision of May 19, 2001,[9] the BOC denied the petition to exclude the election returns contained in the questioned 9 ballot boxes.

Petitioner appealed[10] to the COMELEC the BOC Resolution denying her petition for exclusion of election returns contained in the contested ballot boxes.

In the meantime, the BOC declared the formal adjournment of the canvassing proceedings. The winning candidates for local positions, however, were not proclaimed in view of the pending appeal of petitioner with the COMELEC.[11]

By Resolution of June 6, 2001,[12] the COMELEC En Banc ordered the BOC to complete the canvassing of election returns and proclaim all winning local candidates in Santiago City before June 30, 2001. Pursuant to said resolution, the BOC proclaimed on July 4, 2001 the winning local candidates of Santiago City including herein respondent Miranda who was proclaimed city mayor.[13]

By Resolution of July 9, 2001,[14] the COMELEC Second Division, finding that "the allegations of the appeal [of petitioner from the BOC Resolution denying the exclusion of the election returns contained in the contested ballot boxes] do . . . not raise a genuine pre-proclamation controversy" as she was questioning "the condition of the ballot boxes", denied petitioner's appeal. Her motion for reconsideration was likewise denied by the COMELEC

En Banc.

Hence, the present petition, petitioner alleging that:

“THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT SECURING THE BALLOT BOXES CONTAINING THE ELECTION RETURNS AND THE ABSENCE OF THE REQUIRED PADLOCKS THEREIN ARE NOT PART OF THE PROCEDURE OF THE CBOC.[15] and

THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PROCLAMATION MAY BE MADE PENDING APPEAL.”[16]

The issues to be resolved are thus as follows:

- Whether the lack of the required number of padlocks on the ballot boxes containing the election returns is a proper issue in a pre-proclamation case; and
- Whether a proclamation may be made pending appeal from the BOC Resolution denying the exclusion of election returns.

Section 243 of the Omnibus Election Code enumerates the issues that may be raised in a pre-proclamation controversy, to wit:

a)

Illegal composition or proceeding of the board of canvassers;

b)

The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code;

c)

The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

d)

When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. (Emphasis supplied).

The enumeration is exclusive.[17]

It is petitioner’s contention that “proceeding” as used in paragraph (a) of the above-cited provision refers to the entirety of the steps that have to be done by the BOC from the time it is created to constitute a Reception and Custody Group up to the time it has completed the canvass and proclaimed a winner.[18] Petitioner thus concludes that the BOC failed to comply with COMELEC En Banc Resolution No. 3848 otherwise known as the “General Instructions for Municipal/ City/ Provincial Board of Canvassers” in connection with the May 14, 2001 national and local elections, the pertinent provisions of which are:

“SEC. 21 Safekeeping of transmitted Election Returns or Certificate of Canvass. – The Board shall place the Election Returns/ Certificate of Canvass in ballot boxes that shall be locked with three padlocks and one serially numbered self-locking metal seal. The members of the Board shall keep a key to the three padlocks.

The serial number of every metal seal used shall be entered in the minutes.

The said ballot boxes shall be kept in a safe and secured room before, during and after the canvass. The room shall be locked with three padlocks with the keys thereof kept by each member of the Board.” (Emphasis in the original).

x x x

“SEC. 25 Canvassing Procedure. – The Board shall comply with the following rules: (Emphasis in the original).

x x x

b) The Reception and Custody Group shall, after recording all the data required under Sec. 23 hereof, place all envelopes containing Election Returns/Certificate of Canvass received by it inside an empty ballot box.

When the ballot box is already full or when there is no more Election Returns/Certificate of Canvass to be received, the Reception and Custody Group shall close the ballot box and lock the same with padlock and metal seal. The Reception and Custody Group shall submit the locked ballot box to the Board, for assignment to the Canvassing Committee, if any, together with the list of precinct numbers or city/municipality of the Election Returns/ Certificate of Canvass contained therein. For this purpose, the Reception and custody Group shall maintain a record of the Election Returns/ Certificate of Canvass submitted to the Board.”

x x x

“SEC. 26 Adjournment/ suspension of canvass. –A. In case of adjournment or suspension of canvass: (Emphasis in the original).

x x x

c) The remaining unopened envelopes and Statement of Votes containing the page partial total shall be placed in the ballot box provided for the purpose for which shall be locked with three padlocks and self-locking metal seals. The members of the Board shall keep the keys to each padlock.

x x x

B. Upon resumption of the canvass:

a)

The secretary of the Board shall verify and enter in the minutes of the three padlocks and the metal seal, as well as its serial number.

x x x”

Continuing, petitioner argues that when the BOC failed to comply with the procedure prescribed by the COMELEC, the proceedings before it became illegal and its illegality was a proper issue in a pre-proclamation controversy.

This Court is not persuaded. Non-compliance by a BOC of the prescribed canvassing procedure is not an “illegal proceeding” under paragraph (a) of Section 243 of the Omnibus Election Code, given the summary nature of a pre-proclamation controversy, consistent with the law’s desire that the canvass and proclamation be delayed as little as possible.[19] A pre-proclamation controversy is limited to an examination of the election returns on their face and the COMELEC as a general rule need not go beyond the face of the returns and investigate the alleged election irregularities.[20]

Petitioner's allegation that the absence of the required number of padlocks puts into question the integrity of the election returns fails, she not having alleged nor proved that the election returns showed on their face tampering or alteration.

The case of *Baterina, et al. v. COMELEC*[21] is, contrary to the contention of petitioner, applicable to the case at bar. In *Baterina*, the therein petitioners contested the legality of the proceedings before the BOC, questioning "the failure to close the entries with the signatures of 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." Held this Court:

"While the aforesaid grounds may, indeed, involve a violation of the rules governing the preparation and delivery of election 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 petitioners are clearly defects in form insufficient to support a conclusion that the election returns were tampered with or spurious." (Underscoring and emphasis supplied).

The ground raised by herein petitioner partakes of the nature of those raised in *Baterina*.

In any event, as correctly observed by the COMELEC, petitioner did not adduce substantial and convincing evidence to support her objection[22] to the inclusion of the contested returns. She merely posited that since the contested ballot boxes did not have the required number of padlocks, the returns were exposed to tampering, substitution, alteration and switching.[23]

As to the contention that the proclamation of private respondent is null and void, it having been made by the BOC during the pendency at the COMELEC Second Division of petitioner's appeal from the BOC's denial of her petition for exclusion of the returns[24] in the questioned ballot boxes, this Court finds no error, let alone grave abuse of discretion on the part of the COMELEC En Banc which ordered the proclamation. Petitioner's argument that this is a violation of Republic Act 7166, specifically Section 20 thereof which reads:

"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 in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election."

is without merit. As correctly ruled by the COMELEC, petitioner's reliance on said Section is misplaced.[25] The Section applies only where the objection deals with a pre-proclamation controversy, not where, as in the present petition, it raises or deals with no such controversy.

WHEREFORE, the petition is DISMISSED for lack of merit.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., and Azcuna, JJ., concur.

[1] Rollo at 107-118.

[2] Id. at 12-14, 107.

[3] Id. at 15.

[4] Rollo at 15.

[5] Ibid.

[6] Id. at 119 –122.

[7] Vide COMELEC Elections Officer Decision of May 19, 2001, Rollo at 123-125, which states that the petition for exclusion of election returns “is anchored on the ground that each one of the said nine (9) ballot boxes containing the ELECTION RETURNS was provided with only ONE (1) padlock”.

[8] Rollo at 16.

[9] Id. at 123-125.

[10] Id. at 126-236, 108.

[11] Id. at 19, 108.

[12] Rollo. at 270-273.

[13] Id. at 111.

[14] Id. at 107-118.

[15] Id. at 40.

[16] Ibid.

[17] Sanchez v. COMELEC, 153 SCRA 67 (1987)

[18] Rollo at 46.

[19] Abella v. Larrazabal, 180 SCRA 509 (1989) citing Alonto v. COMELEC, 22 SCRA 878 (1968).

[20] Sebastian v. COMELEC, 327 SCRA 406 (2000).

[21] 205 SCRA 1 (1992).

[22] Rollo at 113.

[23] Rollo at 131-138.

[24] Id. at 84.

[25] Id. at 116.

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