

RASMIA ROMATO SALIC, PETITIONER, VS. THE COMMISSION ON ELECTIONS, AND DIMNATANG L. PANSAR, RESPONDENTS.

G.R. No. 157007. March 17, 2004

Ponente: TINGA, J.

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TINGA, J.:

In the 2001 local elections in Butig, Lanao del Sur, two Municipal Boards of Canvassers (“MBC”), with varying members participating, proclaimed different sets of municipal candidates as winners. The Commission on Elections nullified the conflicting proclamations of the two boards and ordered the constitution of a new MBC.

The COMELEC action is before this Court through two consolidated petitions. The first petition, docketed as G.R. No. 157007, is a Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[1] filed by Rasmia Romato Salic (“Salic”), a candidate for municipal mayor of Butig. The second petition, docketed as G.R. No. 157019, is likewise a Petition for Certiorari,[2] filed by Pauli Dimnatang Ditual A.B.M. (“Ditual”), a candidate for municipal vice-mayor of the same town. Both petitions seek to set aside the Resolution[3] of the COMELEC Second Division (“Second Division”)[4] dated 5 July 2002, which annulled the proclamations of Salic and Ditual, as well as the Resolution[5] of the COMELEC en banc[6] affirming the Second Division’s Resolution.

The mayorship of Butig was contested by, among others, Salic and private respondent Dimnatang L. Pansar (“Pansar”), while the candidates for vice-mayor included Ditual and private respondent Monabantog Kiram (“Kiram”). Pursuant to COMELEC Resolution No. 4307,[7] the counting and canvassing of votes cast in Butig were, like those in other municipalities of the province, transferred to the Provincial Capitol Complex in Marawi City.

As mandated by law,[8] the canvass of municipal election returns was conducted by the MBC of Butig. However, the proper composition of the board is a matter of controversy. The parties do not contest the designation of Musa Macabayao (“Macabayao”) and Mesug Palawan (“Palawan”) as Chairman and Vice-Chairman of the board, respectively. The dispute refers to who really was the lawful Third Member of the board. The petitioners claim that Catambac Mimbantas (“Mimbantas”) legally served as the Third Member, while private respondents insist that it was Ismael Magarang[9] (“Magarang”) instead.

On 10 June 2001, Salic was proclaimed by the MBC as the duly-elected mayor of Butig, in a Certificate of Canvass and Proclamation (“COC”) signed by Chairman Macabayao and Mimbantas as Third Member. The Macabayao-Mimbantas canvassing board also proclaimed Ditual as vice-mayor, and a set of duly-elected councilors.[10] The COC signed by Macabayao and Mimbantas was submitted to the Election Records and Statistics Division (“ERSD”) of the COMELEC on 13 June 2001 by Macabayao, in his purported capacity as Acting Election Officer of Butig.[11] This COC was based on the returns from only thirty-six (36) out of the forty (40) precincts in Butig. The Macabayao-Mimbantas board, on Salic’s motion, excluded the returns from the other four (4) precincts. The precincts and the grounds for the disallowance of the returns therefrom, according to the

rulings of the Macabayao-Mimbantas MBC, are as follows:

Precinct No. 1A/2A — Election return is false and obviously manufactured, the return being accomplished by a biased Board of Election Inspectors as shown by the evidence and as it appears on said return, whose pages 1 and 2 for Local Positions have the serial number of 68090057, pages 3 and 4 have Serial Number 68090035, and page 5 with Serial Number 68090036.[12]

Precinct No. 7A/8A — Election return is false and obviously manufactured, the return being accomplished by a biased Board of Election Inspectors as shown by the evidence and as it appears on said return, whose page 1 for Local Positions have the serial number of 68090033, pages 2 and 3 have Serial Number 68090036, and page 4 with Serial Number 68090014.[13]

Precinct No. 9A/10A — Election return is false and obviously manufactured, the return being accomplished by a biased Board of Election Inspectors as shown by the evidence and as it appears on said return, whose page 1 for Local Positions have the serial number of 68090026, pages 2 and 3 and 4 have Serial Number 68090032.[14]

Precinct No. 11A/12A — Election return is false, and “obviously manufactured return being accomplished by a biased Board of Election Inspectors on the basis of ballots which are not legible being all soaked in and marred by ink, and as show (sic) also by the evidence on records and as it appears on the said returns.”[15]

According to Pansar, however, the Macabayao-Mimbantas board acted without authority. He claims that at the start of the municipal canvass on 7 June 2001, all three - Macabayao, Palawan and Magarang — sat and performed their duties as members of the board .[16] On 10 June 2001, after canvassing all the forty (40) election returns, Macabayao declared a recess and announced the reconvening of the board on the following day. As he left, Macabayao took with him all the election paraphernalia needed to proclaim the winners. But he did not show up on the following day when the board met to reconvene. Upon the instruction of Datusalangit Macalaba, PES in-charge, Palawan and Magarang continued the canvass proceedings.

On 17 June 2001, the Palawan-Magarang board issued a second COC proclaiming Pansar as the elected mayor and a set of municipal councilors as winners different from those proclaimed by the Mambuyao-Mimbantas board.[17] Inexplicably, the Palawan-Macarang board did not proclaim the winner for the position of vice-mayor. The Palawan-Macarang COC was based on the canvass of the returns from all forty (40) precincts, including the four (4) returns excluded by the Mambuyao-Mimbantas board. The Palawan-Macarang COC was transmitted to the COMELEC on the same day it was issued, with the transmittal letter signed by both Palawan and Magarang.[18]

On 25 June 2001, Salic filed with the COMELEC a Petition,[19] docketed as SPC No. 01-337, praying that the Palawan-Magarang COC be stricken from the records for being void ab initio. Salic alleged, among others, that Mimbantas and not Magarang was the legitimate Third Member and that the signature of Palawan in the 17 June 2001 COC was forged.

To ascertain the true facts, the COMELEC en banc, issued Resolution No. 01-1029 on 12 July 2001,[20] constituting an Ad Hoc Committee[21] “to evaluate/study and to submit comment/recommendation” relative to the election. Thereafter, the Ad Hoc Committee issued a subpoena directing “all parties concerned” to submit

their respective position papers.[22] The Committee also received several pertinent documents and memoranda which were submitted to the COMELEC Law Department and the COMELEC ERSD pursuant to the Resolution. It conducted a hearing which only Magarang and Mimbantas attended together with their respective counsels.[23] On 1 October 2001, the Committee submitted its findings to the COMELEC, and the matter was referred to the Second Division.[24]

In the meantime, vice-mayoral candidate Kiram filed a Petition[25] with the COMELEC, docketed as SPC No. 01-273, against Ditual, the MBC and the Board of Election Inspectors (BEI), but it was dismissed by the Second Division in an Order dated 20 September 2001.[26] The Second Division noted that what Kiram had filed was a pre-proclamation controversy and it was mooted by the proclamation of Ditual as vice-mayor. Undaunted, Kiram filed instead on 15 February 2002 a Motion for Leave to Intervene and/or to Admit Petition in Intervention (with attached Petition in Intervention) in SPC No. 01-337.[27] He sought the reconvening of the MBC to tabulate the results from all precincts, including the returns from the four (4) controverted precincts, and thereafter proclaim the winning candidate for vice-mayor.

On 5 July 2002, the Second Division promulgated the assailed Resolution[28], which declared as a “sham” the Macabayao-Mimbantas COC, thus nullifying the proclamations of Salic, Ditual and the eight (8) councilors who were proclaimed therein. At the same time, the Second Division ordered the exclusion of the returns from three (3) clustered precincts, namely Precincts No. 1A/2A, 7A/8A, and 9A/10A in the canvass of the election results for the positions of mayor and vice-mayor, thereby nullifying and declaring illegal the Palawan-Magarang board’s proclamation of Pansar as mayor.[29] The Second Division gave credence to the findings of the Ad Hoc Committee which declared, among others, that it was Magarang, not Mimbantas, who was the duly-designated Third Member of the MBC. Accordingly, only the Palawan-Magarang board had the authority to act as the authorized MBC.[30]

The Second Division reversed the Ad Hoc Committee’s recommendation and voided the Palawan-Magarang board’s proclamation of Pansar as mayor. It cited as an uncontested fact that the election returns from Precincts No. 1A/2A, 7A/8A, and 9A/10A had varying serial numbers on the pages of the set of returns for each precinct.[31] Following Section 212 of the Omnibus Election Code, the Second Division ruled that the duly authorized MBC should have automatically excluded the returns from the precincts in the absence of a COMELEC order to the contrary. The COMELEC did not issue any such countervailing order since there was no explanation for the variance of the serial numbers on the pages of the returns supplied by the municipal treasurer who was Palawan himself. The MBC thus did not have any discretion but to exclude from canvass the returns with varying serial numbers.

Accordingly, the Second Division ordered that a new MBC composed of three COMELEC lawyers be constituted.[32] It directed the new MBC to complete the Butig canvass by resorting to and canvassing the ballot box copies of the returns from Precincts No. 1A/2A, 7A/8A, and 9A/10A, satisfying itself of the integrity of the ballot boxes prior to opening them. Should the ballot box copies of the returns that emerged be likewise irregular for having varying serial numbers or they are otherwise missing, the Second Division further directed the new MBC to conduct a recount of the votes cast for mayor and vice-mayor in the controverted precincts.[33]

Salic filed a Motion for Reconsideration of the Second Division’s Resolution but the COMELEC en banc denied it per its Resolution of 6 February 2003, adopting in toto the dispositive portion of the Second Division’s Resolution.[34] Undaunted, Salic filed the present petition with this Court.

On the other hand, Ditual also felt aggrieved by the Second Division Resolution notwithstanding her claim that she was not a party to S.P. No. 01-273. But according to the records, she filed with the COMELEC the following:

(a) on 5 July 2002, a Motion with Leave of Court to Admit Motion for Reconsideration of the Resolution dated July 5 2002;^[35] (b) on 23 July 2002, a Motion with Leave of Court to Admit Answer on the Petition for Intervention Filed by Monabantog D. Kiram;^[36] and (c) on 1 October 2002, a Motion to Exclude Vice Mayor Pauli Dital from the Effects of the July 5, 2002 Resolution.^[37] Only in the last mentioned motion did she argue that jurisdiction was not acquired over her person, stressing she was not summoned to answer the petition-in-intervention filed by Kiram.

As previously mentioned, the COMELEC en banc affirmed in toto the Second Division Resolution on 6 February 2003, merely noting therein the various pleadings filed by Dital. Hence, she filed her own Petition for Certiorari^[38] with this Court, docketed as G.R. No. 157019. On 10 June 2003, the Court resolved to consolidate the separate petitions filed by Salic and Dital.^[39] Both Salic and Dital also prayed in their respective petitions for the issuance of a temporary restraining order (TRO) enjoining the COMELEC from enforcing its assailed resolutions. The Court has chosen not to issue a TRO.

All the respondents in the consolidated cases, except for Palawan, filed their respective comments on the petitions. The last pleading was filed on 14 August 2003. Given the issues, the disposal of the petitions entailed a close examination of the records, more particularly the originals or certified photocopies of relevant documents such as the contested election returns and the certificates of canvass. However, the records were not promptly transmitted to the Court, and the delay prompted the Court to issue a Resolution dated 13 January 2004, directing the COMELEC to transmit the complete records of SPC No. 01-337 within ten (10) days from receipt. The voluminous records, consisting of sixteen (16) folders which in turn contain the total of two thousand four hundred sixty-seven (2,467) pages, were finally transmitted to the Court on 26 January 2004. The transmitted records include mere photocopies of the questioned election returns. The transmittal of the records was calendared in the Court's agenda of 10 February 2004.

The issue presented by Salic's petition is whether the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in annulling Salic's proclamation as mayor, in ordering the recount of ballots in the three (3) excluded precincts, and in failing to exclude the returns from Precincts No. 11A/12A. On the other hand, Dital's petition asserts that the COMELEC had no jurisdiction to annul her proclamation as vice-mayor, as she had never been served summons by the poll body.

We shall first resolve Salic's petition. To determine who were the legitimate members of the MBC, we refer to Republic Act No. 6646.^[40] Section 20 thereof delineates the qualifications of the members of the municipal board of canvassers, to wit:

Sec. 20. Board of Canvassers. — There shall be a board of canvassers for each province, city and municipality as follows:

(c) Municipal Board of Canvassers. — The municipal board of canvassers shall be composed of the election registrar or a representative of the Commission, as chairman, the municipal treasurer, as vice-chairman, and the most senior district school supervisor or in his absence a principal of the school district or the elementary school, as members. (emphasis supplied)

It is undisputed that the most senior district school supervisor, DECS District Head Babaino P. Macadato, had inhibited himself from serving on the MBC by reason of his relationship to some local candidates.^[41] Thus, the question arose as to whom Macadato had designated in his stead, Mimbantas or Magarang? The law explicitly

prescribes the minimum qualifications of who may sit as the substitute Third Member of the MBC in the absence of the most senior school district supervisor. The substitute must be a principal of the school district or the elementary school. The assailed Resolution made a factual finding that Mimbantas was not a principal, but an ordinary elementary public school teacher.

As admitted by Mimbantas herself in her testimony before the Ad Hoc Committee, she is not a principal of the school district or the elementary school but an Elementary Public School Teacher I. Thus, her designation by the District In-Charge to the Butig MBC, though un rebutted, is null and void.[42]

Salic does not refute the finding and there is no compelling reason for the Court to overturn it. Clearly then, Mimbantas was not qualified to sit on the MBC, even assuming she was designated by the DECS District-In-Charge. The personality of the designating authority is not even relevant in the case of Mimbantas, as she does not possess the minimum qualifications as defined by law. If the law prescribes qualifications for appointment to a public office, the appointee must possess such statutory qualifications to make the appointment valid.[43]

Consequently, the Macabayao-Mimbintas COC proclaiming Salic as mayor is void. The only valid signature thereon is that of Chairman Macabayao's, but he alone cannot bind or speak for the entire MBC.[44]

On the other hand, the COMELEC found that Magarang was the Acting Principal of Nanagun National High School, a position which made him qualified under the law to sit in the MBC.[45] Further, as found by the Ad Hoc Committee, a memorandum from Macadato dated 9 May 2001 explicitly directed Magarang to sit in the MBC.[46] Again, Salic does not dispute Magarang's appointment. She claims though that Magarang had signed an Indorsement dated 7 May 2001 wherein he disqualified himself from sitting in the MBC since his cousins were candidates for the municipal council.[47] Magarang denied ever having signed such indorsement, claiming his signature therein was forged.[48] Neither the Ad Hoc Committee nor the COMELEC commented on this particular allegation. But suffice it to note that they separately concluded that Magarang was qualified to sit in the MBC, as he indeed in fact performed the duties of a member of the MBC. Thus, there is dearth of factual basis to support the petitioners' submission that the COMELEC committed grave abuse of discretion in finding that Magarang was the lawful MBC Third Member.

The Court likewise cannot ignore the submission of the Ad Hoc Committee imputing serious irregularities on the part of the Macabayao-Mimbantas board. The Committee made the following observations on the Statement of Votes (SOV), thus:

The attention of the Honorable Commission En Banc is respectfully invited to the Statement of Votes (SOV) signed and submitted by E.O. Musa Macabayao and Catambac Mimbantas particularly to the alleged winning candidates for Sangguniang Bayan members, namely: Palala Saman B., Coasain Senaida M., Hasim Gubar, Anawal Mustapha, and Datu Kunung Namraida and which were included in the Certificate of Canvass and Proclamation of Rasmia Romato Salic as they all contained erasures indicative of tampering to make it appear that they won in the election but candidates Canacan Cali Casimun Caseron and Panolong Taha D., who garnered votes of 670 and 613, respectively, and whose votes are higher than candidates Hashim Gubar, Anawal Mustapha and Datu Kunug Namraida, whose votes are 583, 544 and 535 respectively, were not included in the Certificate of Canvass and Proclamation of the Winning Candidates in the COC of Rasmia Romato Salic. It is crystal clear as the water that E.O. Musa Macabayao and Catambac Mimbantas tampered the Statement of Votes (SOV) which should be disregarded by the Honorable Commission and should be treated as a mere scrap of paper.[49]

The Court examined the SOV adverted to and the observations of the Committee are indeed borne out by the document, at it contains several superimpositions and erasures that taint the veracity of the document.

The COMELEC, however, nullified the proclamation of Pansar as mayor on the ground that the Palawan-Magarang COC failed to exclude the election returns from Precincts No. 1A/2A, 7A/8A, and 9A/10A. The individual pages of the set of returns for each of the precincts contain varying serial numbers. For that reason, the COMELEC ruled that they should have not been canvassed as mandated by Section 212 of the Election Code. Accordingly, the poll body ordered the constitution of a new MBC, composed of COMELEC lawyers, as well as the use of the ballot box copies of the returns in the canvass by the new board.

Salic agrees with the COMELEC on the exclusion of the returns from Precincts No. 1A/2A, 7A/8A and 9A/10A on the ground that they bear varying serial numbers in contravention of Section 212 of the Omnibus Election Code. However, she does not agree that recount of the ballots is the proper remedy, insinuating that not just the returns but the ballots themselves are tainted because members of the BEI participated in the perpetration of the electoral irregularities in the precincts. She further claims that the returns from Precincts No. 11A/12A should also be excluded because of the irregularities committed by the BEI.[50] Pansar, for his part, maintains that the returns should not be excluded but submits at the same time that a recount is the most definitive mode of ascertaining the true results.[51]

Based on the SOV signed by the Palawan-Magarang board, it is apparent that the exclusion of the returns from the four (4) contested precincts would greatly benefit Salic. The vote tallies reveal that Salic received a disproportionately low number of votes in the precincts, compared to Pansar.[52] But this fact alone does not conclusively establish the commission of irregularities, much more provide legal basis for excluding the returns from the precincts. Indeed, there could be a plausible explanation for her receiving relatively fewer votes in the precincts. Hence, there must be a legal justification for excluding the returns from the precincts.

Such legal justification exists for the exclusion of the returns from Precincts No. 1A/2A, 7A/8A and 9A/10A. Section 212 of the Omnibus Election Code is clear and specific on how the returns such as those from the three (3) precincts should be treated. The penultimate paragraph of the Section is pointedly instructive, viz:

Any election return with a separately printed serial number or which bears a different serial number from that assigned to the particular polling place concerned shall not be canvassed. This is to be determined by the board of canvassers prior to its canvassing on the basis of the certification of the provincial, city or municipal treasurer as to the serial number of the election return assigned to the said voting precinct, unless the Commission shall order in writing for its canvassing, stating the reason for the variance in serial numbers.

The COMELEC states the reason for the rule in the assailed Order:

Where the law outrightly (sic) and explicitly DIRECTS the board of canvassers to EXCLUDE election returns when the serial number appearing in the election return is different from that assigned to the precinct concerned, and necessarily, when there is a variance in the serial numbers of the pages of one set of election returns, the presumption of regularity in the due execution and preparation of the election return is entirely demolished, such that the reverse is the evidentiary norm, i.e., said election returns are presumed MANUFACTURED and therefore treated as falsified documents unless proven otherwise through an explanation of the legal custodian and distributor of the election returns.[53]

The exclusion of the election returns from the three (3) precincts is warranted and, more importantly,

uncontroverted. None of the parties has posed any objection to the move. Salic, however, maintains that the return from Precincts No. 11A/12A should be excluded as well, alleging that the BEI members of the precinct participated in illegal substitute voting in the precinct. Surprisingly, the Solicitor General, as counsel for the COMELEC, agrees with Salic also on the exclusion of the return from Precincts No. 11A/12A.[54] The Court, however, is unable to agree that the COMELEC committed grave abuse of discretion in ordering the inclusion of the return from Precincts No. 11A/12A in the canvass.

The evidence presented by Salic for the exclusion of the return from Precincts No. 11A/12A consists of a “certification” purportedly signed by Election Officer Taha Casidar, and a handwritten “certification” allegedly executed by the members of the Board of Election Inspectors for Precincts No. 11A/12A. The COMELEC, and before it, the Ad Hoc Committee chose not to consider the “certifications,” and the Court cannot fault them for having done so. On their faces, the “certifications” appear as unauthenticated. Assuming that they are genuine writings issued by public officers, the rule is that public documents do not constitute prima facie evidence of the facts therein stated, unless they are evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record or by his deputy.[55] There is no such proof of official record; thus, the “certifications” must be considered private and not public documents.[56] No evidentiary value can be accorded private documents in the absence of collateral proof of due execution and genuineness thereof.[57] Not being a trier of facts, the Court has to accord great respect to the factual findings of the COMELEC, including its appreciation of evidence before it.[58]

The only basis for excluding the four (4) questioned election returns is the discrepancy in the serial numbers on the pages thereof and not, as Salic claims, the alleged participation of the BEI members in the commission of election frauds. The claim is unproven and thus bereft of merit. The very case[59] Salic cites in her petition provides the unequivocal standard that there must be “unrebutted clear and convincing evidence before the COMELEC that not only did the inspectors not comply with the duty required of them by law but that serious defects shown by the voting records amounting to falsification thereof could not have happened without the active participation of the inspectors themselves.”[60] There is no such “unrebutted clear and convincing evidence” in this case.

The COMELEC directed the utilization of the ballot box copies of the election returns from the contested precincts for the purpose of completing the canvass and, as an alternative, the recount of the votes cast in the precincts in the event the pages of the returns are likewise found to be have varying serial numbers. This is the procedure laid down in Section 235 of the Omnibus Election Code in situations where the election returns appear to be tampered with or falsified.[61] As the COMELEC First Division noted, Section 212 of the Omnibus Election Code does not explicitly provide for a remedy where the pages of the election returns contain varying serial numbers which is the situation governed by the Section. But the silence of the Section does not signify any legislative intent to disenfranchise the voters of the precincts in question. The procedure laid down in Section 235 may also apply to the returns whose pages bear dissimilar numbers since such returns also appear to be unauthentic, such as those with varying serial numbers.

In all, Salic’s petition must fail as it is unable to demonstrate any grave abuse of discretion on the part of the COMELEC.

On the other hand, Dital’s position assumes a different thrust. She argues that the COMELEC’s nullification of her proclamation as vice-mayor violated her rights to due process and equal protection, stressing that she was not a party to COMELEC SPC No. 01-337, wherein the Second Division issued the assailed resolution annulling the canvassing board’s proclamation of her as the winning vice-mayoral candidate. The mere filing by opposing candidate Kiram of a motion to intervene in SPC No. 01-337, Dital points out, did not ipso facto compel her to

file a responsive pleading before the COMELEC. Under the COMELEC Rules of Procedure,[62] the allowance of a motion for intervention always depends upon the discretion of the COMELEC whose task is to evaluate first whether intervention is proper. Certainly, it is only after the COMELEC grants the motion to intervene that it may acquire jurisdiction over the party-intervenor. The fact that Ditual was served a copy of the Petition for Intervention by Kiram's counsel is inconsequential considering that the COMELEC has not acted upon, much more granted, the motion to intervene.

However, jurisdiction over the person may be waived either expressly or impliedly.[63] In filing a Motion With Leave of Court (sic) To Admit Answer on the Petition for Intervention filed by Monabantog D. Kiram, on 23 July 2002, Ditual placed herself under the COMELEC's jurisdiction. That is the logical consequence of her plea before the poll body to admit her Answer to Kiram's Petition for Intervention. It is of no moment that, as Ditual claims, she caused the filing of that pleading "in sheer panic," or through another lawyer.[64] The filing of the motion evinces Ditual's clear intention to submit himself to the jurisdiction of the COMELEC. Now, she is estopped from claiming otherwise.

There is another compelling reason for the affirmance of the COMELEC's annulment of Ditual's proclamation. Ditual draws her supposed right to public office from her proclamation by the Macabayao-Mimbantas board. But as, we declared earlier, it was illegally constituted and as such its acts and declarations are null and void. As Ditual's claim to the vice-mayoralty has emanated from an illegal source, evidently it cannot be sustained.[65]

One final note. For no apparent reason, the Palawan-Magarang board refused to proclaim a winning vice-mayoral candidate. Worse, the parties and even the COMELEC seem to ignore that fact, as if the issue would fade away by pretending the anomaly had not existed. While the Macabayao-Mimbantas board canvassed the returns for vice-mayor and proclaimed a winning candidate, its acts however are void. On the other hand, a perusal of the SOV prepared by the Palawan-Magarang board reveals that it crossed out all the entries of votes cast for all the vice-mayoral candidates. Even curiousest is the fact that the Palawan-Magarang board tabulated the votes cast for Ditual in only half of the forty (40) precincts, not bothering to write down the number of votes cast for Ditual in the other twenty (20) precincts. Apart from per se smacking of irregularity, the acts reveal a deliberate intent on the Palawan-Magarang board's part to frustrate the will of the Butig electorate. The proclamation of all the winning candidates in the municipal elections is a ministerial duty[66] of the canvassing board.

As the body mandated by the Constitution to enforce and administer all laws relative to the conduct of elections is the bounden duty of the COMELEC to ensure that the will of the electorate prevails. However, as of now there is no basis for the proclamation of the winning candidate for vice-mayor. The COMELEC decided to limit the canvass of the election returns from the four (4) contested precincts. In order to determine the winning vice-mayoral candidate, however, it is necessary and proper for the new Butig MBC to recanvass the returns for vice-mayor in all the forty (40) precincts of the municipality.[67]

WHEREFORE, the consolidated Petitions are DISMISSED. The assailed COMELEC Resolutions are AFFIRMED with the MODIFICATION that the newly-constituted Municipal Board of Canvassers of Butig, Lanao del Sur, is ordered to conduct also a recanvass of the election returns from all the forty (40) precincts of the Municipality with respect to the position of vice-mayor, complete the same and the canvass of the returns for the position of mayor, and proclaim the duly elected mayor and vice-mayor of Butig, Lanao del Sur, within five (5) days from receipt hereof.

This Decision is declared final and immediately executory.

SO ORDERED.

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

Puno, J., on leave.

Panganiban, J., on official leave.

[1] Rollo for G.R. No. 157007 (Salic Rollo), p. 3.

[2] Rollo for G.R. No. 157019 (Ditual Rollo), p. 3.

[3] Salic Rollo, p. 34.

[4] Composed of Commissioners Ralph Lantion, Mehol K. Sadain and Florentino A. Tuason, Jr.

[5] Salic Rollo, p. 73.

[6] Apart from the members of the COMELEC Second Division, *supra* note 4, the COMELEC en banc consists of Chairman Benjamin Abalos, Sr., Commissioners Luzviminda Tancangco, Rufino Javier and Ressureccion Borra.

[7] Dated 13 May 2001.

[8] See Art. XIX, Sec. 22(d), B.P. Blg. 881, The Omnibus Election Code, as amended.

[9] Referred to as “Esmail” Magarang by petitioners, and “Ismael” Magarang by the COMELEC.

[10] Salic Rollo, p. 89.

[11] Salic Rollo, p. 97.

[12] *Id.* at 90.

[13] *Id.* at 91.

[14] *Id.* at 92. Salic also points out that Election Officer Taha Casidar submitted a Certification that during the day of the election, it was reported to him that the ballot box and other election paraphernalia for Precincts 9A and 10A, Barangay Bayabao, was reported lost or missing, and recovered only later in the afternoon, after the casting of votes. *Id.* at 9, 93.

[15] *Id.* at 94. Salic also points out that according a Certification issued by Election Officer Taha Casidar on 30 May 2001, respondent Pansar and a certain Col. Castro ordered the re-opening of the ballot boxes and the continuation of voting past the three o’clock deadline, in Precincts No. 11-A & 12-A, 1-A & 2-A, and 7-A and 8-A. *Id.* at 96.

[16] Salic Rollo, at 204-205.

[17] *Id.* at 98.

[18] *Id.* at 10.

[19] *Id.* at 99.

[20] *Id.* at 200.

[21] With Atty. Ferdinand T. Rafanan serving as Chairman, Atty. Juanito O. Icaro as Vice-Chairman and Atty. Jovencio Balanquit as Member.

[22] Rollo, p. 201. The parties who complied with the subpoena were Pansar, Salic, Palawan, Magarang, Mimbantas.

[23] Id. at 208.

[24] COMELEC Records, p. 226.

[25] Vide COMELEC Resolution of 20 September 2001, Ditual Rollo, p. 60.

[26] See Ditual Rollo, p. 60.

[27] Id. at 69.

[28] Salic Rollo at 34.

[29] As regards the eight councilors proclaimed by the Palawan-Magarang COC, the Second Division ruled that while their proclamation was based on the same canvass which included the irregular returns, the proclamation must be presumed valid and binding “in accordance with the time-honored principle that no proclamation can be nullified without due notice and hearing”, since these proclaimed candidates were not made parties to the case. See Salic Rollo, pp. 48-49.

[30] Id. at 43.

[31] Id. at 44-45. See also *supra* notes 11-13.

[32] Atty. Betty Pizaña as Chairperson, Atty. Allen Francis Abaya as Vice-Chairperson and Atty. Michael Valdez as Secretary. Id. at 50-51.

[33] Id. at 51. COMELEC Commissioner Florentino A. Tuason dissented in part from the Second Division’s Resolution. He disagreed in particular with the holding that the election returns from the controverted precincts should be disqualified, opining that a close examination of the questioned returns reveals that they are authentic and genuine, despite the variance in serial numbers.

[34] Id. at 73.

[35] Ditual Rollo, p. 62.

[36] Id. at 78.

[37] Id. at 49.

[38] Id. at 3.

[39] Salic Rollo, p. 338.

[40] “An Act Introducing Additional Reforms in the Electoral System and for Other Purpose.”

[41] Salic Rollo, p. 39. See also Sec. 222 of the Omnibus Election Code. “Relationship with candidates and other members. — The chairman and the members of the board of canvassers shall not be related within the fourth civil degree of consanguinity or affinity to any of the candidates whose votes will be canvassed by said board, or to any member of the same board.”

[42] Id. at 42.

[43] *Imbong v. Ferrer*, 146 Phil. 30, 47 (1970).

[44] See Sec. 225, Omnibus Election Code: “A majority vote of all the members of the board of canvassers shall be necessary to render a decision.”

[45] *Salic Rollo*, p. 42.

[46] *Id.* at 39, 148.

[47] *Id.* at 26.

[48] *Id.* at 213.

[49] *Id.* at 215.

[50] *Id.* at 16-21.

[51] *Id.* at 194.

[52] Based on the SOV prepared by the Magarang — Palawan board, Pansar received a total of 1,541 from 40 precincts, while Salic received 1,280 votes. If the 4 contested precincts are to be excluded, as done by the Macabayao-Mimbantas Board, Salic would receive 1,252 votes while Pansar would have 1,231 votes.

[53] *Id.* at 47.

[54] *Id.* at 356.

[55] See Section 24, Rule 132, Revised Rules of Court, in relation to Section 23, Rule 132, Revised Rules of Court. See also *Matugas v. COMELEC*, G.R. No. 151944, 20 January 2004.

[56] See Section 19, Rule 132, Revised Rules of Court.

[57] See Sec. 20, Rule 132, Revised Rules of Court. “Proof of Private Document. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker. x x x”

[58] *Matalam v. COMELEC*, 338 Phil. 447 (1997).

[59] *Bashier v. COMELEC*, 150 Phil. 271 (1972).

[60] *Id.* at 299.

[61] 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, otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of 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 election inspectors as basis of the canvass. (Sec. 173, 1978 EC)

[62] See Sections 1 & 3, Rule 8, 1993 COMELEC Rules of Procedure, which state:

Section 1. When Proper and Who may be Permitted to Intervene. — Any person allowed to initiate an action or proceeding may, before or during the trial of an action or proceeding, be permitted by the Commission, in its discretion, to intervene in such action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by such action or proceeding.

Section 3. Discretion of Commission. — In allowing or disallowing a motion for intervention, the Commission or the Division, in the exercise of its discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate action or proceeding.

[63] *La Naval Drug Corp. v. Court of Appeals*, G.R. No. 103200, 31 August 1994, 236 SCRA 78, 86.

[64] *Ditual Rollo*, p. 9.

[65] “Where a proclamation is null and void, that proclamation is no proclamation at all.” *Aguam v. COMELEC*, 132 Phil. 353 (1968).

[66] See *Olano v. Ronquillo*, 118 Phil. 205 (1963).

[67] *Ibid.* “In proclaiming only four, notwithstanding there were other candidates receiving votes for fifth and sixth place respectively, the board failed to perform its ministerial duty which the (COMELEC) by virtue of its functions has the power to enforce.”

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