

NANCY SORIANO BANDALA, PETITIONER, VS. COMMISSION ON ELECTIONS, NEW BOARD OF CANVASSERS FOR OROQUIETA CITY AND ALEJANDRO G. BERENGUEL, RESPONDENTS.

G.R. No. 159369. March 03, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Election cases involve not only the adjudication of the private interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to whom shall discharge the prerogatives of the offices within their gift.[1]

Thus, election cases are imbued with public interest. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.[2]

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution[3] dated August 14, 2003 rendered by the Commission on Elections En Banc in SPC No. 01-277, entitled “Alejandro G. Berenguel, Candidate for City Mayor, Oroquieta City vs. Board of Canvassers, Oroquieta City and Nancy Soriano Bandala, Candidate for City Mayor, Oroquieta City.”

The antecedents of the present petition are as follows:

Nancy Soriano Bandala, herein petitioner, and Alejandro G. Berenguel, herein respondent, were mayoralty candidates in Oroquieta City, Misamis Occidental during the May 14, 2001 national and local elections.

During the canvass of the election returns conducted by the City Board of Canvassers of Oroquieta City, respondent objected to the inclusion of eighty (80) election returns on the following grounds: (1) that seventy-one (71) election returns were not secured with inner paper seals; (2) that seven (7) election returns do not indicate the party affiliation of the watchers-signatories; and (3) that two (2) election returns have missing pages which contain the list of the local city candidates.

In an Omnibus Ruling dated May 19, 2001, the City Board of Canvassers overturned the objection of respondent and included in its canvass the contested election returns.

On June 30, 2001, petitioner was proclaimed the duly elected mayor of Oroquieta City.

Upon appeal, the Second Division of the Commission on Elections (COMELEC) issued a Resolution dated September 5, 2002 affirming the Omnibus Ruling of the City Board of Canvassers, holding that:

Lack of inner seal of an election return does not necessarily mean that the same is spurious and/or was tampered with. Such tampering, or its being spurious must appear on the face of the election return itself. It is the ministerial function of the board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities. [Cf. Balindong vs. Commission on Elections, 27 SCRA

567]

In the canvassing of election returns, the Board of Canvassers, which is an ad hoc body, need not look beyond or behind the returns or do an act which would necessitate the piercing of the returns and the presentation of evidence aliunde. [Cf. *Usman vs. Commission on Elections*, 42 SCRA 667]

Significantly, we observe that what the petitioner has presented were just affidavits mostly executed by his supporters, the nature of which has been ruled by the Supreme Court as self-serving. [*Casimiro vs. COMELEC*, 170 SCRA 627] We cannot just rely on this kind of evidence because what is at stake is the paramount interest of the electorate.

Finally, our General Instructions for the Board of Election Inspectors (BEI) [COMELEC Resolution No. 3742] does not require the indication by the poll watchers of their respective political party/candidate being represented. What the rule instructs is this: “SEC. 45. Preparation of election returns and tally board. – The boards shall prepare in their own handwriting the election returns and tally board simultaneously with the counting of votes in their respective polling places. The election returns shall be prepared in seven (7) copies. x x x

After all the ballots have been read:

a) x x x

d) The watchers if any, shall affix their signatures and imprint their thumb marks on the right hand portion of the election returns and the tally board; and

x x x”

Clearly, nothing in the afore-quoted rule requires the poll watcher to indicate the party/candidate he represents.[4]

Respondent then filed with the COMELEC en banc a motion for reconsideration.

On August 14, 2003, the COMELEC en banc promulgated a Resolution reversing and setting aside the Second Division’s Resolution. The dispositive portion of which reads:

“ACCORDINGLY, the Commission en banc hereby renders judgment to:

- EXCLUDE the one hundred one (101) election returns found without the inner paper seals enumerated in the Canvassing Report of the City Board of Canvassers of Oroquieta City dated 24 May 2001, from the canvass;
- NULLIFY the proclamation of Oppositor Nancy Soriano Bandala made on 30 June 2001;
- CONSTITUTE a New City Board of Canvassers for Oroquieta City composed of Atty. Nelia Aureus as Chairman; Atty. Allen Francis Abaya as Vice-Chairman; and, Atty. Norina Tangaro as member-Secretary;
- DIRECT the City Election Officer of Oroquieta City to BRING to the Commission at Manila all the election returns and other election documents subject of and pertaining to the canvass made by the Board and TURN-OVER the same under receipt to the New City Board of Canvassers for Oroquieta City; and,
- DIRECT the New City Board of Canvassers for Oroquieta City to CONVENE with notice to the parties, upon finality of this Resolution, CANVASS the election returns and, thereafter, PROCLAIM the winning candidate for Mayor of Oroquieta City.
- The aforementioned BEIs, with the exception of the BEI of Precinct No. 134A of Barangay Dolipos Alto, composed of Catalina J. Bajade as Chairman, Emma J. Aganos as Poll Clerk, and Rosenda P. Baloncio as Third Member and the Chairperson, Margie B. Lamparas of the BEI of Precinct No. 145A1 of Barangay Upper Lamac, are recommended to be charged administratively before the Department of Education.

- Atty. Francisco G. Pobe is hereby suspended from Office with forfeiture of salary from the promulgation of this resolution until after the elections of 10 May 2004 with stern warning that repetition of the same or similar offense will be dealt with more severely.

- The Law Department, this Commission, is hereby DIRECTED to file the appertaining information for violation of Section Z (15) and (21), and Section 212, both of the Omnibus Election Code (Batas Pambansa Blg. 881) against these BEIs and Mr. Filoteo C. Alngohuro, Chairman of the City Board of Canvassers of Oroquieta City, there being strong prima facie case against them.

SO ORDERED.”

Hence, this petition for certiorari with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction. On August 27, 2003, we issued a status quo ante order.

Petitioner contends that the COMELEC en banc acted with grave abuse of discretion (1) in excluding 101 election returns based on a formal defect of lack of inner paper seals in the election returns; and (2) in nullifying her proclamation as the winning candidate for mayor of Oroquieta City.

The petition is impressed with merit.

I

May the ground of lack of inner paper seals in the election returns be considered a proper issue in a pre-proclamation controversy?

There is a need to emphasize the definition of a pre-proclamation controversy under Section 241 of the Omnibus Election Code, thus:

“SEC. 241. Definition. - A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.”

The issues that may be raised in a pre-proclamation controversy are enumerated in Section 243 of the same Code, thus:

“SEC. 243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings 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 Section 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.”

There being no inner paper seals pasted on 101 election returns coming from numerous polling precincts, the COMELEC en banc then concluded that the election returns in question appear to be obviously falsified and/or manufactured, the results of which certainly affected the standing of respondent. According to the COMELEC en

banc, this is an issue (under Sec. 243 (b) in the enumeration) that may be raised in a pre-proclamation controversy.

The lack of inner paper seals in the election returns does not justify their exclusion from the canvassing. Indeed, it is not a proper subject of a pre-proclamation controversy.

In the Matter of the Petition to Exclude Election Returns contained in Nine (9) Ballot Boxes, Amelita S. Navarro vs. Commission on Election,[5] we held:

"While the aforesaid grounds (lack of inner and outer paper seals and lack of signatures of watchers, among others) 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."

Likewise, in Bateria vs. COMELEC,[6] we ruled:

"The grounds raised by petitioners for the exclusion of the election returns from the canvassing, as stated in their 'Appeal Memorandum' before the COMELEC x x x refer to the failure to close the entries with the signatures of the election inspectors; lack of inner and out papers seals; canvassing by the BOARD of copies not intended for it; lack of time and date of petitioners' watchers; and lack of authority of person receiving the election returns.

"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 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. x x x. On the basis of formal defects alone, such palpable irregularity cannot be said to have been established herein."

II

May the COMELEC look beyond the election returns and receive evidence aliunde in a pre-proclamation controversy?

Assuming that the ground of lack of inner paper seals in election returns is a proper issue in a pre-proclamation controversy, the COMELEC cannot investigate and receive evidence to determine why those inner paper seals are missing.

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.[7]

In Matalam vs. Commission on Elections,[8] we stressed that "in a pre-proclamation controversy, the COMELEC, as a rule, is restricted to an examination of the election returns and is without jurisdiction to go beyond or behind them and investigate election irregularities."

Thus, the COMELEC acted beyond its jurisdiction when it directed the Provincial Election Supervisor of Misamis Occidental to investigate and receive evidence "to determine once and for all the mystery behind the missing inner paper seal of the subject election returns" or the failure of the Board of Election Inspectors (BEIs) to paste the inner seals of the election returns.

III

Did the COMELEC commit grave abuse in discretion in nullifying the proclamation of petitioner as mayor of Oroquieta City?

In its assailed Resolution, the COMELEC en banc held that the City Board of Canvassers acted without authority when it arbitrarily proclaimed petitioner herein as the duly elected mayor of Oroquieta City, in gross violation of Section 20 (i) of Republic Act 7166 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."

Suffice it to state that the above provision applies only where the objection deals with a pre-proclamation controversy, not where, as in the present case, it raises or deals with no such controversy.[9] It bears reiterating that the lack of inner paper seals in the election returns is not a proper subject of a pre-proclamation controversy. Respondent's recourse should have been to file an election protest. Where a party raises issues, the resolution of which would compel the COMELEC to pierce the veil of election returns which appear prima facie regular on their face, his proper remedy is an election protest. In this proceeding, the parties may litigate all the legal and factual issues raised by them in as much detail as they may deem necessary or appropriate.[10]

WHEREFORE, the petition is GRANTED. The challenged Resolution dated August 14, 2003 of the COMELEC en banc in SPC No. 01-277 is REVERSED and SET ASIDE. The Resolution dated September 5, 2002 of the COMELEC Second Division is AFFIRMED.

SO ORDERED.

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

Puno, J., on leave.

Panganiban, J., on official leave.

[1] Sanchez vs. Commission on Elections, G.R. No. L-78461, August 12, 1987, 153 SCRA 67, 76, citing Vda. De Mesa vs. Mencias, 18 SCRA 533 (1966).

[2] See Malabaguio vs. Commission on Elections, G.R. No. 142507, December 1, 2000, 346 SCRA 699, 712, citing Alberto vs. Comelec, 311 SCRA 215 (1999).

[3] Annex "A", Petition for Certiorari, Rollo at 30-44.

[4] Id. at 62-63.

[5] G.R. No. 150799, February 3, 2003, citing Bateria vs. Commission on Elections, 205 SCRA 1 (1992).

[6] G.R. Nos. 95347-49, January 6, 1992, 205 SCRA 1.

[7] In the Matter of the Petition to Exclude Election Returns contained in Nine (9) Ballot Boxes, Amelita S. Navarro vs. Commission on Election, *ibid.*

[8] G.R. No. 123230, April 18, 1997, 271 SCRA 733, 745.

[9] In the Matter of the Petition to Exclude Election Returns contained in Nine (9) Ballot Boxes, Amelita S. Navarro vs. Commission on Election, *ibid.*

[10] Matalam vs. Commission on Elections, *ibid.* at 747, citing *Dimaporo vs. Comelec*, 186 SCRA 769 (1990).

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