

RAYMOND P. ESPIDOL, PETITIONER, VS. COMMISSION ON ELECTIONS, WILFREDO TABAG & THE MUNICIPAL BOARD OF CANVASSERS OF RAMON, ISABELA, RESPONDENTS.

G.R. NO. 164922. October 11, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the petition for certiorari and prohibition filed by Raymond P. Espidol seeking to nullify the Resolution[1] dated August 30, 2004 of the Commission on Elections (COMELEC) en banc in SPC No. 04-180. The said resolution affirmed the COMELEC Second Division Resolution[2] dated July 16, 2004 annulling the petitioner's proclamation as the duly-elected municipal mayor of Ramon, Isabela, during the May 10, 2004 elections.

The Antecedents

Petitioner Raymond P. Espidol and private respondent Wilfredo L. Tabag were rival candidates for Mayor of the Municipality of Ramon, Isabela, in the May 10, 2004 synchronized national and local elections.[3] Petitioner Espidol, a re-electionist, was the official candidate of the Lakas ng Bansa (Lakas)-Christian Muslim Democrats (CMD) coalition,[4] while private respondent Tabag was the official candidate of the Partidong Demokratiko ng Pilipinas-Laban (PDP-Laban).[5] The municipality had a total of 117 precincts.[6]

At about 6:00 p.m. of May 10, 2004, the Municipal Board of Canvassers (MBC) of Ramon, consisting of Chairman Atty. Agripino A. De Guzman, Jr., Vice-Chairman Pedro L. Gueco and Member-Secretary Rosalinda B. Doroni, convened at the municipality's Barangay Training Center to commence the canvassing.[7] Actual canvassing started at around 3:00 a.m. of the following day or May 11, 2004, and formally adjourned at about 8:30 p.m., with the MBC scheduling the resumption of the canvass at 9:00 a.m. of the next day.[8]

However, no canvassing took place on May 12 and 13, 2004 because MBC Chairman De Guzman failed to report for work at the canvassing center.[9] In his "After-Incident-Report" Memorandum for Commissioner Mehol K. Sadain, Commissioner-in-Charge for Regions II and III, De Guzman reported that, in the evening of May 11, 2004, just after the adjournment of the canvassing proceedings, he and his group of tabulators were harassed and intimidated by allies and political supporters of petitioner Espidol. De Guzman further averred that on their way to Santiago City where they were temporarily billeted, their car was tailed by a vehicle belonging to petitioner Espidol's camp. Fearing for their safety, De Guzman immediately requested protection from the local police. This did not allay the fears of his staff because the next day, his group of tabulators fled back to Manila.[10]

Together with the "After-Incident-Report," De Guzman submitted to Commissioner Sadain another Memorandum[11] requesting for a transfer of the canvassing venue to Manila citing as reason the volatile peace and order situation in Ramon, Isabela. On May 13, 2004, Commissioner Sadain denied De Guzman's request for a change of venue in view of the opposition of the other members of the MBC who refuted De Guzman's claims of intimidation and harassment.[12]

On May 14, 2004, the MBC reconvened and resumed the canvassing of the election returns. The canvassing continued until the evening of May 15, 2005. During the said proceedings, private respondent Tabag, through his lawyers, orally sought the exclusion of several election returns from the following precincts, namely: Precinct Nos. 2A, 4A/7A, 10A, 49A, 52A, 57A, 66A, 93A, 95/96A, 97A/98A, 103A, 112A, 15A, 24A, 47A&B, 63A, 88A, 92A/94, 50A, 56A, 60A/62A, 74A, 83A, 121A, 123A, 114A. Private respondent Tabag objected to the inclusion of these election returns on the following grounds: (1) that the security envelopes containing the election returns did not have the proper seals as required by Section 212 of the Omnibus Election Code (OEC); (2) that the election returns did not bear the signature of the chairman of the Board of Election Inspectors (BEI) as required by the same law; and (3) that the election returns did not have the thumbprints of the members of the BEI in the box provided for the purpose, and in some, the thumbprints and signatures of the BEI at the close of each entry or at the end of each tally/taras of each candidate were superimposed on the said tally/taras, thereby obscuring the number of votes obtained by each at the end of every entry.[13]

Despite these objections, and without any formal or written ruling thereon, the MBC included the contested election returns. The canvassing was concluded at about 9:30 p.m. of May 15, 2004.[14]

In the morning of May 16, 2004, private respondent Tabag, through counsel, filed a petition with the MBC vigorously opposing the impending proclamation on the ground that the proceedings of the board were irregular. De Guzman read the petition aloud. Nonetheless, at 9:00 a.m. of the same day, or barely twelve (12) hours after the conclusion of the canvassing of votes, the MBC proceeded to proclaim petitioner Espidol as the winning candidate for mayor, along with the vice-mayor and eight councilors.[15] Petitioner Espidol obtained 8,647 votes as against his closest rival, private respondent Tabag, who obtained 6,635 votes, or a margin of 2,012 votes.[16] Minutes after the proclamation, the counsel of private respondent Tabag submitted to the MBC his written objections to the inclusion in the canvass of the contested election returns. The MBC did not make a formal or written ruling thereon.[17]

On May 24, 2004, private respondent Tabag filed with the COMELEC a petition for annulment of proclamation.[18] Named respondents therein were MBC Chairman De Guzman, and petitioner Espidol. The petition was docketed as SPC 04-180 and raffled to the COMELEC Second Division.

In support of his petition, private respondent Tabag alleged that:

1. The MBOC acted in violation of RA 7166 and Comelec Resolution No. 2962 (6669) and with grave abuse of discretion amounting to lack of jurisdiction, in proclaiming private respondent (Espidol) as winner despite the pending and unresolved appeals before it, the railroading of petitions for exclusion without any hearing and written rulings thereon, and the petitions for exclusion which were not acted and ruled upon by it, considering that the contested returns will adversely affect the results of the election.
2. The proclamation by the board of private respondent as winner, is vitiated by duress, coercion, intimidation and threats and the mob rule, and the preparation of the election returns in certain barangays of the municipality is likewise vitiated by intimidation and threats resulting to falsified and materially defective returns and failure of elections and, therefore, not made freely and voluntarily as the true will of the electorate, considering that the contested returns will affect the results of the election.
3. The integrity, genuineness and sanctity of the contested election returns have been violated because the security envelopes containing the election returns do not have the proper seals provided by the commission for the purpose when prepared by the BEI until the same were subsequently transmitted to and canvassed by the MBOC, the election returns did not bear the signature of the chairman of the BEIs, the election returns do not have the thumbmarks/thumbprints of the members of the BEI in the boxes provided for the purpose, and in some, the thumbmarks and signatures of the BEI at the close of each entry or at the end of each tally/taras of

each candidate were superimposed on the said tally/taras thereby obscuring the number of votes obtained by each at the end of every entry.

4. Discrepancy in the statement of votes by precinct of the MBOC where the sum total of the number of votes obtained by the three (3) mayoralty candidates is greater than the number of those who actually voted in all the 117 precincts of the municipality of Ramon, Isabela.[19]

On June 9, 2004, the COMELEC Second Division issued summonses with notice of hearing on June 17, 2004. During the said hearing, the parties made their respective manifestations. Subsequently, petitioner Espidol was given five (5) days to file his Answer-Memorandum, while private respondent Tabag and De Guzman were also given the same period to file their respective memoranda. On June 21, 2004, private respondent Tabag filed his Memorandum, while petitioner Espidol and De Guzman filed their respective Answer-Memoranda on June 22, 2004.[20]

In his Answer-Memorandum,[21] petitioner Espidol contended that the grounds raised by private respondent Tabag were not proper for a pre-proclamation controversy. Moreover, the latter did not raise his objections properly. Petitioner Espidol also refuted private respondent Tabag's allegations of massive vote buying, threats and intimidation.

For his part, MBC Chairman De Guzman, in his Answer-Memorandum,[22] admitted that the board did not make any formal or written rulings on the objections raised by private respondent Tabag. De Guzman averred that there were persistent threats and intimidation which constrained him to hastily finish the canvassing. In fact, two of the tabulators with him (De Guzman) who were from Manila went home without finishing their task of tabulating because of fear for their safety. These tabulators from Manila, were replaced with local municipal employees.

Acting on the pleadings filed by the parties, the COMELEC Second Division issued the Order[23] dated June 23, 2004 suspending the effects of petitioner Espidol's proclamation:

Due to the seriousness of the allegation that the Board of Canvassers issued the proclamation even before questions involving the validity of returns which will affect the result of the election are resolved by the Commission, which is clearly in violation of the above mandated procedure, and, further, that the proclamation of private respondent [referring to Espidol] as the Mayor-elect of the Municipality of Ramon, Isabela was allegedly issued under duress, and with intimidation, coercion and threats, the Commission (Second Division) hereby orders that the effect of the proclamation of private respondent Raymond P. Espidol be suspended until the issues raised on the irregularities and alleged duress in the issuance of the proclamation be resolved on the merit.

WHEREFORE, premises considered, the Second Division of the Commission hereby SUSPENDS THE EFFECT OF THE PROCLAMATION of private respondent Raymond P. Espidol, with the note that the instant petition shall be resolved on the merit with dispatch.

SO ORDERED.[24]

In defiance of the said order, petitioner Espidol took his oath of office as Mayor of Ramon, Isabela on June 25, 2004.[25] Consequently, on June 26, 2004, private respondent Tabag filed with the COMELEC an urgent motion to annul the oath of petitioner Espidol and to restrain him from assuming the duties and functions of the Municipal Mayor of Ramon, Isabela. Private respondent Tabag also prayed that petitioner Espidol be cited for contempt for blatantly disregarding the June 23, 2004 Order.[26]

On June 29, 2004, the COMELEC Second Division, acting on the urgent motion, issued an Order, the fallo of which stated thus -

WHEREFORE, premises considered, respondent [referring to petitioner Espidol] is hereby directed to submit his comment to the above motion within five (5) days from notice. A stern warning is further directed upon respondent to refrain from committing acts which are in contravention of the Commission's June 23, 2004 Order and which tend to obstruct the proper resolution by the Commission of the present controversy, lest a severe sanction shall be imposed upon the same.

SO ORDERED.[27]

Notwithstanding the two orders, on June 30, 2004 - the beginning of the term of office of all elective officials - Espidol assumed office as Mayor of Ramon, Isabela and has since been discharging its functions and duties.

On July 16, 2004, the COMELEC Second Division promulgated the Resolution[28] declaring petitioner Espidol's proclamation illegal. It held that the MBC failed to give private respondent Tabag 24 hours from the time of his oral objections to submit his evidence in support thereof, in gross violation of Section 20 (c) of Republic Act (R.A.) No. 7166. Worse, the MBC acted without authority when it proclaimed petitioner Espidol as the duly elected Mayor of Ramon, Isabela, without making any written rulings on the objections raised by private respondent Tabag, in gross violation of paragraph (i) of the same provision. It further ruled that MBC was pressured, coerced, threatened and intimidated by petitioner Espidol in order to proclaim him. Further, the COMELEC Second Division opined that since the number of the votes cast for the mayoralty position exceeded the number of registered voters who actually voted by 858 as reflected in the Statement of Votes (SOV), there was enough basis to annul petitioner Espidol's proclamation. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Petition to Annul the Proclamation of Respondent Raymond P. Espidol, as Mayor of Ramon, Isabela, is hereby GRANTED; consequently, the proclamation of Respondent Raymond P. Espidol is hereby declared NULL and VOID. A Municipal Board of Canvassers shall be reconstituted to conduct a re-canvassing of the election returns strictly adhering to the prescribed procedures for canvassing and in handling contested election returns; meanwhile, the Vice-Mayor elect shall temporarily assume the mayoralty post as Acting Mayor, until further notice; furthermore, the Provincial Commanding Officer of the Philippine National Police in the Province of Isabela is hereby deputized, together with the Chief of Police of the Municipality of Ramon, Isabela, to assist the Election Officer of the same municipality, in ensuring that this resolution be immediately enforced. Let a copy of this resolution be furnished to the Department of Interior and Local Government for their information and guidance in implementing the provision on temporary succession in the local government as provided in the Local Government Code.

The charge of indirect contempt against respondent Raymond P. Espidol shall be treated as a separate case and subjected to a hearing in compliance with the requirements of due process. Petitioner is further advised that the appropriate complaint for election offense against the alleged offenders be filed with the Commission.

SO ORDERED.[29]

On July 21, 2004, petitioner Espidol filed a motion for reconsideration with the COMELEC Second Division.[30]

On August 30, 2004, the COMELEC en banc promulgated its Resolution[31] affirming in toto the COMELEC Second Division's Resolution of July 16, 2004. The dispositive portion of the COMELEC en banc's resolution reads:

WHEREFORE, premises considered, the Commission En Banc hereby DENIES the Motion for Reconsideration of Private Respondent for lack of merit and AFFIRMS the Resolution of the Second Division of the Commission ANNULING THE PROCLAMATION of Private Respondent Raymond Espidol. We further AFFIRM the Second Division's issuance of the interlocutory order SUSPENDING THE EFFECT OF THE PROCLAMATION of Private Respondent Raymond Espidol. We further emphasize that private respondent Raymond Espidol has no authority to assume the Office of the Mayor from the very beginning or

on June 30, 2004, his proclamation being null and void ab initio. Private respondent Raymond Espidol is hereby directed to physically vacate the Office of the Mayor for having no authority to assume and remain therein. Accordingly, as provided in the Local Government Code, the Vice-Mayor is hereby directed to assume the Office of the Mayor temporarily until the controversy as to who shall assume the post shall have been resolved. Let a copy of this resolution be issued to the Department of Interior and Local Government and the Philippine National Police for their information and guidance. Furthermore, the Provincial Commander of the Philippine National Police of the Province of Isabela, as assisted by the Municipal Chief of Police of Ramon, Isabela is hereby DEPUTIZED TO ASSIST the Election Officer of Ramon, Isabela or any authorized representative of the Commission on Elections, and ENSURE that this resolution be ENFORCED.

SO ORDERED.[32]

The COMELEC en banc affirmed the findings of the Second Division as it held that "the proclamation of petitioner Espidol is null and void for having been made amidst questionable circumstances, particularly by railroading the proclamation, as admitted by the Chairman of the MBC, when he failed or refused to follow the canvassing procedure, especially the issuance of written rulings in the disposition of objected election returns." This fact, according to the COMELEC en banc, is also revealed by the minutes of the board of canvassers when no report was made that written rulings were issued in the disposition of the objections to the election returns. The COMELEC en banc thus ruled that the Second Division was correct in preliminarily suspending the effects of petitioner Espidol's proclamation and eventually annulling the same.

The COMELEC en banc opined that while it is true that after a winning candidate has been proclaimed, the remedy of a losing candidate is to file an election protest, such rule is applicable only when there has been a valid proclamation. It likewise debunked petitioner Espidol's interpretation of Section 20(c) of R.A. No. 7166 that oral and written objections on election returns must be "simultaneously," i.e., without interval of time, submitted to the board. It characterized this interpretation as too constricting. Rather, the COMELEC en banc ratiocinated, an objecting candidate may still submit his written objection and evidence in support thereof within 24 hours from making the oral objection. It concluded that election cases are imbued with public interest and laws governing election contests must be liberally construed to the end that the true wishes of the electorate prevail.

Commissioner Virgilio O. Garcillano dissented from the COMELEC en banc's Resolution of August 30, 2004 as he voted to reconsider the Resolution of the Second Division. Commissioner Garcillano was of the view that the "[b]oard correctly included the contested election returns in the canvass as they did not suffer any serious infirmities affecting their integrity." [33]

Aggrieved, petitioner Espidol sought recourse to the Court by filing the present Petition for Certiorari and Prohibition with Prayer for Temporary Restraining Order, Maintenance of Status quo and/or Writ of Preliminary Injunction.

In the Resolution [34] dated September 7, 2004, the Court directed the parties to observe the status quo prevailing before the filing of the petition.

Petitioner Espidol proffers the following issues for the Court's resolution:

I

Did respondent COMELEC commit grave abuse of discretion amounting to lack or excess of jurisdiction when it resolved to affirm the 16 July 2004 Resolution of the COMELEC Second Division which erroneously held that the MBC of Ramon, Isabela did not follow the prescribed procedure in disposing the private respondents objection to certain ERs[?]

II

Did respondent COMELEC commit grave abuse of discretion amounting to lack or excess of jurisdiction when it held that the petitioner's proclamation was vitiated by threat, intimidation, coercion and duress[?]

III

Did respondent COMELEC commit grave abuse of discretion [a]mounting to lack or excess of jurisdiction when it suspended the effects of the petitioner's proclamation[?][35]

Petitioner Espidol contends that De Guzman's tale of threats and intimidation should have been taken by the COMELEC with a grain of salt. It being "patently baseless and totally fabricated," the COMELEC gravely abused its discretion in swallowing the same "hook, line and sinker." Petitioner Espidol also assails the COMELEC Second Division's interlocutory order suspending the effects of his proclamation, claiming that the same was issued without the required notice and hearing.

Petitioner Espidol further argues that the grounds invoked by private respondent Tabag, i.e., lack of inner paper seals, lack of signature of BEI chairman, absence of thumbmarks on the election returns, among others, are merely defects in form and not proper subjects of a pre-proclamation controversy. Citing jurisprudence, petitioner Espidol emphatically asserts that the enumeration in Section 243 of the Omnibus Election Code (OEC) of the issues that may be raised in a pre-proclamation controversy is restrictive and exclusive.

He maintains that even assuming that the grounds relied upon by private respondent Tabag were proper issues in a pre-proclamation controversy, the MBC, nonetheless, correctly included the orally objected election returns in the canvassing since the latter's oral objections were not reduced into writing and simultaneously filed with the board as required by Section 20 of R.A. No. 7166. Petitioner Espidol posits that Section 245 of the OEC, which allows the filing of the written objection within 24 hours from the time the oral objection was made, has been amended by Section 20 of R.A. No. 7166 which now requires both oral and written objections to be "simultaneously" filed with the MBC. Thus, there was allegedly no need for the MBC to make any written rulings on the objections made by private respondent Tabag because these were not raised properly or in the manner prescribed by Section 20 of R.A. No. 7166.

Petitioner Espidol points out that private respondent Tabag's remedy is not the exclusion of the contested election returns, but that provided under Section 234 of the OEC, thus -

Section 234. Material defects in the election returns. - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction.

Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials; Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

In his Comment,[36] private respondent Tabag supports the findings of the COMELEC. In addition, he avers that the petition is defective since it failed to implead Vice-Mayor Mercedes M. Vizcarra, who is now the Acting

Mayor of Ramon, Isabela. He argues that Vice-Mayor Vizcarra is an indispensable party without whom no final determination of the action may be had.

The petition is bereft of merit.

Section 20 of R.A. No. 7166 outlines the procedure for the disposition of contested election returns, thus:

SECTION 20. Procedure in Disposition of Contested Election Returns. -

(a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Section 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

The evidence attached to the objection or opposition submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each and every page thereof.

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of the said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(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.[37]

In the present case, private respondent Tabag, through his lawyers, sought during the canvassing the exclusion of several election returns on various grounds, among them: lack of inner paper seals, lack of signature of the Chairman of the BEI, absence of thumbmarks of the members of the BEI, etc. These objections were tabulated[38] as follows:

Precint Number

Number of Votes Cast

2A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

151

4A/7A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

174

10A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

138

49A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

135

52A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

136

57A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

146

66A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

137

93A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

168

95/96A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

198

97A/98A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

178

103A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

164

112A

- petition for exclusion filed by petitioner but inclusion was ordered by MBOC without written ruling; verbally appealed while written Notice of Appeal was not acted upon.

141

15A

- petition for exclusion filed by respondent but inclusion was ruled by MBOC without written ruling; no appeal from private respondent.

145

24A

- petition for exclusion filed by respondent but inclusion was ruled by MBOC without written ruling; no appeal from private respondent.

132*

47A & B

- petition for exclusion filed by petitioner but inclusion was ruled by MBOC without written ruling; no appeal from private respondent.

242*

63A

- petition for exclusion filed by respondent but inclusion was ordered by MBOC without written ruling; no appeal from private respondent.

138*

88A

- petition for exclusion filed by respondent but inclusion was ordered by MBOC without written ruling; no appeal from private respondent.

164*

92A/94

- canvass was deferred by MBOC for lack of summation on the first page of the ER but the inclusion thereafter was made without written ruling of the MBOC.

188*

50A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

158

56A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

149

60A/62A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

210

74A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

144

83A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

145

121A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

169

123A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

149

114A

- petition for exclusion with offer of evidence in writing was submitted in the morning but was not acted and not ruled upon, thereafter, MBOC proclaimed the respondent.

161

Total Votes Cast on Contested Precincts 4,160

As shown above, in no single instance did the MBC make any written ruling on the numerous petitions for exclusion filed by private respondent Tabag. Even those objections made in writing by private respondent Tabag were not acted and ruled upon by the MBC; neither did it act on the several written notices of appeal filed by private respondent Tabag.

Clearly, the MBC violated its duty under paragraph (d) of Section 20 of R.A. No. 7166 to enter its rulings, particularly on those objections that have been reduced to writing, on the prescribed form and authenticate the same by the signatures of its members. De Guzman, the Chairman of the MBC, in his answer-memorandum filed with the COMELEC Second Division, admitted that the MBC did not make any written ruling vis-à-vis private respondent Tabag's objections, even those made in writing.

Petitioner Espidol maintains that the MBC could not be faulted for not making any written rulings on private respondent Tabag's objections because most were not reduced to writing as required by paragraph (c) of Section 20 of R.A. No. 7166. Further, those objections made in writing were not allegedly simultaneously submitted with the oral objections. According to petitioner Espidol, the word "simultaneous" in Section 20 (c) of R.A. No. 7166 should be construed strictly in view of its mandatory nature.

This proffered construction fails to persuade. As correctly ruled by the COMELEC en banc and the Second Division, the word "simultaneous" must not be given a strict and constricting meaning. Submission of the written objection within 24 hours from when the oral objection was made is substantial compliance with the law. The COMELEC en banc's ratiocination on this point is quoted with approval:

There is no debate that an oral objection must be reduced into writing. Even the case laws cited by private respondent [referring to Espidol] assert the same requirement. However, there was never any discussion that the same shall be submitted at the same moment as the oral objection. The requirement therefore that written objections must be submitted simultaneously is just limited to the provision itself.

To advance, therefore, the technical interpretation of the word simultaneous, is to require that written objections should be submitted at the same time with the oral objection. The fact that the rule speaks of an oral objection separate from the written form contemplates that both forms may be submitted at different moments, as long as this is done within reasonable time. Hence, if a counsel submits his written objection an hour later, the same may be considered compliance with the rule. The same may be the situation if counsel may submit his written objections at the end of the canvassing for the day. The question, therefore, is up to when "reasonable time" be in the submission of written objections.

The interpretation must be put in the context of the whole process of disposing objected returns. Considering that the objections have to be ruled upon by the board of canvassers based on the evidence which are required to be submitted within twenty-four (24) hours, the board, therefore, has to wait for at least twenty-four (24) hours, before they could rule on the objection. Hence, even if the board already has the written objections with them, they still cannot rule on the same until the evidence has been submitted within twenty-four (24) hours.

It is therefore, the consideration of this Commission that the board of canvassers should not rule on the objections of the parties until the twenty-four-hour (24) period has lapsed, unless they already have with them the written objections as well as the evidence. In that case, submission of written objections within twenty-four (24) hours together with the evidence, may be considered substantial compliance with the rule.[39]

Petitioner Espidol likewise justifies the MBC's failure to rule on the objections of private respondent Tabag by stating that these were not proper for pre-proclamation controversy; hence, the dismissal thereof by the MBC was proper. This contention deserves scant consideration.

A pre-proclamation controversy is defined as referring "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." [40] Issues that may be raised in a pre-proclamation controversy are as follows:

- (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 another 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 controversy polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. [41]

Admittedly, the Court had the occasion to state that lack of inner paper seals in the election returns does not justify their exclusion from canvassing and that such is not proper subject of a pre-proclamation controversy. [42] However, in the present case, aside from the lack of inner paper seals, private respondent Tabag raised other grounds for the exclusion of certain election returns, including lack of signature of the Chairman of the BEI and absence of thumbmarks of the members of the BEI.

The signatures and thumbmarks of the BEI members are required to be affixed on the election returns under Section 212 of the OEC, which states in part:

Sec. 212. Election returns. - The board of election inspectors shall prepare the election returns simultaneously with the counting of the votes in the polling place as prescribed in Section 210 hereof. The return shall be prepared in sextuplicate. The recording of votes shall be made as prescribed in said section. The entry of votes in words and figures for each candidate shall be closed with the signature and the clear imprint of the thumbmark of the right hand of all the members, likewise to be affixed in full view of the public, immediately after the last vote recorded or immediately after the name of the candidate who did not receive any vote.

...

If the signatures and/or thumbmarks of the members of the board of election inspectors or some as required in this provision are missing in the election returns, the board of canvassers may summon the members of the board of election inspectors concerned to complete the returns.

In relation thereto, the pertinent proviso of Section 234 of the OEC is quoted anew:

Sec. 234. Material defects in the election returns. - If it should appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction'

Consequently, the absence of these signatures and thumbmarks rendered the said election returns materially defective and, therefore, proper subject of a pre-proclamation controversy particularly falling under paragraph (b) of Section 243 of the OEC which is quoted anew:

- (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 another authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

Granting *arguendo* that the objections interposed by private respondent Tabag were not proper for a pre-proclamation controversy, nonetheless, the MBC should have made written rulings thereon. Under Section 20

of R.A. No. 7166, the board of canvassers is mandated to grant an objecting party 24 hours from the time of the presentation of the oral objection to submit its evidence. Thereafter, the other party is also given 24 hours to submit its opposition. If no opposition has been filed, the board shall rule on the objections and enter its ruling in the prescribed form and authenticate the same with the signatures of the members of the board. As earlier opined, De Guzman, as Chairman of the MBC, admitted in his Answer-Memorandum that the board did not make any written rulings on the objections interposed by private respondent Tabag, including those reduced to writing.

The requirement that the board of canvassers reduce to writing its rulings is mandatory:

It is clear from this provision that the board of canvassers is under the obligation to make a written ruling on the formal objections made by any of the parties, who may then appeal the same to the COMELEC. It is equally clear that the failure or refusal of the board of canvassers to discharge this obligation should not in any way prejudice the objecting party's right to elevate the matter to the COMELEC for proper review. Otherwise, all that a board of canvassers partial to one of the candidates has to do to favor him would be to refuse to make a written ruling on his opponent's objections and thereby prevent their review by the COMELEC.[43]

The Court notes that during the final day of the canvassing, or on May 15, 2004, private respondent Tabag made oral objections to the inclusion of several election returns. The canvassing concluded at about 9:30 p.m. of the said day. Barely 12 hours thereafter, or at 9:00 a.m. of May 16, 2004, the MBC proclaimed petitioner Espidol as the mayor-elect of Ramon, Isabela. By so doing, the MBC effectively deprived private respondent Tabag of the opportunity to seasonably substantiate his oral objections with evidence and submit the corresponding written objections. The proclamation of petitioner Espidol was clearly made with undue haste, considering that it was made even before the lapse of the 24-hour period given to private respondent Tabag under Section 20(c) of R.A. No. 7166 to submit the evidence and written objections in support of his oral objections. In other words, the MBC, without awaiting for or considering private respondent Tabag's evidence and written objections to support his oral objections and, consequently, without any lawful ruling thereon, proclaimed petitioner Espidol.

In the process, the MBC not only deprived private respondent Tabag of the right to appeal its ruling to the COMELEC, it likewise deprived the latter body to rule on the objections of private respondent Tabag. Such act of the MBC violated Section 20 (i) of R.A. No. 7166, quoted again below:

(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.

The following pronouncement in *Jamil v. Comelec*[44] is likewise instructive:

It is our considered view that both proclamations of petitioner and private respondent are invalid.

Clear it is that petitioner Jamil was proclaimed on June 26, 1995 after Casan Macadato, chairman of the second MBC, conducted an investigation with respect to the inclusion or exclusion of the returns from Precinct Nos. 5, 10-1 and 20-1 and after he submitted his investigation report, which he alone signed, to the COMELEC on June 5, 1995 merely recommending the inclusion of the three (3) returns in the canvass. As we have mentioned above, said investigation report was not in form or substance a ruling of the MBC because it did not make a definitive pronouncement or disposition resolving the issues regarding the questioned returns but only a recommendation to the COMELEC. There being no ruling on the inclusion or exclusion of the disputed returns, there could have been no complete and valid canvass which is a prerequisite to a valid proclamation.[45]

In addition, it is significant to note that the COMELEC Second Division found a discrepancy between the number

of votes cast for the mayoralty candidates and the number of registered voters who actually voted. Upon verification of the SOV, the COMELEC Second Division discovered that the total number of those who actually voted was 17,207; on the other hand, the total number of votes cast for the mayoralty candidates added up to 18,065, hence, exceeding the total number of those who actually voted by 858. This finding was affirmed by the COMELEC en banc.

Pertinently, in *Duremdes v. COMELEC*,^[46] cited by the COMELEC Second Division, the Court affirmed the COMELEC's nullification of the proclamation of a candidate for the Vice-Governor as there existed discrepancies between the number of votes appearing in the SOV and that in the election returns. According to the Court in the said case, "any error in the Statement of Votes would affect the proclamation made on the basis thereof. The true will of the electorate may thus be not fully and faithfully reflected by the proclamation"^[47]

Equally damaging to petitioner Espidol's cause is the admission made by De Guzman in his Answer-Memorandum of the presence of threats and intimidation that constrained him to hastily finish the canvassing and proclamation.^[48] The following disquisition of the COMELEC Second Division with respect to the discrepancy in the SOV and the presence of threats and intimidation is apropos:

The above discrepancy may not yet overturn the alleged lead of respondent [referring to Espidol] from petitioner [referring to Tabag] but such figure tells of the fact that a deliberate attempt to pad one's votes may have transpired, and the Commission cannot just close its eyes to this travesty of the integrity of the electoral process. In addition to this, when We consider all the other circumstances surrounding the canvassing of the returns in Ramon, Isabela, including the admission of the MBOC Chairman of the presence of threats and intimidation, as well as the irregularities in the accomplishment of the election returns as found during the canvassing, We are led to conclude that the proceedings of the MBOC in Ramon, Isabela has been irregular and that the same has been vitiated with threats and intimidation, hence, annulment of Respondent's proclamation is in order.^[49]

Under the foregoing circumstances, the COMELEC did not commit grave abuse of discretion when it nullified the proclamation of petitioner Espidol. In a long line of cases, the Court has affirmed the power of the COMELEC to annul an illegal canvass and proclamation.^[50]

Lastly, petitioner Espidol decries that he was deprived of due process when the COMELEC Second Division issued the Order dated June 23, 2004 suspending the effects of his proclamation. The records, however, belie this claim, as it has been shown that on June 9, 2004, the COMELEC issued summonses with notice of the hearing set on June 17, 2004; on the said date, respective counsel of petitioner Espidol and private respondent Tabag attended the hearing; after making their respective manifestations, petitioner Espidol's counsel was given five (5) days to file his answer-memorandum; and on June 22, 2004, petitioner filed his Answer-Memorandum.

The fact that the order of the COMELEC Second Division suspending the effects of petitioner Espidol's proclamation was issued a day after he filed his Answer-Memorandum does not mean that the order was tainted with irregularity. As the COMELEC en banc explained -

The order to suspend the effect of private respondent's [referring to petitioner Espidol] proclamation is an interlocutory order based on a prima facie finding that the allegations raised by the petitioner have merits. It is also intended to prevent private respondent from having the advantage of incumbency, hence, depriving him of the possibility of delaying the resolution of this case and of a possible election protest. If, on the other hand, private respondent is confident that he is the true winner of the election then such fact will come out during the re-canvassing of the election returns. However, if he has something to hide then his best strategy, indeed, is to grab the proclamation, assume the office and delay any controversy or protest filed against him until the end of the term of the subject office.

Such interlocutory order was eventually justified by the actuation of private respondent of taking his oath of office and in actually assuming the post of Mayor despite the order suspending the effect of his proclamation. His counsel should have advised him to follow the order of the Commission and push for the immediate resolution of the controversy so that any doubt as regards his proclamation will immediately be erased, unless, such doubt is corroborated during the re-canvassing of the election returns.[51]

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.[52] Clearly, petitioner Espidol was given full opportunity to present his side on the petition for annulment filed by private respondent Tabag.

It bears reiterating, at this point, that the Court has given its imprimatur on the principle that the COMELEC is with authority to annul any canvass and proclamation illegally made.[53] The fact that a candidate illegally proclaimed has assumed office is not a bar to the exercise of such power.[54] It is also true that as a general rule, the proper remedy after the proclamation of the winning candidate for the position contested would be to file a regular election protest or quo warranto.[55] This rule, however, admits of exceptions and one of those is where the proclamation was null and void.[56] In such a case, i.e., where the proclamation is null and void, the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such proclamation a nullity.[57]

The rationale therefor is aptly elucidated thus:

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 served in *Lagumbay v. Climaco*, 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.[58]

All told, the COMELEC en banc did not commit grave abuse of discretion in affirming in toto the resolution of the Second Division annulling the proclamation of petitioner Espidol.

WHEREFORE, the petition is DISMISSED. The Resolution dated August 30, 2004 of the COMELEC en banc in SPC No. 04-180 is AFFIRMED in toto. The status quo order issued on September 7, 2004 is hereby set aside.

This decision is immediately executory.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Rollo, p. 62.

[2] Rollo, p. 46.

- [3] Id. at 16.
- [4] Id. at 331.
- [5] Id. at 353.
- [6] Id. at 91.
- [7] Id. at 140.
- [8] Id. at 141-143.
- [9] Rollo, p. 143.
- [10] Id. at 63-64.
- [11] Id. at 364.
- [12] Id. at 154.
- [13] Rollo, pp. 89-90.
- [14] Id. at 150.
- [15] Rollo, p. 151.
- [16] Id. at 16.
- [17] Id. at 151.
- [18] Id. at 86.
- [19] Rollo, pp. 47-48.
- [20] Id. at 65.
- [21] Id. at 328.
- [22] Rollo, p. 323.
- [23] Id. at 105
- [24] Id. at 107.
- [25] Rollo, p. 109.
- [26] Id. at 108.
- [27] Id. at 109.
- [28] Id. at 46.
- [29] Rollo, pp. 55-56.
- [30] Rollo, p. 110.
- [31] Id. at 62.
- [32] Id. at 79-80.
- [33] Rollo, p. 85.

[34] Id. at 163.

[35] Id. at 18.

[36] Rollo, p. 164.

[37] Emphasis supplied.

[38] Concurring Opinion of Commissioner F.A. Tuason, Jr., COMELEC Second Division Resolution dated July 16, 2004; Rollo, pp. 58-59.

[39] Rollo, p. 73.

[40] Section 241 of the Omnibus Election Code.

[41] Section 242, Id.

[42] *Bandala v. Commission on Elections*, G.R. No. 159369, 3 March 2004, 424 SCRA 267.

[43] *Abella v. Larrazabal*, G.R. Nos. 87721-30, 21 December 1989, 180 SCRA 509. See also *Sema v. COMELEC*, 347 SCRA 633 (2000).

[44] G.R. No. 123648, 15 December 1997, 283 SCRA 349.

[45] Underscoring supplied.

[46] G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746.

[47] G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746, p. 754.

[48] Rollo, p. 75.

[49] Id. at 55.

[50] *Lorenzo v. COMELEC*, G.R. No. 158371, 11 December 2003, 418 SCRA 448 citing *Albano v. Arranz*, 4 SCRA 386 (1962); *Demafiles v. COMELEC*, 21 SCRA 1461 (1967); *Aguam v. COMELEC*, 23 SCRA 883 (1968).

[51] Rollo, p. 70.

[52] *Utto v. Comelec*, G.R No. 150111, January 31, 2002, 375 SCRA 523.

[53] Ibid.

[54] Id.

[55] *Lorenzo v. COMELEC*, *supra*.

[56] Ibid.

[57] *Utto v. COMELEC*, *supra*.

[58] Id. citing *Aguam v. COMELEC*, 23 SCRA 883 (1968).

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