DATU ISRAEL SINSUAT AND DATU JABERAEL SINSUAT, PETITIONERS, VS. THE HONORABLE COMMISSION ON ELECTIONS AND THE SPECIAL MUNICIPAL BOARD OF CANVASSERS OF SOUTH UPI, MAGUINDANAO, AS...

G.R. NO. 169106. June 23, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari and prohibition with application for the issuance of a temporary restraining order and/or preliminary prohibitory injunction or status quo order assails the Order[1] dated August 16, 2005 of the Commission on Elections (COMELEC) in SPC No. 04-247. The COMELEC denied petitioners' motions to suspend the reconvening of the Special Board of Canvassers (SBOC) and the proclamation of winning candidates for South Upi, Maguindanao.

The facts are undisputed.

Petitioner Datu Israel C. Sinsuat (Israel) was a mayoralty candidate in the May 2004 Local Elections in South Upi, Maguindanao, while petitioner Datu Jaberael R. Sinsuat (Jaberael), a vice mayoralty candidate. Before the elections, Israel filed a complaint docketed as SPA No. 04-202 for the cancellation of the certificate of candidacy for mayor of Antonio B. Gunsi, Sr. (Gunsi).

Upon canvassing of votes, the Municipal Board of Canvassers proclaimed as winners, on different dates, three candidates for mayor, two candidates for vice-mayor and different sets of members of the Sangguniang Bayan.

Atty. Clarita Callar, Regional Election Director, Region XII, Cotabato City, filed a report on the multiple proclamations in South Upi. In a Resolution[2] dated June 29, 2004, the COMELEC First Division, finding that all proclamations were based on incomplete canvass, annulled the proclamations. The COMELEC en banc, in a Resolution[3] dated September 8, 2004, denied Israel's motion for reconsideration[4] and ordered the appointment of the SBOC. The SBOC was directed to convene and re-canvass all election returns from all 35 precincts of South Upi, and proclaim the winners for mayor, vice-mayor and members of the Sangguniang Bayan. However, the SBOC was unable to canvass votes from four of the 35 precincts. Thus, in a resolution dated March 8, 2005, the SBOC was also directed to act as Special Board of Election Inspectors for Precincts Nos. 3A,[5] 10A, 15A and 17A, count the ballots therein, and proceed with the canvassing.

Meanwhile, the COMELEC Second Division, in SPA No. 04-202, disqualified Gunsi to run for mayor for not being a registered resident of South Upi.[6] On June 9, 2005, the COMELEC en banc denied Gunsi's motion for reconsideration.[7]

The SBOC, on the other hand, submitted its report[8] dated May 16, 2005 with the following results:

[For Mayor]

Antonio B. Gunsi

-

1,954

Jovito B. Martin

-

1,617

Israel C. Sinsuat

-

1,643

For Vice-Mayor

Catalino M. Ariston

-

387

Ricardo F. Betita

-

872

Abdullah A. Campong

-

1,352

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Roland B. Moendeg

-

1,296

Jaberael R. Sinsuat

-

1,229

For Councilors

Jose N. Alvarez

-

1,307

Doming L. Angit

-

653

Lencio A. Arig

-

859

Lydia B. Aron

-

1,652

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Armando S. Babas

-

214

Antonio B. Batitao

-

623

Rene T. Batitao

-

447

Vicente F. Betita

-

1,384

Manuel L. Compleza

-

839

Abogado K. Dida

-

1,105

Mohamad D. Diocolano

-

761

Francilino B. Dizon

-

508

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Alimudin S. Edzil

-

1,166

Linda L. Erese

-

2,061

Florentino M. Fantingan

-

19

Leo T. Galangan

-

1,002

Manuel B. Gunsi

-

1,026

Joselito C. Insoy

-

968

Amil B. Kamid

-

308

Adnan K. Karim

-

1,290

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Gems S. Kudteg

-

902

Ronnie K. Omar

-

1,284

Sanny M. Piang

-

1,155

Warlito D. Pinuela

-

1,477

Raymundo L. Quinlat, Jr.

-

1,356

Calbeno P. Rawadin

-

1,041

Maria A. Sargan

-

1,868

Manuel B. Gunsi

-

1,026

Alfredo A. Tenorio

-

1,046

Rodrigo S. Toriales

-

1,481

Zainal S. Tumambiling

-

23

Armando B. Untal

-

747

Jaime T. Usman

-

1,364

Bienvenido W. Yap, Sr.

-

1,609

[9]

Jaberael questioned 95 ballots from Precincts Nos. 15A and 17A which would affect the results of the election. It appeared that in 48 ballots from Precinct No. 15A and 47 ballots from Precinct No. 17A, the name "Jay" or "Sinsuat" written on the space for vice-mayor was "erased" by a single line and beside it was the name "Campong" or "Beds" which is the nickname of respondent Abdullah Campong (Campong). In view of this, the SBOC suggested that the commission check these ballots which it counted in favor of Campong. It wanted the commission to "ascertain whether or not the Board's determination of the integrity and validity of the ballots" from said precincts "must be reversed and set aside."[10]

In an Order[11] dated July 26, 2005, the COMELEC en banc ordered the SBOC to reconvene and proclaim Campong for vice-mayor, and Erlinda L. Erese, Maria A. Sargan, Lydia B. Aron, Bienvenido W. Yap, Sr., Rodrigo S. Toriales, Warlito D. Pinuela, Vicente B. Betita and Jaime T. Usman, for councilors. It also held that no

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candidate shall be proclaimed mayor due to the disqualification of Gunsi, the winning candidate for mayor. Instead, it referred the matter to the Department of Interior and Local Government – ARMM for the implementation of the rules on succession.

Consequently, petitioners filed the following: (1) Motion to suspend implementation of order promulgated on July 26, 2005; (2) Very urgent motion to suspend reconvening of the SBOC; and (3) Very urgent motion to recall notice to reconvene issued by the SBOC. On August 2, 2005, the COMELEC suspended the reconvening of the SBOC and required the other parties to comment.

In its assailed order dated August 16, 2005, the COMELEC denied the cited motions holding that they were actually motions for reconsideration of an en banc resolution which is not allowed in special cases under Section 1, Rule 13 of the 1993 COMELEC Rules of Procedure. It added that the SBOC had already considered the contested ballots from Precincts Nos. 15A and 17A as valid, and counted them in favor of Campong. It ratiocinated that the case before it was not an election protest where election documents may be examined and evidence aliunde may be presented to prove that the contested ballots were written by two persons.

Hence, this petition where petitioners raise the following issues:

> - WHETHER OR NOT THE NINETY-FIVE (95) VOTES ORIGINALLY AND OBVIOUSLY CAST FOR DATU JABERAEL SINSUAT, VICE MAYORALTY CANDIDATE, BUT WAS ILLEGALLY ERASED AND TAMPERED IN FAVOR OF ABDULLAH "BEDS" CAMPONG SHOULD BE COUNTED IN FAVOR OF DATU JABERAEL SINSUAT;
>
> - WHETHER OR NOT DATU ISRAEL SINSUAT, MAYORALTY CANDIDATE, AS THE CANDIDATE WHO RECEIVED THE NEXT HIGHEST NUMBER OF VOTES, [SHOULD] BE PROCLAIMED AS THE DULY ELECTED MUNICIPAL MAYOR OF SOUTH UPI, MAGUINDANAO CONSIDERING THAT THE DISQUALIFICATION OF THE CANDIDATE WHO RECEIVED THE HIGHEST NUMBER OF VOTES, ANTONIO GUNSI, SR., BECAME FINAL AND EXECUTORY PRIOR TO THE PROCLAMATION OF ANY WINNING CANDIDATE;
>
> - THE PRIMORDIAL CONSIDERATION IS WHETHER OR NOT THE AUGUST 16, 200[5] ORDER IS PROPER OR REVERSIBLE.[12]

Simply, the issues in this case are: (1) Did the COMELEC gravely abuse its discretion when it did not count the contested ballots in favor of Jaberael? (2) Should petitioner Israel be proclaimed mayor?

On the first issue, petitioners contend that the COMELEC gravely abused its discretion when it did not consider the contested ballots as votes for Jaberael despite the SBOC's recommendation. They aver that had the 95 contested ballots been counted in favor of Jaberael, the latter would have won the elections with 1,324 votes since Campong would only have 1,257 votes. They also maintain that the COMELEC should have inspected and examined the contested ballots and made a definite ruling thereon. On the second issue, petitioners claim that the COMELEC should have proclaimed Israel as the duly elected mayor since Gunsi's votes should have been considered stray votes. They also aver that Gunsi's disqualification became final and executory before the proclamation of any winning candidate.

Respondent Campong claims that the case is now moot and academic as the order sought to be annulled had become final and executory. Further, he argues that he already took his oath as vice-mayor and assumed his office on August 25, 2005. Thereafter, he succeeded as mayor in view of Gunsi's disqualification.

He also contends that petitioners are guilty of forum-shopping considering Jaberael also filed an election protest, docketed as Case No. 2005-19, now pending in the Regional Trial Court of Cotabato City, Branch XIV.[13] He

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argues that the appreciation of the contested ballots and election documents is best left to the trial court hearing the election protest.

Considering the circumstances in this case, we find that no grave abuse of discretion was committed by the respondent COMELEC.

Note that this petition stemmed from a pre-proclamation controversy where the proclamations of Israel and Jaberael were annulled due to an incomplete canvass.[14] 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 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of election returns.[15] The proceedings are summary in nature in that there is no room for the presentation of evidence aliunde, the inspection of voluminous documents, and for meticulous technical examinations which take up considerable time.[16]

In this case, Jaberael challenged, not the election returns, but the 95 ballots reflected in the returns of Precincts Nos. 15A and 17A. Well-settled is the rule that issues relative to the appreciation of ballots cannot be raised in a pre-proclamation controversy.[17] Appreciation of ballots is the task of the board of election inspectors, not the board of canvassers, and questions related thereto are proper only in election protests.[18] In a regular election protest, the parties may litigate all the legal and factual issues raised by them in as much detail as they may deem necessary or appropriate.[19]

Moreover, the COMELEC en banc's decision directing the proclamation of the winning candidates becomes final and executory after five days from promulgation unless restrained by the Supreme Court.[20] Since this Court did not issue a restraining order, the winning candidates must be proclaimed. Upon such proclamation, the action ceases to be a pre-proclamation controversy. But the losing party may still file an election contest within ten (10) days following the date of proclamation.[21]

As a rule, the filing of an election protest (1) precludes the subsequent filing of a pre-proclamation controversy or (2) amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason for this rule is that once the competent tribunal has acquired jurisdiction of an election protest, all questions relative thereto will have to be decided in the case itself and not in another proceeding to prevent confusion and conflict of authority.[22]

While this rule admits exceptions, circumstances of this case do not warrant their application. Records reveal that, indeed, Jaberael filed an election protest[23] with the trial court assailing the results in all 35 precincts of South Upi including the 95 contested ballots from Precincts Nos. 15A and 17A. Hence, such election protest amounts to his abandonment of the pre-proclamation controversy.

On the second issue, should petitioner Israel be proclaimed mayor?

It is now settled doctrine that the COMELEC cannot proclaim as winner the candidate who obtains the second highest number of votes in case the winning candidate is ineligible or disqualified.[24] This rule admits an exception. But this exception is predicated on the concurrence of two requisites, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate.[25] The facts warranting the exception do not obtain in this case.

The complaint for disqualification of Gunsi was filed before the elections but the COMELEC en banc disqualified him subsequent to the election. Thus, when the electorate voted Gunsi for mayor on May 10, 2004, it was under

the belief that he was qualified. There is no presumption that the electorate agreed to the invalidation of their votes as stray votes in case of Gunsi's disqualification. The Court cannot adhere to petitioner Israel's contention that the votes cast in favor of Gunsi are stray votes. The subsequent finding of the COMELEC en banc that Gunsi is ineligible cannot retroact to the date of elections so as to invalidate the votes cast for him.[26] At the time, he was not notoriously known by the public to be ineligible to run for mayor.[27]

Conformably then, the rules on succession under the Local Government Code shall apply, thus,

> SECTION 44. Permanent Vacancies in the Office of the Governor, Vice-Governor, Mayor, and Vice-Mayor.—If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. . . .
>
> x x x x
>
> For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.
>
> x x x x[28] (Emphasis added)

Considering Gunsi failed to qualify as mayor of South Upi, the proclaimed vice-mayor shall then succeed him as mayor.

WHEREFORE, the petition is DISMISSED for lack of merit, without prejudice to the election protest filed in the Regional Trial Court of Cotabato City, Branch XIV. The order dated August 16, 2005 of the Commission on Elections in SPC No. 04-247 is hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

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

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[1] Rollo, pp. 48-56.

[2] Id. at 57-64.

[3] Id. at 106-111.

[4] Id. at 65-105.

[5] Id. at 127. Unlike the ballots from Precincts Nos. 10A, 15A and 17A, those from Precinct 3A had already been counted. The SBOC merely retrieved the election return from the ballot box and canvassed it.

[6] Id. at 119-121.

[7] Id. at 145-147.

[8] Id. at 125-135.

[9] Id. at 133-134. Emphasis on winning candidates.

[10] Id. at 135.

[11] Id. at 155-159.

[12] Id. at 486.

[13] Id. at 440.

[14] Folder No. 2, p. 418. Israel filed a petition for certiorari and prohibition with prayer for temporary restraining order and/or preliminary prohibitory injunction, docketed as G.R. No. 165293, with the Supreme Court.

[15] OMNIBUS ELECTION CODE, Art. XX, Sec. 241.

[16] Chu v. Commission on Elections, G.R. No. 135423, November 29, 1999, 319 SCRA 482, 491.

[17] Patoray v. Commission on Elections, G.R. No. 125798, June 19, 1997, 274 SCRA 470, 480.

[18] Id.

[19] Lucman v. Commission on Elections, G.R. No. 166229, June 29, 2005, 462 SCRA 299, 308.

[20] COMELEC RULES OF PROCEDURE, Rule 18, Sec. 13(b).

[21] Id. at Rule 35, Sec. 3.

[22] Dumayas, Jr. v. Commission on Elections, G.R. Nos. 141952-53, April 20, 2001, 357 SCRA 358, 367.

[23] Rollo, pp. 447-460.

[24] Bautista v. Commission on Elections, G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299, 323-324.

[25] Grego v. Commission on Elections, G.R. No. 125955, June 19, 1997, 274 SCRA 481, 501.

[26] Bautista v. Commission on Elections, supra at 324.

[27] Domino v. Commission on Elections, G.R. No. 134015, July 19, 1999, 310 SCRA 546, 575.

[28] LOCAL GOVERNMENT CODE OF THE PHILIPPINES, SECTION 44.

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