ROMMEL G. MUÑOZ, PETITIONER, VS. COMMISSION ON ELECTIONS, CARLOS IRWIN G. BALDO, JR., RESPONDENTS.

G.R. NO. 170678. July 17, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order filed by petitioner Rommel G. Muñoz assailing the Resolution[1] dated December 15, 2005 of the Commission on Elections (COMELEC) En Banc in SPC No. 04-124 which affirmed the Resolution[2] dated October 25, 2004 of the COMELEC First Division granting the petition of private respondent Carlos Irwin G. Baldo, Jr. to annul petitioner's proclamation as mayor of Camalig, Albay.

The facts of the case are as follows:

Petitioner and private respondent were candidates for mayor of Camalig, Albay in the May 10, 2004 election.[3] At 6:00 o'clock in the evening of May 10, 2004, the Municipal Board of Canvassers (MBC) convened and canvassed the election returns (ER).[4]

On May 11, 2004, the lawyers of private respondent objected to the inclusion of the 26 ERs from various precincts based on the following grounds: 1) eight ERs lack inner seal; 2) seven ERs lack material data; 3) one ER lack signatures; 4) four ERs lack signatures and thumbmarks of the members of the Board of Election Inspectors on the envelope containing them; 5) one ER lack the name and signature of the poll clerk on the second page thereof; 6) one ER lack the number of votes in words and figures; and 7) four ERs were allegedly prepared under intimidation.[5]

On May 13, 2004, the MBC denied the objections and ruled to include the objected ERs in the canvass. Private respondent appealed the said ruling to the COMELEC on May 18, 2004 and was docketed as SPC No. 04-087 and raffled to the COMELEC First Division.[6]

Despite the pendency of the appeal, petitioner was proclaimed on May 19, 2004 by the MBC as the winning candidate for mayor of Camalig, Albay.[7]

On May 21, 2004, private respondent filed with the COMELEC a petition to annul the proclamation of the petitioner for being premature and illegal. The case was docketed as SPC No. 04-124 and raffled to the COMELEC First Division.[8]

On October 25, 2004, the COMELEC First Division rendered a Resolution in SPC No. 04-124 granting the petition to annul the proclamation. The dispositive portion thereof reads:

> WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) hereby GRANTS the Petition. The proclamation of x x x ROMMEL MUÑOZ as winning candidate for mayor of Camalig, Albay is ANNULLED for having been made in an irregular proceeding and for being precipitate and premature.

SO ORDERED.[9]

Petitioner's motion for reconsideration[10] was denied for lack of merit by the COMELEC En Banc in a Resolution dated December 15, 2005, thus:

> WHEREFORE, premises considered, the Commission En Banc hereby DENIES the Motion for Reconsideration filed by x x x Muñoz for lack of merit. Accordingly, the ANNULMENT and SETTING ASIDE, by the First Division, of the proclamation of x x x ROMMEL MUÑOZ as the duly elected Mayor is hereby AFFIRMED.
>
> The Regional Election Director of Region V, Atty. Zacarias C. Zaragoza, Jr., is hereby DIRECTED to constitute a new Municipal Board of Canvassers from among the Election Officers in the Region.
>
> Accordingly, the new Municipal Board of Canvassers of Camalig, Albay is hereby DIRECTED to:
>
> a) RECONVENE, and after due notice to all parties/candidates concerned,
>
> b) RE-CANVASS all the election returns of Camalig, Albay, and on the basis thereof,
>
> c) PREPARE a new Certificate of Canvass, and forthwith
>
> d) PROCLAIM the winning candidates for Mayoralty position.
>
> SO ORDERED.[11]

Hence, petitioner files the instant petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order.

On January 17, 2006, the Court issued a temporary restraining order effective immediately and ordered the COMELEC to cease and desist from implementing and enforcing the December 15, 2005 Resolution in SPC No. 04-124.[12]

Petitioner relies on the following grounds in support of his petition:

I

> THE PUBLIC [RESPONDENT] COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION DENYING FOR LACK OF MERIT PETITIONER'S MOTION FOR RECONSIDERATION OF THE 25 OCTOBER [2004] RESOLUTION OF THE PUBLIC RESPONDENT'S FIRST DIVISION, FOR BEING CONTRARY TO LAW, RULES AND WELL-SETTLED JURISPRUDENCE;
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> II
>
> THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION ANNULLING AND SETTING ASIDE THE PROCLAMATION OF PETITIONER AS DULY ELECTED MAYOR OF CAMALIG, ALBAY WITHOUT FIRST RESOLVING THE PENDING APPEAL FIRST INITIATED, SPC 04-87;
>
> III
>
> THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION DIRECTING THE NEW MUNICIPAL BOARD OF CANVASSERS OF CAMALIG, ALBAY, TO RECONVENE AND RE-CANVASS ALL ELECTION RESULTS OF CAMALIG, ALBAY, FOR BEING CONTRARY TO

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LAW.[13]

The foregoing issues may be summarized into two: 1) whether or not the COMELEC First Division committed grave abuse of discretion when it decided only the Petition to Annul Proclamation despite the agreement of the parties to consolidate private respondent's appeal from the ruling of the MBC since both cases were raffled to the same Division and the issue in the latter case was connected to, if not determinative of, the merits of the former case; and 2) whether or not the COMELEC En Banc correctly ordered the new MBC to re-canvass all the ERs and to proclaim the winner on the basis thereof despite the pendency of the appeal with the First Division.

The petition is partly granted.

Anent the first issue, we find no merit in petitioner's contention.

While Section 9, Rule 3 of the COMELEC Rules of Procedure provides that "when an action or proceeding involves a question of law and fact which is similar to or common with that of another action or proceeding, the same may be consolidated with the action or proceeding bearing the lower docket number," however, this rule is only permissive, not mandatory. We have consistently held that the term "may" is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise. If he chooses to exercise the right, he must comply with the conditions attached thereto,[14] which in this case require that the cases to be consolidated must involve similar questions of law and fact.

In the case at bar, the consolidation of SPC No. 04-087 with SPC No. 04-124 is inappropriate as they do not involve similar questions of law and fact. SPC No. 04-087 assails the inclusion of the 26 ERs by the MBC on the ground that these were incomplete, contained material defects and were prepared under intimidation, issues which are proper for a pre-proclamation controversy under paragraphs (b) and (c) of Section 243 of the Omnibus Election Code. On the other hand, SPC No. 04-124 is a petition for the annulment of petitioner's proclamation for allegedly being prematurely done, in violation of Section 36(i) of COMELEC Resolution No. 6669[15] which instructs the board of canvassers "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; [a]ny proclamation made in violation hereof shall be void ab initio, unless the contested returns/certificates will not affect the results of the elections." In fine, SPC No. 04-087 pertains to the preparation of the ERs which is a pre-proclamation controversy, while SPC No. 04-124 refers to the conduct of the MBC in proclaiming the petitioner without authority of the COMELEC.

Mere pendency of the two cases before the same division of the COMELEC is not a ground for their outright consolidation. The discretion to consolidate cases may be exercised only when the conditions are present. In any event, the records are bereft of evidence that the parties agreed to consolidate the two cases or that the COMELEC First Division had granted the same.

Further, we find that the COMELEC First Division correctly annulled the proclamation of the petitioner. Time and again, this Court has given its imprimatur on the principle that COMELEC is with authority to annul any canvass and proclamation which was illegally made.[16] At the time the proclamation was made, the COMELEC First Division had not yet resolved SPC No. 04-087. Pursuant to Section 36(i) of COMELEC Resolution No. 6669, which finds basis in Section 20(i) of Republic Act (R.A.) No. 7166,[17] the MBC should not have proclaimed petitioner as the winning candidate absent the authorization from the COMELEC. Any proclamation made under such circumstances is void ab initio.[18]

We likewise do not agree with petitioner's contention that the proclamation was valid as the contested ERs will not affect the results of the election.

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Section 20(i) of R.A. No. 7166 reads:

> Sec. 20. Procedure in Disposition of Contested Election Returns. -
>
> x 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 made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election. (Emphasis supplied)

The phrase "results of the election" is not statutorily defined. However, it had been jurisprudentially explained in Lucero v. Commission on Elections[19] to mean:

> [T]he net result of the election in the rest of the precincts in a given constituency, such that if the margin of a leading candidate over that of his closest rival in the latter precincts is less than the total number of votes in the precinct where there was failure of election, then such failure would certainly affect "the result of the election."[20]

Although the Lucero case involves a failure of election, the definition of "results of election" applies to the disposition of contested election returns under Section 20(i) of R.A. No. 7166. In both situations, the law endeavors to determine the will of the people in an expeditious manner in that if the total number of votes in the precinct where there is a failure of election or in case of the contested ERs, is less than the lead of a candidate over his closest rival, the results of the election would not be adversely affected. Hence, a proclamation may be made because the winning candidate can be ascertained. Otherwise, a special election must be held or an authorization of the COMELEC is necessary after ruling on the objections brought to it on appeal by the losing party in order to determine the will of the electorate. Proclamation made in violation of the rules is void ab initio as it would be based on an incomplete canvass of votes. It is well settled that an incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation. A canvass is not reflective of the true vote of the electorate unless the board of canvassers considers all returns and omits none.[21]

In the case at bar, petitioner obtained a margin of 762 votes over the private respondent based on the canvass of the uncontested ERs whereas the total number of votes in the 26 contested ERs is 5,178, which is higher than the 762-lead of the petitioner over the private respondent. Clearly, the results of the election would be adversely affected by the uncanvassed returns.

As aptly held by the COMELEC First Division:

> The votes obtained by petitioner and private respondent tallied in the contested election returns can not be the basis of the partial proclamation. The objected election returns cannot be considered, even provisionally, as the true and final result of the elections in the contested precincts. The possibility remains, remote thought (sic) it may be that they could be excluded and the results reflected therein disregarded. The contested election returns involved 5,178 votes as this is the number of voters who actually voted in the precincts covered by the objections. The lead of [petitioner] over [private respondent] as shown in the uncontested returns was less than this number. Clearly, the results of the elections could be adversely affected by the uncanvassed returns. Truly, the Board erred in its perception that its partial proclamation was warranted.[22]

While the COMELEC En Banc correctly affirmed the October 25, 2004 Resolution of its First Division in SPC 04-124 insofar as it annulled petitioner's proclamation, however, we find that it exceeded its authority and thus gravely abused its discretion when it ordered the new MBC to re-canvass all ERs even before its First Division could decide on SPC No. 04-087 filed by private respondent assailing the ruling of the MBC to include the 26 contested ERs in the canvass.

Section 3 of Article IX-C of the 1987 Constitution provides:

> Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

In Sarmiento v. Commission on Elections[23] and Zarate v. Commission on Elections,[24] the Court similarly held that "election cases must first be heard and decided by a Division of the Commission," and that the "Commission, sitting en banc, does not have the authority to hear and decide the same at the first instance."

Thus, in Acosta v. Commission on Elections,[25] the Court held that the COMELEC En Banc violated the foregoing Constitutional mandate when it affirmed the trial court's decision that was not the subject of the special civil action before it, but of the appeal filed by therein petitioner, which was still undocketed at the time and the parties have not yet submitted any evidence in relation thereto.

Clearly, by ordering the re-canvass of all the ERs in SPC No. 04-124, the COMELEC En Banc in effect rendered a decision on the merits of SPC No. 04-087, which up to the present is still pending before its First Division, in violation of the rule that it does not have the authority to hear and decide election cases, including pre-proclamation controversies, at the first instance. As the proclamation of the winning candidate has been delayed for more than two years now due to these cases, the COMELEC First Division is directed to expeditiously resolve SPC No. 04-087, which is summary in nature.

WHEREFORE, in view of the foregoing, the petition is PARTLY GRANTED. The December 15, 2005 Resolution of the COMELEC En Banc in SPC No. 04-124 which affirmed the annulment and setting aside by its First Division of the proclamation of petitioner Rommel G. Muñoz as Mayor of Camalig, Albay for being premature, is AFFIRMED with the MODIFICATION that the order to constitute a new Municipal Board of Canvassers to re-canvass all the election returns of Camalig, Albay; to prepare a new Certificate of Canvass; and to declare the winning candidate for mayoralty position is SET ASIDE for having been issued with grave abuse of discretion. The temporary restraining order issued on January 17, 2006 is hereby SET ASIDE.

SO ORDERED.

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

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[1] Rollo, pp. 42-48.

[2] Id. at 49-56.

[3] Id. at 14.

[4] Id. at 14-15.

[5] Id. at 15.

[6] Id. at 64-80.

[7] Id. at 50.

[8] Id. at 58-61.

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[9] Id. at 55.

[10] Id. at 91-108.

[11] Id. at 47.

[12] Id. at 137-138.

[13] Id. at 23.

[14] Social Security Commission v. Court of Appeals, G.R. No. 152058, September 27, 2004, 439 SCRA 239, 250.

[15] General Instructions for Municipal/City/Provincial and District Boards of Canvassers in connection with the May 10, 2004 Elections; Promulgated March 16, 2004.

[16] Abdulakarim D. Utto v. Commission on Elections, 426 Phil. 225, 241(2002).

[17] AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES; Promulgated November 26, 1991.

[18] Nasser Immam v. Commission on Elections, 379 Phil. 953, 963 (2000).

[19] G.R. Nos. 113107 & 113509, July 20, 1994, 234 SCRA 280.

[20] Id. at 292-293.

[21] Barbers v. Commission on Elections, G.R. No. 165691, June 22, 2005, 460 SCRA 569, 584.

[22] Rollo, pp. 54-55.

[23] G.R. Nos. 105628, 105725, 105727, 105730, 105771, 105778, 105797, 105919 & 105977, August 6, 1992, 212 SCRA 307, 313-314.

[24] 376 Phil. 722, 727-728 (1999).

[25] 355 Phil. 323, 326-327 (1998).

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