

CORNELIO EWOC, EDDIE PUGAO, DAVID TOLLINO, ESTEBAN ULLALIM AND AGUINALDO SICNAUA, PETITIONERS, VS. COMMISSION ON ELECTIONS, THE NEW MUNICIPAL BOARD OF CANVASSERS OF TANUDAN, KAL...

G.R. NO. 171882. April 03, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for certiorari, with a prayer for a writ of preliminary injunction and/or temporary restraining order, to nullify and set aside the Resolution[1] dated October 28, 2005 of the Commission on Elections (COMELEC) Second Division in SPC No. 04-301. Said resolution denied the petition to annul the proclamation of private respondents Marcimada Cawi, Lino Gacadan, Julio Tommongao and Amado Calsiyao as candidates for mayor, vice-mayor and Sangguniang Bayan members, respectively, on the ground that the proceedings of the new Municipal Board of Canvassers (MBOC) of Tanudan, Kalinga were illegal. Equally assailed is the Resolution[2] dated March 2, 2006 of the COMELEC en banc which affirmed the October 28, 2005 Resolution.

Petitioners pray that (1) a temporary restraining order and/or a writ of preliminary injunction be issued against the COMELEC; (2) private respondents be made to cease and desist from implementing the October 28, 2005 and March 2, 2006 Resolutions of the COMELEC; (3) the aforementioned Resolutions be reversed and set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction; (4) the COMELEC be directed to immediately reconvene the new MBOC and order that the results from Precincts Nos. 26A, 27A/28A, 39A and 40A/41A be included in its canvass; and (5) all the winning local candidates in the May 10, 2004 elections be immediately proclaimed.[3]

The antecedent facts are as follows:

Petitioners and private respondents were candidates for mayor, vice-mayor and Sangguniang Bayan members in the municipality of Tanudan, Kalinga in the May 10, 2004 elections. Three pre-proclamation cases,[4] namely SPC Nos. 04-185, 04-186, and 04-226, were filed, impugning the rulings of the old MBOC for excluding the election returns from Precincts Nos. 26A, 27A/28A, 39A and 40A/41A on the alleged grounds that the same were tampered, falsified, padded and were not prepared by the duly authorized or appointed members of the Board of Election Inspectors (BEI).

These three cases were then consolidated after which the COMELEC Second Division issued a Joint Order,[5] reconstituting a new MBOC and directed the latter to examine and determine the integrity of the contested ballot boxes from the said precincts. After reconvening and opening the ballot boxes of the said precincts, the new MBOC issued its ruling[6] excluding the election returns from the said precincts, and proclaiming private respondents as the winning candidates for the contested positions of mayor, vice-mayor and Sangguniang Bayan members, respectively.

On September 15, 2004, petitioners filed the Petition to Annul Proclamation or To Suspend the Effects Thereof and To Declare Illegal the Proceedings of the New Municipal Board of Canvassers,[7] in the case entitled "Cornelio Ewoc, et al. v. New Municipal Board of Canvassers of Tanudan, Kalinga, et al.," docketed as SPC No. 04-301. In the said petition, petitioners assailed the ruling of the new MBOC for lack of evidence to support its conclusion that the integrity of the ballot boxes for the abovesaid precincts and their contents were violated.

The COMELEC Second Division denied the petition in a Resolution dated October 28, 2005. It said that (1) the new MBOC acted within the parameters of the law when it decided to set aside the ballots and proceeded to proclaim the winning candidates based on the uncontested election returns; (2) its ruling that the ballots were tampered with or that its integrity have been violated was not a final ruling; (3) such observation only prompts the new MBOC to set aside the ballots and wait for further directive from the Commission; (4) it could not make a conclusive ruling since the appreciation of ballots was beyond the authority of the new MBOC; and (5) the authority was lodged with the trial courts, as far as the local executives of municipalities were concerned. The COMELEC Second Division added that it could not afford a long drawn election protest resulting to a vacancy in the vice mayoralty post so it had proclaimed the winning candidates based on the uncontested election returns. The Resolution of the COMELEC Second Division was issued without prejudice to the right of the petitioners to file an election protest within the period allowed by law.[8]

The dispositive portion of the Resolution reads,

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit.

SO ORDERED.[9]

The COMELEC en banc, on appeal, affirmed the ruling of the COMELEC Second Division and denied the petitioners' motion for reconsideration, as follows:

x x x x

We affirm the questioned Resolution.

The Second Division did not err in denying the petition. The board acted in accordance with the provisions of Section 237 of the Omnibus Election Code.

Moreover, the Second Division did not leave the petitioners without any remedy. In fact, in the assailed resolution, it held that:

"This resolution is, therefore, without prejudice to the right of the Petitioners to file an election protest within the period allowed by law in order to once and for all resolve the issues regarding the correct appreciation of the ballots in the contested precincts."

WHEREFORE, premises considered, the Motion for Reconsideration is denied for lack of merit.

SO ORDERED.[10]

Petitioners now raise the following issues for the Court's consideration.

I.

The Public Respondent COMELEC gravely abused its discretion amounting to lack or in excess of jurisdiction when it affirmed the conjectured and unsubstantiated 9 September 2004 ruling of the new MB[O]C which adopted a canvassing process contrary to law and settled jurisprudence.

II.

The Public Respondent COMELEC gravely abused its discretion amounting to lack or in excess of jurisdiction when it affirmed the 28 October 2005 resolution of its Second Division, which also affirmed the conjectured and unsubstantiated 9 September 2004 Ruling of the New MB[O]C that the integrity of ballot boxes and its contents for precincts NoS. 26A, 27A/28A, 39A and 40A/41A, of Tanudan, Kalinga, have been violated and were immediately excluded from the canvass that resulted to the illegal proclamation of private respondents.[11]

Simply stated, the main issue for our resolution now is whether the COMELEC gravely abused its discretion when it affirmed the COMELEC Second Division's ruling that the new MBOC's exclusion of election returns from Precincts Nos. 26A, 27A/28A, 39A and 40A/41A was proper. Initially, however, we must first determine whether the Board of Canvassers had jurisdiction to evaluate ballots and determine that the majority of the ballots were prepared by one and the same person or that the individual ballots were prepared by two or more persons.

First, it is a well-established rule in pre-proclamation cases that the Board of Canvassers is without jurisdiction to go beyond what appears on the face of the election return.[12] The rationale is that a full reception of evidence aliunde and the meticulous examination of voluminous election documents would run counter to the summary nature of a pre-proclamation controversy. However, this rule is not without any exception. In *Lee v. Commission on Elections*, we held as follows:

... [this rule] presupposes that the returns "appear to be authentic and duly accomplished on their face." Where, as in the case at bar, there is a prima facie showing that the return is not genuine, several entries having been omitted in the questioned election return, the doctrine does not apply. The COMELEC is thus not powerless to determine if there is basis for the exclusion of the questioned election return.[13] (Emphasis supplied.)

This case is analogous to *Lee*.

Secondly, petitioners aver that the COMELEC erred in affirming the "illegal, highly conjectural and unprocedural (sic)"[14] September 9, 2004 ruling of the new MBOC. It argues that the new MBOC, which had no authority under the law to appreciate the ballots, illegally excluded the election results from the questioned precincts. They also posit that the Joint Order issued by the COMELEC gave the new MBOC only the power to recount the ballots, and not to appreciate them.[15] They contend that to recount involves only physical counting, while to appreciate involves the examination, perusal and review of the entire appearance of the ballots, hence, in the latter the pertinent laws and rules in the appreciation of ballots should apply.[16]

While the summary nature of pre-proclamation controversies is intended to ensure that the canvass and proclamation be delayed as little as possible so as not to create a vacuum in elective positions,[17] in our view, the Board of Canvassers cannot close its eyes to patently dubious entries that would put a reasonable person on notice that something is wrong or irregular.

In this case, the MBOC ruled that (a) in Precinct No. 26A, 72 out of 198 ballots appeared to have been prepared by two or more persons;[18] (b) in Precinct No. 27A/28A, it was observed that there was a total of 249 official ballots, and that there were 249 lower stubs compared to 247 upper stubs as per physical count;[19] (c) in Precinct No. 39A, it was observed that there was a 100% voter turnout, and that 151 ballots appeared to have been prepared by one and the same person or by two or more persons;[20] and (d) in Precinct No. 40A/41A, 224 voters actually voted despite the fact that there were only 221 registered voters, and that 169 ballots appeared to have been prepared by one and the same person, and that individual ballots were prepared by two or more persons.[21] Private respondents cite the same factual evidence as basis for their opposition.[22]

It must be noted that the MBOC arrived at the foregoing conclusions primarily from the handwriting used in the ballots.[23] The similarity found across ballots prompted the MBOC to compare the handwritings found in one

precinct to another, and to consult the Minutes of Voting and Counting. Upon discovery that there were no assisted illiterate or disabled voters,[24] thereby eliminating any possible explanation for the similar handwriting used in the ballots, the MBOC was constrained to exclude the questioned election returns corresponding to the said ballots.[25] It also found that several members of the BEI in the questioned precincts were not authorized by the COMELEC to serve in the BEI.[26] Thereupon, it proceeded with the canvass and made the proclamation based on the unquestioned returns.

Considering all the aforementioned findings, we hold that the COMELEC properly upheld the actions taken by the MBOC, since the MBOC merely complied with the directives found in its Joint Order and pursuant to Section 237 of the Omnibus Election Code, providing thus:

Sec. 237. When integrity of ballots is violated. — If upon the opening of the ballot box as ordered by the Commission under Sections 234, 235 and 236, hereof, it should appear that there are evidence or signs of replacement, tampering or violation of the integrity of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping.[27]

Finally, the MBOC, in ruling for the exclusion of the questioned returns, is entitled to the legal presumption of regularity in the performance of its official functions,[28] which petitioners have failed to rebut.

While this Court has already stressed that public policy frowns on "grab-the-proclamation-prolong-the protest" attempts,[29] this policy however, has to be balanced against the clear and present dangers created by a lengthy period of non-proclamation of winners, a period commonly fraught with tension and danger for the public at large.[30] Thus, we find that based on the submissions by the parties before us, there was no grave abuse of discretion committed by public respondent COMELEC amounting to a lack or excess of jurisdiction.

WHEREFORE, the petition is DENIED for lack of merit. The Resolution of the COMELEC Second Division dated October 28, 2005 and the Resolution of the COMELEC en banc dated March 2, 2006 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 33-35.

[2] Id. at 54-56.

[3] Id. at 28-29.

[4] Id. at 33.

[5] Id. at 61-66.

[6] Id. at 57-60.

[7] Id. at 68-93.

[8] Id. at 34-35.

[9] Id. at 35.

[10] Id. at 55.

[11] Id. at 12-13.

[12] See *Lucman v. Commission on Elections*, G.R. No. 166229, June 29, 2005, 462 SCRA 299, 307; *Bandala v. Commission on Elections*, G.R. No. 159369, March 3, 2004, 424 SCRA 267, 274-275; *Lee v. Commission on Elections*, G.R. No. 157004, July 4, 2003, 405 SCRA 363, 368; *Alauya, Jr. v. Commission on Elections*, G.R. Nos. 152151-52, January 22, 2003, 395 SCRA 742, 750.

[13] *Lee v. Commission on Elections*, id.

[14] *Rollo*, p. 21.

[15] Id. at 23.

[16] Id. at 23-24.

[17] *Chu v. Commission on Elections*, G.R. No. 135423, November 29, 1999, 319 SCRA 482, 492.

[18] *Rollo*, p. 57.

[19] Id.

[20] Id. at 58.

[21] Id.

[22] Id. at 160.

[23] *Supra* note 18.

[24] Id. at 57-59.

[25] Id. at 59.

[26] *Supra* note 22.

[27] *Batas Pambansa Blg. 881, Omnibus Election Code of the Philippines*, Art. XIX — Canvass and Proclamation.

[28] *Chu v. Commission on Elections*, *supra* note 17, at 496; *Pangkat Laguna v. Commission on Elections*, G.R. No. 148075, February 4, 2002, 376 SCRA 97, 100.

[29] See *Navarosa v. Commission on Elections*, G.R. No. 157957, September 18, 2003, 411 SCRA 369, 383; *Dagloc v. Commission on Elections*, G.R. No. 138969, December 17, 1999, 321 SCRA 273, 282.

[30] *Alauya, Jr. v. Commission on Elections*, *supra* note 12, at 752.

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