

MAYOR SALIP ALOY JAINAL, PETITIONER, VS. COMMISSION ON ELECTIONS, JULHATAB J. TALIB, AND HUSSIN AHAJAN, RESPONDENTS.

G.R. NO. 174551. March 07, 2007

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court involving certain issuances of the Commission on Elections (COMELEC) with prayer for the issuance of temporary restraining order (TRO), status quo ante order and/or writ of preliminary injunction.

Petitioner Mayor Salip Aloy Jainal and private respondent Julhatab J. Talib (Talib) were duly certified candidates for Mayor of Indanan, Sulu in the 10 May 2004 elections. During the canvassing, Talib objected to the inclusion of certain returns before the Municipal Board of Canvassers (MBC). On 20 May 2004, petitioner was proclaimed by the MBC as the winning candidate with an alleged margin of 1,018 votes.

On 23 May 2004, Talib filed a pre-proclamation case with the COMELEC, docketed as SPC No. 04-169, praying for the annulment of election returns pertaining to twenty-one (21) precincts, representing 3,788 votes, and for his proclamation as the Mayor of Indanan, Sulu. Talib claimed that his official watchers were asked to leave the precincts before the counting and the preparation of the election returns. Furthermore, the election returns for these precincts did not bear the signatures of the members of the Board of Election

Inspectors (BEI) and his official watchers, a fact which indicates that said election returns were manufactured. Talib also noted that the number of votes cast exceeded the number of voters in Precinct Nos. 33A and 34A.

Petitioner, in his memorandum,[1] prayed for the dismissal of the Talib petition, contending that the latter's allegations were the proper subject of an election protest in the proper trial court.

The members of the MBC were summoned and directed to file their verified answer to Talib's petition.[2] They failed to file their Answer and, despite notice, they also failed to attend the scheduled hearing of SPC No. 04-169. They also failed to submit the memorandum required by the COMELEC.[3] Talib, however, presented an affidavit[4] signed by Daryl Kinazo and Roy M. Cuevas, Chairman and Vice-Chairman, respectively, of the MBC of Indanan, Sulu to the effect that Indanan, Sulu was not their original station; that the stations of COMELEC personnel were re-shuffled and they were re-assigned to Indanan, Sulu because the election officer originally

assigned there for canvassing was nowhere to be found; that when they assumed their duties as members of the MBC, they noticed that some election returns canvassed by them were materially incomplete while others bore erasures.

On 22 March 2005, the COMELEC (2nd Division) issued a Resolution,[5] the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition is granted in part. The election returns from the

following precincts are hereby annulled:

- Precinct 33A (Barangay Kagay)
- Precinct 34A (Barangay Kagay)
- Precinct 17A (Barangay Buansa)
- Precinct 18A (Barangay Buansa)
- Precinct 19A (Barangay Buansa)
- Precinct 20A (Barangay Buansa)
- Precinct 21A (Barangay Buansa)
- Precinct 22A (Barangay Buansa)
- Precinct 9A/9B (Barangay Adjid)

The proclamation of respondent Salip Aloy Jainal is likewise annulled. The vacancy in the position of Indanan Mayor will be filled up pursuant to the applicable provisions of the Local Government Code.

The Election Officer of Indanan is ordered to convene the Board of Election Inspectors in the abovementioned precincts, after notifying the parties concerned and after ensuring that the integrity of the ballot boxes and the ballots are not compromised, in order to recount the ballots cast in the abovementioned precincts. After the recount, the new results will be canvassed and the mayoralty winner proclaimed. If a recount is deemed not possible, he is to make a report to the Commission so that a special election may be immediately scheduled in the affected precincts.

Let a copy of this resolution be forwarded to the presiding judge of the Regional Trial Court of Jolo, Sulu hearing Election Protest Case No. 5-4-04.[6]

SO ORDERED.[7]

On 1 April 2005, petitioner filed a Motion for Reconsideration[8] of the COMELEC 2nd Division's 22 March 2005 Resolution. On 18 September 2006, the COMELEC en banc denied reconsideration but modified the resolution of its 2nd Division by declaring the election return pertaining to Precinct 9A[9] of Barangay Adjid as valid.[10] Hence, petitioner filed the instant petition, including Hussi Ahajan (Ahajan) as private respondent in his capacity as Vice-Mayor who, under the provisions of the Local Government Code, will fill up the vacancy created by the annulment of petitioner's proclamation.

On 8 November 2006 and 2 February 2007, Talib[11] and Ahajan[12] filed their Comments on the Petition, respectively. On 5 December 2006, acting upon the Manifestation and Motion filed by the Office of the Solicitor General, this Court excused it from filing a comment on behalf of the COMELEC in accordance with Sec. 5, Rule 65 of the Rules of Court.[13]

The issues for resolution of this Court may be summarized as follows: (1) whether Talib should have followed the procedure outlined in Sec. 20 of Republic Act (R.A.) No. 7166 for contesting

election returns; (2) whether the order of the Regional Trial Court of Jolo, Sulu in Election Protest Case No. 5-4-04 upholding petitioner's proclamation as Mayor of Indanan, Sulu precludes the COMELEC from issuing the assailed resolutions; (3) whether the COMELEC observed the procedure outlined in Sec. 235 of Batas Pambansa Blg. 881 (Omnibus Election Code) for annulling election returns; and (4) whether it was proper for the COMELEC to "pierce-the-veil" of election returns.

In his Comment,[14] Ahajan questions, as an additional issue, the validity of the 5 October 2006 Order of the COMELEC which directed him, as Vice-Mayor, or any ranking councilor to cease and desist from assuming the position of Acting Mayor. Said Order was issued during the pendency of the present petition and after Ahajan had already taken his oath and assumed office as Acting Mayor[15] pursuant to the COMELEC resolutions of 22 March 2005 and 18 September 2006.

On the first issue, petitioner contends that Talib should have followed the mandatory terms of Sec. 20 of R.A. No. 7166[16] for contesting election returns by appealing to the COMELEC with all the attached evidence and forms within the reglementary period.

Indeed, Sec. 20 of R.A. No. 7166 provides for the steps, outlined below, to be undertaken by a party contesting the inclusion or exclusion of any election return:

- 1) Submitting oral objections and thereupon entering the objections in the form for written objections to be prescribed by the COMELEC;
- 2) Submitting evidence in support of the objections within twenty-four (24) hours;
- 3) Informing the MBC of his intention to appeal from the MBC ruling on his objections;
- 4) Filing with the MBC a written and verified notice of appeal within forty-eight (48) hours from suspension of the canvass, and taking an appeal to the COMELEC within an inextendible period of five (5) days from filing the notice of appeal.

However, the provision also requires the MBC to perform certain acts, to wit:

- 1) Recording the oral objections in the minutes of the canvass;
- 2) Automatically deferring the canvass of the contested returns and proceeding to canvass the uncontested returns;
- 3) Summarily and immediately ruling on the objections upon receipt of the evidence;
- 4) Entering its ruling in the prescribed form and authenticating the same;
- 5) Entering in the minutes of the canvass a party's signified intention to appeal the ruling to the COMELEC;
- 6) Suspending the canvass after canvassing all the uncontested returns and ruling upon the contested returns; and
- 7) Making an appropriate report to the COMELEC immediately upon receipt of the notice of appeal, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

Apparently relying on his bare allegation, petitioner does not state in what respect and on what basis Talib failed to comply with Sec. 20 of R.A. No. 7166. It is incumbent upon petitioner to prove the alleged non-compliance. In the absence of such proof, there is no aspect in the proceedings before the MBC which legally precludes Talib from filing his petition before the COMELEC in accordance with the COMELEC Rules of Procedure. In fact, petitioner did not even raise this issue of non-compliance with Sec. 20 of R.A. No. 7166 in his Answer[17] and Memorandum[18] filed before the COMELEC.

There is no dispute that Talib had objected to the inclusion of the election returns in question before the MBC. Petitioner admitted this in his petition before this Court and in his Memorandum submitted to the COMELEC.[19] Petitioner further admitted that the MBC had denied Talib's petition to exclude the election returns. But the MBC

thereafter proceeded to canvass the election returns, including even the contested ones, contrary to Sec. 20 (b) of R.A. No. 7166, which requires it to automatically defer the canvass of the contested returns. And, as may be gathered from the results of such canvass, the MBC proceeded to proclaim petitioner as the winner of the elections.[20]

Clearly, Talib did what was required of him by Sec. 20 of R.A. No. 7166 as far as the circumstances would allow. He made oral objections to the inclusion of the election returns. It was then incumbent on the MBC to immediately make a categorical ruling on the said objections, even without the benefit of additional evidence considering that Talib's basic evidence consists of the questioned election returns themselves, as they clearly depict on their face the stark absence of the printed names and signatures of the members of the BEI in violation of Sec. 212[21] of the Omnibus Election Code. *Res ipsa loquitur*. The thing speaks for itself.

In view of the absence of the names and signatures of the members of the BEI on the returns, the MBC was further duty bound to comply with Section 212 and Section 234[22] of the Omnibus Election Code. Said provisions respectively allow and require the MBC to summon the members of the BEI to complete the election returns and/or correct the same should it appear that some requisites in form or data are omitted in the election returns.

Assuming, however, that Sec. 20 of R.A. No. 7166 was not complied with, Talib cannot be faulted or made to suffer for such non-compliance as it was the MBC who did not comply with its duties under Sec. 20 of R.A. No. 7166. When Talib made his objections to the inclusion of the contested election returns, there was no other recourse for the MBC except to rule on the objections, suspend the canvass of the contested election returns, and suspend the proclamation of petitioner, in that sequence. Instead of doing so, the MBC, after ruling on the objections, included the contested returns in the canvass and immediately proclaimed petitioner.

These actions of the MBC rendered it impossible for Talib to comply with Sec. 20 of R.A. No. 7166 any further. It should be noted that the forty-eight (48)-hour period for filing a verified notice of appeal with the MBC is reckoned from suspension of the canvass. The appeal to the COMELEC is also reckoned five (5) days from suspension of the canvass. Understandably, Talib had no other recourse but to go directly to the COMELEC.

It is worthy of note that what was filed with and resolved by the poll body is a pre-proclamation case. Pre-proclamation cases refer 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 election returns.[23]

The general rule is that a pre-proclamation case before the COMELEC is, logically, no longer viable after a proclamation has been made.[24] However, this rule admits of exceptions,[25] as when the proclamation is null and void. The proclamation of petitioner in this case is void for three (3) reasons: (1) it was based on a canvass that should have been suspended with respect to the contested election returns; (2) it was done without prior COMELEC authorization which is required in view of the unresolved objections of Talib to the inclusion of certain returns in the canvass; and (3) it was predicated on a canvass that included unsigned election returns involving such number of votes as will affect the outcome of the election. In this regard, it has long been recognized that among the reliefs that the COMELEC may grant is to nullify a proclamation or suspend the effects of one.[26]

Parenthetically, the absence of the required signatures and thumbmarks rendered the election returns concerned materially defective. The crucial circumstance also served as a proper subject of a pre-proclamation controversy, particularly falling under paragraph (b) of Section 243 of the Omnibus Election Code,[27] which the COMELEC

resolved in the assailed issuances.

On the second issue, petitioner calls the attention of this Court to the 3 March 2005 order of the Regional Trial Court of Jolo, Sulu in Election Protest Case No. 5-4-04[28] upholding petitioner's proclamation as Mayor of Indanan, Sulu.[29] He claims that the COMELEC en banc should not have ignored the existence of the order in his motion for reconsideration considering that the order is a judicial affirmation of his proclamation as such Mayor.

Note that Election Protest Case No. 5-4-04 is an election protest case filed by Isnaji, the third candidate for the position of Mayor against petitioner and Talib. Being an election protest or a post-proclamation case, it is markedly different from the case filed by Talib before the COMELEC which is a pre-proclamation case.

Verily, the order of the trial court in the election protest case does not conflict with nor diminish the legal effect of the COMELEC en banc Resolution of 18 September 2006, invalidating eight (8) of the nine (9) questioned election returns. Particularly, the order is not inconsistent with the directive of the COMELEC to the Election Officer of Indanan to convene the BEI in the concerned precincts for a recount, after notice to the parties and after ensuring that the integrity of the ballot boxes are not compromised. The order of the trial court directed a dismissal of the election protest on a technicality, that is, for failure of Isnaji as protestant to prosecute the protest.[30] No election returns were examined and no ballots revised. The questioned election returns could not have been examined before the trial court because they were already with the COMELEC at that time in connection with Talib's pre-proclamation case. The trial court perfunctorily considered the report of the Revision Committee and on that basis concluded that it was no longer necessary to continue with the case because of petitioner's "enormous lead" over Isnaji, not Talib.

Although denominated as a respondent in Election Protest Case No. 5-4-04, Talib could not be expected to participate therein because of his pending pre-proclamation case with the COMELEC. Had he participated in the election protest, his pre-proclamation case would have been deemed abandoned because the general rule is that the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, or amounts to the abandonment of one earlier filed.[31] Without a doubt, the dismissal of Election Protest Case No. 5-4-04 could not have cast an adverse or prejudicial effect on Talib's pending pre-proclamation case.

On the third issue, petitioner contends that the COMELEC acted prematurely and precipitately in annulling the questioned election returns as well as his proclamation as Mayor, without first observing the procedure outlined in Sec. 235 of the Omnibus Election Code. Said provision states:

Sec. 235. When election returns appear to be tampered with or falsified. â”€ If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic,

prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicates that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been

duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

Contrary to petitioner's contention, the COMELEC fully complied with this Court's exhortation in *Dagloc v. COMELEC*[32] that the above-quoted provision be followed to ascertain the will of the electorate. Indeed, the COMELEC did not instantaneously nullify the questioned election returns as claimed by petitioner. Utilizing the first procedure contained in the first sentence of Sec. 235, the COMELEC used other copies of said suspect election returns, namely the election returns submitted by Talib. When this was not enough, it even resorted to an examination of the COMELEC copies. And when it was evident that the election returns for the nine (9)[33] precincts were manufactured or fabricated because the printed names and signatures of the members of the BEI were absent, it was only then that the COMELEC annulled the said election returns[34] and petitioner's proclamation.[35] The COMELEC thereafter ordered the Election

Officer of Indanan to convene the BEI in the concerned precincts for a recount, if possible, or to report to the COMELEC the impossibility of a recount so that a special election can be immediately scheduled. Clearly, the issuances of the COMELEC can hardly be described as precipitate and premature.

Finally, the fourth issue. Petitioner claims that in the absence of strong evidence, the election returns must be accorded prima facie status as bona fide reports on the count.

It is a well-entrenched rule in jurisprudence that in a pre-proclamation controversy, the board of canvassers and the COMELEC are not to look beyond or behind election returns which are on their face regular and authentic returns.[36] In *Chu v. COMELEC*,[37] aside from reiterating the rule against piercing the veil of returns, this Court intimated that a pre-proclamation case is the proper remedy if the defects and irregularities are apparent from a physical inspection of the election returns.

In the case at bar, the COMELEC did not have to look at other evidence to conclude that the election returns were manufactured because the defects were apparent on the face of the election returns themselves. In fact, a detailed description of each questioned election return was provided in the Resolution of the COMELEC (2nd Division).[38]

Before we close, we note with disapproval the action taken by petitioner when, on 3 October 2006, he filed with the COMELEC en banc the Extreme Urgent Ex-Parte Manifestation, praying for an order suspending the implementation and execution of the 22 March 2005 and 18 September 2006 COMELEC resolutions. Clearly, the move is violative of the prohibition against forum-shopping.

There is forum-shopping when a party seeks to obtain remedies in an action in one court, which had already been solicited, and in other courts and other proceedings in other tribunals.[39] Forum-shopping, an act of malpractice, is considered as trifling with the courts and abusing their processes. It is improper conduct and degrades the administration of justice. If the act of the party or its counsel clearly constitutes willful and deliberate forum-shopping, the same shall constitute direct contempt, and a cause for administrative sanctions, as well as a ground for the summary dismissal of the case with prejudice.[40]

In the case at bar, the relief sought in the Extreme Urgent Ex-Parte Manifestation is basically the same as the prayer for a temporary restraining order in the present petition which was still pending resolution by this Court at the time the Extreme Urgent Ex-Parte Manifestation was filed before the COMELEC. However, for as long as the present petition, including the prayer for injunctive relief, pends before this Court, the assailed COMELEC resolutions remain presumptively valid. With the filing of the present petition, only this Court has jurisdiction to nullify the COMELEC resolutions or suspend their enforcement.

Another violation of the ban against forum-shopping lies in petitioner's failure to inform this Court of its filing of the Extreme Urgent Ex-Parte Manifestation with the COMELEC. Such undertaking is prescribed by Sec. 5,[41] Rule 8 of the Rules of Court and conformably with such prescription, petitioner assumed the undertaking by executing the certification against forum-shopping in the present petition.[42]

What is worse than petitioner's forum-shopping is the poll body's favorable action on petitioner's Extreme Urgent Ex-Parte Manifestation despite knowledge of the pending petition with this Court. Such action on the part of COMELEC should not be countenanced and deserves disapprobation.

Under Sec. 13, Rule 18 of the COMELEC Rules of Procedure, a decision or resolution of the Commission en banc in Special Actions and Special Cases[43] shall become final and executory after five (5) days from its promulgation unless restrained by this Court. Clearly, the effects of the 22 March 2005 and 18 September 2006 resolutions can no longer be suspended not only because the resolutions are already final and executory but also because the power to suspend enforcement lies only with this Court. Thus, in granting the motion and ordering the Vice-Mayor or any ranking councilor to cease and desist from assuming the position of Acting Mayor of Indanan, Sulu, it committed what amounts to a usurpation of this Court's prerogative that is to issue the TRO which is precisely one of the reliefs sought in the present petition. It behooved the COMELEC en banc to deny or at least refuse to take action on the Extreme Urgent Ex-Parte Manifestation.

Quite plainly, the 5 October 2006 order of the COMELEC En banc is null and void for having been issued with grave abuse of discretion, without jurisdiction and in usurpation of this Court's prerogative and jurisdiction. Consequently, the COMELEC should be taken to task for entertaining the Extreme Urgent Ex-Parte Manifestation and granting an injunctive relief asked for therein despite a clear showing and despite its foreknowledge, of the forum-shopping.[44]

With the nullification of petitioner's proclamation, the position of Municipal Mayor of Indanan, Sulu is vacant. The Local Government Code is clear on the matter of succession. Sec. 44 of R.A. No. 7160 and Art. 83, Rule XIV of the Implementing Rules of the Local Government Code governing vacancies and succession, quoted below, apply:

Sec. 44. Permanent Vacancies in the Offices 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. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest-ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein:

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

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.

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in

each district in the immediately preceding local election. [Emphasis supplied.]

The Implementing Rules of the Local Government Code provides in Art. 83, Rule XIV:

Art. 83. Vacancies and Succession of Elective Local Officials. (a) What constitutes permanent vacancy - 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.

(b) Permanent vacancies in the offices of the governor, vice governor, mayor and vice mayor -

(1) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall ipso facto become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor, or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall ipso facto become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined in this Article.

x x x [Emphasis Supplied.]

Verily, the vacancy created by the nullification of petitioner's proclamation is in the nature of a permanent vacancy and may be qualified as a "permanent incapacity to discharge the functions of his office." Ahajan's assumption of the office of Mayor should be understood as subject to the result of the recount to be conducted in accordance with the issuances of the COMELEC. Thus, there is an immediate need for the COMELEC to speedily ascertain the true will of the electorate in the eight (8) precincts whose election returns were nullified.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- 1) The instant petition for certiorari is DISMISSED;
- 2) The Commission on Elections (2nd Division) Resolution dated 22 March 2005, as modified by the Commission on Election (en banc) Resolution of 18 September 2006 in SPC No. 04-169 is AFFIRMED;
- 3) The Commission on Elections is ORDERED to IMPLEMENT its RESOLUTION of 22 March 2005 as modified by its Resolution of 18 September 2006, and thereupon to REPORT on such implementation to this Court, with deliberate dispatch;
- 4) The 5 October 2006 Order of the Commission on Elections en banc is NULLIFIED and SET ASIDE, and the Commission on Elections is ADMONISHED to be more circumspect and deferential to the standing and dignity of this Court in its dealings with the Court;
- 5) Private respondent Hussin Ahajan is ORDERED to assume the position of Acting Mayor of Indanan, Sulu, pursuant to the applicable provisions of the Local Government Code, but subject to the outcome of the recount to be concluded in accordance with the above-mentioned Resolutions of the Commission on Elections; and
- 6) Petitioner and his counsel are REQUIRED to show cause, within five (5) days from notice, why they should not be held in contempt by this Court for committing forum-shopping.

In view of the proximity of the next elections, this Decision is declared FINAL and IMMEDIATELY EXECUTORY.

SO ORDERED.

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

Callejo, Sr., J., on leave.

Azcuna, J., on official leave.

[1] COMELEC Records, pp. 39-53.

[2] Id. at 29-31.

[3] Id. at 36.

[4] Id. at 77.

[5] Rollo, pp. 38-51. Penned by Presiding Commissioner Mehol K. Sadain and concurred in by Commissioners Florentino A. Tuason, Jr. and Manuel A. Barcelona, Jr.

[6] This is an election protest case filed by Khan Isnaji (Isnaji), the third candidate for Mayor, against petitioner and Talib before the Regional Trial Court, Branch 4, Parang, Sulu.

[7] Rollo, p. 50.

[8] Id. at 52-66.

[9] Considering that there is only one election return for Precinct 9A and 9B, i.e. E.R. No. 01400049, the declaration of validity refers to the apparently merged Precinct Nos. 9A/9B.

[10] Rollo, pp. 28-37.

[11] Id. at 109-147.

[12] See Expediente, G.R. No. 174551.

[13] Rollo, p. 148-150.

[14] Admitted per Court resolution dated 13 February 2007.

[15] Ahajan took his oath of office and assumed the position of Mayor on 3 October 2006.

[16] Entitled "AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES." Sec. 20 thereof reads:

SEC. 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 Sections 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 an 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. [Emphasis supplied.]

[17] COMELEC Records, pp. 18-22.

[18] *Id.* at 39-52.

[19] In his Petition before this Court, petitioner admitted that "[w]hen the questioned election returns were petitioned by Talib for exclusions due to misplaced unmeritorious grounds, the [MBC] correctly denied his petition." (See rollo, pp. 10) This admission is also contained in his Memorandum filed before the COMELEC. In said pleading, petitioner stated that "[w]hen the questioned returns were petitioned by TALIB for exclusion, due to misplaced unmeritorious grounds, the [MBC] correctly denied his petition." (See COMELEC Records, pp. 42-43)

[20] See Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices, COMELEC Records, p. 62.

[21] 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.

x x x x

If the signatures and/or thumbmarks of the members of the board of election inspectors or some of them 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. [Emphasis supplied.]

[22] Sec. 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 the 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. [Emphasis supplied.]

[23] Sandoval v. COMELEC, 380 Phil. 375 (2000).

[24] See Laodenio v. COMELEC, 342 Phil. 676` (1997); Atty. Torres v. Commission on Elections, 337 Phil. 270 (1997); Gallardo v. Rimando, G.R. No. 91798, 13 July 1990, 187 SCRA 463; Casimiro v. COMELEC, G.R. Nos. 84462-63, 29 March 1989, 171 SCRA 468 (1989); Salvacion v. COMELEC, G.R. Nos. 84673-74, 21 February 1989, 170 SCRA 513; Padilla v. COMELEC, G.R. Nos. 68351-52, 9 July 1985, 137 SCRA 424.

[25] See also Laodenio v. COMELEC, supra note 22 at 687, where the Court enumerated the exceptions as where: (a) the board of canvassers was improperly constituted; (b) quo warranto was not the proper remedy; (c) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; (d) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and (e) the proclamation was null and void.

[26] See Lorenzo v. COMELEC, 463 Phil. 863, 869 (2003) citing Albano v. Arranz, 114 Phil. 318 (1962); Demafiles v. COMELEC, 129 Phil. 792 (1967); Aguam v. COMELEC, 132 Phil. 353 (1968).

[27] See Espidol v. COMELEC, G.R. No. 164922, 11 October 2005, 472 SCRA 380. Section 243 of the Omnibus Election Code reads:

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

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sec. 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affect the standing of the aggrieved candidate of candidates.

[28] Infra note 2.

[29] Rollo, pp. 68-71.

[30] Isnaji failed to attend three hearings on petitioner's motion to dismiss the election protest. While the first hearing was re-scheduled upon Isnaji's request, he failed to attend the re-scheduled hearing and the next hearing after that. The trial court based its ruling on Sec. 3, Rule 17 of the Rules of Court.

[31] See *Samad v. COMELEC*, G.R. Nos. 107854 & 108642, 16 July 1993, 224 SCRA 631.

[32] 463 Phil. 263 (2003).

[33] The COMELEC En banc modified this finding by declaring valid the election returns for Precinct No. 9A of Barangay Adjid.

[34] Citing *Lagumbay v. COMELEC and Climaco*, 122 Phil 1274 (1966).

[35] Citing *Antonio, Jr. v. COMELEC*, 143 Phil. 241 (1970).

[36] *Chu v. COMELEC*, 377 Phil. 509 (1999).

[37] Id.

[38] The COMELEC (2nd Division) came out with the following conclusions with regard to the annulled election returns (see rollo, pp. 44-47):

Precinct 33A (E.R. No. 014000087) - This election return is obviously manufactured. There are no signatures in the space provided for certification by BEI members. The printed names of the BEI members appear to be written by one person. Instead of signatures of BEIs as closing of entry of votes, the notation "1st," "2nd" and "3rd" appeared at the end of the entry of votes per candidate. The box of data on voters and ballots was left blank. The name of [Talib] was even written twice in the list of candidates for Mayor. [Petitioner] got 113 votes while [Talib] got three.

Precinct 34A (E.R. No. 014000086) - This election return is obviously manufactured. There are no signatures by the three BEI members. There was a printed name only on the space for the poll clerk. Instead of signatures, the sign ""L" and "M" were used to close the entry of votes. They appear to be written by one person. Likewise, there was no thumbmark in the closing and in the certification. [Petitioner] got 118 votes while [Talib] got eight.

x x x x

Precinct 17A (E.R. No. 014000095) - This election return is obviously manufactured. The printed name and signatures of the BEI members appear to be written by one person. There was no tally and thumbmark to close the votes. The box for data on voters and ballots were unfilled. All other candidates for Mayor got zero votes while

[petitioner] got 157 votes.

Precinct 18A (E.R. No. 014000074) - The election return is obviously manufactured. There is no signature on the space for BEI Chair on the second page and the signature of the other members appear to be signed by one. There are no printed names on the space for BEI members. There was also no thumbmark from the BEI Chair on the space provided in pages 1 and 2 of the election return for precinct 18A. The votes on the second page containing the votes of the provincial board members and mayoralty candidates were not even totaled. No thumb marks were attached to mark the closing of entry of votes. Likewise, the box for data on voters and ballots was not filled up. [Petitioner] got 155 votes while [Talib] got one vote.

Precinct 19A (E.R. No. 014000059) - This election return is obviously manufactured. There are no printed names for the Chairman and Third Member. The poll clerk did not attach his signature. There were no signatures and thumb marks to mark the closing of entry of votes. The box for data on voters and ballots was not filled up. There was likewise no tally of votes for individual candidates. [Petitioner] got 165 votes while [Talib] got one vote.

Precinct 20A (E.R. No. 014000061) - This election return is obviously manufactured. The printed name and signatures of the BEI member appear to be written by one person. There was no tally and thumbmark to close the votes. [Petitioner] got 174 votes while [Talib] got one vote.

Precinct 21A (E.R. No. 014000055) - This election return is obviously manufactured. The printed name and signatures of the BEI members appear to be written by one person. This same person appears to have also written the names and signatures of the watchers who supposedly signed the return. There was no thumbmark to close the votes. The box for data on voters and ballots was left unfilled. [Petitioner] got 102 votes while [Talib] got two votes.

Precinct 22A (E.R. No. 014000057) - This election return is obviously manufactured. The printed name and signatures of the BEI members appear to be written by one person. There was no tally, signature and thumbmark to close the votes. [Petitioner] got 133 votes while [Talib] got 14 votes.

[39] *Balite v. Court of Appeals*, G.R. No. 140931, 26 November 2004, 444 SCRA 410, 421 citing *MB Finance Corporation v. Abesamis*, 195 SCRA 592 (1997).

[40] *Balite v. Court of Appeals*, G.R. No. 140931, 26 November 2004. See also Rules of Court, Rule 7, Sec. 5.

[41] Said rule provides:

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate

forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[42] Rollo, p. 25.

[43] Under Sec. 5, Rule 1, Part I, COMELEC Rules of Procedure, "Special Cases" shall refer to pre-proclamation cases.

[44] See also *Santos v. COMELEC*, 447 Phil. 760 (2003) where we found that the COMELEC committed grave abuse of discretion in giving due course, instead of dismissing outright, a petition before it despite the clear showing that there was forum-shopping.

See also *Bayan Muna v. Commission on Elections*, G.R. No. 147613, 18 February 2003, where this Court found the Chairman and the members of the COMELEC guilty of contempt and required them to pay a fine in the amount of P20,000 for "degrading the dignity of this Court; for brazen disobedience to its lawful directives, in particular its Temporary Restraining Order dated May 9, 2001; and for delaying the ultimate resolution of the many incidents of this case, to the prejudice of the litigants and of the country." The COMELEC was also warned that a repetition of the same or similar acts shall be dealt with more severely in the future.

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