OMAR M. “SOLITARIO” ALI, PETITIONER, VS. COMMISSION ON ELECTIONS, THE PROVINCIAL BOARD OF CANVASSERS OF LANAO DEL SUR, AND MAMINTAL A. ADIONG, JR., RESPONDENTS.

G.R. No. 181837. February 04, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari assails the Resolution[1] dated September 20, 2007 of the Commission on Elections (Comelec) Second Division and Resolution[2] dated January 28, 2008 of the Comelec En Banc in SPC No. 07-265. The Comelec Second Division had dismissed the consolidated appeals of petitioner Omar M. "Solitario" Ali (Ali) from the rulings of the Provincial Board of Canvassers (PBOC) of Lanao del Sur denying his objections to the inclusion in the canvass of the Municipal Certificates of Canvass (MCOCs) of the Municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran of the Province of Lanao del Sur during the May 14, 2007 elections. The Comelec Second Division had also dismissed Ali's Motion to Annul Proclamation and Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong. The Comelec En Banc had affirmed the Comelec Second Division's ruling and also dismissed Ali's motion for reconsideration.

The facts of this case are as follows:

Petitioner Omar M. "Solitario" Ali and Mamintal A. Adiong, Jr. were candidates for the position of Governor of the Province of Lanao del Sur during the May 14, 2007 elections. After elections, Adiong was proclaimed the winner.

During the canvassing by the PBOC, Ali objected to the inclusion in the canvass of the MCOCs coming from the Municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran of the Province of Lanao del Sur. Ali alleged that the MCOC of Picong should be excluded because 29 election returns were not signed by authorized members of the Board of Election Inspectors but by civilians acting without authority.[3] In the Municipality of Ganassi, Ali alleged that ballots in six precincts were not counted, or ballots were counted without the presence of watchers.[4] In the Municipality of Buadiposo-Buntong, Ali alleged that the total number of votes credited to the four candidates for governor exceeded the total number of voters which shows that the MCOC of Buadiposo-Buntong was manufactured.[5] In the Municipality of Bumbaran, Ali alleged that the counting of ballots was not done in Marawi City as directed by the Comelec, but in Bumbaran.[6] The PBOC denied all his objections. Ali then filed a consolidated appeal before the Comelec.

On July 2, 2007, Ali filed a Motion to Annul Proclamation with Prayer for the Issuance of a Temporary Restraining Order before the Comelec.[7]

On July 11, 2007, Ali filed a Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong, alleging that the Municipal Board of Canvassers there padded a total of 600 votes in favor of

Adiong as attested to in the affidavits executed by two tabulators, Abdulcarim B. Pangcatan and Elizabeth Titiban Mla.[8]

In a Resolution dated September 20, 2007, the Comelec Second Division dismissed Ali's consolidated appeal and Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong. It also denied his Motion to Annul Proclamation. The Comelec Second Division ruled as follows:

> Records reveal that there are three (3) matters subject for resolution in the instant case. These are: (i) the main pre-proclamation case involving the appeals from the rulings of the PBOC of Lanao del Sur covering the municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran; (ii) the motion to annul the proclamation of private respondent Adiong on 30 June 2007; and (iii) the motion to correct manifest error involving the municipality of Buadiposo-Buntong.
>
> To end this controversy, We deem it proper to resolve all these issues in a single resolution, taking into account all the arguments raised by both parties during the hearing of this case and the pieces of evidence submitted to this Commission.
>
> The Omnibus Election Code particularly Section 243 thereof specifically enumerates the issues that may be raised in [a] pre-proclamation controversy, viz:
> "x x x x
>
> - Illegal composition or proceedings of the board of canvassers;
>
> - 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 Sections 233, 234, 235 and 236 of this Code;
>
> - The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
>
> - When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates."
>
> The objections made by the appellant in the inclusion of the election returns of the different municipalities being the subject of the main appeal from the ruling of the PBOC are hereunder discussed and ruled:
>
> 1. In the Municipality of Picong.
>
> It is the contention of the appellant that the proceedings of the Municipal Board of Canvassers were illegal, null and void ab initio because the 29 election returns pertaining to Picong were not signed by the proper authorities, hence, the Municipal Board of Canvasser's Certificate of Canvass was illegally prepared.
>
> To support his allegations in this case, appellant presented the list of the names of individuals who allegedly served as BEI's in this municipality prepared by the counsel of congressional candidate Macabangkit Lanto. The list was then compared with the TENTATIVE (SIC) CHAIRMEN AND MEMBERS OF THE BOARD OF ELECTION INSPECTORS FOR THE FORTHCOMING NATIONAL AND LOCAL ELECTIONS for the Municipality of Picong duly signed and issued by DECS District Supervisor Norolyn Amerol. Appellant insisted that the BEI's who actually served during the elections were not listed in the list submitted by DECS Supervisor Amerol.
>
> We are not convinced.
>
> We note that the tentative list of the chairmen and members of the Board of Election Inspectors was prepared on 08 February 2007, which was long before the 14 May 2007 elections. Changes in the composition of the BEIs [were] not entirely prohibited since the list submitted by the DECS was merely a temporary list. Thus, in

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> the absence of sufficient evidence categorically showing that the BEIs who participated in the conduct of the elections had no authority, We cannot agree to the assertion of the appellant.
>
> Aside from the fact that the issue on the alleged replacement [of] the BEI's was not a proper subject of pre-proclamation controversy, no report or statements of violence, untoward incidents or irregularities were submitted involving the elections in Picong. Hence, the claim of the appellant that fraud and irregularities were committed during the elections in Picong has absolutely no basis.
>
> 2. In the Municipality of Ganassi
>
> Appellant seeks for the exclusion of the Municipal Certificate of Canvass (MCOC) of Ganassi for being incomplete. The ballots pertaining to the six (6) precincts (32A, 33A, 34A, 35A, 36A and 37A, all of Ganassi) were still to be counted by the BEIs. As regards the other precincts, it is the contention of the appellant that the ballots were counted without the presence of the watchers of the appellant because they were forcibly excluded by the Election Officer during the counting of the ballots.
>
> We are not persuaded.
>
> As regards the exclusion based on incomplete canvass, the same has been rendered moot by the conduct of Special Elections in Lanao del Sur on 20 June 2007. The results of the elections in the six (6) precincts mentioned were already counted and canvassed by the new MBOC of Ganassi. This fact was admitted by the PBOC in its Comment dated July 12, 2007 and was never controverted by the appellant in his memorandum in support of the consolidated appeals. The PBOC in its Comment dated 12 July 2007, particularly stated that:
> "With respect to the ground of exclusion based on incomplete canvass in the Municipality of Ganassi, it must be stressed that this matter became moot in view of the fact [that] after the conduct of the June 20, 2007 Special Elections in the said province, the six (6) ballot boxes that were specifically mentioned were counted and canvassed by the new MBOC of Ganassi. A municipal COC was prepared and submitted for canvass to the respondent Board."

Anent the other grounds cited by the Appellant, We, found them not to be proper subjects of [a] pre-proclamation controversy so as to warrant the exclusion of the said returns. In fine, the inclusion of said returns by the PBOC in the canvass was justified.

3. In the Municipality of Buadiposo-Buntong

It is the contention of the appellant that Municipal Certificate of Canvass (MCOC) of Buadiposo-Buntong is obviously manufactured because the total number of the votes credited to all candidates for governor in the said municipality exceeded the actual number of voters who actually voted by two thousand forty-nine (2,049).

Appellant further argues that the MBOC of Buadiposo-Buntong padded a total of six hundred (600) votes in favor of Adiong. To bolster his allegations, he cited the affidavits of two tabulators namely Abdulcarim B. Pangcatan and Elizabeth Titiban Mla, stating that they increased the votes of Adiong by more than six hundred (600) distributed to the fifty one (51) precincts of the said municipality.

We note that the appellant filed a Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong regarding the excess votes.

Aside from affidavits, no evidence was presented by the appellant to substantiate his allegation on the said excess votes. Although in his petition, appellant alleged that in due time he will present his evidence regarding the result of the elections per election return, to date, however no returns were presented to substantiate his claim. Thus, in the absence of proof, the result of the elections in Buadiposo-Buntong cannot be disregarded and excluded with the resulting disenfranchisement of the voters. The election returns reflecting the number of votes obtained by the candidates must be accorded prima facie status as bona fide reports of the voting for canvassing and proclamation

purposes. The burden of proof is on the appellant to prove otherwise.

Moreso, by simply claiming excess votes without specifying how it occurred and what document/s shall be corrected, runs counter to the provision on manifest error under SEC. 35 of Comelec Resolution No. 7859, to wit:

"SEC. 35. Manifest error. - There is manifest error in the tabulation or tallying of the results during the canvassing where:

> 1) A copy of the election return or certificate of canvass was tabulated more than once;
>
> 2) Two or more copies of the election returns of one precinct, or two or more copies of certificates of canvass were tabulated separately;
>
> 3) There was [a] mistake in the copying of the figures from the election returns to the SOV by precinct or from the municipal/city Certificates of canvass to the SOV by Municipality; or from the Provincial/City Certificate of Canvass to the SOV by province/city;
>
> 4) Returns from non-existent precincts were included in the canvass; or
>
> 5) There was a mistake in the addition of the votes in any candidate.

In the absence of proof showing compliance with the requirements of the law, any bare assertion for correction of manifest error must not be given credence.

4. In the Municipality of Bumbaran

Appellant [prays] for the exclusion of the Municipal Certificate of Canvass (MCOC) of this municipality on the sole ground that the counting of votes involving the different precincts was done in Bumbaran and not in Marawi City in violation of the alleged directive issued by the Commission on Elections.

We take notice however, that in Minute Resolution No. 07-0925 following the Special En Banc Meeting of the Commission on April 27, 2007, this Commission resolved that:

> "xxx, all requests/recommendations by the EOs in the ARMM for transfer of polling places; clustering of precincts; and transfer of counting and canvassing venues shall be approved by the Regional Election Director and submit a report thereon to the Commissioner-in-Charge."

And in [a] Memorandum dated April 30, 2007 addressed to the Commissioner-in-Charge of the ARMM and signed by [the] ARMM Regional Election Director, the Comelec field personnel in the said area proposed, among others, that the counting for all municipalities in Lanao del Sur be centralized in Marawi City EXCEPT in Bumbaran where the counting should be done in Bumbaran also.

Thus, we find no reason to lend credence to the claim that it was prohibited to do the counting in Bumbaran.

To reiterate, appellant in this case failed to convince Us that the grounds relied upon by him in his Consolidated Appeal are proper subjects of pre-proclamation controversy.

It has been held that the scope of pre-proclamation controversy is limited to the issues enumerated in Sec. 243 and that the enumeration is restrictive and exclusive.

It is a well-entrenched rule that in a pre-proclamation controversy, the board of canvassers and the COMELEC are not to look beyond or behind the election returns which are on their face regular and authentic returns. Given the summary nature of the pre-proclamation controversy, there is no room in the presentation of evidence aliunde, the inspection of voluminous documents and for meticulous technical examinations which take-up considerable time. The remedy available to appellant is to file an election protest.

We note that respondent Adiong was already proclaimed as winning gubernatorial candidate of Lanao del Sur during the 14 May 2007 [elections]. Considering the prior proclamation of respondent Adiong and the dismissal of this case (consolidated appeal) there is no valid and existing reason to annul the proclamation of Adiong by this Commission.

In view of the foregoing, the Commission (Second Division) RESOLVED as it hereby RESOLVES to DISMISS the herein consolidated appeal for lack of merit. The motion to annul the proclamation of respondent Adiong is DENIED. The motion to correct manifest error involving the results of the election in the municipality [of] Buadiposo-Buntong is DISMISSED for failure of the appellant to submit evidence in support thereof.

WHEREFORE, premises considered, this case is hereby DISMISSED for LACK of MERIT.[9]

Ali filed a motion for reconsideration of the above-mentioned resolution before the Comelec En Banc. However, in a Resolution dated January 28, 2008, the Comelec En Banc dismissed Ali's motion. The dispositive portion of the resolution reads as follows:

> WHEREFORE, in view of the foregoing, the motion for reconsideration is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[10]

Hence, this petition before us now where Ali raises the following issues:

> I.
>
> THE HONORABLE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT DECLARING THAT THERE WAS A VIOLATION OF SEC. 20 (i) OF R.A. 7166 AND SEC. 39 (13) OF COMELEC RESOLUTION NO. 7859 BY THE PROVINCIAL BOARD OF CANVASSERS WHEN IT PROCLAIMED RESPONDENT MAMINTAL ADIONG JR. AS THE ALLEGED WINNER OF THE GUBERNATORIAL ELECTION IN LANAO DEL SUR; AND IN NOT NULLIFYING THE SAID PROCLAMATION IN SPITE [OF] THE PENDENCY OF A CONSOLIDATED APPEAL AND MOTION TO CORRECT MANIFEST ERROR BEFORE THE COMMISSION SECOND DIVISION, AND THE ABSENCE OF AN AUTHORITY TO PROCLAIM FROM THE COMMISSION AT THE TIME THE PROCLAMATION WAS MADE.
>
> II.
>
> THE HONORABLE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT THIS CASE DOES NOT INVOLVE ANY VALID PRE-PROCLAMATION ISSUE IN SPITE [OF] AMPLE PROOFS PRESENTED THAT THE ELECTION RETURNS WERE IN FACT ERRONEOUS AND MANUFACTURED AND THE CERTIFICATES OF CANVASS AND STATEMENTS OF VOTES WERE BASED ON THESE ERRONEOUS AND MANUFACTURED ELECTION RETURNS.[11]

Thus, in our view, the main issue to be resolved in this case is whether or not the Comelec acted with grave abuse of discretion and/or lack of jurisdiction in dismissing Ali's consolidated appeal, Motion to Annul Proclamation and Motion to Correct Manifest Errors.

Grave abuse of discretion is such capricious and whimsical exercise of judgment amounting to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[12] Absent a clear showing of grave abuse of power or discretion on the part of the Comelec, this Court may

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not validly conduct an incursion and meddle with the affairs exclusively within the province of the Comelec - a body accorded independence by no less than the fundamental law.[13]

A review of the ruling of the Comelec Second Division shows that, in resolving the case, the Comelec examined the records and pertinent election documents as well as assessed the evidence submitted by the parties. The Comelec meticulously and succinctly discussed the issues pertaining to the certificates of canvass coming from the Municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran in the Province of Lanao del Sur. It cannot, therefore, be faulted for grave abuse of discretion.

Moreover, the Comelec is the specialized agency tasked with the supervision of elections all over the country. Its findings of fact, when supported by substantial evidence, are final, non-reviewable, and binding upon this Court. The appreciation of cited election documents involves a question of fact best left to the determination of the Comelec. Worth stressing, this Court is not a trier of facts and it will only step in if there is a showing that the Comelec committed grave abuse of discretion.[14]

There being no grave abuse of discretion on the part of the Comelec, in our considered view, this petition should be dismissed.

WHEREFORE, the petition is dismissed for lack of merit. The Resolution dated September 20, 2007 of the Commission on Elections Second Division and Resolution dated January 28, 2008 of the Comelec En Banc in SPC No. 07-265 are affirmed.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura and Leonardo-De Castro, JJ., concur.
Carpio, J., on official leave.
Tinga, J., in the result.
Brion, and Peralta, JJ., on leave.

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[1] Rollo, pp. 36-56.

[2] Id. at 57-61.

[3] Id. at 37-40.

[4] Id. at 41-42.

[5] Id. at 42.

[6] Id. at 42-43.

[7] Id. at 43.

[8] Id. at 44.

[9] Id. at 49-55.

[10] Id. at 60.

[11] Id. at 331-332.

[12] Mayor Basmala v. Commission on Elections, et al., G.R. No. 176724, October 6, 2008, pp. 1, 4.

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[13] Akbayan-Youth v. Commission on Elections, G.R. Nos. 147066 & 147179, March 26, 2001, 355 SCRA 318, 342.

[14] Mayor Basmala v. Commission on Elections, et al., supra at 4-5.

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