

MANUEL DISINI, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.*G.R. No. 52502. December 30, 1982*

Ponente: FERNANDO, C.J.

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The question posed in this petition for certiorari with prayer for restraining order is not novel. It arose from a pre-proclamation controversy, reliance being placed by petitioner on Section 175 of the 1978 Election Code.[1] The order assailed dates back to February 5, 1980 when respondent Commission ruled: "On proper motion duly seconded, the Commission [Resolved] to allow the canvassing of votes to proceed except the election returns from voting centers Nos. 22, 22-A, 23, 24, 29, 29-A, 31 and 31-A and hereby orders the said Municipal Board of Canvassers to desist from proclamation of the winning candidates until further orders from this Commission." [2] Petitioner "is the duly nominated official candidate of the Nacionalista Party for the Office of Municipal Mayor of said municipality and who was voted upon in the election of January 30, 1980." [3] His rival for such office is Gregoria Cauton running under the banner of the KBL. On January 31, 1980, she "wrote a letter addressed to the Municipal Board of Canvassers of Narvacan, Ilocos Sur, protesting the canvass of the returns of voting centers nos. 24, 29, 29-A, 22, 22-A, 31 and 31-A on the ground that the same [did] not reflect the true elections in said place as there was rampant vote-buying, terrorism and irregularities; [with xerox copy of the letter attached to the petition]." [4] On February 1, 1980, respondent Commission sent this telegram to the Municipal Board of Canvassers of Narvacan: "You are hereby directed to exclude from canvass election returns from voting centers nos. 22 CMA 22-A CMA 24 CMA 29 CMA 29-A CMA 31 CMA 31-A that municipality PD desist from proclamation until further orders from this Commission end." [5] On the other hand, petitioner himself on the very next day filed a petition with respondent Commission praying for an order for a complete and immediate termination of the canvassing of votes in such municipality. [6] That was the background of the challenged order of February 5, 1980 quoted at the outset of this petition.

It is alleged in the petition: "That the election returns of the voting centers nos. 22, 22-A, 29-A, 31 and 31-A has already long been canvassed by the Municipal Board of Canvassers. The only remaining election returns which has yet to be canvassed are the election returns of Precincts Nos. 23, 24 and 29." [7] The contention is that there is no justification for such an order either by the Constitution or the 1978 Election Code. It was sought, therefore, to have the Commission on Elections proceed with the canvass of election returns on the questioned Precincts Nos. 23, 24 and 29. Respondent Commission was required to comment. It did so in a pleading submitted through the Office of the Solicitor General. [8] In seeking the dismissal of this suit for certiorari, the submission was that the contention as to petitioner receiving the plurality of votes cast for the position of municipal mayor of Narvacan was "self-serving and plainly speculative" and that there is no finality in the resolution complained of, it being merely preventive and, therefore, partaking of an interlocutory order. [9] A reply was submitted by petitioner. Thereafter the Comment was considered as the answer, and on the basis thereof as well as the reply, the case was submitted for decision.

On December 7, 1982, this Court received the following manifestation from respondent Commission on Elections to the effect "that on November 23, 1981, in PP. Case No. 18 (Disini v. Cauton) and PP. Case No. 284 (Cauton v. Disini), the Commission on Elections (Third Division) decided said cases, the dispositive portion of which reads as follows: '[Wherefore], all the foregoing premises considered, the Commission (Third Division) [Resolves] as follows: 1. To confirm the action of the municipal board of canvassers of Narvacan, Ilocos Sur in excluding from the canvass the election returns of voting centers Nos. 23 and 24, 2. To confirm the action of the municipal board of canvassers of Narvacan, Ilocos Sur in excluding the election returns of voting center No. 29-A for even if it is included in the canvass it will no longer affect the result since in said election return Cauton received 54 votes and Disini 121 votes and when added to their respective total votes, the result would be as follows: Total Votes received excluding Voting Centers Nos. 23, 24 and 29-A -- Cauton: 6,660; Disini: 6,550; Votes received in Voting Center No. 29-A -- Cauton: 54; Disini: 121; [Total] -- Cauton: 6,714; Disini: 6,671; 3. To confirm the proclamation made on February 9, 1980 by the Municipal Board of Canvassers of Narvacan, Ilocos Sur of [Gregoria Cauton] as the winning candidate for the position of Mayor of said municipality in the January 30, 1980 elections; 4. To dismiss the petition to hold the municipal board of canvassers of Narvacan, Ulocos Sur in contempt of this Commission for lack of sufficient notice or knowledge of the resolutions or telegraphic orders restraining it to proclaim the winning candidates until further orders of the Commission. In line with the doctrine laid down by the Supreme Court in *Venezuela vs. Comelec*, G. R. No. 53532, July 25, 1980 that "after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable and resort be had to the remedy of an election protest or a quo warranto, which ever is proper", the foregoing [Decision] is without prejudice to the filing of the proper election protest by the party aggrieved within ten (10) days from receipt of said Decision.'"[10]

No objection can possibly be made to the reliance on *Venezuela v. Commission on Elections*.^[11] The doctrine relied upon by respondent Comelec has since then been followed by this Court. As pointed out in *Aguinaldo v. Commission on Elections*:^[12] "Since *Venezuela v. Commission on Elections*, this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or follow-ing an election, filed with this Court after January 30, 1980, arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved:"^[13] A latter portion of the opinion referred to such doctrine being applied after *Venezuela* in *Villegas v. Commission on Elections*,^[14] *Potencion v. Commission on Elections*,^[15] *Arcenas v. Commission on Elections*,^[16] and *Singco v. Commission on Elections*.^[17] Nor is injustice being done to petitioner. For in accordance with the above doctrine, it is still open for him to file the appropriate election protest or quo warranto as the case may be.

WHEREFORE, the petition is dismissed for lack of merit. Petitioner, Manuel Disini is given a period of ten days from receipt of this decision to file, if so minded, either an election protest or quo warranto against private respondent. No costs.

Aquino, Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur. Teehankee and Abad Santos, JJ., dissents in a separate opinion.

Makasiar, J., in the result.

Concepcion, J., on leave.

[1] Section 175 of the 1978 Election Code reads as follows: "Suspension and annulment of proclamation. — The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, motu proprio, or upon written opinion, and after due notice and hearing, order the suspension of the proclamation of a candidate-elect or annul any proclamation if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof."

[2] Petition, par. 8.

[3] Ibid, par. 2.

[4] Ibid, par. 4.

[5] Ibid, par. 6.

[6] Ibid, par. 7.

[7] Ibid, par. 9.

[8] The pleading was prepared by Assistant Solicitor General Ruben E. Agpalo and Solicitor Amado D. Aquino.

[9] Comment, 9.

[10] Manifestation, 1-2.

[11] G.R. No. 53532, July 25, 1980, 98 SCRA 790.

[12] G.R. No. 53953, January 5, 1981, 102 SCRA 1.

[13] Ibid, 3.

[14] G.R. No. 52463, September 4, 1980, 99 SCRA 582.

[15] G.R. No. 52527, September 4, 1980, 99 SCRA 575.

[16] G.R. No. 54039, November 28, 1980, 101 SCRA 437.

[17] G.R. No. 52830, November 28, 1980, 101 SCRA 420.

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DISSENTING OPINION

ABAD SANTOS, J.:

It is with deep regret that I have to dissent for I regard opinions written by Mr. Chief Justice Enrique M. Fernando as highly impressed not only with learning but more importantly with wisdom.

In my opinion the COMELEC's order of February 5, 1980, which is quoted in the main opinion, is utterly devoid of legal support. In other words, the COMELEC had no jurisdiction to issue the order so that all proceedings had thereafter were absolutely void ab initio.

It is true that the COMELEC has the power to suspend or annul the proclamation of a candidate-elect under Sec. 175 of the 1978 Election Code. But the provision specifically states that such power can be exercised only on any of the grounds mentioned in Sections 172, 173 and 174 of the Code.

Section 172 mentions material defects in the election returns; Section 173, when election returns appear to be tampered with or falsified; and Section 174, discrepancies in election returns.

The letter-complaint of Gregoria Cauton dated January 31, 1980, upon which the COMELEC's order of February 5, 1980, is based alleges "rampant vote-buying, terrorism and irregularities." Said allegation does not fall under the ambits of Sections 172, 173 and 174. Consequently, all of the actuations of the COMELEC should have been set aside and the election returns in all voting centers should have been canvassed and a proclamation made according to the results. The remedy of Cauton as correctly stated by Disini, is an election protest.

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DISSENTING OPINION

TEEHANKEE, J.:

I am constrained to dissent. The majority opinion misapplies the Venezuela ruling for the simple reason that there has been no proper nor valid proclamation of Gregoria Cauton as "winner" and elected mayor of Narvacan, Ilocos Sur. What happened here was that by a simple unsworn half-page letter of the loser Cauton to the canvassing board making bare allegations without any particulars of "rampant vote-buying, terrorism and irregularities,"[1] the Comelec has sustained the board's arbitrary, capricious and oppressive action of excluding from the canvass the returns from the three decisive precincts in question and unlawfully depriving the petitioner Disini of his commanding majority of two hundred eleven (211) votes therein, compared to Cauton's "margin" of one hundred ten (110) votes with their unlawful exclusion.[2]

The Comelec action should be stricken down. It is bereft of any authority in law. Cauton's grounds of election irregularities are not grounds for exclusion of the three re-turns in question. Sections 172, 173 and 174 of the 1978 Election Code provide these grounds only in the specific cases and conditions therein provided of materially defective returns, tampered or falsified returns and discrepant returns - none of which exists here. And they could only be excluded upon due notice and hearing - none of which was granted petitioner. On the contrary, the affidavits of the public school teachers-members of the Citizens Election Committees in the three precincts besides the affidavit of the Parish Priest of Narvacan, Ilocos Sur as member of the civic citizens election watchdog committee all attest under oath that the elections therein were peaceful and orderly and conducted in accordance with the official instructions and regulations.[3]

Cauton's grounds of election anomalies and irregularities are patently grounds for an election protest, as held, at least most of the time, by this Court and the Comelec.^{3-a} The prompt determination of the will and verdict of the electorate is the very *raison d'être* of elections. Hence, canvassing boards are ministerially enjoined to canvass all votes of all regular and authentic election returns and thus restore public tranquility by dispelling all doubts as to the true number of votes cast for the rival candidates in a given precinct.[4] Otherwise, the Comelec could capriciously nullify the voters' right to vote and thwart their will and verdict - when the Constitution has

ex-pressly withheld from it the authority to decide questions involv-ing the right to vote.[5]

To uphold, as the majority opinion does, the proclama-tion[6] of the loser Cauton thru the arbitrary and void exclusion from the canvass of the three decisive returns that show petitioner as the winner and to compel him to file an election protest three (3) years after the holding of the January 30, 1980 local elections is as classic and pernicious an example as one can find of the elec-tion loser's eternal battlecry of "Grab the proclamation and pro-long the protest!" that was supposed to have been eradicated by the Court even before the New Society.

[1] Annex A, Petition.

[2] See majority opinion and Petitioner's Reply, page 2; and Annexes F, G and H.

[3] Petitioner's Reply, Annexes A, B, C and D.

3-a Cf. Olfato vs. Comelec, G.R. 52749, March 31, 1981.

[4]Abes vs. Comelec, 21 SCRA 1252; Tiglao vs. Comelec 34 SCRA 456; Albano vs. Prov. Bd. of Canvassers, 5 SCRA 13; and a host of cases.

[5] Art. XII (C), section 2(3), 1973 Constitution, as amended, provides: "Sec. 2. The Com-mission on Elections shall have the follow-ing powers and functions: x x x x (3) Decide, save those involving the right to vote, administrative questions affecting elec-tions, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters. x x x"

[6] After three years from the January 30, 1980 elections, during which hiatus the loser Cauton apparently continued as holdover mayor of Narvacan.

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