

CESAR JARDIEL, PETITIONER, VS. COMMISSION ON ELECTIONS AND BENJAMIN AVES, RESPONDENTS.

G.R. No. 58575. September 21, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Certiorari to annul the Resolution of the Commission on Elections (COMELEC), (Second Division), dated December 10, 1980 (P.P. Case No. 214), wherein it resolved:

"x x x

"a) to annul the results of the January 30, 1980 elections in the municipality of Penaranda, Nueva Ecija; and

b) to order the holding of a special election thereat for the positions of Mayor, Vice-Mayor and Members of the Sangguniang Bayan, on a date to be set by the Commission." [1]

In the local elections of Penaranda, Nueva Ecija, held on January 30, 1980, petitioner Cesar Jardiel, a Kilusang Bagong Lipunan (KBL) candidate for Mayor seeking re-election, prevailed over private respondent Benjamin Aves, a Nacionalista Party (NP) candidate, by a plurality of 1,678 votes [2] and was pro-claimed by the Municipal Board of Canvassers on the same date.

The day after the elections, or on January 31, 1980, the COMELEC received a telegraphic report from its Special Action Team, reading:

"HON. CHAIRMAN PEREZ

COMELEC

DUE TO RAMPANT PARTICIPATION OF FLYING VOTERS CMA WIDESPREAD TERRORISM CMA TAMPERING OF BALLOTS CMA UNJUSTIFIED/ILLEGAL STOPPING OF COUNTING OF VOTES AND TRANSFERRING OF BALLOT BOXES IN PENARANDA CMA NUEVA ECIJA IN THE CONDUCT OF ELECTIONS CMA STRONGLY RECOMMEND THE IMMEDIATE SUSPENSION OF THE CANVASS OF THE RESULTS OF ELECTIONS FOR MAYOR CMA VICE MAYOR AND COUNCILORS IN ALL THE VOTING CENTERS THEREAT STOP IF CANVASS ALREADY COMPLETED CMA ANNUL THE RESULTS THEREOF END

COMSAT 9

CABANATUAN CITY." [3]

That same day, January 31, 1980, the COMELEC received an urgent letter-request from private respondent asking that the canvassing of votes be annulled and the proclamation of winning candidates be suspended for reasons of massive terrorism and rampant irregularities. The letter alleged that armed goons supporting the petitioner disrupted the counting of votes and caused the transfer of the ballot boxes and the canvassing of votes to the

Municipal Hall where accredited NP watchers were denied access, and that ballots were tampered with and blank unused ballots were filled up in favor of KBL candidates. The letter-request was docketed as P.P. Case No. 214, and petitioner was ordered to submit an answer within ten (10) days from receipt.

On February 8, 1980, without any answer having been filed, COMELEC issued another Resolution suspending the effects of the proclamation if one had been made, and directing the Municipal Board of Canvassers of said Municipality and Mayor Cesar Jardiel, KBL candidate for Mayor, to submit their answer.[4]

On February 11, 1980, petitioner filed a plead-ing captioned "Manifestation and Prayer by Way of Motion for Reconsideration" assailing the Resolution of February 8, 1980 as violative of due process as it was issued without hearing, and before he could file the required Answer, and that private respondent never brought any complaint to the PC soldiers assigned by the Provincial Election Officer to the municipality nor had complained about election irregularities to the Municipal Board of Canvassers du-ring the canvass and proclamation.

On February 22, 1980, petitioner filed his Answer denying private respondent's charges. Attached were supporting affidavits, including certifications of the Election Registrar of Penaranda that no complaint of irregularities had been received (Annexes "D" and "D-1", Petition) as well as of two PC sol-diers assigned thereat that there was no terrorism by policemen and armed goons during the election in said municipality (Annex "E", Petition).

On March 4, 1980, private respondent filed a reply disputing the veracity of petitioner's certifications, and attached counter-affidavits in support of his allegations.

Also on March 4, 1980, COMELEC issued a Resolution allowing petitioner and private respondent to file "simultaneous manifestations" in respect of the affidavits, to be marked as their exhibits," so as to inform them of the affiants to be brought to Manila and cross-examined during the hearing of the case" on the merits. Subsequently, a rejoinder by petitioner and a surrejoinder by private respondent were also filed.

During the hearings, private respondent presented four witnesses, who identified and affirmed the contents of their affidavits, and were cross-examined by petitioner's counsel.

On April 15, 1980, COMELEC required private respondent to make a written offer of evidence and allowed petitioner to file written objections thereto and a "motion to dismiss if he so desires" and that "upon the filing of the motion to dismiss and objection thereto, the said incident shall be deemed submitted for resolution".[5]

On April 21, 1980, private respondent submitted a written offer of evidence, to which petitioner interposed his objections.

On April 26, 1980, petitioner filed a Motion to Dismiss for insufficiency of evidence to support allegations of massive terrorism and rampant irregularities. Private respondent filed an opposition to said motion, and on May 7, 1980, petitioner was given time to file a reply after which the incident was to be deemed submitted.

On July 22, 1980, the Ministry of Justice Election Task Force, deputized by the COMELEC in Resolution No. 1449-A, dated February 14, 1980, to investigate and prosecute persons found violating election offenses committed in relation to the conduct of the January 30, 1980 elections, and before whom a complaint had likewise been filed by private respondent, dismissed said complaint for insufficiency of evidence (Annex "G", Petition).[6]

On December 10, 1980, COMELEC issued the questioned Resolution wherein it priorly observed:

"A painstaking examination - demanded by the gravity of the issues raised - of the records in this case resulted in the inescapable finding that serious and widespread election venalities did occur in the hapless community of Penaranda. Petitioner (now private respondent) submitted as his evidence documents tending to establish

said fact, but the one single piece of evidence that sticks out prominently because it commends itself with authority and credibility is the official telegraphed report to then Chairman Perez from Comelec Special Action Team for Region 9, 'COMSAT 9' for short, dated January 31, 1980, and marked as petitioner's Exhibit 'G' (Annex 'E' to the petitioner's Answer and Opposition to the Motion for Reconsideration). Created by Commission Resolution No. 1430, which was pro-mulgated on January 7, 1980, COMSAT 9 was composed of Atty. Benigno R. Lapitan, Provincial Election Officer of Nueva Ecija; Lt. Col. Francisco V. Samala of JAGO; and Atty. Jose Balbuena, Assistant Chief, Investigation and Prosecution Division, Law Department, this Commission. Significantly, it functioned and acted as 'the deputy and implementing arm of the Commission' (Sec. 1, Resolution No. 1430) to be sent on orders of the Chairman of the Commission to areas where the holding of free, orderly and honest elections is placed in jeopardy due to terrorism, violence, frauds, vote-buying and other analogous causes.' (Sec. 3, Ibid). Its assignment: Region 9, which included the province of Nueva Ecija, of which Penaranda, the present case milieu, is one of the municipalities. In the course of its assigned tasks, it came up with its above-mentioned January 31, 1980 report to this Commission."

The COMELEC then concluded:

"x x x Unhesitatingly, We declare the elections or the results thereof, should be annulled. Considered in the light of the pervasive and wanton disregard of Our election laws and processes, the election results in said town do not reflect the true or popular will of the electorate there. They justify no less than the extreme sanction of their being nullified.

This Body is ever-conscious of the fundamental injunction that the power to annul the elections should be exercised with extreme caution (Demetrio vs. Lopez, 50 Phil. 45) in order not to cause unnecessary disenfranchisement, and in the Penaranda experience, We did no less. But regrettably, the compelling circumstances dictated the nullification." [7]

A motion for reconsideration filed by petitioner was denied by the COMELEC in a Resolution dated October 27, 1981.

Before us, petitioner prays for the reversal of the COMELEC Resolutions, dated December 10, 1980 and October 27, 1981, contending that:

- "1. COMELEC's resolution on the merits of PP Case No. 214, without first receiving his evidence, constitutes a denial of due process which renders said resolution null and void.
2. The primary basis of the challenged resolution, a mere telegram from COMSAT 9, is hearsay.
3. COMELEC is estopped by the findings of a Ministry of Justice 'Task Force' which was deputized by COMELEC to investigate and prosecute violations of the election laws during the January 30, 1980 elections, to the effect that there was insufficient evidence to prove charges of terrorism and irregularities during said election in Penaranda, Nueva Ecija.
4. PP Case No. 214 is no longer viable because on January 31, 1980 petitioner was proclaimed duly elected mayor, took his oath of office and assumed the duties thereof.
5. COMELEC has no power to order the holding of a special elections in Penaranda."

1. The alleged denial of due process to petitioner on the ground that the COMELEC rendered its decision without first resolving petitioner's pending Motion to Dismiss and without giving him the opportunity to present his evidence, is not well taken. As the COMELEC had explained in resolving petitioner's Motion for Reconsideration of its Decision.

"Our failure to resolve first said Motion to Dismiss was criticized by the respondent and viewed by him as a denial of due process. We disagree. With substantial evidence from both parties on hand, upon which a

decision on its merits could be reached without sacrificing the fundamental precept of due process, both in its substantial and its procedural aspects, this Body elected to dispose of this case on the merits, rather than go to the circuitous process of resolving independently the letter-motion to dismiss of the respondent. The motion to dismiss was, therefore, included in the disposition of the entire case, as it was mandated by the circumstances. Resort to this procedural short-cut was compelled by the circumstance that being a pre-proclamation case, it had to be threshed out summarily, keeping in mind the length of time that had lapsed after the date of the 1980 local elections. x x x"[8]

Moreover, petitioner had controverted by means of sworn statements the allegations of private respondent of massive terrorism and rampant irregularities in the counting of votes. The COMELEC had weighed the conflicting pleadings, certifications and affidavits before it and concluded that the case was ripe for resolution on the merits. It found that "a painstaking examination -- demanded by the gravity of the issues raised -- of the records in this case resulted in the inescapable finding that serious and widespread election venalities did occur in the hapless community of Penaranda."

The procedural step taken by COMELEC finds support in the case of *Demetrio vs. Lopez*, 50 Phil. 45 (1927), the pertinent portion of which is quoted herein below:

"x x x In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires, the motion for dismissal at that stage of the proceeding must be considered as a demurrer to the evidence presented by the protestant, with implied waiver by the protestee to present his evidence, whatever may be the ruling, whether adverse or favorable, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. If, in the prosecution of election protests the ordinary practice were to be followed in regard to the presentation of motions for dismissal or of demurrers to the evidence, in the majority of cases, if not always, the law would be frustrated and the will of the electorate defeated, to the great detriment of the underlying principles of representative government, because, in case of revocation of a ruling sustaining the motion of dismissal or the demurrer on appeal, the case would have to be remanded to the court below for the continuation of the trial and the introduction of evidence by the protestee, thus causing the proceeding to continue during the term of the office in question, with possible result that the defeated, and not the elected, candidate would be discharging the office.

In election protests, therefore, the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it."

2. Petitioner contends that the challenged COMELEC Resolution relied solely on the telegram sent by the COMELEC Special Action Team for Region 9 (*supra*) and that said telegram "just found its way" in the record of PP Case No. 214 "without its sender or author identified and made available on the witness stand for searching confrontation and cross-examination". The contention is not borne out by the records. The telegram was actually a report to the COMELEC addressed to its Chairman. It was official in character. It was marked as Exhibit "G" and was formally offered in evidence together with other exhibits by private respondent, to which petitioner filed his objections. The members of COMSAT Team No. 9, namely, Lt. Col. Francisco V. Samala of the Office of the Judge Advocate General, Atty. Benigno R. Lapitan, Provincial Election Officer of Nueva Ecija, and Atty. Jose Balbuena, Asst. Chief, Investigation and Prosecution Division, Law Department, both of the COMELEC, were in the list of witnesses submitted to COMELEC by private respondent in compliance with its Order, from which petitioner could select whom to cross examine (Annex "2", Comment of private respondent). However, in his request for cross-examination, petitioner chose not to include them in his list of witnesses whom he desired to cross-examine (Annexes "2" & "3", Rollo).

The report of COMSAT No. 9 is deserving of serious consideration.[9] The report is not hearsay because COMSAT 9 was the COMELEC Special Action Team. It was "the deputy and implementing arm of the Commission" (Resolution No. 1430) "to be sent on orders of the Chairman of the Commission to areas where the holding of free, orderly and honest elections is placed in jeopardy due to terrorism, violence, frauds, vote-buying and other analogous causes." It was given "blanket authority" to:

"(1) /E/xercise for the Commission the power to determine if there are grounds for the postponement or suspension of elections in any voting center or political subdivision as provided under Sections 6 and 7 of the 1978 Election Code; (Sec. 4, paragraph (1), Resolution No. 1430).

x x x x x

(3) /A/ssess the political situation and all other factors that may affect the conduct of the elections in their respective area of assignment or jurisdiction, adopt measures to ensure free, orderly and honest elections, and render periodic reports thereon to the Commission and the Comelec Supervisory Panel concerned; (Sec. 4, paragraph (3), Ibid), and

x x x x x

"(5) /R/ecommend to the Commission the adoption of such measures that are conducive to free, orderly and honest elections in the area of assignment.' (Sec. 4, paragraph (5) Ibid)"[10] (Emphasis ours).

COMSAT 9, therefore, maybe said to have been an extension of the COMELEC itself.

In addition to the telegram to which the COMELEC gave "full faith and credit" considering that "COMSAT 9 was Our special 'deputy' and 'implementing arm' in the critical area or areas which were expected to become trouble spots in the last elections"[11], the COMELEC also relied on other pleadings and documents of record. Thus, it stated:

"x x x The record will disclose petitioner's lack of candor and honesty on his assertion, because from its mute pages, the follow-ing facts are undisputedly set out:

- (1) that from February 11, 1980, when he filed his Manifestation and Prayer by way of Motion for Reconsideration, to May 9, 1980, when he filed his Supplemental Rejoinder, petitioner had filed with this Commission five (5) substantial pleadings dealing with his defense;
- (2) that in all said five pleadings, he had argued extensively his defense and the demerits of his adversary's cause;
- (3) that prior to December 10, 1980, the date of the challenged resolution, a total of 32 documents, most of them affidavits, were submitted to this Commission as evidence and annexed to the aforesaid pleadings.

To emphasize the obvious, the foregoing were taken into account, together with the petitioner's exhibits, in the assessment of the evidence and in arriving at the decision. x x x"[12]

3. Petitioner's contention that the findings of the Ministry of Justice Election Task Force (Annex "G", Petition) dismissing the complaint against petitioner for insufficiency of evidence is *res judicata* is untenable. The Task Force was deputized by the COMELEC to the end that violators throughout the Philippines of laws relative to elections would be charged in Court and correspondingly penalized. The charges filed before it were for election offenses which are criminal in nature. It was not a body exercising judicial functions. To the COMELEC belongs the prerogative to enforce all laws relative to the conduct of elections and to see to it that elections are free, honest and orderly. It cannot be "estopped" by any finding or recommendation by any Task Force organized to assist it in the performance of its functions.

4. Neither is there merit in petitioner's contention that since he has already been proclaimed, the present complaint is no longer viable. The case filed by private respondent is not in reality a pre-proclamation case but one for annulment of election. Petitioner's having been proclaimed, his having taken his oath of office, and his having assumed the duties thereof, present no impediment to the prosecution of this case to its conclusion.

5. The power of the COMELEC to order the holding of a special election was upheld in *Sanchez vs. COMELEC*, 114 SCRA, 454 (1982) wherein "we (upheld) the power and prerogative of the COMELEC to annul an election where the will of the voters has been defeated, as well as to call for a special election where widespread terrorism, whether before or after election, has been proven resulting in a failure to elect, without need of recourse to the President and the Batasang Pambansa for the enactment of remedial legislation".

WHEREFORE, the Writ of Certiorari is denied, and the Resolutions, dated December 10, 1980 and October 27, 1981, of the Commission on Elections annulling the elections held in the Municipality of Penaranda, Nueva Ecija, and ordering the holding of a special election thereat for the positions of Mayor, Vice-Mayor and Members of the Sangguniang Bayan, are hereby upheld.

No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.
De Castro, J., on sick leave.

[1] p. 88, Rollo.

[2] p. 25, *ibid*.

[3] p. 85, *ibid*.

[4] p. 82, *ibid*.

[5] p. 10, *ibid*.

[6] p. 65, *ibid*.

[7] p. 86, *ibid*.

[8] p. 95, *ibid*.

[9] *Garcia vs. COMELEC*, 105 SCRA 250, 280 (1981).

[10] p. 85, Rollo.

[11] COMELEC Resolution of December 10, 1980, p. 4.

[12] p. 94, Rollo.

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