

GUILLERMO ROBES, CRESENCIO GARCIA, EFREN BARTOLOME, EDUARDO IGNACIO, RAYMUNDO GERONA, ROMAN MANGAHAS, VICTORIANO MENDOZA, SEVERO CAYOCA, HIPOLITO SAMERA AND PERCIVAL MOGUEIS, PE...

G.R. No. 63130. June 28, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In this petition for certiorari, prohibition with preliminary injunction and/or restraining order, petitioners seek to set aside the January 11, 1983 resolution of the respondent Commission on Elections en banc in Pre-Proclamation Case No. 499 entitled Reynaldo Villano, et al. vs. Guillermo Robes, et al., reversing the resolution dated May 7, 1981 of respondent Comelec's Second Division on the ground that the same was issued without jurisdiction, and/or with grave abuse of discretion amounting to a lack or in excess of jurisdiction.

In the January 30, 1980 local elections, herein petitioner Guillermo Robes was elected mayor in San Jose del Monte, Bulacan by a majority vote of 5,063 over private respondent Reynaldo Villano. The rest of the petitioners were also elected—Cresencio Garcia as Vice-Mayor and the others as members of the Sangguniang Bayan—and duly proclaimed as such by the Municipal Board of Canvassers on February 1, 1980.

On February 23, 1980—or twenty-two days after the proclamation of the petitioners herein—private respondents filed with COMELEC a petition (Annex B, petition; pp. 21-26, rec.) for "Nullification of Election, Canvass, and/or Suspension or Holding in Abeyance of Proclamation." Cited as grounds for their petition, private respondents herein alleged, inter alia, the commission of terrorism, massive and rampant fraud such as registration of flying voters, vote-buying, vote-padding, allowing flying voters to vote through scheme and design in connivance with several members of the Citizens Election Committees.

On March 12, 1980, petitioners herein filed their joint answer (Annex C, petition; pp. 27-33, rec.) traversing the petition and maintaining that their proclamation was legal, valid and in accordance with the provisions of the 1978 Election Code.

On March 21, 1980, herein petitioners filed a Motion to Dismiss the petition filed by private respondents herein, alleging the following grounds:

"1. That this Honorable Commission has no more jurisdiction over the above-entitled petition on account of the fact that it was filed 22 days after the proclamation of the respondents;

"2. That the grounds relied upon by the petitioners are proper grounds for an election protest which should be initially ventilated in a proper proceeding before the proper court of first instance as provided for in Sec. 190 of the 1978 Election Code;

"3. That the grounds alleged by the petitioners are not those specifically provided for in Secs. 172, 173 and 174 of the 1978 Election Code that would warrant the annulment of the proclamation of the respondents under Sec.

175 of the 1978 Election Code;

"4. That the respondents won overwhelmingly over the petitioners, that the votes of some 903 persons who signed the letter-petition, annexes 'B', 'B-1' to 'B-17', inclusive, of the petition, would not alter the result of the election for the municipal officials of San Jose del Monte, Bulacan on January 30, 1980" (Annex D, petition; pp. 34-40, rec.).

In its resolution (Annex E, petition; pp. 41-43, rec.) dated April 22, 1980, respondent COMELEC denied herein petitioners' motion to dismiss and set the petition filed by herein private respondents for hearing on the merits.

On May 7, 1980, petitioners filed a motion for reconsideration (Annex F, petition; pp. 44-53, rec.) of the resolution denying their motion to dismiss.

On June 10, 1980, respondent COMELEC, thru its Second Division, set the petition for hearing on July 1, 1980 for the "purpose of hearing the evidence of the petitioners in support of their contention in the petition (Annex G, petition; p. 54, rec.).

In a resolution dated May 7, 1981, respondent COMELEC, thru its Second Division, granted the motion for reconsideration filed by petitioners herein and dismissed the questioned petition (PP Case No. 499) for lack of legal basis. The dispositive portion of the aforesaid resolution reads:

"The evidence produced by the petitioner only confirmed Our initial analysis that this pre-proclamation action was not the proper vehicle for the petitioners' cause; verily, it ought to be, or should have been, an election protest.

"In consideration of the foregoing findings and consistent with Our rulings in a host of cases with identical factual backgrounds as the present one, decided by this Commission, We resolve to GRANT the motion for reconsideration and TO ORDER THE DISMISSAL of the instant petition for lack of legal basis. This dismissal is, however, without prejudice to the appropriate legal remedy before the proper court that the petitioners may wish to pursue within ten (10) days from notice of this resolution" (Annex I, petition; pp. 59-60, rec.).

On May 15, 1981, private respondents herein filed an appeal (Annex J, petition; pp. 68-106, rec.) before the respondent COMELEC en banc.

On July 1, 1981, herein petitioners filed their Comment and/or Opposition to the appeal (Annex K, petition; pp. 107-126, rec.).

On January 11, 1983, public respondent COMELEC meeting en banc issued Resolution No. 83-901 setting aside the resolution of its Second Division dated May 7, 1981. The dispositive portion of COMELEC Resolution No. 83-901 reads:

"Wherefore, the Commission en banc RESOLVED to set aside the Resolution dated May 7, 1981, of the Second Division, this Commission, and hereby orders that the hearing thereof be continued and terminated at the earliest possible time.

"Commissioner Domingo C. Pabalate and Luis L. Lardizabal dissented.

"Let the Law Department implement this Resolution.

"Unanimously approved" (Annex L, petition; pp. 207-208, rec.).

On January 25, 1983, public respondent COMELEC issued an order (Annex M, petition; p. 129, rec.) setting the hearing of the petition on February 8, 9, 10, 1983.

Hence, this petition for certiorari, prohibition with preliminary injunction and/or restraining order.

On March 23, 1983, herein public respondent COMELEC issued a resolution holding in abeyance the scheduled hearings until further notice from this Court.

I

The main issue to be resolved in the petition as well as in the questioned Resolution No. 83-901 of herein respondent COMELEC is simple—whether the proper remedy in the instant controversy is an election protest, and not a pre-proclamation suit.

The alleged specific factual backdrop, as narrated by herein private respondents Reynaldo Villano, et al. in support of their petition in PP. Case No. 499, are as follows:

"That immediately before and during the election day, January 30, 1980, respondent candidates and their political leaders, including the Barangay officials and tanods of the Barangays of San Jose del Monte, Bulacan, using government facilities, resorted to terrorism and massive and rampant fraud such as registration of flying voters, vote-buying, vote-padding, allowing flying voters to vote although such voters were not included in the list of registered voters by use of scheme and design in connivance with several members of the Citizens Election Committees of several voting centers in the Municipality, allowing unauthorized persons to certify for flying voters as residents of the Municipality thereby enabled such flying voters to freely vote more than once, and also depriving duly registered voters to vote by allowing other persons to vote for them and/or by deleting their names from the list of registered voters, all with apparent tolerance, if not consent, of the respondent Election Registrar, despite protestations from legitimate and registered voters of the Municipality of San Jose del Monte, Bulacan, and the affidavits of witnesses, copies of which are hereto attached and made integral parts hereof as Annexes 'A', 'B', 'B-1', 'B-2', 'B-3', 'B-4', 'B-5', 'B-6', 'B-7', 'B-8', 'B-9', 'B-10', 'B-11', 'B-12', 'B-13', 'B-14', 'B-15', 'B-16', 'B-17', 'C' and 'C-1';

"That during the counting of the votes electric power was twice switched off in all voting centers; that several members of the Citizens Election Committee of the different voting centers in the Municipality who were given consideration by the KBL candidates disregarded and rejected considerable number of votes in favor of the petitioners and credited more than one vote the candidates of the KBL if the letters KBL and the names of its candidates were written on the same ballot, which irregular and anomalous acts were committed to favor the respondents-candidates" (pp. 22-23, rec.).

In its comment to the instant petition for certiorari, prohibition with preliminary injunction and/or restraining order, the Solicitor General made the following submissions:

.....

"It will thus be observed that the charges were nothing more than generalizations which are not proper grounds for the suspension and annulment of proclamation under Section 175 of the Election Code. Thus, Section 175 provides that COMELEC 'may, motu proprio or upon written petition, 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' (italics supplied).

"Section 172 refers to material defects in the election returns and provides that 'if it should clearly appear that some requisites in form or data had been omitted in the election returns, the board shall return them by the most expeditious means, to the corresponding election committee for correction.' Respondents' charges clearly do not refer to this ground.

"Section 173 refers to election returns that 'appear to be tampered with or falsified' and provides in part that 'if the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after it

has left the hands of the election committee, the board shall use the other authentic 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 163 hereof.' Under this provision, if the other authentic copies of the returns are likewise tampered with, COMELEC may order 'the election committee 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.'

"Section 174 reads in full as follows:

'Discrepancies in election returns.— In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a voting center or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved and once satisfied thereof, shall order the opening of the ballot box to recount the votes cast in the voting center solely for the purpose of determining the true result of the count of votes of the candidate concerned; Provided, however, That if upon the opening of the ballot box it should appear that there are evidence or signs of replacement or tampering of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping. (Italics supplied).

"None of the alleged irregularities properly fall among the above grounds for suspension or annulment of proclamation. There are no categorical assertions, nor can it be implied from the allegations in the petition in PP Case No. 499 that there are material defects in the election returns in the voting centers in question (Sec. 172); that the election returns appear to be tampered with or falsified after it has left the hands of the election committee (Sec. 172), and that there are discrepancies in the other authentic copies of the election returns (Sec. 174).

"Private respondents surely could not properly invoke grounds for the annulment of proclamation of petitioners other than those specified in Sections 172, 173 and 174 of the Election Code. To multiply the grounds for pre-proclamation controversies or for the suspension or annulment of proclamation would result in downgrading the election protest as a remedy and unduly delay the proclamation of a candidate-elect. As this Court well said, 'pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible' (Ilarde vs. Comelec, 31 SCRA 72, citing Alonto v. Comelec, 22 SCRA 878; and Anni vs. Rasul, 46 SCRA 758, 770).

"Indeed, the question of whether or not there was terrorism, vote buying and other irregularities should be ventilated in a regular election protest (City Board of Canvassers of Tacloban vs. Moscoso, 9 SCRA 91, 195; Ligot vs. Comelec, 31 SCRA 45; Ilarde vs. Comelec, 31 SCRA 72)" [pp. 284-287, rec.].

WE affirm the foregoing ratiocination of the Solicitor General. Likewise, We hold that respondent COMELEC en banc committed a grave abuse of discretion when it reversed the resolution of its Second Division granting the motion for reconsideration filed by herein petitioners and ordering the dismissal of the petition filed by private respondents herein in PP Case No. 499.

At this point, it bears reiterating the pronouncement We have already made in several cases that "after an election duly held and a proclamation thereafter made of the winning candidate, a pre-proclamation controversy should no longer be viable" (Pasion vs. Comelec, 109 SCRA 238, 244; Mogueis, Jr. vs. Comelec, 104 SCRA 578; Arcenas vs. Comelec, 101 SCRA 437; Villegas vs. Comelec, 99 SCRA 582; Venezuela vs. Comelec, 98 SCRA 790).

But unlike in Pasion vs. Comelec, supra, Mogueis Jr. vs. Comelec, supra, and Villegas vs. Comelec, supra, where the petitioners therein were not left without a remedy for the opportunity for them to prove such a wholesale allegation of massive fraud and violations of the Election Code—through the filing or continuation of their

respective election protest before the appropriate body or tribunal—herein private respondents' recourse to an electoral protest in the proper court is deemed foreclosed or extinguished when they chose instead to file before the COMELEC the questioned petition (PP Case No. 499) twenty-two [22] days after the proclamation of herein petitioners.

In no uncertain language, the 1978 Election Code provides:

"SEC. 190. Election contests for municipal and municipal district offices.— A sworn petition contesting the election of a municipal or municipal district officer shall be filed with the proper Court of First Instance by any candidate for the same office who has duly filed a certificate of candidacy, within ten days after the proclamation of the election."

By filing the assailed petition (PP Case No. 499) before the COMELEC twenty-two days after the proclamation of the petitioners, private respondents herein are deemed to have abandoned the remedy afforded under the aforecited Section 190 of the Election Code.

II

Finally, the assailed resolution dated January 11, 1983 of respondent COMELEC en banc as well as private respondents herein sought to invoke the ruling of this Court in the case of *Olfato vs. Comelec* (103 SCRA 741, 781) that:

"Hence, once there is a prima facie showing of the commission of other election irregularities which will ultimately be reflected in the election returns, the Comelec should in a pre-proclamation controversy, with due observance of due process of course, be also authorized to suspend canvass, suspend or annul a proclamation of a candidate-elect, for it smacks of absurdity to proscribe the commission of one kind of irregularity and yet countenance another kind of irregularity, when both irregularities make a mockery of suffrage."

Again, We quote with approval the following observations of the Solicitor General:

"It should be noted that in the *Olfato* case, private respondent therein Francisco Lirio and the other KBL candidates filed the petition for suspension of canvass and proclamation of the winning candidates on February 2, 1980, or before the petitioners therein, Sotero Olfato, et al., were proclaimed duly elected municipal officials of Tanauan, Batangas on February 5, 1980 and before they took their oath of office on February 6, 1980. In fine, that case was truly a pre-proclamation controversy.

"On the other hand, the present case cannot with precision be called a pre-proclamation controversy. As earlier shown, the petition against the petitioners herein was filed with COMELEC after the lapse of 22 days after they had been proclaimed duly elected municipal officials of San Jose del Monte and after they had assumed office. This case is more of a post-proclamation dispute" (p. 291, rec.).

WHEREFORE, THE PETITION IS HEREBY GRANTED, THE QUESTIONED RESOLUTION NO. 83-901 OF RESPONDENT COMMISSION ON ELECTIONS IS HEREBY SET ASIDE, AND PRE-PROCLAMATION CASE NO. 499 IS ORDERED DISMISSED. NO COSTS.

SO ORDERED.

Fernando, C.J., Concepcion Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., in consonance with his dissent in *Olfato vs. Comelec*, 103 SCRA 741, concurs in the result.

Aquino, J., in the result.

De Castro, J., took no part.

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