

ESTEBAN D. DORUELO, PETITIONER, VS. COMMISSION ON ELECTIONS AND TOMAS D. BAGA, JR., RESPONDENTS.

G.R. No. 67746. November 21, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Assailed in this petition for review on certiorari and prohibition with prayer for the issuance of a writ of preliminary prohibitory injunction is the Minute Resolution dated June 14, 1984 issued by respondent Commission on Elections [COMELEC] in Pre-Proclamation Case No. 66-84, entitled "Doruelo v. Baga, et al." [1]

Petitioner Esteban Doruelo and private respondent Tomas Baga, Jr., were two of the ten candidates in the May 14, 1984 elections who vied for the two seats allocated to the province of North Cotabato in the Batasan Pambansa. On May 20, 1984, after all the elections returns had been canvassed, but before the canvass was officially terminated, petitioner Doruelo filed with the provincial board of canvassers, two petitions for: [1] the suspension of the proclamation of the winning candidates, designated as Pre-Proclamation Case No. 1; and [2] the nullification of the election returns in the municipality of Kabacan, designated as Pre-Proclamation Case No. 2.

Upon petition of some of the candidates, a recheck of the canvass was conducted by the provincial board of canvassers the whole night of May 20, 1984, until about 3:00 P.M. of May 21, 1984 when the canvass was finally declared terminated. As shown by the official tally, the three leading candidates with their respective votes are as follows:

1. Carlos B. Cajelo 75,067 votes
2. Tomas D. Baga, Jr. 69,709 votes
3. Esteban D. Doruelo 64,162 votes

On the same day, May 21, 1984, petitioner filed with the Provincial Board of Canvassers a third petition for the annulment of the canvassed election returns in the whole province of North Cotabato. After the Provincial Board of Canvassers resolved to dismiss all three pre-proclamation cases filed by petitioner, the latter filed with respondent Comelec the following petitions:

[1] On May 23, 1984, an Urgent Omnibus Petition to [a] hold special elections in certain voting centers or barangays in North Cotabato due to failure of elections, the results of which will allegedly alter the voting returns/votes affecting KBL candidates Carlos B. Cajelo, Tomas Baga, Jr. and NP candidate Esteban D. Doruelo; [b] annul or set aside from the canvass results certain election returns therein specified, as further basis for such special elections; and [c] suspend the proclamation of leading candidates KBL Carlos Cajelo and Tomas Baga, Jr. pending such special elections, and for a restraining order against the provincial board of canvassers from so proclaiming. This Urgent Omnibus Petition was filed as an appeal from the Board's ruling in Pre-Proclamation Case No.1[2] ;

2] Also on May 23, 1984, an Urgent Petition to "annul all election returns in the municipality of Kabacan,

North Cotabato, in connection with the May 14, 1984 Batasang Pambansa elections," by way of appeal from the ruling of the provincial board of canvassers in pre-proclamation case No. 2 in said board[3] ;

3] On May 25, 1984, a Supplemental Petition[4] ;

4] Likewise on May 25, 1984, an Appeal/Petition from the ruling of the Provincial Board of Canvassers of North Cotabato admitting for canvass certain returns therein specified, and to annul or exclude the same from canvass[5] ; and

5] Also on May 25, 1984, an Appeal/Petition from the ruling of the Provincial Board of Canvassers of North Cotabato denying the petition to annul and set aside the entire canvass results in the May 14, 1984 BP elections for North Cotabato and to order recanvass of only complete and valid returns in strict compliance with law.[6]

Carlos Cajelo and private respondent Tomas Baga, Jr. also filed separate petitions with the Comelec seeking their proclamation as winning candidates.

These various petitions were docketed as Pre-Proclamation Case No. 66-84 and were set for hearing on May 29, 1984 before the Comelec First Division. At the scheduled hearing, petitioner's counsel was not present; but he sent a representative, on whose motion the hearing was reset to June 5, 1984 to give petitioner the opportunity to cross-examine the chairman of the provincial board of canvassers who testified thereat, as well as to present his evidence. The Comelec likewise authorized the proclamation of Carlos Cajelo.

On June 5, 1984, the chairman of the board of canvassers was recalled to the witness stand and was cross-examined by petitioner's counsel. At the close of the hearing and upon agreement of the parties, the Comelec issued an order requiring the parties "to submit memorandum simultaneously on or before June 11, 1984, after which the issues shall be deemed submitted for resolution." [7]

After the parties had submitted their respective memoranda [Petitioner filed a 41-page Main Memorandum and a 14-page Supplemental Memorandum, plus Annexes, at about 3:00 P.M. of June 11, 1984], the Comelec issued the questioned minute resolution on June 14, 1984, which we quote:

"PPC No. 66-84 [DORUELO vs. BAGA, et al., North Cotabato]. - It appearing that Respondent Baga is leading Petitioner Doruelo by 5,547 votes and the total number of voters in the 22 voting centers where special election is being sought is 5,994, it would be purely conjectural to perceive that the petitioner would win 100% or at least 90% of 5,994 voters in the special election assuming that there will be a 100% turn-out of voters which may be both unlikely and improbable, then the calling of a special election in the 22 voting centers will not be justified as there is no certainty that it will affect or alter the result of the election; and considering further that no prima facie evidence to warrant reception of evidence aliunde have been submitted before the provincial board of canvassers or before this Commission, [FIRST DIVISION], without prejudice to an extended opinion, hereby RESOLVED to dismiss Pre-Proclamation Controversy in PPC No. 66-84 and PROCLAIMS TOMAS BAGA, JR. as the Second Assemblyman-elect for North Cotabato in the May 14, 1984 election on the basis of the certified results of the canvass made by the Provincial Board of Canvassers. [COM. RAMON FELIPE, JR., Concurring, without prejudice to petitioner's right to file an election protest within ten [10] days from the proclamation.]"

On June 22, 1984, petitioner filed the instant petition. On June 26, we required respondents to comment on said petition, and set the plea for a temporary restraining order for hearing on Thursday, June 28, 1984 at 11:00 A.M. It appears that on June 27, the day before the scheduled hearing, the Comelec promulgated an extended resolution in PPC Case No. 66-84.

A main objection of petitioner to the Minute Resolution is that while PPC Case No. 66-84 actually involved

various petitions, said minute resolution considered merely the first of the three grounds relied upon by him for his prayer for a special election. Moreover, petitioner alleged that the reservation regarding an extended opinion had left him in the dark both as to when said extended opinion would be handed down, even as his opponent, private respondent Baga, had already been proclaimed and the ten-day period for the filing of an election protest had commenced to run. It is for these reasons, basically, that he considers said minute resolution to have been rendered with grave abuse of discretion amounting to lack of jurisdiction. These objections, however, can now be properly considered moot and academic as the Comelec did issue the promised extended resolution on June 27, 1984, wherein the various issues raised by petitioner were lengthily discussed and resolved.

Petitioner further alleged disregard by respondent Comelec of due process. The essential requirements of due process as applied to administrative proceedings were first laid down in the 1940 case of *Ang Tibay v. Court of Industrial Relations*.^[8] Analyzing an array of American decisions, Justice Laurel, in said case, set forth what is now known as the "cardinal primary" requirements of due process in administrative proceedings, to wit: [1] the right to a hearing which includes the right to present one's case and submit evidence in support thereof; [2] the tribunal must consider the evidence presented; [3] the decision must have something to support itself; [4] the evidence must be substantial. And substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion; [5] the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; [6] the tribunal or body of any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; [7] the board or body should, in all controversial questions, render its decisions in such manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

In the issuance of the minute resolution under consideration, the respondent Comelec had duly observed these requisites. That not one, but two hearings were conducted in connection with PPC No. 66-84, is undisputed. In fact, at the instance of petitioner, the first hearing was reset in order to give him the opportunity both to cross-examine the chairman of the board of canvassers and to present his evidence; and these, petitioner was able to accomplish during the second hearing held on June 5, 1984. He also submitted a memorandum, to which all his documentary evidence were attached.

Neither could it be said that the respondent Comelec did not "render its decision in such manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered." It must be noted that only three basic issues were presented by petitioner's petitions, namely: a) the holding of special elections in the enumerated barangays; b) the nullification of the canvass results in Kabacan, North Cotabato; and c) the nullification of the entire canvass results in the province of North Cotabato. Denial of the first issue was founded on the non-certainty of a special election altering the final outcome of the elections, while the denial of the other two issues was based on the findings that "no prima facie evidence to warrant the reception of evidence aliunde have been submitted before the provincial board of canvassers or before this Commission." The difficulty encountered by petitioner obviously stemmed from a deliberate refusal to understand the import of the minute resolution. Nonetheless, whatever details may have been lacking in the questioned minute resolution were supplied in full by the extended opinion of June 27, 1984.

In the proceeding before respondent Comelec, petitioner sought the nullification of all election returns from the municipality of Pikit and Kabacan, invoking in support thereof, the doctrine of "statistical improbability". This issue was resolved by Comelec in this wise:

1. There is absolutely no allegation or showing that in the 100% voting turn-out all voters voted for a particular candidate while petitioner was completely blanked out. On the contrary the election returns from

Pikit and Kabacan show that the votes cast were distributed to the various candidates and the winning candidates belong to different parties;

2. In the voting centers which registered an 'exceedingly high' turn-out as alleged by the petitioner, the turn-out was actually 90% to 92.22% and the election returns show a wide distribution of the votes cast to the various candidates. x x x.

We agree. The election returns in question show that there is neither uniformity of tallies in favor of the candidates belonging to one party only nor a systematic blanking of the opposing candidates.[9] And the mere allegation of a high voting turn-out or that a candidate had received a high percentage of the votes cast, by itself, does not justify the application of the statistical improbability rule.[10]

WHEREFORE, the petition is hereby dismissed, without prejudice to petitioner's right to file an election protest within ten (10) days from notice hereof. Costs against petitioner.

SO ORDERED.

Fernando, C.J, Makasiar, Aquino, Concepcion, Jr., Melencio-Herrera, Plana, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Teehankee, J., in the result.

Abad Santos, J., no part.

[1] Annex "K", Petition, p. 115, Rollo.

[2] Annex "B", Petition; pp. 35-42, Rollo.

[3] Annex "C", Petition; pp. 43-47, Rollo.

[4] Annex "D", Petition; pp. 48-50, Rollo.

[5] Annex "E", Petition; pp. 51-53, Rollo.

[6] Annex "F", Petition; pp. 54-58, Rollo.

[7] p. 181, Rollo.

[8] 69 Phil. 635.

[9] *Alonto, et al. v. Comelec, et al.*, 22 SCRA 878

[10] *Sinsuat v. Pendatun*, 33 SCRA 630.

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