

ANTONIO S. CALIMBAS, PETITIONER, VS. HON. COMMISSION ON ELECTIONS AND ARMANDO M. QUIMLAT, RESPONDENTS.*G.R. No. 69932. October 08, 1985*

Ponente: MELENCIO-HERRERA, J.

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A Petition for Certiorari to set aside the Decision of respondent Commission on Elections (COMELEC), dated January 15, 1985, declaring respondent Armando M. QUIMLAT the duly elected Municipal Mayor of Morong, Bataan, in the local elections of January 30, 1980. This Decision reversed on appeal the judgment of the then Court of First Instance of Bataan, which proclaimed petitioner, Antonio S. CALIMBAS, as the duly elected Municipal Mayor of Morong, Bataan.

The pertinent antecedents follow:

In the 1980 local elections in Morong, Bataan, three candidates vied for the office of Municipal Mayor, namely, petitioner CALIMBAS (KBL); respondent QUIMLAT (NP); and Benjamin Escolango (NUL).

On January 31, 1980, CALIMBAS was proclaimed by the Municipal Board of Canvassers as the duly elected Municipal Mayor, with 2,545 votes, as against QUIMLAT's 2,103 votes, or a plurality of 442 votes.

On February 7, 1980, QUIMLAT lodged an election protest with the then Court of First Instance of Bataan, Branch I (Election Case No. 314), against CALIMBAS alleging fraud, massive vote-buying and terrorism in Voting Centers 1 and 2 of Mabayo, Morong, Bataan, and particularly, that:

"In Voting Center No. 1 in Barangay Mabayo, only 299 voters actually cast their votes but the total votes counted were 644. x x x"

Protestee CALIMBAS filed his Answer denying the material averments of the protest and praying for its dismissal. In his Counter-Protest, CALIMBAS also contested the election results in other specified Voting Centers.

On March 17, 1982, the trial Court rendered judgment "thoroughly convinced that the frauds, notably the 508 votes counted by the Municipal Board of Canvassers in favor of the protestee in Mabayo Voting Center No. 1, the use of flying voters and the likes put up by both protestant and protestee do not have any factual basis", and declaring protestee CALIMBAS as the duly elected Municipal Mayor, with a plurality of 113 votes over protestant QUIMLAT.

QUIMLAT appealed to respondent COMELEC.

On January 15, 1985, the COMELEC promulgated its challenged Decision nullifying all the votes cast in Voting Center No. 1, Mabayo, on the basis of its finding that there were 151 excess votes, which are over 65% of the number of voters who actually voted, citing the ruling in *Bashier, et al. vs. COMELEC, et al.*[1] Accordingly, the COMELEC declared QUIMLAT as the duly elected Municipal Mayor of Morong, Bataan, with 1,762 votes as

against 1,719 votes of CALIMBAS, or a plurality of 43 votes. CALIMBAS sought reconsideration, but the same was denied. Hence, this recourse on February 18, 1985.

On February 21, 1985, we issued a Temporary Restraining Order enjoining the COMELEC from enforcing its questioned Decision in EAC No. 10-82, and QUIMLAT from assuming the position of Municipal Mayor of Morong, Bataan, effective immediately, and continuing until further Orders from this Court.

At the hearing on February 28, 1985, it was agreed that the only issue for resolution is whether or not COMELEC abused its discretion in concluding that in Voting Center No. 1, Mabayo, there were, in fact, "151 excess votes." At the same hearing, Assistant Solicitor General Eduardo Montenegro appeared for the COMELEC and manifested that he will not argue on the plea for Preliminary Injunction because "the Office of the Solicitor General could not reconcile the confusing data in the records."

Finding that the data before it were, in fact, confusing, inconsistent and inaccurate, this Court, in its Resolution of June 13, 1985, stated in part:

"For a just resolution of the instant controversy, therefore, particularly, in the absence of sufficient and reliable evidence to support the finding of excess voting in Voting Center 1, the inaccuracies in the Citizens Election Committee reports, and the COMELEC's erroneous assumption that 'registered' voters are synonymous with those who 'actually voted,' in addition to QUIMLAT's allegation that the documents CALIMBAS presented to this Court are 'spurious', there is imperative need to determine definitively and conclusively the accurate number of registered voters in Voting Center No. 1. The data may be obtained from the Certified List of Registered Voters, x x x which should be in COMELEC custody."

The List of Registered voters as of January 30, 1980 in Voting Center No. 1 of Barangay Mabayo, Morong, Bataan, was submitted by the COMELEC, through the Solicitor General, in its Compliance of July 29, 1985, with the manifestation that "the list was handcarried by the Election Registrar of Morong, Bataan to the COMELEC, Manila, on Wednesday, July 17, 1985 at 5:00 o'clock in the afternoon, pursuant to a telegram sent by COMELEC."

A careful scrutiny of all the documents required to be submitted constrains us to conclude that the COMELEC gravely abused its discretion in holding that there was excess voting in Voting Center No. 1.

The COMELEC computation was as follows:

Total votes cast "after physical count" (per Summary of the Court Commissioners' Report)

Calimbias

205

votes

Quimlat

50

"

Escolango

89

"

"Stray"

36

"

380

Number of Voters

229

Excess Votes

151[2]

That 380 votes were actually cast is an established fact. However, that the "number of voters" is "229" is erroneous. Apparently, the COMELEC considered the terms "registered voters" and "voters who actually voted" as synonymous when it said that "379 (should be 380) ballots were counted and appreciated by the Citizens Election Committee in Voting Center No. 1, Mabayo, in spite of the fact that only 229 voters are registered or actually voted in this voting center".[3] Herein lies the grave reversible error. The term "registered voters" is not synonymous with "actual voters." It is a matter of judicial notice that not all "registered voters" cast their votes on election day.

The decisive factors in the determination of the existence of excess votes should be the number of registered voters, the number of registered voters who actually cast their votes, and the number of ballots found in the ballot box. Applied to the present controversy, we arrive at the following results:

No. of registered voters per List submitted by COMELEC

491

No. of voters who actually cast their votes after physical count
380

No. of ballots found in the ballot box
38

The foregoing negate any excess voting.

The simplified method prescribed in Section 151 of the Revised Election Code of 1978 for the determination of excess ballots, that is, the number of ballots in the ballot box compared to the number of voters who voted suffices if those numbers had been accurate. However, the inaccuracies and the unreliability of the pertinent entries in the "Minutes of Voting & Counting of Votes, Voting Center I, Morong, Bataan" (Exhibit "AA") are glaringly evident. Thus:

"No. of registered voters in the book of voters — 299 (Exhibit "AA-3")

x x x x x x x x

"No. of voters who cast their votes — 229 (Exhibit "AA-4)

x x x x x x x x

"No. of ballots found inside compartment of valid ballots — 299

x x x x x x x x

"No. of ballots read and counted — 299"

The entry in the "Minutes of Voting" that the "number of registered voters in the book of voters" was "299" (Exhibit "AA-3") is negated by the List of Registered Voters submitted by the COMELEC[4] showing that the registered voters numbered:

"Total Male - 284

Total Female - 207

—

Total - 491"

Similarly, the entry in the same Minutes that the "number of voters who cast their votes" was "229" is belied by the physical count conducted by the trial Court's Commissioners showing that 380 votes were actually cast. It was this number that was found inside the ballot box including the stray votes. And this number tallies with the following official data:

Certificate of Receipt of Official Ballots signed by the members of the Citizens Election Committee, Serial Nos. 3895410-3895882 (Exhibit "DD") -----

473

(Exhibit "DD-4")

No. of unused ballots -----

93

(Exhibit "EE")

Difference -----

380

Respondent persists in his submission, however, that the List of Registered Voters as of January 30, 1980 in Voting Center No. 1 of Barangay Mabayo, Morong, Bataan, is spurious and should be rejected. But the fact remains that said list was the one used during the local elections of January 30, 1980 in Morong, Bataan, and that, as manifested by the Solicitor General it was handcarried to Manila on July 17, 1985 pursuant to a telegram sent by the COMELEC. To all intents and purposes, it is an official document.

Although it may be that the said List was not presented in evidence during the COMELEC hearings, it behooved the COMELEC, considering the claim of excess voting, to have sent for said list in the interest of accuracy and in keeping with the primordial objective of ascertaining always the true will of the electorate.

In the ultimate analysis, the fundamental rule should not be lost sight of that the power to throw out an election should be exercised with great care and caution and only in extreme cases of fraud or under circumstances which demonstrate fundamental and wanton disregard of law[5], which circumstances we do not find present herein.

WHEREFORE, the assailed Decision of the COMELEC in EAC No. 10-82, dated January 15, 1985, is hereby SET ASIDE, and the Decision of the then Court of First Instance of Bataan, Branch I, is hereby reinstated. Petitioner Antonio S. Calimbas is hereby declared the duly elected Municipal Mayor of Morong, Bataan. The Temporary Restraining Order heretofore issued is hereby made permanent.

SO ORDERED.

Makasiar, C.J., Concepcion, Jr., Abad Santos, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

Teehankee and Aquino, JJ., no part.

[1] 43 SCRA 238 [1972].

[2] p. 20, COMELEC Decision.

[3] p. 18, Decision.

[4] Annex "A", Compliance by COMELEC.

[5] Capalla vs. Tabiana, 63 Phil. 95 [1936]; Demetrio vs. Lopez, 50 Phil. 45 [1927].

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