

JESUS F. SALAZAR, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, AND BENJAMIN S. IMPERIAL, RESPONDENTS.

G.R. NO. 85742. April 19, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

We sustain the challenged Resolutions/Decision of the Commission on Elections (COMELEC) dated 26 February 1988, 21 October 1988, 3 March 1989, and 5 June 1989, and thus uphold the proclamation of Respondent Benjamin S. IMPERIAL.

In the 18 January 1988 local elections, Petitioner Jesus V. SALAZAR and respondent Benjamin S. IMPERIAL were candidates for Mayor of Legaspi City. In the course of the canvass, Petitioner SALAZAR registered objections to the admission of 165 election returns allegedly due to massive irregularities committed by or on behalf of Respondent IMPERIAL. The City Board of Canvassers (the City Board, for short) overruled the objections.

On 25 January 1988, Petitioner SALAZAR filed before the COMELEC a Petition (SPC No. 88-265) for "Declaration of Failure of Election and Holding of New Election, or Annulment of Disputed Election Returns, and/or Appeal from the Rulings of the City Board of Canvassers of Legaspi City." In the alternative, Petitioner Salazar asked the COMELEC to order a recount of the votes cast, or to annul the affected returns; and in either case, to set aside the appealed rulings of the Board.

On 28 January 1988, Respondent IMPERIAL filed his Answer denying the alleged irregularities and contending that the Petition stated no cause of action, was merely dilatory, and that Petitioner SALAZAR's proper recourse was an election protest to ventilate the alleged wholesale irregularities, none of which had ever been reported to the authorities previously.

On 31 January 1988, the COMELEC en banc promulgated Resolution No. 88-412 (SPC No. 88 265) reading, in part:

"x x x x x x x x

"RESOLVED to suspend, as it hereby suspends, the effects of proclamation of respondent Benjamin S. Imperial and x x x in the meantime the City Board of Canvassers of Legaspi City is directed to submit its comment on its alleged violation of Sec. 245 of the Omnibus Election Code (BP 881).

"The Chairman and Commissioner Rama voted to dismiss the petition as the allegations therein are proper in an election protest, and for non-compliance with the requirements of Section 245 of the Omnibus Election Code.

"x x x x x x x x"

On 5 February 1988, the City Board proclaimed the Vice Mayor and nine (9) members of the Sangguniang

Panglunsod as the winning candidates on the basis of the votes cast in 186 precincts (out of 206 precincts). No winner was proclaimed for the position of Mayor.

On 8 February 1988, Respondent IMPERIAL filed before the COMELEC a Petition to declare the proclamation, dated 5 February 1988, a nullity and impugned the integrity of twenty (20) election returns.

On 6 February 1988, the COMELEC sent a telegram to the Chairman, City Board of Canvassers, as follows:

"Re telegram sent February 2 1988 quote be advised that the Commission in SPC 88-265 upon petition of Jesus Salazar Jr against that Board comma resolved to set aside the effects of proclamation of the private respondents Benjamin S Imperial and Cesar Bordeos and to require that Board to comment for your alleged violation of Sec 245 Omnibus Election Code Stop Secure copy of said petition from petitioner Salazar Stop Notify all parties and candidates immediately and wire receipt and compliance hereof end law Unquote Please be advised to comply strictly with the provisions of Sec 245 of Omnibus Election Code Stop If results in 20 contested precincts repeat contested precincts recorded separately pursuant to general instructions for Board of Canvassers will not adversely affect the result of elections for all positions proclamation of all candidates can be made Stop Wire receipt and compliance hereof immediately end law" (Emphasis ours).

In the meantime, the COMELEC was reorganized.

Subsequent to that reorganization, or on 26 February 1988, the First Division of the COMELEC promulgated a Minute Resolution reading:

"Acting on the verified petition, dated January 25, 1988, filed by Jesus F. Salazar, Jr. against the City Board of Canvassers of Legazpi City, et al., praying to declare failure of election due to irregularities committed during the recounting by the board of canvassers, and the answer filed by the respondents, denying the alleged irregularities submitting the reports therein, the Commission (First Division) RESOLVED to lift or set aside the order embodied in Minute Resolution No. 88-412 dated January 21, 1988, which suspended the private respondents proclamation or the effects thereof, and instead to order the City Board of Canvassers to reconvene and proclaim the winning candidate for City Mayor.

SO ORDERED" (Italics supplied).

Petitioner SALAZAR moved for reconsideration before the COMELEC en banc.

In the meantime, on 2 March 1988, the City Board proclaimed Respondent IMPERIAL as the duly elected Mayor of Legaspi City, stating:

"This proclamation is based on the election returns from one hundred eighty six (186) precincts duly canvassed. The addition of the election returns from the twenty (20) precincts still to be canvassed will not affect the outcome of the results of the election for mayor.

"March 2, 1988."

Respondent IMPERIAL took his oath on the same day, 2 March 1988.

On 21 October 1988, the COMELEC en banc promulgated a Resolution DENYING Petitioner SALAZAR's Motion for Reconsideration, AFFIRMING the Resolution of the First Division of 26 February 1988, which lifted the suspension of the proclamation, and REMANDING the case to the First Division for hearing and final disposition on the merits.

On 27 January 1989, Petitioner SALAZAR filed this Petition for Certiorari seeking to set aside the Resolution of the COMELEC First Division, dated 26 February 1988, which authorized the City Board to proclaim the winning candidate for the position of City Mayor; the proclamation of Respondent IMPERIAL; and the Resolution en banc

of the COMELEC, dated 21 October 1988, affirming the suspension of the proclamation and remanding the case to the First Division for hearing and final disposition. Petitioner SALAZAR also prayed that Respondent IMPERIAL be enjoined from discharging the functions of the office of City Mayor by reason of the nullity of his proclamation (Reliefs prayed for in the Petition, p. 11, Rollo).

In the meantime, no Restraining Order having been issued by this Court, hearings proceeded before the COMELEC First Division as mandated by the en banc Resolution of 21 October 1988, which was challenged before us only in the present Petition. At the hearing of 3 March 1989, the First Division dismissed the petition before it for lack of interest, Petitioner SALAZAR's counsel having failed to appear. Upon reconsideration prayed for by the latter, the hearing was reset to 18 May 1989. One of the reasons advanced for seeking reconsideration was that considering the pendency of this Petition, propriety demanded that COMELEC refrain from further proceedings so as not to render the issues herein moot and academic.

On 5 June 1989, the First Division promulgated its Resolution, also challenged herein, denying reconsideration and, in "resolving the more compelling issue not treated in the Motion for Reconsideration," held that "after the proclamation of the winning candidate, a pre-proclamation controversy is no longer viable." It then decreed:

ACCORDINGLY, considering the alternative relief prayed for by petitioner in his petition 'to order a recount of the votes cast,' he may as well be advised to file a regular protest with this Commission, if he so desires, within ten (10) days from receipt of this Order."

In a Supplemental Petition filed on 26 June 1989, Petitioner SALAZAR assails the COMELEC First Division Resolution of 5 June 1989 on the grounds that [1] jurisdiction to resolve Motions for Reconsideration rests with the COMELEC en banc; [2] even assuming that the First Division could resolve the Motion, it lacked jurisdiction over the issue of whether or not the entire pre-proclamation controversy had been rendered moot and academic; and (c) it deprived this Court of its superior jurisdiction over the entire case by precipitately dismissing the main case before the COMELEC.

Petitioner SALAZAR's contention that the COMELEC First Division could not have lifted the suspension of proclamation (Resolution of 26 February 1988) mandated by the COMELEC en banc (Resolution of 31 January 1988) is without merit. As authorized in the COMELEC en banc's Resolution of 21 October 1988:

"x x x the Commission en banc itself, in an executive session shortly after said elections, empowered the Division to which a particular case is assigned, to lift the order of suspension should such Division find it proper in the course of its consideration of the case. The minute resolution of the First Division of 26 February 1988 was in accordance with this executive resolution."

Petitioner SALAZAR stresses, in particular, that the COMELEC was without jurisdiction or had acted in excess of its jurisdiction in having directed the proclamation of Respondent IMPERIAL notwithstanding that the objections he had raised on appeal had not yet been resolved, in violation of Section 245 of the Omnibus Election Code.

Section 245 does provide:

"The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party and any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election."

We are unable to agree with Petitioner SALAZAR's submission, however.

Petitioner SALAZAR's so-called objections on appeal referred to irregularities that attended the voting,

particularly, fraud, massive vote buying, bribery, fake bills and open balloting. Likewise, he assailed the unreasonable denial of his objections based on those irregularities by the City Board in the course of the canvass.

It was by reason of those alleged irregularities that the COMELEC en banc ordered the suspension of the proclamation of the winning candidate in its Resolution of 31 January 1988. In the same Resolution, the City Board was ordered to submit its Comment on its alleged violation of Section 245 of the Omnibus Election Code.

In its Comment (pp. 59-64, Rollo), the City Board denied that Petitioner SALAZAR or his counsel had made timely objections as required by Section 245; said Board stated that what Petitioner SALAZAR did was merely to file a written request which the Board initially denied verbally and later reduced to writing. The City Board likewise refuted point by point the irregularities during the canvassing alleged by Petitioner SALAZAR (Ibid.).

Apparently satisfied with the City Board's explanations, taken in conjunction with the main Petition, the Answer thereto and the reports submitted regarding the alleged irregularities, the COMELEC (First Division) lifted the suspension of the proclamation in its Resolution of 26 February 1988. It is inaccurate for Petitioner SALAZAR to contend, therefore, that the COMELEC had failed to rule on his objections on appeal based on alleged irregularities. Implicit in that COMELEC Resolution lifting the suspension of proclamation, was its refusal to set aside the appealed rulings of the Board, thereby resolving the same. For, if the COMELEC (First Division) felt that Petitioner SALAZAR's objections to the appealed rulings of the City Board were valid, it would not have lifted the suspension of the proclamation. It cannot be said, therefore, that the proclamation that the COMELEC (First Division) had authorized was void for being in violation of Section 245 of the Omnibus Election Code.

For, we note as well that, as stated in the Comment of the City Board and in the votes of the COMELEC Chairman and Commissioner Rama (Resolution of the COMELEC en banc, 31 January 1988), Petitioner SALAZAR had failed to comply with the requirements of said Section 245.

Cognizance should also be taken of the fact that some of the irregularities enumerated as having attended the voting were vote buying, fake bills and open balloting, which are proper grounds in an election contest but may not, as a rule, be invoked to declare a failure of election (Section 6, Omnibus Election Code). Neither are they proper issues in a pre-proclamation controversy as enunciated in Sections 233, 234, 235 and 236 of the Omnibus Election Code.

In fact, Petitioner SALAZAR's alternative relief was for COMELEC to order a recount of the votes cast, which again, is more properly the subject of an election protest. The COMELEC (First Division) cannot be faulted, therefore, in ruling in its 5 June 1989 Resolution that Petitioner SALAZAR, if so minded, could file a regular protest with the COMELEC.

In finding in the same Resolution that a proclamation having been made, a pre-proclamation controversy is no longer viable, the COMELEC (First Division) was merely applying a settled doctrine. Petitioner SALAZAR cannot justifiably argue that the COMELEC was devoid of jurisdiction to do so, the matter of jurisdiction, meaning the right of a tribunal to act in a particular case, being governed by law (*Calimlim vs. Ramirez, et al.*, G. R. No. L-34362, 19 November 1982, 118 SCRA 399; *De Jesus, et al. vs. Garcia, et al.*, G. R. No. L-26816, 28 February 1967, 19 SCRA 554). Moreover, in the Resolution of the COMELC en banc of 21 October 1988, the case was remanded to the First Division "for hearing and final disposition."

And, as far as the "hierarchical courtesy" owing this Court is concerned, it only need be pointed out that this Court did not issue any order restraining the COMELEC from enforcing its 21 October 1988 Resolution, which it would have done had it believed, as Petitioner SALAZAR would have wanted it to, that the proceedings below had to be suspended during the pendency of this case or that Respondent IMPERIAL should be enjoined from discharging

the functions of the office of Mayor of Legaspi City (p. 11, Rollo). The factual setting in *Eternal Gardens Memorial Park vs. Court of Appeals*, G. R. No. L-50054, 17 August 1988, 164 SCRA 421, relied on by Petitioner SALAZAR to support his view, is not on all fours with this case, specially considering that this involves an election controversy generally governed by its own procedural rules.

In his Supplemental Petition, Petitioner SALAZAR further challenges the validity of the 5 June 1989 Resolution of the COMELEC (First Division) on the ground that his Motion for Reconsideration should have been resolved by the COMELEC en banc pursuant to Section 3, Article IX (C) of the 1987 Constitution.[1] It suffices to state, however, that said Resolution dismissing the Petition for lack of interest due to the failure of Petitioner Salazar or his counsel to appear for hearing, is not a Decision nor of such a nature that a motion for the reconsideration thereof would call for resolution by the COMELEC en banc.

Lastly, Petitioner SALAZAR's attack against the 5 June 1989 COMELEC Resolution that it has made the Petition before this Court moot and academic is of no practical significance since this Court has arrived at the same conclusion as the COMELEC that the proper recourse for him is an election protest, and has concluded that no violation of Section 245 of the Omnibus Election Code has been committed by the COMELEC.

WHEREFORE, this Petition is hereby DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., and Sarmiento, JJ., on leave.

[1] Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

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