

DIMANGADAP DIPATUAN, PETITIONER, VS. THE COMMISSION ON ELECTIONS, ALEEM HOSAIN AMANODDIN, ALEEM ABBAS MOHAMMAD HABIB, HADJI SALIC IMAM, IBRA P. BALI, MAMENTAL NAGA, CADAR G. USM...

G.R. No. 86117. May 07, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Dimangadap Dipatuan asks us to set aside the decision dated 8 November 1988 of the respondent Commission on Elections (Comelec) Second Division which ordered the inclusion of election returns from two (2) precincts (Precincts Nos. 15 and 17) of the Municipality of Bacolod Grande, Province of Lanao del Sur, in the canvass of votes cast in the 1988 local elections, as well as the decision of the Comelec En Banc dated 22 December 1988, affirming the decision of the Comelec Second Division.

Petitioner Dipatuan and private respondent Aleem Hosain Amanoddin were candidates for Mayor of Bacolod Grande in the 1 February 1988 special local elections in Lanao del Sur. The other private respondents were candidates for Vice-Mayor and Councilors in the same municipality.

On 21 February 1988, the Municipal Board of Canvassers of Bacolod Grande, chaired by Samuel Minalang, finished canvassing the votes but did not proclaim the winning candidates. It did so on 29 February 1988, when private respondent Amanoddin was proclaimed winner and elected Mayor.

Earlier, on 25 February 1988, petitioner Dipatuan was proclaimed Mayor by a separate Board of Canvassers headed by one Mamacaog Manggray, after the said Board had excluded the election returns from Precincts Nos. 15, 17 and 21 from its canvass.

The Comelec En Banc set aside both (a) the proclamation made by the Minalang Board for being premature, the candidates not having been given the opportunity to appeal, and (b) the proclamation by the Manggray Board on the ground that the latter Board had not been properly constituted. A Special Board of Canvassers ("Special Board") was therefore convened in Manila by the Comelec to recanvass the election returns from Bacolod Grande, Lanao del Sur.

On 21 June 1988, during the recanvass, petitioner objected to the inclusion of the election returns from Precincts Nos. 15 and 17, contending that the returns from the two (2) precincts were "spurious and manufactured". In this connection, petitioner seasonably converted his oral objections into written form, and submitted certified copies of the voting records and voter's affidavits and affidavits of witnesses. The petitioner claimed that the questioned returns were "obviously manufactured" within the meaning of Section 243 (c) of the Omnibus Election Code and that therefore a pre-proclamation controversy existed which must be resolved before proclamation of the winning candidates. Petitioner contended the following irregularities had attended the Bacolod Grande local elections:

1. In Precinct No. 15, of the 248 persons who actually voted, 187 arrived in the precinct and voted, according to

the voting list, precisely in alphabetical and chronological order; of the 187 voters who voted in alphabetical and chronological order, 85 were illiterates as reflected in their respective voter's affidavits, but had suddenly learned how to write their names in the voting list; many persons whose faces were covered by veils were allowed to vote without their identities being verified.

2. In Precinct No. 17, 93 voters are listed as having voted in alphabetical and chronological order, i.e., in the precise sequence of their listing in the voting records: 45 illiterate voters suddenly learned to write their names in the voting records: many persons with their faces covered were allowed to vote without confirmation of their identities.

3. In both Precincts Nos. 15 and 17, there were discrepancies between the signatures of voters appearing in the voter's affidavits and the signatures appearing in the voting record; and members of the Boards of Election Inspectors falsified the voting records by making it appear that many or most of the registered voters had voted, when in fact they had not.

The Special Board denied petitioner's objections and ordered the inclusion of the questioned returns from Precincts Nos. 15 and 17 in the canvass.

On appeal, the Comelec Second Division sustained the Special Board's action, dismissed petitioner's appeal and ordered the Special Board to proclaim the winning candidates. On 22 December 1988, the Comelec En Banc affirmed the decision of the Comelec Second Division and denied petitioner's Motion for Reconsideration.

Hence the instant Petition for Certiorari, filed on 23 December 1988, with prayer for a writ of preliminary injunction or temporary restraining order to enjoin proclamation of private respondent Amanoddin as elected Mayor of Bacolod Grande.

On 10 January 1989, the Court issued a Temporary Restraining Order requiring Comelec to cease and desist from proclaiming private respondents as the duly elected municipal officials of Bacolod Grande. It turned out, however, that pursuant to the Comelec decision of 22 December 1988 and upon notice to petitioner, the Special Board had on 28 December 1988 already proclaimed private respondent Amanoddin and the other private respondents as the elected Municipal Mayor and Councilors of Bacolod Grande.

The Court, acting on petitioner's Motion to Annul Proclamation and/or Suspend Effects of Proclamation and on the Lanao del Sur Provincial Governor's Urgent Request for Clarificatory Order, issued a Resolution on 2 February 1989 directing that, pending resolution on the merits of the instant Petition for Certiorari, private respondent Amanoddin, having been proclaimed Municipal Mayor on 28 December 1988, should be recognized as such Mayor and authorized to discharge the functions and duties of that office.

The central issue here posed is whether or not the questioned returns from Precincts Nos. 15 and 17 in the Municipality of Bacolod Grande, Province of Lanao del Sur, were "obviously manufactured" such that the propriety or legality of their inclusion in the canvass by the Special Board presented a pre-proclamation controversy to be resolved before proclamation of the winning candidates.

Both the Comelec Second Division and the Comelec En Banc, in sustaining the Special Board's action ordering the inclusion of the questioned returns in the recanvass, held that the assailed returns were not "obviously manufactured" such that petitioner's contentions had not generated a pre-proclamation controversy and that petitioner's proper recourse was rather the bringing of an election contest where his contentions in respect of the assailed returns could be properly ventilated and examined in detail.

1. We start by noting that the Comelec (both Second Division and the Commission En Banc) correctly

emphasized that, under the regime of the Omnibus Election Code, pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before such Board of Canvassers, and not the Board of Election Inspectors nor proceedings before such latter Board[1] and that such challenges should relate to particular election returns to which petitioner should have made specific verbal objection subsequently confirmed in writing.[2] In a pre-proclamation controversy, it is axiomatic that the Comelec is not to look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues resolution of which would compel the Comelec to pierce the veil, so to speak, of election returns prima facie regular, has his proper remedy in a regular election protest. By their nature, and given the obvious public interest in the speedy determination of the results of elections, pre-proclamation controversies are to be resolved in summary proceedings.[3] The delicate policy equilibrium here involved was explained by the Court in the following terms in *Alonto v. Commission on Elections*: [4]

"[P]re-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible x x x [and that the Comelec and the courts should guard both] against proclamation grabbing through tampered returns as well as against attempts to paralyze canvassing and proclamation in order to prolong hold-overs."

2. Section 243 of the Omnibus Election Code provides, in relevant part:

"Section 243. Issues that may be raised in pre-proclamation controversy. -- The following shall be the proper issues that may be raised in a pre-proclamation controversy:

x x x x x x x x

(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic: and x x x" (Underscoring supplied)

Thus, in principle, the issues raised by petitioner do constitute issues properly raised in pre-proclamation controversies. That the assailed returns were "obviously manufactured" must, however, be evident from the face of the election returns themselves. In the case at bar, petitioner does not claim that the election returns from Precincts Nos. 15 and 17 had not been made or issued by the Board of Election Inspectors or that they had been manufactured by some unknown third party or parties; petitioner does not, in other words, claim that the returns themselves were not authentic. What petitioner in effect contends is that where election returns, though genuine or authentic in character, are reflective of fraudulent acts done before or carried out by the Board of Election Inspectors, the returns should be deemed as "obviously manufactured."

Petitioner's contention does not persuade. In *Ututalum v. Commission on Elections, et al.*, [5] petitioner Ututalum (represented by the same counsel who, in the Petition at bar, represents petitioner) contended that the issues he had raised before the Comelec actually referred to "obviously manufactured returns", a subject matter proper for a pre-proclamation controversy and therefore cognizable by the Comelec. Petitioner Ututalum claimed that the questioned election returns had been based upon a List of Voters which was subsequently nullified by the Comelec "on the ground of massive irregularities committed in the preparation thereof and being statistically improbable", and that the Comelec then ordered a new registration of voters for the local elections of February 1988. In dismissing the Petition, the Court said, through Mme. Justice Herrera:

"That the padding of the List of Voters may constitute fraud, or that the Board of Election Inspectors may have fraudulently conspired in its preparation, would not be a valid basis for a pre-proclamation controversy either. For, whenever irregularities, such as fraud, are asserted, the proper course of action is an election protest.

'Such irregularities as fraud, vote-buying and terrorism are proper grounds in an election contest but may not as a rule be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through

the misdeeds, precisely, of only a relative few. Otherwise, elections will never be carried out with the resultant disenfranchisement of the innocent voters, for the losers will always cry fraud and terrorism' (GAD vs. COMELEC, G.R. No. 78302, May 26, 1987, 150 SCRA 665)."[6]

3. In the case at bar, the Comelec Second Division held that the apparent alphabetical and chronological sequence in the voting was not necessarily proof of fraud that would justify the exclusion of the assailed returns. The Comelec Second Division explained:

"1. Mere alphabetical and chronological voting does not itself constitute sufficient evidence to establish fraud that would justify the setting aside of election returns. As counsel for appellant had occasion to assert in *Lucman v. Dimaporo*, SPC No. 87-190, October 15, 1987, '[I]t is unfair to conclude that alphabetical voting is indicative of fraud,' and '[I]n some precincts of Lanao, alphabetical voting is imposed to promote an orderly election.' We do not make such factual finding here. But the evidence is ambiguous and is susceptible of several interpretations. For this reason, we are bound by the presumption of regularity in the performance of official functions, Rule 131, Sec. 5 (m) Rules of Court."[7]

In the case of *Lucman v. Dimaporo* (SPC 87-190), petitioner Lucman raised before the Comelec the same issue here raised by petitioner Dipatuan. Counsel for candidate Dimaporo (again, the same counsel for petitioner Dipatuan) defended the same chronological and alphabetical voting in the following comments:

"It is unfair to conclude that alphabetical voting in Lanao del Sur is indicative of fraud. There is evidence on record from the testimony of Lucman's own witness Elsa Sarip that alphabetical voting is an honest procedure adopted by some Boards of Election Inspectors in Lanao.'

In some Precincts in Lanao del Sur, alphabet-ical voting is imposed to promote an orderly election. Usually in the morning the bulk of the voters gather in the precincts. What the Board of Election Inspectors do is to call one by one the names of the voters in alphabetical order to avoid overcrowding in the precincts. This procedure finds corroboration in the very testimony of Lucman's witness Elsa Sarip."[8]

Private respondents in the case at bar explained that Precincts Nos. 15 and 17 of Bacolod Grande, Lanao del Sur, were located in the poblacion. Early in the morning of election day, 1 February 1988, voters of the two (2) precincts converged on their respective polling places ready to cast their votes as soon as the precincts opened. In order to avoid trouble, since everyone wanted to vote ahead of the others, the Boards of Election Inspectors of the two (2) precincts adopted voting by alphabetical order, calling out the names of voters in the same sequence listed in the List of Voters.[9]

4. Petitioner's complaints about supposed irregularities involving illiterate voters appear to assume that it is improper or unlawful for a third person -- e.g., the assistor who had helped the illiterate to cast his vote[10] -- to write the name of the assisted illiterate in the voting record. As the Comelec pointed out, however, the proper procedure for indicating that illiterate voters have cast their votes has not been specifically set out in the Omnibus Election Code:

"2. The citation of signatures of alleged illiterate voters is not clear. For the procedure that the Board of Election Inspectors followed with respect to them is not established. The law itself is not too clear as to how it is to record the fact that an illiterate voter actually votes, i.e., to do so by thumbmarking the voting record, or to allow the assistor to sign the name of the illiterate voter. Sec. 196, B.P. Blg. 881. Again, the evidence is ambiguous and we are bound by law to presume regularity. In addition, it must be pointed out that the illiterate voters in the two questioned precincts are outnumbered by literate voters whose valid votes will be invalidated by the setting aside of the returns. The disenfranchisement of voters through the misdeeds of a few should be avoided. *Grand Alliance for Democracy v. Commission on Elections*, supra."[11]

5. Turning to the Affidavits relied upon by the petitioner Dipatuan, we need note only that they do not appear to

be the direct and conclusive evidence required in *Pimentel v. Comelec*,^[12] considering that said Affidavits had been executed by affiants allegedly closely connected to petitioner and therefore expected to support his position, rather than by independent and impartial witnesses. In any case, as pointed out in the decision of the Comelec Second Division, to require the comparison of signatures and thumbmarks appearing in the voting records and the voter's list and voter's affidavits would necessitate, not a summary pre-proclamation proceeding, but a regular election protest. In so ruling, the Comelec correctly relied upon the ruling of this Court in *Dianalan v. Comelec*.^[13]

We must conclude that petitioner has not shown any grave abuse of discretion or any act without or in excess of jurisdiction on part of the Comelec in rendering the decisions dated 8 November 1988 and 22 December 1988.

WHEREFORE, this Petition for Certiorari is hereby DISMISSED. No pronouncement as to costs.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Gancayco, J., on leave.

[1] *Grand Alliance for Democracy v. Commission on Elections*, 150 SCRA 665 (1987); *Sanchez v. Commission on Elections*, 153 SCRA 67 (1987).

[2] Section 245, Omnibus Election Code; *Pausing v. Yorac, et al.*, G.R. No. 82700, 4 August 1988; *Endique v. Commission on Elections*, G.R. Nos. 82020-21, 22 November 1988.

[3] Section 246, Omnibus Election Code; *Espaldon v. Commission on Elections*, G.R. No. 78987, 25 August 1987; *Pasion v. Commission on Elections*, 109 SCRA 238 (1981); *Bautista v. Commission on Elections*, G.R. No. 78994, 10 March 1988.

[4] 22 SCRA 878, 884-886 (1968).

[5] G.R. Nos. 84843-44, 22 January 1990.

[6] *Id.* at 9-10.

[7] *Rollo*, p. 61; underscoring supplied.

[8] As quoted in the Comment of Private Respondents dated 9 February 1989 in G.R. No. 86117, p. 14; underscoring in the original.

[9] Comment of Private Respondent, p. 14.

[10] Section 196, Omnibus Election Code expressly provides for assistance to a voter who is illiterate or physically unable to prepare his ballot by himself, by a relative by affinity or consanguinity within the 4th civil degree, or by a person of his confidence belonging to the same household, or by a member of the Board of Election Inspectors.

[11] *Rollo*, p. 62; underscoring supplied.

[12] 140 SCRA 126 (1987).

[13] G.R. No. 79712, 12 November 1987.

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