

HIPOLITO O. TATLONGHARI, PETITIONER, VS. THE HONORABLE COMMISSION ON ELECTIONS, CESAR C. CASTILLO, REYNALDO B. GILERA, MILQUIADES BAUSTISTA, JR., AND ADELAIDA M. ALDOVINO, RESPO...

G.R. No. 86645. July 31, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari and mandamus seeking to nullify the minute resolution of the Second Division of respondent Commission on Elections (COMELEC) dated September 22, 1988 dismissing the petition for declaration of nullity of proclamation in SPC No. 88-824 (entitled Hipolito O. Tatlonghari v. Cesar Castillo, et al.) as well as the resolution of COMELEC en banc dated January 19, 1989 denying petitioner's motion for reconsideration of the aforesaid minute resolution. The remedy of mandamus is being sought to compel respondent COMELEC to proclaim petitioner as the duly elected municipal councilor of Mabini, Batangas.

The facts are as follows:

Petitioner Hipolito Tatlonghari and private respondent Cesar Castillo were among the twenty-five (25) candidates for municipal councilors of Mabini, Batangas in the January 18, 1988 elections.

On January 19, 1988, respondent Castillo was proclaimed as one of the duly elected councilors of said municipality.

On April 26, 1988 (or 97 days after said proclamation), petitioner filed a petition before the COMELEC to annul, the proclamation of private respondent, alleging that in the "Certificate of Canvass of Votes and Proclamation of the Winning Candidates" bearing No. 002843 issued by the Municipal Board of Canvassers of Mabini, it was erroneously made to appear that private respondent received 4,591 votes, as a result of which, said respondent was proclaimed as councilor. However, after verification of the overall votes actually received by all the candidates for councilors, petitioner discovered that private respondent obtained only 3,681 votes which is less by 51 votes than the 3,732 votes garnered by petitioner. Otherwise stated, 910 votes were erroneously added to the actual number of votes received by private respondent, thereby making private respondent the candidate with the second highest number of votes garnered in said elections for the office of municipal councilor.

Petitioner further alleged that the erroneous addition or tabulation of votes for private respondent was committed in the "Statement of Votes by Precinct" bearing Serial No. 30844 covering Precincts Nos. 1 to 15 of Mabini, where it was made to appear that respondent Castillo received a total of 2,047 votes, when the actual total number of votes obtained by him (Castillo) in said precincts is only 1,137, or a difference of 910 votes; that in the preparation of the Statement of Votes by Precinct, the respondent Municipal Board of Canvassers erroneously added and/or credited as votes obtained by private respondent the 910 total votes cast for candidate Nilo B. Camongol, whose name appears immediately above that of private respondent in the said "Statement of Votes by

Precinct" bearing Serial No. 30844.

Thus, petitioner prayed respondent COMELEC to declare the "Certificate of Canvass and Proclamation of Winning Candidates" bearing Serial No. 002843 void ab initio insofar as candidate Cesar C. Castillo is concerned, and to direct the respondent members of the Municipal Board of Canvassers to reconvene and proclaim petitioner as the winning candidate for councilor in the said municipality.

Respondent members of the Municipal Board of Canvassers filed their Answer admitting without qualification petitioner's allegation in the petition.

Respondent Castillo, on the other hand, raised in his Answer, among others, the timeliness of the petition and averred that no complaint was ever made by petitioner or his duly authorized representative during the canvassing of votes.

In a minute resolution dated September 22, 1988, the COMELEC dismissed the petition for having been filed more than three (3) months from the date of the local elections. Petitioner was however advised to file, if he so desires, an election protest before the proper court on the basis of the same allegations contained in the petition.

Petitioner filed a motion for reconsideration contending that the COMELEC failed to consider the merits of the case. Private respondent filed his Opposition to the motion for reconsideration. For its part, the Municipal Board of Canvassers filed a Manifestation/Comment to Motion for Reconsideration and to Opposition to Motion for Reconsideration reiterating its admission of the error it committed in the tally of votes for respondent Castillo and supporting petitioner's prayer in the motion for reconsideration.

The COMELEC en banc denied the motion for reconsideration for having been filed only on December 14, 1988 or approximately two and a half months after copies of the Minute Resolution were served on the parties, by which time, pursuant to Sec. 246 of the Omnibus Election Code, the questioned resolution of the Second Division had long become final and executory.

Hence, this petition.

After giving due course to the petition, the Court, on February 8, 1990, further required respondent Municipal Board of Canvassers to submit its memorandum, particularly stating (1) the true and correct number of votes received by petitioner and private respondent, (2) how and why the error in the computation of the total number of votes received by private respondent was committed and (3) to submit such documents as may be available in support thereof.

In its Explanation and Memorandum dated March 21, 1990, respondent Board of Canvassers stated, inter alia, that:

"The error in the computation of the votes in question to the best of our recollection was committed as follows:

"As preliminary statement we wish to inform this Honorable Court that the statement of votes by Precinct used or accomplished by the Municipal Board of Canvassers for the January 18, 1988 local elections consisted of THREE (3) sets, each set bearing Serial Numbers 30844, 30843, and 30847. Serial number 30844 copy of which is hereto attached as Annex "A" containing the votes received by all candidates from the Municipal Mayor down to the last councilor for Precinct Numbers 1 to 15, inclusive, Serial Number 30843, copy of which is hereto attached as Annex "B" containing the votes received by all candidates from the Municipal Mayor down to the last councilor for Precinct Numbers 16 to 29-A inclusive. Serial number 30847 copy of which is hereto attached as Annex "C", containing the votes received by all candidates from the Municipal Mayor down to the last councilor for Precinct Numbers 30 to 40-A inclusive.

"The Municipal Board of Canvassers, composed by the herein public respondent in subtotalling the votes received by each candidate reflected on the last column of every sheet of the Statement of Votes by precinct (Annex "A", "B" and "C") used an adding machine. As could be seen on the first column of Annex "A" (Serial Number 30844) candidates for councilor, CAMONGOL, NILO B is immediately (sic) followed by candidate CASTILLO, CESAR C private respondent in the instant case.

"The order of the steps taken by the Municipal Board of Canvassers in said subtotalling is to get the subtotal of all the votes received by each candidate in the order of their listing and then entering under the last column in the right side of the Statement of votes by precinct.

"When the undersigned subtotalled the votes received by Camongol, Nilo B. for Precinct Numbers 1 to 15 inclusive which is Nine Hundred Ten (910) as indicated in Annex "A", the undersigned perhaps due to physical exhaustion and fatigue and through inadvertence forgot or missed to punch the key of the adding machine to bring the figure back to "ZERO" after getting the subtotal 910 votes of Camongol, Nilo B., and when the undersigned proceeded and continue(d) taking the subtotal of the votes received by the immediately following (in the list) candidate CASTILLO, CESAR C private respondent herein, the registered "910" votes in the adding machine for Camongol, Nilo B was carried over and added to the votes received by Castillo, Cesar C, which as appearing on Annex "A" is "2,047". The correctness and accuracy of this figure "2,047" is belied by a recomputation and readdition of the votes received by Castillo, Cesar C per precinct from precinct numbers 1 to 15 inclusive which will yield a subtotal of only "1,137" votes for the said first fifteen (15) precinct (sic). This is bolstered by the fact that if the "910" votes for Camongol, Nilo B which was erroneously carried over to the subtotalling of votes for Castillo, Cesar C will be added to the true actual votes received by Castillo, Cesar C which is 1,137 will give sum of "2,047" which appears to be the subtotal votes for Precinct Number 1 to 15 inclusive of Castillo, Cesar C." (Rollo, pp. 161-163)

It appears indubitable that the issue raised herein arose out of the mathematical error in addition committed by the respondent Board of Canvassers in the computation of total votes received by private respondent Castillo in the "Statement of votes by Precinct" SN 30844, which error is reflected in the Certificate of Canvass and Proclamation of Winning Candidates No. 002843, resulting in the erroneous proclamation of private respondent as a winning candidate for councilor.

Petitioner's action to nullify the proclamation of respondent Castillo before respondent COMELEC was however dismissed on the ground that it was not filed within a reasonable time.

It is the contention of petitioner that the instant petition is not barred by prescription as it merely seeks the formal declaration of nullity of private respondent's proclamation which is void ab initio.

The Court is not inclined to support petitioner's contention that the action at bar is imprescriptible, specially in view of the COMELEC Rules and Procedures which now provide a five-day (5) prescriptive period for filing petitions relating to correction of manifest errors in the tabulation or tallying of the results during canvassing following the date of proclamation (Sec. 4 [b], Rule 27; *Duremdes v. Commission on Elections, et al.*, 178 SCRA 746 [1989]).

However, the Court takes cognizance of the fact that the aforesaid Rule of Procedure took effect only on November 15, 1988 or after the petition in the case at bar was filed on April 26, 1988. It is elementary that laws cannot be given retroactive effect where substantive rights may be impaired. Prior to said Rules, not even the Omnibus Election Code provided for the prescriptive period in cases such as the one before this Court.

In the absence of an express provision of law providing for a prescriptive period to be observed in case of erroneous tabulation in the statement of votes at the time the petition was filed; and considering further that the error in the addition of votes was initially discovered by the respondent board of canvassers, which in turn relayed

the same to petitioner, the petition may not be said to have been filed out of time or that petitioner is guilty of inaction for an unreasonable length of time.

The petition was filed with the COMELEC ninety-seven (97) days from the date of proclamation of private respondent. According to respondent Board of Canvassers, it was only "one week after said proclamation that they noticed the mistake in the addition of votes cast for (respondent) Castillo so that as early as that period (they) had wanted to rectify the error but had been reluctant as (they) were uncertain as to the legality and procedural propriety of (their) *motu proprio* annulling the proclamation of Castillo and proclaim the actual winning candidate, Hipolito Tatlonghari. Sometime later, (they) advised, to play safe, petitioner to seek remedy in this Commission in order that we may be able to rectify our mistake" (Manifestation/Comment to the Motion for Reconsideration and to Opposition to Motion for Reconsideration, Rollo, pp. 41- 42).

It must be stressed that the petition does not concern itself with contested election returns, in which case, the procedure laid down in Sec. 245 of the Omnibus Election Code should have been followed. Rather, petitioner points out the admitted mechanical error in the computation of votes by the board of canvassers, who, having realized such error one week after respondent Castillo's proclamation and was in a quandary as to the manner by which they could rectify their mistake, informed and advised petitioner, yet much later, to seek relief from respondent COMELEC. The fact that respondent board of canvassers admitted its grievous error but was at a loss as to the proper course of action in cases of this nature, should have been considered by respondent COMELEC.

More, what is involved in the case at bar is purely mathematical and/or mechanical error in the operation of the adding machine committed by the board of canvassers which is admitted by all the parties. It does not involve any opening of the ballot boxes, examination and appreciation of ballots and/or election returns. As said error was discovered sometime after proclamation, all that is required is to convene the board of canvassers to rectify the error it inadvertently committed in order that the true will of the voters will be effected. The correction of the manifest mistake in mathematical addition calls for a mere clerical task of the board of canvassers. The remedy invoked was purely administrative for which no prescriptive period has been provided at the time of the filing of the petition.

We have carefully examined the documents submitted by respondent board of canvassers (Statement of Votes by Precinct Nos. 30843, 30844 and 30847 in the January 18, 1988 elections; Rollo, pp. 158-160) and painstakingly computed the votes cast for all the candidates for councilors of Mabini, Batangas, particularly on the votes cast in favor of petitioner, respondent Castillo and including that of candidate Nilo C. Camongol. The total number of votes cast in favor of respondent Castillo in Precincts 1, 2, 2-A, 3, 4, 5, 6, 7, 8, 9, 9-A, 10, 10-A, 11, 12, 12-A, 13, 14, 14-A and 15, or a total of 20 precincts, should have been only 1,137 and not 2,047 as reflected in the statement of votes by Precinct No. 30844. The difference of 910 votes would, indeed, have no other source than the erroneous inclusion and/or addition of the 910 total votes received by Nilo C. Camongol (whose name appears immediately before that of respondent Castillo) to the 1,137 votes actually obtained by the latter, thereby making it appear that respondent Castillo obtained 2,047 in said precincts when in truth and in fact he obtained only 1,137 votes.

With this correction, the total number of votes in favor of respondent Castillo that should have been reflected in the statement of votes by Precinct No. 30844, is only 1,137 and not 2,047. Taking the summation in the other two statement of votes Nos. 30843 and 30847 where respondent Castillo was shown to have garnered 1,482 and 1,062 votes respectively, the total number of votes cast in favor of private respondent in the entire municipality of Mabini, Batangas, should only be 3,681 and not 4,591. With only 3,681 votes in his favor, respondent Castillo obtained the ninth highest, not the second vote among the twenty-five candidates for Councilor.

Petitioner, on the other hand, received a total of 1,258; 1,035 and 1,439 votes as per statement of votes No. 30843, 30844 and 30847, respectively, for an aggregate 3,732 votes. Hence, petitioner garnered 51 more votes than that of respondent Castillo, thereby making petitioner the candidate who obtained the eighth highest number of votes for the eight-man municipal council of Mabini, Batangas.

By a margin of 51 votes, petitioner is, beyond doubt, the duly elected councilor and not respondent Castillo, whose only claim to the office may be described that of a mere usurper by the grace of a mathematical error in computation which catapulted him to the winning column when actually he is a losing candidate.

Private respondent argues, however, that the petition involves a pre-proclamation controversy and is therefore not proper as he has already been proclaimed and has in fact assumed office as municipal councilor.

The argument is devoid of merit. For one thing, records indicate that respondent's assumption of office was effected by a clerical error or simple mathematical mistake in the addition of votes and not through the legitimate will of the electorate. Thus, respondent's proclamation was flawed right from the very beginning. Having been based on a faulty tabulation, there can be no valid proclamation to speak of insofar as respondent Castillo is concerned. As this Court once said:

"x x x Time and again, this Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed office, we have said, is no bar to the exercise of such power. It of course may not be availed of where there has been a valid proclamation. Since private respondent's petition before the Comelec is precisely directed at the annulment of the canvass and proclamation, we perceive that inquiry into this issue is within the area allocated by the Constitution and law to Comelec.

x x x

"We have but to reiterate the oft-cited rule that the validity of a proclamation may be challenged even after the irregularly proclaimed candidate has assumed office.

x x x

"It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues." (Aguam v. Commission on Elections, 23 SCRA 883 [1968]; cited in Agbayani v. Commission on Elections, 186 SCRA 484 [1990]).

In view of the foregoing, the Court deems it unnecessary to pass upon the timeliness of petitioner's motion for reconsideration before the respondent Commission. While petitioner might have been tardy in filing the same, this Court cannot declare that petitioner lost his right to a public office to which he was duly elected by a mere lapse of time, the length of which was not even the product of his own wrong doing.

In *Juliano v. Court of Appeals* (20 SCRA 808 [1967], cited in *Duremdes v. COMELEC*, supra), this Court said:

"Election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. x x x Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case, the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate."

Having ascertained that petitioner is the candidate elected as the eighth member of the municipal council of

Mabini, Batangas and not private respondent, the latter should not be allowed to frustrate the will of the electorate by mere technical objections.

WHEREFORE, the petition is GRANTED. The questioned resolutions of respondent COMELEC dated September 22, 1988 and December 14, 1988 are hereby SET ASIDE. The proclamation of respondent Cesar C. Castillo is hereby declared null and void. Respondent Board of Canvassers is directed to convene within ten (10) days from receipt hereof and to proclaim petitioner Hipolito O. Tatlonghari as the duly elected councilor of Mabini, Batangas. This decision is immediately executory. Costs against private respondent.

SO ORDERED.

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

Davide, Jr., J., no part; was Chairman of COMELEC at the time questioned en banc resolution was promulgated.

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