

DANIEL L. BOCOBO, PETITIONER, VS. COMMISSION ON ELECTIONS AND LUISITO M. REYES, RESPONDENTS.

G.R. No. 94173. November 21, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner Daniel T. Bocobo and private respondent Luisito M. Reyes were candidates for Governor in the Province of Marinduque in the elections held on January 20, 1988. Reyes won with a margin of 3,145 over Bocobo, who in due time filed an election protest with the Commission on Elections.

After revision of the ballots in 25% of the contested precincts indicated by the protestant, the First Division of the COMELEC issued an order requiring the parties (particularly the protestant) to show cause why the protest should not be dismissed. A hearing thereon was scheduled on December 11, 1989, where the parties agreed to submit their respective memoranda in lieu of oral argument.

In a decision dated February 28, 1990, the Third Division dismissed the protest, declaring in part as follows:

Gleaned from the foregoing review and re-appreciation of the ballots of the contested precincts, protestant has failed to establish a trend that the result of the election would be altered, to justify the further revision of the remaining SEVENTY-FIVE (75%) per centum of the protested ballots still unrevised.

It appearing, therefore, that on revision of the ballots representing TWENTY-FIVE (25%) per centum of the contested precincts the result of the election would not be altered, no sufficient basis exists to order the continuation of the remaining unrevised ballots of the protested precincts as protestant cannot overcome Protestee's lead.

This decision was affirmed by the COMELEC en banc in its resolution dated June 24, 1990, denying the protestant's motion for reconsideration. Bocobo then came to the Court in this petition for certiorari imputing grave abuse of discretion to the public respondent.

The petitioner urges reversal of the Commission on Elections on the ground that it misinterpreted and misapplied the partial determination rule embodied in Rule 20, Section 7, of its own Rules of Procedure. He also maintains he was denied due process when certain ballots protested by him were admitted by the public respondent without giving him an opportunity to support his objections.

The partial determination rule reads in full as follows:

Sec. 7. Partial determination of the case. - The Commission or the Division concerned may direct the protestant and, in case there is a counter-protest, the counter-protestant, to state and designate in writing his or their choice of the precincts, numbering not more than twenty-five (25%) per centum of the total number of precincts involved in the protest or counter-protest, if any, whose ballot boxes shall first be opened, and shall thereafter make a partial determination of the case based on what appears from an examination of said ballot boxes and their contents or the revision of the ballots therein. If such a determination shows that the results of

the election would not be affected, the protestant shall be required to show cause why the protest or counter-protest, as the case may be, shall not be dismissed.

The same rule shall apply to a protest-in-intervention.

The petitioner contends that the COMELEC violated this rule when it immediately issued a show-cause order without first making an initial evaluation on the basis of the ballots already revised, thus disregarding the two-step process required by the provision.

It is settled that the best authority to interpret a rule is the source itself of the rule (*Advincula v. Commission on Appointments*, 5 SCRA 1179), in this case the COMELEC. The COMELEC rejects the petitioner's interpretation as a misreading of the rule. Its own interpretation must prevail, of course. At any rate, it is established that there was in fact such an initial evaluation and that the ballots revised were actually examined by the Third Division before it issued the show-cause order. The record belies the petitioner's allegation that the COMELEC sent for the ballots only after its show-cause order.

The respondents dismiss the petitioner's complaint that he was denied due process, pointing out that he was in fact given an opportunity to substantiate his charges at the hearing and also in the memorandum he later submitted. For refusing to do so on the mistaken ground that evidence aliunde was not necessary, he should be deemed to have waived the right to be heard on his objections.

They are correct insofar as the petitioner's claim of terrorism, coercion and other similar irregularities are concerned. Evidence was really needed to support these charges. With regard, however, to the ballots claimed to be marked, written by two or more persons, in groups written by only one hand, or fake, no evidence aliunde was indeed necessary to appreciate them.

In admitting all the ballots protested on these grounds for failure of the protestant to submit extrinsic evidence, the COMELEC was less than judicious. The ballots are the best evidence of the objections raised. Handwriting experts, while probably useful, are not indispensable in examining or comparing handwriting; this can be done by the COMELEC itself. We have ruled that evidence aliunde is not allowed to prove that a ballot is marked, an inspection of the ballot itself being sufficient (*Penson v. Parungao*, 52 Phil. 718). As for the allegedly fake ballots, no better authority than the COMELEC itself can determine their authenticity, having itself ordered and supervised the printing of all the official ballots.

We find that the public respondent committed no error in issuing the show-cause order in accordance with its own interpretation of its own rule. We also agree that the petitioner should have submitted evidence to support his allegations of terrorism, coercion, and other irregularities committed during the election. But with regard to the ballots objected to as fake, marked, written by more than one person or in groups written by the same person, an examination thereof should suffice; no evidence aliunde is necessary for their appreciation. Hence, the petitioner's objection should not have been summarily rejected for lack of such evidence.

ACCORDINGLY, the petition is GRANTED. The challenged decision and resolution are SET ASIDE and the protest is REINSTATED, without prejudice to a new partial determination of the case being made in accordance with Rule 20, Section 7, of the COMELEC Rules of Procedure and the rulings in this decision.

SO ORDERED.

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

Paras, J., no part. Private respondent is my cousin.

Feliciano, J., on leave.

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