

CIPRIANO B. PEÑAFLOIDA, PETITIONER, VS. COMMISSION ON ELECTIONS, PROVINCIAL BOARD OF CANVASSERS OF ILOILO AND RAMON D. DUREMDES, RESPONDENTS.

G.R. No. 96760. June 19, 1991

Ponente: MELENCIO HERRERA, J.

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MELENCIO HERRERA, J.:

This is the third Petition before this Court involving the elective position of Vice-Governor of the Province of Iloilo, actually on its third year of controversy.

We start with a brief history of the case as set forth initially in:

1. Duremdes v. COMELEC et al. (First Petition) (G.R. Nos. 86362-63, 27 October 1989, 178 SCRA 746)

In the 18 January 1988 elections, petitioner Cipriano B. PEÑAFLOIDA and private respondent Ramon D. DUREMDES were the contending Vice-gubernatorial candidates for the province of Iloilo. PEÑAFLOIDA was the official candidate of the Lakas ng Bansa (Lakas), while DUREMDES was the official candidate for the Liberal Party (LP) and PDP-Laban coalition.

During the canvass of votes by the Provincial Board of Canvassers of Iloilo (PBC) from 20 to 31 January 1988, PEÑAFLOIDA objected to some 110 election returns. The PBC overruled the objections and ordered their inclusion in the canvass.

On 29 January 1988, PEÑAFLOIDA appealed to the Commission on Elections (COMELEC) and prayed for the exclusion of the same returns and his proclamation as the elected Vice-Governor of Iloilo. The day after, on 30 January 1988, PEÑAFLOIDA filed with the COMELEC a Petition seeking the annulment of those election returns and the suspension of the proclamation of any candidate.

On 31 January 1988, however, the PBC proclaimed DUREMDES as the duly elected Vice-Governor together with the duly elected Governor and only eight (8) members of the Sangguniang Panglalawigan of Iloilo. DUREMDES was certified to have garnered 157,361 votes representing the number of his uncontested votes in 2,377 precincts.

On 2 February 1988, DUREMDES took his oath and assumed office.

On 20 September 1988, the COMELEC (Second Division) upheld the rulings of the PBC as well as DUREMDES' proclamation. The same Resolution directed the PBC to immediately reconvene and to include in the canvass the questioned election returns and thereafter to proclaim the winning candidate for the ninth (9th) and tenth (10th) slots for the Sangguniang Panglalawigan of Iloilo.

On 27 September 1988, the COMELEC (Second Division) certified the case to the COMELEC en banc when PEÑAFLOIDA moved for reconsideration.

On 15 December 1988, the date of the proclamation of the ninth (9th) and tenth (10th) placers of the Sangguniang Panglalawigan, the Chairman of the PBC openly admitted the existence of discrepancies between the entries of votes in the Statement of Votes and the votes reflected in the questioned election returns.

On 12 January 1989, the COMELEC en banc rendered a per curiam Decision "declaring as null and void the proclamation of Duremdes" and:

"4. Directing the Provincial Board of Canvassers of Iloilo to immediately reconvene and to include in the canvass of votes for Vice Governor the questioned/contested returns. For the purpose the Board shall make a formal tabulation of the results of the contested returns and shall prepare a new Statement of Votes and Certificate of Canvass; and

"5. Directing the Provincial Board of Canvassers to thereafter proclaim the winning candidate for Vice Governor of Iloilo." (Underlining ours).

His proclamation having been nullified by the COMELEC, and charging grave abuse of discretion by said body, DUREMDES availed of a Petition for Certiorari in G.R. Nos. 86362-63, *supra*.

On 27 October 1989, this Court upheld the COMELEC decision after finding that DUREMDES' proclamation was based on an incomplete canvass because of the non-inclusion of the questioned election returns. The Court stated *inter alia*:

"That discrepancies exist between the entries in the Statement of Votes and those reflected in the questioned election returns, was openly admitted by the Chairman of the Board of Canvassers at the scheduled promulgation on 15 December 1988 of the 9th and 10th placers of the Sangguniang Panlalawigan (p. 6, COMELEC Decision). What is more, it is also admitted by the parties except that PEÑAFLOIDA assails the correctness of the Statement of Votes, while DUREMDES maintains its correctness but avers the possibility of the tampering of the questioned election returns (p. 7, *ibid.*).

On 20 January 1990, DUREMDES' Motion for Reconsideration was denied with finality.

On 13 March 1990, the PBC reconvened as directed. But because it was following the procedure prescribed in Section 245 of the Omnibus Election Code by entertaining verbal and written objections and thereafter ruling thereon, PEÑAFLOIDA questioned the applicability of said provision before the COMELEC on 14 March 1990.

On 18 May 1990, the COMELEC released an Order informing the parties that:

"The Commission en banc will conduct physical examination of the questioned election returns (PBC copy and other election returns copy) on 23 May 1990 at 2:00 P.M.

"The parties may attend the opening of the questioned election returns on the date and time aforementioned." (Emphasis supplied).

Upon PEÑAFLOIDA's Motion, the physical examination of the questioned election returns was re-scheduled on 29 May 1990. The day before, however, or on 28 May 1990, PEÑAFLOIDA instituted before this Court:

2. *Peñaflorida v. COMELEC* (Second Petition) (G.R. No. 93376, July 19, 1990)

That was a Petition for Certiorari, Prohibition and Mandamus seeking primarily to prohibit the COMELEC from making any physical examination of the questioned contested returns and to direct the PBC to "simply include" in the canvass of votes for Vice Governor of Iloilo the results reflected in the contested returns. The Court restrained the physical examination temporarily.

It is to be noted that this time, PEÑAFLOIDA sought the inclusion of the contested returns contrary to his

position in January 1988 asking for their exclusion.

On 19 July 1990, this Court upheld the COMELEC Order and mandated:

"The COMELEC is DIRECTED to proceed with dispatch to the physical examination of the questioned election returns so that the true will of the electorate of Iloilo, in so far as the vice-gubernatorial position is concerned, may be determined at the earliest possible time. The Temporary Restraining Order heretofore issued is LIFTED. x x x "

Further, the Court found:

"The necessity of a comparison of the several copies of the election returns is highlighted by the fact that the parties have failed to pinpoint which exactly are the questioned election returns, there being instances where the several copies of those returns do not tally with one another."

The reconsideration requested by PEÑAFLOIDA was denied with finality in our Resolution of 29 November 1990, wherein we stated, in part:

"x x x As correctly stated by the Solicitor General, the said physical examination will consist only of a simple comparison between the different copies of the questioned election returns in order to determine the correctness of the entries in the Statement of Votes. The purpose of said examination is merely to put to rest any controversy as to the number of votes actually received by each candidate. x x x ." (Underscoring supplied).

In an Order, dated 18 December 1990, and pursuant to this Court's directive to "proceed with dispatch" with the physical examination of the questioned election returns in G.R. No. 93376 (the Second Petition), the COMELEC en banc set, on 20 December 1990, the physical examination of the election returns in question and ordered the production of the PBC copy and the other five (5) copies of the questioned election returns in the scheduled examination. The Division Clerk of Court was also ordered to notify the parties of this incident (Annex C, Petition).

On 20 December 1990, the COMELEC en banc convened, but reset the examination the following day, 21 December 1990, "considering that there are still necessary steps to be taken in order to produce all the election returns subject of the canvass" (Annex D, *ibid.*).

On 21 December 1990, the COMELEC again convened and commenced the examination of the contested election returns. Both parties were not in attendance as it appears that they received copies of the Order only on 22 December 1990, or a day after the scheduled examination. For lack of material time, however, the continuation of the examination of the election returns was set on 3 January 1991. The Clerk of Court was again "directed to issue proper notification to all concerned" (Annex E, *ibid.*).

On 3 January 1991, the COMELEC continued its examination. Only DUREMDES was said to be in attendance.

In an Order, dated 4 January 1991, the COMELEC manifested its intention "to terminate as soon as possible the comparison of the different available copies of the contested election returns," and for that purpose set the examination dates daily on 14, 15, 16, 17 and 18 of January 1991. The parties were ordered to be notified accordingly (Annex F, *ibid.*). PEÑAFLOIDA received a copy of the Order on 5 January 1991. He also admits that he was notified by telephone through counsel that the examination was on-going and that he may attend the same (Petition, pars. 7, 8, 1, p. 25).

On 11 January 1991, PENAFLORIDA filed before the COMELEC an "Urgent Motion to Set Aside Proceedings," setting the same for hearing on 17 January 1991 (Annex G, Petition).

On 14 January 1991, the COMELEC en banc convened, saw fit to act on said Motion earlier than the date set by PEÑAFLOIDA, and to deny the same for being "devoid of merit." At the same time, it proceeded with the examinations as scheduled. The Order clearly stated, however, that the parties may attend succeeding examinations upon prior notice of the proceedings to be conducted by the Commission. (Annex A, *ibid.*).

On 17 January 1991, the COMELEC issued an Order setting forth the completion of the physical examination of the contested election returns but reset the same to 21 January 1991 for the Commissioners who had not finished with their examination. The Order likewise directed the Clerk of Court to notify the Commissioners "and parties concerned to be present during said schedule." (Annex 2, *Duremdes Comment*; emphasis ours).

3. *Peñaflorida v. COMELEC, PBC and Duremdes* (G.R. No. 96760) (This Petition [the third])

On 24 January 1991, PEÑAFLOIDA filed the present Petition, the third that has reached this Court involving the vice-gubernatorial race in Iloilo, praying primarily that all proceedings conducted by the COMELEC commencing 21 December 1990, relative to the physical examination of the contested election returns, be declared null and void.

In our Resolution, dated 29 January 1991, respondents were ordered to comment on the Petition, with which directive they have complied.

In the interim, on 11 February 1991, the COMELEC completed the physical examination and comparison of the questioned election returns. It found that of the 110 questioned election returns in nine (9) municipalities of Iloilo, 49 returns from four (4) municipalities, namely, Guimbal (25 precincts), Oton (8 precincts), San Dionisio (5 precincts), and Ajuy (11 precincts), had been "systematically tampered" with or substituted. Thus, with respect to said 49 questioned returns, the COMELEC ordered that the COMELEC copy or Ballot Box copy of said election returns be used for canvassing, instead of the usual PBC copy. The PBC was also ordered to convene within five (5) days from notification and to complete the canvass, utilizing for the purpose, PBC copies for those precincts the returns of which were not questioned, and for those which were, such election returns, per precinct, as specified in the Order.

Upon PEÑAFLOIDA's "Most Urgent Motion," the Court issued a Temporary Restraining Order on 14 February 1991, "ordering the COMELEC to Cease and Desist from enforcing its Resolution (Order) dated February 11, 1991 in SPC No. 88-448 and respondent Provincial Board of Canvassers of Iloilo to Cease and Desist from implementing said COMELEC Resolution (Order)."

The case was also set for oral argument on 21 February 1991, with the Court having been particularly interested in determining the basis of the COMELEC in the selection of the copies of the election returns to be used in the canvass. After the hearing, Memoranda were required of the parties, the last to be submitted having been included in the Agenda of the Court en banc on 19 March 1991.

In his present Petition, PEÑAFLOIDA contends that the COMELEC had acted with grave abuse of discretion in conducting examinations without proper notice to him and without his participation, thereby rendering said proceedings invalid for having been conducted contrary to the basic precepts of procedural due process. As a subsidiary issue, he also attributes grave abuse of discretion to the COMELEC for having denied his "Urgent Motion to Set Aside Proceedings" without affording him a chance to be heard.

PEÑAFLOIDA's protestations are unconvincing.

That the physical examination of the questioned election returns was conducted without proper notice to him is not borne out by the records.

Except for the fact that PEÑAFLORIDA (and DUREMDES for that matter) was not notified on time of the opening of ballot boxes and the commencement of the physical examination set for 21 December 1990, having received the notice therefor only on 22 December 1990, the records disclose that PEÑAFLORIDA received previous notice of all the other scheduled dates of examination. Besides, no substantial prejudice actually resulted from his non-attendance on 21 December 1990. The PBC copies of the questioned election returns opened and examined on said date were found to be genuine and, therefore, non-controversial.

With respect to the examination on 3 January 1991, PEÑAFLORIDA admits having received notice thereof the day before, or on 2 January 1991 (Petition, pp. 11-12). Also, as early as 28 December 1990, he had been served a copy of Duremdes' "Supplemental Motion" which made reference to the examination scheduled on said date (Duremdes Comment, p. 4).

Similarly, PEÑAFLORIDA had also received a copy of the COMELEC Order, dated 4 January 1991, on 5 January 1991. That Order set the examination of the questioned election returns daily from 14 January to 18 January 1991 (Duremdes Comment, p. 5).

That the examination was conducted without PEÑAFLORIDA's participation was through no fault of the COMELEC. Even if, as PEÑAFLORIDA contends, the COMELEC never intended to involve the parties, the records disclose that the examination was not conducted "privately" as PEÑAFLORIDA alleges and that the COMELEC had always included in its Orders directives to notify the parties. Thus, PEÑAFLORIDA was duly notified of the dates of examination, except for that of 21 December 1990, but for reasons of his own, he chose not to attend the same. He moved instead to annul the examinations below and opted to rely on this Petition. He was never "excluded" from participation nor was there any attempt on the part of the COMELEC to do so, as he alleges. His present complaint is the result of his own omission.

PEÑAFLORIDA further asserts, however, that the "fair and reasonable procedure" adopted by the COMELEC in the examination of the twenty one (21) contested election returns in the "Mountain Province Cases" was not adopted in the present one. Culled from those suits, that procedure may be outlined briefly as follows:

1. All parties were notified to appear and be present at the opening of the ballot boxes containing the returns in question and to observe the proceedings for such opening.
2. Subsequently, parties and their counsel were directed to conduct their own examination of each and every copy of the returns in question and to submit a formal summary of their observations.
3. Thereafter, the COMELEC met in executive session where every member conducted individual examinations of each of the copies of the contested returns.
4. After such examination, the individual members submitted their respective vote and opinion on the matter (SPC Nos. 88-796-7-8-9-800-01-02-10, p. 9, COMELEC Resolution, 23 October 1989).

From the records of this case and the oral arguments of the parties, we find that, except for the late notification to the parties of the physical examination on 21 December 1990, which they received only the day after, there has been no departure from said prescribed procedure. As far back as its Order of 18 May 1990, followed by its subsequent Orders, dated 18 December 1990 (Annex C, Petition), 21 December 1990 (Annex E, *ibid.*), 4 January 1991 (Annex F, *ibid.*), and 14 January 1991 (Annex 2, Duremdes Comment), the COMELEC had consistently required notification to the parties. If PEÑAFLORIDA had attended, he could have observed the physical examination proceedings, but he did not. He must, therefore, be deemed to have forfeited the opportunity given him, pursuant to notice, to "conduct his own examination of each and every page of the returns in question and to submit a formal summary of his observations" (Step 2, above). After all, the presence of a party is not always the

essence of due process. It is enough that a party has been given notice and an opportunity to be heard (see *Asprey v. Itchon*, G.R. No. L-21685, 30 April 1966, 16 SCRA 921; *Var-Orient Shipping Co., Inc. v. Achacoso*, G.R. No. 81805, 31 May 1988, 161 SCRA 732).

Steps 3 and 4 are addressed to the COMELEC Commissioners and have also been complied with as disclosed in the COMELEC Orders, dated 20 December 1990 (Annex D, Petition), 21 December 1990 (Annex E, *ibid.*), and 4 January 1991 (Annex F, *ibid.*). There is nothing to stop the Commissioners from holding executive sessions.

It is likewise of significance to note that the Mountain Province Cases involved the knotty question of exclusion and inclusion of election returns originating from the Provincial Board of Canvassers level up to the COMELEC. In contrast, this Court circumscribed the extent of the physical examination to be conducted in this case as a summary one, i.e., a "simple comparison between the different copies of the questioned election returns" (G.R. No. 93376, 29 November 1990), and to determine the copy to be used in the canvass of the votes previously ordained by the COMELEC and upheld by this Court.

Said physical examination was rendered necessary in order to determine the genuineness and authenticity of the contested election returns in view of the discrepancies that were found to exist between the entries in the Statement of Votes and those reflected in the questioned election returns. Those discrepancies were admitted by the Chairman of the Board of Canvassers himself at the scheduled promulgation on 15 December 1988 of the 9th and 10th placers of the Sangguniang Panglalawigan. As we stated in G.R. No. 93376, 19 July, 1990:

"Since discrepancies admittedly exist between the Statements of Votes and the questioned election returns, a physical examination of those returns including a comparison with other copies thereof is in order with a view to settling once and for all wherein those variances lie. Specially so, in view of the conflicting positions taken by the parties, with petitioner assailing the correctness of the Statement of Votes, and Duremdes maintaining its accuracy but suggesting the possibility of tampering of the questioned election returns."

" x x x

"By that physical examination, the true and accurate number of votes cast in favor of each candidate, as reflected in the various copies of the election returns, can be made. This will put to rest any controversy as to the number of votes actually received by each candidate per precinct and will make possible an accurate tally in the Statement of Votes. Accuracy is imperative because the election returns constitute the basis of the Statement of Votes which, in turn, supports the Certificate of Canvass on the basis of which a proclamation is made (Sec. 231, 2nd par., Omnibus Election Code)."

The additional records now before us (Annexes 32 and 33, Duremdes Memorandum) further disclose that in a verified report, dated 19 January 1989, by the Vice Chairman of the Provincial Board of Canvassers to Hon. Hilario G. Davide, Jr., then Chairman of the COMELEC, the former disclosed that the election returns collected by one Atty. Aurelio Ignacio, Chairman of the PBC of Iloilo, and submitted to said Vice-Chairman on 5 January 1988, were found to have been flagrantly substituted, and that the collection of the election returns by said Atty. Ignacio was done by him alone in the absence of other designated officials despite previous arrangements to the contrary.

So it was that Congressman Oscar G. Garin, in his "deep concern for the sanctity of our electoral process generally and more specifically for the sake of maintaining the integrity of the results of the local elections held on January 18, 1988, in my hometown of Guimbal, Iloilo," called the attention of the COMELEC officially in his letter, dated 12 January 1989, regarding the conduct of said Atty. Ignacio, and suggested that "in order to arrive at the ultimate truth as to the exact number of votes each vice gubernatorial candidate obtained in the questioned precincts, the ballot boxes corresponding to these precincts be opened and the election returns therein deposited

be made the basis of the recanvass and if need be the ballots themselves be again appreciated and counted" (Annex J, Petition). That the COMELEC saw fit to act on said letter in its Resolution of 16 January 1989 (Annex 32, Duremdes Memorandum) and 14 March 1990 (Annex K, Petition) is no cause for suspicion as PEÑAFLOIDA would seem to insinuate. On the contrary, the COMELEC was duty bound to act thereon, as it did, when it relieved Atty. Ignacio of his position as Chairman of the PBC and appointed another in his stead (Annex 32, Duremdes Memorandum).

The results of the physical examination of the five (5) copies of the contested election returns already conducted and terminated by the COMELEC en banc tellingly confirm the need therefor. The PBC's, Municipal Judge's and Treasurer's copies of the questioned returns in forty-nine (49) precincts were found to be fake or substituted copies. In some precincts, the PBC copies were found to have been systematically tampered with and no longer reflected the true results of the election. Thus, where those infirmities were proven, the COMELEC was left with no alternative but to order that the COMELEC copy or ballot box copy of said election returns, all of which were found to be genuine and authentic, be used for canvassing, instead of the usual PBC copy. At any rate, it will be noted that where the COMELEC en banc found the PBC copies to be authentic, they were also ordered to be used in the canvass (COMELEC Order, 11 February 1991).

The examination of copies of election returns, other than the PBC copy, may not be commonly done. However, given the ample power of the COMELEC to enforce and administer all laws relative to the conduct of elections, it should be allowed to take such measures as it may deem necessary in the exercise of those powers, with a view to ensuring that the true will of the electorate is known. Besides, the conduct of physical examination was affirmed by this Court in G.R. No. 93376, *supra*.

Anent the subsidiary issue that PEÑAFLOIDA's "Urgent Motion to Set Aside Proceedings" was brushed aside by the COMELEC without due hearing, again, that was within its discretion. Section 6, Rule 11, of the COMELEC Rules on Procedure provides:

"No oral argument shall be heard in support of motions unless, for special reasons, the Commission or Division directs otherwise."

It is obvious that the COMELEC saw no "special reason" for setting PEÑAFLOIDA's aforesaid Motion for hearing on the date he had indicated. This could have meant the cancellation of the scheduled dates of the physical examination of the questioned election returns, earlier set daily from 14 January to 18 January 1991, notice of which was duly furnished him, and the COMELEC, justifiably, wanted to avoid unnecessary delays.

Besides, after having filed said Motion, PEÑAFLOIDA had no right to assume that the same would be granted, or to be absent, or to shy away from the proceedings (*Auyong Hian v. Court of Tax Appeals*, L-28782, 12 September 1974, 59 SCRA 110; *Eden v. Minister of Labor and Employment*, G.R. No. 72145, 28 February 1990, 182 SCRA 840).

All told, due process has been accorded PEÑAFLOIDA. No undue haste, nor grave abuse of discretion may be attributed to the COMELEC in issuing its questioned Orders of 14 January and 11 February 1991 in SPC No. 88-448. In fact, it was merely complying with the directive of this Court to "proceed with dispatch to the physical examination of the questioned election returns so that the true will of the electorate of Iloilo, insofar as the vice-gubernatorial position is concerned, may be determined at the earliest possible time." (G.R. No. 93376, *Peñaflorida v. COMELEC et al.*, 19 July 1990).

Three (3) years of controversy have retarded the determination of the true choice of the Iloilo electorate for their Vice-Governor. There need be no reminder that only approximately one (1) year of the term remains.

WHEREFORE, this Petition is hereby DISMISSED and petitioner Cipriano B. Peñaflorida's plea for the re-examination of all 110 contested election returns is REJECTED.

However, to afford petitioner an opportunity to see for himself the discarded returns, the COMELEC is hereby DIRECTED to allow him to examine, within a fixed period of three (3) days, the forty-nine (49) questioned election returns, which the COMELEC en banc found to be fake, or substituted, or systematically tampered with and no longer reflective of the true results of the election, and to compare them with the COMELEC copies or the ballot box copies found to be authentic and genuine and ordered to be used instead in the canvass of the remaining votes for the position of Vice Governor of Iloilo in the uncanvassed 110 election precincts.

Thereafter, the Temporary Restraining Order heretofore issued by this Court shall be deemed automatically LIFTED.

Costs against petitioner, Cipriano B. Peñaflorida.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Medialdea, and Regalado, JJ., concur.

Griño-Aquino, J., in the result.

Davide, Jr., J., no part.

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