

YUSOPH PAPANDAYAN, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF BUADIPUSO BUNTONG, LANAOS DEL SUR AND ABDUL GANI ACOON, RESPONDENTS.

G.R. Nos. 107509-11. February 28, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court in relation to Section 7, Article IX of the Constitution, to set aside the en banc Resolution dated October 23, 1992 of the Commission on Elections (COMELEC), which affirmed the Resolution dated September 18, 1992 of the COMELEC's First Division in Cases Nos. SPC 92-182, SPC 92-341 and SPC 92-358. The Resolution of the First Division dismissed the three special cases filed by petitioner.

We dismiss the petition.

I

Petitioner was one of the candidates for the mayoralty of the Municipality of Buadipuso Buntong, Lanao del Sur in the May 11, 1992 elections.

On May 25, 1992, petitioner filed with the COMELEC the Urgent Omnibus Motion docketed as SPC No. 92-182 praying: (a) that the Board of Election Inspectors of Precinct No. 23-A-1 be directed to complete its election return by including the 32 ballots which did not bear the signatures at the back thereof of the Chairman of the Board of Election Inspectors; and (b) that the Board of Election Inspectors of Precinct No. 40-A-1 be directed to complete its election return by including seven ballots which also did not bear the signature of the Chairman. Petitioner further prayed that the respondent Board of Canvassers be directed: (a) to include in the canvass the election returns of: (i) Precincts Nos. 23-A-1 and 40-A-1, (ii) Precinct No. 10-A, which return was partially burned by accident but whose entries remain legible and (iii) Precinct No. 10-A-1, which return contained two pages marked number "1" but otherwise did not show any sign of tampering as to affect its genuineness and due execution; and thereafter (b) to proclaim the winning candidate for mayor.

On May 26, 1992, the COMELEC en banc granted all of the requests of petitioner in Minute Resolution No. 92-1621. They also directed respondent Board of Canvassers "to immediately comply therewith and to complete the canvass by including the election returns of Precincts Nos. 10-A and 10-A-1 and the completed election returns of Precincts Nos. 23-A-1 and 40-A-1 and thereafter, to proclaim the winning candidates" (Rollo, p. 51).

Respondent Board of Canvassers included in the canvass, the election returns of Precincts Nos. 10-A and 10-A-1 as directed by the COMELEC.

In the case of Precinct No. 40-A-1 the Board of Election Inspectors completed the Election Return No. 660241,

which showed that petitioner got 45 votes while private respondent got 19 votes. When the said return was submitted to the respondent Board of Canvassers for the canvassing, private respondent verbally moved for its exclusion even before its envelope could be opened to retrieve the election return. He assailed the authenticity of the election return, claiming that it was not submitted by the assigned poll clerk. The oral objection was followed by a written petition to exclude the election return and a written offer of evidence. No written petition for the inclusion of the election return was filed.

After considering the evidence offered for the exclusion of Election Return No. 660241, respondent Board of Canvassers ruled that it could not open the envelope containing said election return. This is because the Board of Election Inspectors of Precinct No. 40-A-1 had not complied with the order of the COMELEC for it to continue their counting and appreciation of the seven unsigned ballots and then to submit to respondent Board of Canvassers their accomplished election return (Rollo, pp. 54-55).

On June 11, 1992, petitioner appealed the ruling of respondent Board of Canvassers to the COMELEC. The appeal, docketed as SPC No. 92-341, averred that the Board of Election Inspectors of Precinct No. 40-A-1 had not complied with the COMELEC Resolution No. 92-1621 directing it to complete its election return by reading and appreciating the seven, unsigned ballots and to submit the election return to the respondent Board of Canvassers. Petitioner also argued that an election return could only be questioned and objected to after it was retrieved from the envelope and presented to the Board of Canvassers for inclusion or exclusion.

Private respondent filed an omnibus motion and claimed that the appreciation of the seven questioned ballots could no longer affect the result of the election. He claimed that even if the ballots were to be added to the total votes obtained by petitioner, private respondent would still be ahead by 12 votes.

On June 16, 1992, petitioner filed a petition with the COMELEC docketed as SPC No. 92-358, praying for the nullification of the proclamation of private respondent as the elected Mayor of Buadipuso Buntong, for the reconvening of the respondent Board of Canvassers to make a new canvass by including therein the election return of Precinct No. 40--A-1; and the proclamation of the winning candidate (Rollo, pp. 70-75).

On the same day, the COMELEC en banc issued Resolution No. 92-1805, which directed respondent Board of Canvassers to determine whether the seven questioned ballots of Precinct No. 40-A-1 would materially affect the results of the election in the municipality. Accordingly, if the ballots would be material, respondent Board of Canvassers was directed to reconvene the Board of Election Inspectors for the completion of the election return; otherwise, the proclamation of the winners should be based on the canvass of the "other precincts and the incomplete returns, excluding the seven ballots, from precinct 40-A-1" (Rollo, p. 64).

On August 6, 1992, the COMELEC en banc heard Case No. SPC 92-341 and ordered, upon motion of petitioner, its consolidation with Cases Nos. SPC Nos. 92-182 and 92-358, since they involved the same parties and practically the same issues. Subsequently, the COMELEC en banc referred the three cases to the First Division.

On September 18, 1992, the First Division of the COMELEC issued a resolution dismissing the three cases, to wit:

- "1. SPC Case No. 92-182 is considered dismissed when the Commission En Banc promulgated Minute Resolution No. 92-1621 dated May 26, 1992 that granted the prayer made by the petitioner;
2. SPC Case No. 92-341 was also dismissed by the Honorable commission when it affirmed the ruling of the Board (MBC) under Minute Resolution No. 92-1805 dated June 11, 1992;
3. SPC Case No. 92-358 is also among those dismissed by Comelec Resolution No. 2489 dated June 29, 1992;

4. Petitioner's motion and prayer for the conduct of the special election in Precincts 23-A--1 and 40-A-1 has no legal and factual basis;

5. The subsequent cases filed: - SPC No. 92--341 and SPC No. 92-358 are in effect Motions for Reconsiderations of the previous rulings of the commission which is a prohibited pleading under Sec. 1, Rule 13 of the Comelec Rules of Procedure.

Consequently, the proclamation of the winning candidate for Mayor by the Municipal Board of Canvassers of the Municipality of Buadipuso Buntong, Lanao del Sur is hereby SUSTAINED" (Rollo, pp. 27-28).

Petitioner moved for the reconsideration of the resolution, and on October 23, 1992 the COMELEC en banc affirmed the resolution.

II

The instant petition seeks to annul the Resolutions of the COMELEC (First Division) dated September 18, 1992 and the COMELEC en banc dated October 23, 1992.

This petition must fail.

We see no reason to depart from the rulings of the COMELEC. Indeed, SPC No. 92-182 was considered terminated when the COMELEC granted petitioner's prayer in Resolution No. 92-1621 (Rollo, p. 51). The prayer sought the completion of the election returns of three precincts, including that of Precinct No. 40-A-1.

On the other hand, SPC 92-341, which was petitioner's appeal on the ruling of respondent Board of Canvassers, was also deemed terminated when the COMELEC en banc issued Resolution No. 92-1805 (Rollo, p. 64). The ruling of respondent Board of Canvassers, seeking authority from the COMELEC regarding the appreciation of the seven questioned ballots was resolved by directing the respondent Board of Canvassers "to appreciate" the materiality of the ballots.

In compliance with the aforementioned resolution, the respondent Board of Canvassers issued a Report of Implementation, which stated that the seven ballots could "not affect the result of the Election for the Candidates for office of the Municipal Mayor, Vice Mayor and Councilors of Buadipuso Buntong, Lanao del Sur" (Rollo, p. 135).

Finally, SPC No. 92-358 cannot prosper for lack of jurisdiction. The action is actually an election contest, the jurisdiction of which is vested in the regular courts (Section 1, Rule 35 of the COMELEC Rules of Procedure).

It is beyond doubt that SPC No. 92-341 and SPC No. 92--358 are in the guise of a motion for reconsideration of the COMELEC's Resolution No. 92-180, which allowed the re-convening of the Board of Election Inspectors of Precinct No. 40-A-1 only if the seven questioned ballots would materially affect the results of the election. Both actions seek the canvassing of the election return of Precinct No. 40-A-1. Under Section 1 of Rule 13 of the COMELEC Rules of Procedure, a motion for reconsideration of an en banc ruling is among the prohibited pleadings.

It must be noted that the election return relied on by petitioner is dubious. He insists on opening the sealed envelope allegedly containing the election return of Precinct No. 40-A-1 and submitted by a self-appointed clerk. The fact that the election return was submitted by a person other than the assigned poll clerk is not controverted by petitioner.

Moreover, there is no truth to petitioner's allegation that the entire precinct was disenfranchised. There was a proper appreciation of the votes in Precinct No. 40-A-1, exclusive of the seven ballots. It must be borne in mind

that the issue was the completion of the election return, particularly the appreciation of the seven questioned ballots. For this particular precinct, petitioner was already credited 23 votes as against private respondent's 19 votes (See Rollo, p. 103).

At any rate, we see no reason to deviate from the ruling of the COMELEC. The issues raised are factual and petitioner failed to raise substantial issues which would merit a reversal of the ruling.

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur.

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