

**JUNE GENEVIEVE R. SEBASTIAN, AND DARIO ROMANO,
PETITIONERS, VS. THE COMMISSION ON ELECTIONS, THE
MUNICIPAL BOARD OF CANVASSERS OF STO. TOMAS, DAVAO DEL
NORTE (JANDELIE B. ESPAÑO...**

G.R. Nos. 139573-75. March 07, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for certiorari seeking the annulment of the Resolution issued by respondent Commission on Elections, in SPC Nos. 98-129, 98-142, and 98-169, on August 24, 1999, allowing the inclusion in the canvass of votes in Sto. Tomas, Davao del Norte, of 25 election returns which petitioners claimed to have been prepared through threats and undue influence. Said resolution reversed an earlier resolution of the COMELEC Second Division excluding the questioned election returns from the canvass of votes. Petitioners likewise seek the issuance of a temporary restraining order to enjoin the Municipal Board of Canvassers of Sto. Tomas from continuing with the canvassing of votes and including therein the contested election returns.

The antecedent facts are as follows:

Petitioner June Genevieve Sebastian was the mayoralty candidate of the Reporma Party in Sto. Tomas, Davao del Norte, during the May 11, 1998 elections. Petitioner Dario Romano was her running mate. Private respondent Salvador Royo was the mayoralty candidate of the Lakas-NUCD-UMDP, while private respondent Eric Estela was his candidate for vice mayor.

On election day, as the Municipal Board of Canvassers was preparing to canvass the election returns, petitioners sought the exclusion from the canvass of several election returns from certain precincts in barangays Kimamon, New Katipunan, Lunga-og, Balagunan, Pantaron, and Tibal-og.[1] Petitioners claimed that the election returns from these areas were prepared under "extreme duress, threat, intimidation and political pressure and influence." [2] Petitioners also manifested that four election returns were missing.

The Municipal Board of Canvassers denied the petition, prompting petitioners to file three separate appeals with the COMELEC, docketed as SPC No. 98-129, SPC No. 98-142, and SPC No. 98-169.

The COMELEC First Division dismissed the appeal docketed as SPC No. 98-129 on July 15, 1998. No motion for reconsideration was filed by petitioners as appellants therein, thus, the dismissal became final and executory on July 30, 1998.[3]

Meanwhile, the COMELEC Second Division, ruling on the remaining consolidated appeals in a decision promulgated on August 14, 1998, ruled in favor of petitioners and ordered the exclusion of 25 election returns from the canvass of votes in Sto. Tomas.

On August 18, 1998, private respondent Royo filed a motion for reconsideration of said resolution. The

COMELEC en banc, as earlier stated, reversed the ruling of the COMELEC Second Division.

Hence, this petition, in which petitioners assign the following errors:

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISREGARDED THE DOCTRINE ENUNCIATED BY THE HONORABLE SUPREME COURT IN THE LEADING CASE OF ANTONIO vs. COMELEC, G.R. NO. L-31604, APRIL 17, 1970 IN THE DISPOSITION OF THE INSTANT CASE;

THE HONORABLE COMMISSION ON ELECTIONS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT UNILATERALLY DISREGARDED THE OVERWHELMING EVIDENCE OF COERCION, UNDUE INFLUENCE, EXTREME PRESSURE, THREAT, INTIMIDATION AS WELL AS ALL THE ENVIRONMENTAL CIRCUMSTANCES THAT ATTENDED THE PREPARATION, TRANSMISSION, RECEIPT, CUSTODY AND APPRECIATION OF THE TWENTY-FIVE CONTESTED RETURNS.[4]

Petitioners concede that, when the election returns appear to be regular, authentic, and duly accomplished on their face, the COMELEC need not inquire into allegations of irregularities in the casting or counting of votes.[5] However, petitioners question the COMELEC's alleged failure to consider what they claim to be evidence of undue influence, extreme pressure, threat, and coercion that attended the preparation, transmission, custody and appreciation by the Board of Election Inspectors of the contested election returns. These, according to petitioners, affected the regularity, due execution, and authenticity of the election returns.[6]

Petitioners also fault the COMELEC for not taking into account the atmosphere prevailing during the elections at Sto. Tomas, which they claim to be similar to the circumstances obtaining in the case of Antonio v. COMELEC, (32 SCRA 319 [1970]). In that case, returns prepared by election inspectors under threats from armed men were excluded from the canvass of votes in Batanes.

For its part, the COMELEC pointed out that it could not justifiably exclude from the canvass of votes, in a pre-proclamation controversy, election returns that on their face appear regular. A pre-proclamation controversy is limited to the examination of incomplete, falsified, or materially defective returns, which appear as such on their face. Where the issues raised would require the COMELEC to look beyond the face of the return, the proper remedy is a regular election protest.[7]

It is worth noting that petitioners do not claim that the returns themselves are not regular, genuine or authentic. Petitioners admit that the alleged fraud, deceit, and intimidation came from external sources, and, therefore, not manifest on the face of the returns. The alleged fraudulent scheme was designed, according to petitioners, precisely to avoid detection on the face of the returns.[8]

What petitioners assert is that the preparation of the returns had been marred by undue influence and intimidation, thus affecting their regularity, due execution and authenticity. Petitioners argue that this justifies the examination of circumstances beyond the face of the returns.

We find this argument untenable.

This petition stemmed from a pre-proclamation controversy. In a long line of cases, we have consistently held that a pre-proclamation controversy is limited to an examination of the election returns on their face.[9] The COMELEC as a general rule need not go beyond the face of the returns and investigate alleged election irregularities.[10] We see no reason to depart from this rule in this petition. In our view, there is no exceptional circumstance present in this controversy similar to that proved in the Antonio case, *aforecited*, where the COMELEC as well as the Court found "precipitate canvassing, terrorism, lack of sufficient notice to the Board,

and disregard of manifest irregularities in the face of the questioned returns"[11] to justify the summary annulment of the canvass and the annulment of petitioner Antonio's proclamation. Rather, we are guided here by the holding of the Court in the case of *Matalam*, in *Maguindanao*, where it is said:

"...Because what [petitioner] is asking for necessarily postulates a full reception of evidence aliunde and the meticulous examination of voluminous election documents, it is clearly anathema to a pre-proclamation controversy which, by its very nature, is to be heard summarily and decided on as promptly as possible."[12]

To require the COMELEC to examine the circumstances surrounding the preparation of election returns would run counter to the rule that a pre-proclamation controversy should be summarily decided.[13]

In *Sison v. COMELEC*,[14] we ruled that:

"...The reason underlying the delimitation both of substantive ground and procedure is the policy of the election law that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. That is why such questions which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest."

Where the resolution of the issues raised would require the COMELEC to "pierce the veil" of election returns that appear *prima facie* regular, the remedy is a regular election protest,[15]

"...wherein the parties may litigate all the legal and factual issues raised by them in as much detail as they may deem necessary or appropriate."[16]

Here, we note favorably the position taken by the Office of the Solicitor General. Petitioners have not demonstrated precisely how the preparation and appreciation of election returns were adversely affected by, as alleged by petitioners, "harassments of petitioners' supporters," "midnight convoys of armed men riding in motorcycles," and "raids by the military in different houses" in *Sto. Tomas*. We are constrained to agree with the OSG's submission that on the basis of our holding in *Salih v. COMELEC*, 279 SCRA 19, respondent COMELEC herein "could not justifiably exclude said returns on the occasion of a pre-proclamation controversy whose office is limited to incomplete, falsified or materially defective returns which appear as such on their face."[17]

Nor could we fault public respondents herein for grave abuse of discretion in refusing petitioners' call to exclude election returns they claim as the product of coercion and falsification, even if they appear clean on their face. For respondent COMELEC had conducted hearings on the matter, where petitioners and other parties concerned had submitted affidavits and presented witnesses. The COMELEC found, however, that the evidence presented by petitioners failed to prove convincingly that the assailed returns were tainted by duress. Contrary to petitioners' claim, NAMFREL volunteers and the Poll Watchers in the area attested that the election activities therein were generally peaceful. Even the Board of Election Inspectors themselves swore nobody threatened or coerced them in the performance of their duties, and that the elections in their area were peaceful, honest and orderly. Given these factual circumstances, which could not be deemed evidently self-serving on its part, respondent COMELEC could not have prudently and fairly excluded the assailed returns. The better part of discretion in so delicate a matter is to await the filing of the appropriate action, like a regular election protest, if the petitioners were so minded to pursue the proper remedy, rather than delay the determination of the popular will.

WHEREFORE, the petition is DISMISSED, and the resolution of the COMELEC en banc in SPC No. 98-129, SPC No. 98-142, and SPC No. 98-169 is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ. concur.

Pardo, J., no part.

[1] Rollo, pp. 32-33.

[2] Id. at 33.

[3] Id. at 74.

[4] Id. at 36-37.

[5] Id. at 38.

[6] Ibid.

[7] Id. at 710-711.

[8] Id. at 726.

[9] *Dipatuan v. COMELEC*, 185 SCRA 86, 93 (1990).

[10] *Matalam v. COMELEC*, 271 SCRA 733, 745 (1997); *Loong v. COMELEC*, 257 SCRA 1, 23 (1996); *Dipatuan v. COMELEC*, 185 SCRA 86, 92 (1990).

[11] *Antonio v. COMELEC*, 32 SCRA 319, 332 (1970).

[12] *Matalam v. COMELEC*, *supra*, at 746.

[13] Omnibus Election Code, Sec. 243; *Loong v. COMELEC*, *supra*, at 22; *Dipatuan v. COMELEC*, *supra*, at 92; *Sanchez v. COMELEC*, 153 SCRA 67, 75 (1987).

[14] G.R. No. 134096, March 3, 1999, p. 6.

[15] *Matalam v. COMELEC*, *supra*, at 747; *Loong v. COMELEC*, *supra*, at 22; *Dipatuan v. COMELEC*, *supra*, at 92.

[16] *Matalam v. COMELEC*, *supra*; *Dimaporo v. COMELEC*, 186 SCRA 769, 785 (1990).

[17] *Salih v. COMELEC*, 279 SCRA 19, 32 (1997); Rollo, p. 710.

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