

SAADUDDIN M. ALAUYA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, SHALIMAR H. TAMANO AND USMAN T. SARANGANI, RESPONDENTS.

G.R. Nos. 152151-52. January 22, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction or temporary restraining order to nullify the Orders of the Commission on Elections (“COMELEC” for brevity) en banc dated January 2, 2002 and February 19, 2002 in SPA Nos. 01-454 and 01-455 (ARMM). The January 2, 2002 Order directed the Provincial Board of Canvassers not to proclaim the winning candidates for regional assemblyman in the 2nd District of Lanao del Sur, while the February 19, 2002 Order denied the motion to dismiss SPA Nos. 01-454 and 01-455 (ARMM).

The Facts

Regular elections for regional governor, regional vice-governor, and members of the Regional Legislative Assembly for the Autonomous Region in Muslim Mindanao (“ARMM” for brevity) were held on November 26, 2001. The first three (3) candidates for assemblyman of the ARMM receiving the highest number of votes in each legislative district of the province were to be proclaimed winners.

The 2nd District of the province of Lanao del Sur is composed of 21 municipalities. There was a failure of election in the municipality of Lumbatan necessitating the holding of special elections in Lumbatan on January 7, 2002. Nevertheless, the Provincial Board of Canvassers proclaimed Alexander Menor (“Menor” for brevity), who garnered the highest number of votes based on the results of the 20 other municipalities. Considering the number of registered voters in Lumbatan, the special elections would not affect Menor’s election as regional assemblyman.

On December 21, 2001, private respondent Shalimar H. Tamano (“Tamano” for brevity) filed two (2) petitions, docketed as SPA Nos. 01-454 and 01-455, to declare a failure of election in the 5 municipalities of Madalum, Madamba, Sultan Gumander, Bacolod Kalawi, and Bayang of the province of Lanao del Sur. Tamano claimed there was massive substitute voting in these 5 municipalities. Tamano also claimed that in almost all of the precincts in these 5 municipalities, either petitioner Saaddudin M. Alauya, Jr. (“Alauya” for brevity) or private respondent Usman T. Sarangani (“Sarangani” for brevity) obtained 100% of the votes such that their votes equalled the total number of registered voters. Tamano prayed for the suspension of proclamation of the winning candidates. Alauya filed his Answer with Motion to Dismiss. Sarangani filed his Answer and Opposition to the Suspension of Proclamation.

The special elections in Lumbatan proceeded as scheduled on January 7, 2002. The Provincial Board of

Canvassers canvassed the election returns. The results of the canvass of Lumbatan and of the other 20 municipalities showed Menor as the No. 1 winning candidate followed by Sarangani in the No. 2 spot and Alauya in the No. 3 spot, as follows:

1.

MENOR - 47,729

2.

SARANGANI 47,603

3.

ALAUYA - 46,737

4.

BALINDONG 41,773

5.

TAMANO 40,849

On January 7, 2002, the COMELEC en banc issued the order directing “the Provincial Board of Canvassers NOT to proclaim the alleged or supposed winners and to continue and complete the canvass of election results in the Second District of Lanao del Sur.”

On January 9, 2002, Alauya filed a Motion to Lift Suspension of Proclamation with the COMELEC. Sarangani followed suit with a similar motion on January 28, 2002. Alauya filed three (3) motions on January 24, 31, and February 6, 2002, praying for the resolution of the Motion to Dismiss and the Motions to Lift the Suspension of Proclamation.

In its order dated February 19, 2002, the COMELEC resolved to assume jurisdiction and to continue hearing SPA Nos. 01-454 and 01-455. The COMELEC also considered the motion to lift suspension of proclamation submitted for resolution.

Alauya filed the present petition for certiorari and prohibition with a prayer for a writ of preliminary injunction or temporary restraining order on March 1, 2002. On March 5, 2002, the Court required the respondents to comment on the petition.

On March 12, 2002, Alauya filed a motion reiterating the prayer for the issuance of a temporary restraining order. On March 19, 2002, the Court issued a temporary restraining order directing the COMELEC “to CEASE and DESIST from implementing the order of January 7, 2002 in SPA No. 01-454 and SPA No. 01-455 which suspended the proclamation insofar only as the petitioner (Alauya) is concerned.”

Based on the restraining order of the Court, the Provincial Board of Canvassers proclaimed Alauya who took his oath and has already assumed the position of Regional Assemblyman of the Regional Legislative Assembly of the ARMM.

Meanwhile, Sarangani filed his comment joining Alauya in his petition praying for the setting aside of the subject COMELEC orders. Specifically, Sarangani prays that the order suspending proclamation be extended to him so he may also take his oath and assume office as regional assembly member.

The Issues

Alauya attributes grave abuse of discretion amounting to lack of or in excess of jurisdiction to the COMELEC for the following reasons:

- THE RESULTS OF THE 5 MUNICIPALITIES SOUGHT TO BE ANNULLED DO NOT AFFECT THE ELECTION OF THE PETITIONER AS THE NO. 3 WINNING REGIONAL ASSEMBLYMAN OF THE 2ND DISTRICT OF LANA DEL SUR. SEC. 20 (i) AND SEC. 21, OF R.A. 7166 SPECIFICALLY PROVIDE THAT A WINNING CANDIDATE SHALL BE PROCLAIMED IF THE ISSUES RAISED DO NOT AFFECT THE RESULTS OF THE ELECTION;
- THE ORDER OF JANUARY 7, 2002 WAS ISSUED IN VIOLATION OF DUE PROCESS OF LAW. SEC. 242 OF THE OMNIBUS ELECTION CODE PROVIDES THAT THE COMELEC COULD ONLY SUSPEND PROCLAMATION "AFTER DUE NOTICE AND HEARING." x x x;
- THE COMELEC HAS NO JURISDICTION OVER SPA NOS. 01-454 AND 01-455 SEEKING TO ANNUL THE ELECTIONS OF THE 5 MUNICIPALITIES BECAUSE SEC. 3 OF R.A. 7647 PROHIBITS "PRE-PROCLAMATION CASES" IN THE ELECTIONS OF REGIONAL ASSEMBLYMAN OF THE AUTONOMOUS REGION OF MUSLIM MINDANAO.

Simply put, the issues posed for resolution by this Court are: (1) whether the Order dated January 7, 2002 was issued in violation of due process of law; (2) whether the COMELEC has jurisdiction over SPA Nos. 01-454 and 01-455; and (3) whether the order suspending proclamation of the "alleged" winning candidates is void because the results of the 5 municipalities do not affect Alauya's election as No. 3 Regional Assemblyman of the ARMM.

The Solicitor General, for his part, maintains that the petition should be dismissed for lack of merit for the following reasons: (1) there was no violation of due process since Section 242 of the Omnibus Election Code empowers the COMELEC to *motu proprio* suspend the proclamation or annul the proclamation if one has already been made as the evidence shall warrant; (2) Alauya confuses a pre-proclamation controversy with a petition to declare a failure of election or to annul election results; and that (3) the COMELEC has the constitutional authority to declare a failure of election pursuant to Article IX-C, Section 2 of the 1987 Constitution and in accordance with Section 6 of the Omnibus Election Code and Section 4 of R.A. 7166.

The Court's Ruling

First issue: whether the order dated January 7, 2002 was issued in violation of due process of law.

Alauya claims that the COMELEC did not notify him of any hearing conducted prior to the issuance of the order dated January 7, 2002 in violation of Section 242[1] which requires notice and hearing prior to the suspension of proclamation.

A party cannot successfully invoke deprivation of due process if he was accorded the opportunity of a hearing, through either oral arguments or pleadings.[2] There is no denial of due process when a party is given an opportunity through his pleadings.[3]

We find no breach of Alauya's right to due process. Contrary to Alauya's claim, it appears that notices dated December 21, 2001 were given to all concerned parties requiring them to file their answer to the petition and setting the case for hearing on January 4, 2002. In an Order dated January 4, 2002, the COMELEC noted that Alauya did not appear during the hearing. Subsequently, Alauya filed his Answer with Motion to Dismiss to the petitions. Verily, Alauya was given an opportunity to be heard during the hearing held on January 4, 2002 which he failed to attend and was in fact heard through the pleadings he filed with the COMELEC.

Second issue: whether the COMELEC has jurisdiction over SPA Nos. 01-454 and 01-455.

Alauya questions the power and authority of the COMELEC to take cognizance and act on SPA Nos. 01-454 and 01-455 on the ground that “pre-proclamation cases” in the election of regional assemblyman in the ARMM are not allowed by Section 3 of R.A. 7647[4] and Section 15 of R.A. 7166.[5]

Alauya erroneously considers SPA Nos. 01-454 and 01-455 as pre-proclamation controversies. These petitions were filed under Section 6 of the Omnibus Election Code[6] for a declaration of failure of election. The petitions clearly state their nature, as they are denominated “IN THE MATTER OF THE PETITION TO DECLARE A FAILURE OF ELECTIONS OR TO ANNUL THE RESULTS OF ELECTIONS IN THE MUNICIPALITIES OF SULTAN GUMANDER, MADAMBA, BACOLOD KALAWI AND BAYANG, ALL IN THE 2[ND] DISTRICT OF THE PROVINCE OF LANAOS DEL SUR, AUTONOMOUS REGION OF MUSLIM MINDANAO” on account of the “widespread, massive and rampant substitute voting and other electoral fraud, anomalies and irregularities which prevented duly registered voters from actually voting in the regional elections.”

Dagloc v. Commission on Elections[7] reiterates the well-settled rule that an action for declaration of failure of election cannot be confused with a pre-proclamation controversy, thus:

“In Matalam vs. COMELEC, it was held that an action for a declaration of the failure of election is not in the nature of a pre-proclamation controversy. The distinction between the two actions was discussed by the Court in Loong vs. COMELEC in this wise:

While, however, the COMELEC, is restricted in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the COMELEC is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. Thus, the COMELEC, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters’ signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. Needless to say, a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections.”

Hence, we find that the COMELEC did not commit grave abuse of discretion in assuming jurisdiction over said petitions.

Third issue: whether the suspension of proclamation is void because the results of the 5 municipalities do not affect Alauya’s election.

According to Alauya, the results of the canvassing of the election returns from the 21 municipalities of the 2[nd] District of Lanao del Sur show that he is the No. 3 winning regional assemblyman as follows:

1.

MENOR, A. - 47,729

2.

SARANGANI - 47,603

3.

ALAUYA, S. - 46,737

4.

BALINDONG - 41,773

5.

TAMANO - 40,849

The results of the canvassing of the election returns of the 5 municipalities sought to be annulled by Tamano are as follows:

MUNICIPALITY

MENOR

SARANGANI

ALAUYA

BALINDONG

TAMANO

MADALUM

301

4,970

691

1,931

465

S. GUMANDER

470

4,197

871

6,358

533

MADAMBA

968

6,106

515

1,384

598

B. KALAWI

406

252

2,428

1,352

196

BAYANG

3,036

1,163

5,552

1,022

1,098

TOTAL

5,181

16,668

10,057

12,047

2,890

Alauya argues that the above results of the 5 municipalities do not affect his election as the No. 3 winning Regional Assemblyman of the ARMM. Without the 5 municipalities, the results are:

1.

MENOR - 42,548

2.

TAMANO - 37,959

3.

ALAUYA - 36,680

4.

SARANGANI - 30,915

5.

BALINDONG - 29,726

Alauya invokes Section 20 (i)[8] and Section 21[9] of R.A. 7166 which provide that a winning candidate must be proclaimed if the issues raised do not affect the results of the election. Moreover, he contends that the

proclamation of the winning candidates will not deprive the COMELEC of its authority to continue hearing the petitions to declare a failure of election in the 5 municipalities.

These figures are not controverted by Tamano or the Solicitor General acting on behalf of the COMELEC. However, simply deducting the election results of the 5 municipalities from the election results of the other 16 municipalities does not necessarily establish Alauya's theory that the over-all election results will not change. In case the COMELEC declares a failure of election in the 5 municipalities, special elections will have to be conducted. We cannot discount the possibility that the results of the special elections may still change the standing of the candidates. There is no allegation as to how many registered voters there are in the 5 municipalities. The number could not be determined from the figures submitted by Alauya as some registered voters may have voted for three, two or only one candidate. There is no certainty that the election results in the 5 municipalities, before or after the special elections, will not affect the results in the 16 other municipalities absent any allegation on the total number of registered voters in the contested municipalities.

Nevertheless, the COMELEC has already proclaimed Alexander Menor as the No.1 winning candidate. The Court issued a temporary restraining order directing the COMELEC to cease and desist from implementing the suspension of proclamation insofar as Alauya is concerned. Thus, Alauya has since been proclaimed, took his oath and assumed office. This Court has emphasized that public policy frowns on attempts to "grab-the-proclamation and prolong-the protest."^[10] However, this policy has to be balanced against the clear and present dangers created by a lengthy period of non-proclamation of winners, a period commonly fraught with tension and danger for the public at large.^[11]

Impleaded as private respondent in this petition, Sarangani, in his comment to the petition, seeks affirmative reliefs similar to those prayed for by Alauya, including the nullification of the order suspending proclamation. The Court cannot grant Sarangani any affirmative relief as he did not file a petition questioning the orders of the COMELEC. As Sarangani did not contest the orders of the COMELEC before this Court through a petition for certiorari, no affirmative relief can be sought by him.^[12] It is axiomatic that a party who does not ordinarily appeal, or as in this case file a petition for certiorari, from the orders of the COMELEC, is not entitled to any affirmative relief.^[13]

WHEREFORE, the petition is DISMISSED. The COMELEC is directed to act with deliberate speed in resolving the petitions to annul the elections or declare a failure of elections in the 5 municipalities. If the COMELEC does not declare a failure of election, the proclamation of the winning candidates should be done with utmost dispatch based on the canvassed election returns from the 21 municipalities of the 2nd District of Lanao del Sur.

SO ORDERED.

Davide, Jr., (C.J.), Puno, Vitug, Mendoza, Panganiban, Quisumbing, Yñares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.
Bellosillo, J., on leave.

[1] SEC. 242. Commission's exclusive jurisdiction of all pre-proclamation controversies. – The Commission shall have exclusive jurisdiction of all pre-proclamation controversies. It may motu proprio or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding sections.

[2] Domingo, Jr. v. Commission on Elections, 313 SCRA 311 (1999); Villarosa v. Commission on Elections, 319

SCRA 470 (1999).

[3] *Trinidad v. Commission on Elections*, 315 SCRA 175 (1999).

[4] SEC. 3. Pre-proclamation Cases. – No pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody, and appreciation of election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body, *motu proprio* or upon written complaint of an interested person to correct errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 of Republic Act 7166.

[5] SEC. 15. Pre-Proclamation Cases Not Allowed in Elections for President, Vice-President, Senator, and Member of the House of Representatives. – For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it.

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission in accordance with Section 19 hereof.

[6] SEC. 6. Failure of election. – If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

[7] 321 SCRA 273 (1999).

[8] SEC. 20. Procedure in Disposition of Contested Election Returns.

X X X.

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.

[9] SEC. 21. Partial Proclamation. – Notwithstanding the pendency of any pre-proclamation controversy, the Commission may summarily order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.

[10] *Dagloc*, supra, see note 7; *Dimaporo v. Commission on Elections*, 186 SCRA 769 (1990).

[11] *Ibid*.

[12] China Banking Corporation v. NLRC, 260 SCRA 782 (1996).

[13] Pulp and Paper, Inc. v. NLRC, 279 SCRA 408 (1997).

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