

ALEEM AMERODDIN SARANGANI, PETITIONER, VS. COMMISSION ON ELECTIONS AND MAMINTAL ADIONG, RESPONDENTS.

G.R. Nos. 155560-62. November 11, 2003

Ponente: VITUG, J.

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VITUG, J.:

In the aforementioned special civil action for certiorari pursuant to Rule 64, in relation to Rule 65, of the 1997 Rules on Civil Procedure, petitioner Aleem Ameroddin Sarangani assails the resolution, promulgated on 10 October 2002, of the Commission on Elections (COMELEC) en banc in SPC No. 01-369 as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner Aleem Ameroddin Sarangani, Saidamen B. Pangarungan and private respondent Mamintal M. Adiong were the contenders for the position of governor in the province of Lanao del Sur in the elections of 14[th] May 2001. During the canvass of votes made by the Provincial Board of Canvassers (PBC), the contending candidates made several objections to the inclusion of Certificates of Canvass (COC) from several municipalities.

On 02 July 2001, the PBC issued resolutions, excluding COCs from the municipality of Wao, to wit:

"In view of the fact that the second page of the subject Certificate of Canvass (COC) is a photocopy (Xerox) where the votes written in figures were likewise appearing to be a result of photo copying although the votes in words were handwritten thereon, and no single signature was affixed on that page of the COC that would least prove its authenticity, the Board resolved to exclude the same from the canvass." [1]

The PBC likewise excluded the COCs from the municipality of Bubong, viz:

"The Board finds that there is an alteration of votes as reflected in the certificate of votes and the corresponding statements of votes where the board, with its limited authority, cannot ascertain, the true and real votes, thus, the board resolved to exclude the same from the canvass." [2]

On the same day, Sarangani and Pangarungan received a copy each of the board's ruling. Adiong, in his case, refused to acknowledge receipt of the rulings of the PBC; instead, Adiong filed with the COMELEC a "Motion to Resolve Petition to Change Composition of the Provincial Board of Canvassers of Lanao del Sur." The COMELEC granted the motion in its order, dated 02 July 2001, that read:

"WHEREFORE, the newly constituted Provincial Board of Canvassers of Lanao del Sur is hereby directed to resolve with dispatch all pending incidents left unresolved by the old board, by completing the canvass and proclaiming the winning candidates of the Province of Lanao del Sur in accordance with law." [3]

On 09 July 2001, the newly constituted PBC overturned the rulings of the old board on the COCs in the municipalities of Bubong and Wao. The new PBC observed that the rulings were signed by two members of the old board but not dated and merely submitted to the Office of the Secretary of the COMELEC for promulgation. The new PBC thus decided to include the COCs from the municipalities of Wao and Bubong in the canvass which, upon completion, resulted in the proclamation of Adiong as being the duly elected governor of Lanao del

Sur.

Feeling aggrieved by the new ruling, Sarangani and Pangarungan filed, on 14 July 2001, separate appeals to the COMELEC. The appeals, docketed SPC No. 369 and SPC No. 370, were eventually consolidated in the Second Division of the COMELEC together with the "Urgent Petition to Annul the Proclamation of Respondent Mamintal Adiong for the Elective Position of Governor of Lanao del Sur" filed by petitioner and docketed SPC No. 373. Sarangani and Pangarungan claimed that the COCs from Wao and Bubong were manufactured and falsified that should accordingly be excluded from the canvass.

On 09 November 2001, the COMELEC Second Division rendered a resolution setting aside the 09[th] July 2001 order of the new PBC and reinstating the 02[nd] July 2001 ruling of the previous PBC which excluded the COCs from Wao and Bubong.

On 15 November 2001, Adiong filed a motion for reconsideration before the COMELEC en banc contending that the resolution, dated 09 November 2001, of the Second Division was not supported by evidence, as well as contrary to law and existing jurisprudence, and arrived at without actual examination of the COCs from Wao and Bubong.

On 10 October 2002, the COMELEC en banc rendered a resolution that, in turn, annulled and set aside the questioned resolution of the Second Division; the resolution concluded:

"WHEREFORE, this Commission (en banc) Resolved, as it hereby Resolves to Grant the instant motion for reconsideration of movant Mamintal M. Adiong and Deny the Motion for Reconsideration filed by movant Saidamen B. Pangarungan. The 09 November 2001 Resolution of the Second Division (this Commission) is hereby Annulled and Set Aside and the 09 July 2001 Rulings of the New Provincial Board of Canvassers of Lanao del Sur, including the certificates of canvass from the municipalities of Wao and Bubong, Lanao del Sur in the canvass of the 14 May 2001 election results for the position of governor of Lanao del Sur, are hereby Revived and Reinstated. Accordingly, the proclamation of herein movant Mamintal M. Adiong as the duly elected governor of the province of Lanao del Sur in the concluded 14 May 2001 elections is hereby Affirmed.

"This Commission (en banc), likewise, hereby Directs the Law Department of this Commission to conduct an investigation for any culpable violation of the Omnibus Election Code and other pertinent election laws that the two (2) members of the old Provincial Board of Canvassers of Lanao del Sur namely, Atty. Ray Sumalipao, PES of Lanao del Sur, as Chairman and Dagaranao Saripada as Member-Secretary, might have committed by their following acts, to wit: (1) their failure to appear on the scheduled hearings/meetings in the instant cases after the suspension of the canvass on 29 June 2001 despite their assurances and legal duty to do so; (2) their having issued the alleged written rulings excluding the COCs from Wao and Bubong, Lanao Del Sur, without giving the Vice-Chairman, Atty. Jubil Surmieda, the opportunity to participate and take part in the deliberations; and (3) their unprecedented act of deliberating and/or issuing the written rulings by themselves and of clandestinely submitting or turning over the said rulings to the Office of the COMELEC Secretary for promulgation on 02 July 2001, without setting any hearing or giving notice to the Vice-Chairman and/or to the herein parties."[4]

Aleem Ameroddin Sarangani now assails in the instant petition before the Court COMELEC's en banc resolution. The submissions of the parties and their argument boil down to the basic issue, largely predicated on factual considerations, of whether the certificates of canvass from the municipalities of Wao and Bubong should be excluded or included in the canvass of votes. The COMELEC en banc has made a careful examination of the original copies of the COCs from Wao and Bubong used by the PBC in the canvass, along with the statement of votes, which accompanied the COCs. The results have been found to be virtually the same.[5] The COMELEC explains:

"Further perusal of the said COC likewise revealed that the entries written in the photocopied form used as second page are actually mere continuation of the entries written on page one thereof. As we have observed, the number of candidates who ran for the positions of Congressman and Vice-Governor during the said elections cannot be accommodated in the spaces provided in the first page of the COC. It appears therefore that the MBC of Wao deemed it wise to photocopy the first page of the COC and used it to reflect the other candidates for the said positions which cannot be accommodated anymore in the limited spaces provided for in the first page. Also, it must be noted that although the form used as second page of the COC is not an original page, the said page however is authenticated by the signatures and thumb marks of the watchers of NAMFREL and of the different parties during the said elections.

"Thus, while it is conceded that the form used as second page of the COC is only a Xeroxed copy of page one and not an original page, we nonetheless hold that the entries made or written therein are all authentic and original, as correctly observed and ruled by the new board.

Second, we in the Commission (en banc) went out of our way and conducted our own investigation as to what really transpired during the canvassing of the 14 May 2001 election results in Wao, Lanao del Sur. From the inquiries made, it was deduced that during the canvass of election results in Wao, Lanao del Sur, the MBC found that the limited spaces provided for in the first page of the COC cannot accommodate the number of candidates who ran in the said elections, particularly for the positions of Congressman and Vice-Governor of Lanao del Sur. The MBC of Wao, in order not to jeopardize the canvass of election results and for it to clearly reflect the actual number of votes obtained by each candidate, decided to improvise a second page by photocopying the first page of the COC. The MBC then used the improvised photocopy of the first page, as the second page of the COC, in the canvass of the results of the elections in said municipality.

"It is worth emphasizing that the result of our investigation is borne by the records of the instant consolidated cases. In fact, it is in full accord with the testimony given by the Chairman of the MBC of Wao when she was summoned by no less than the old PBC and made to explain before this Commission about the said matter. As testified by the Chairman, the MBC of Wao used the improvised 'photocopied' form as page 2 of the COC because they ran out of 'original' forms during the said elections. She however justified the action as being authorized by a COMELEC Resolution and further added that during the canvass, no candidate or political party ever questioned the use of such improvised second page. The Chairman likewise confirmed and affirmed all the contents of the questioned COC from Wao including the votes obtained by the parties, as reflected therein.

"Third, the petitioners' contention that the COC from Wao is not an actual repository of the results of the elections as the second page thereof is a mere Xeroxed copy, finds no basis in fact and in law.

"We have already held that only the form used as second page of the COC is Xeroxed but not the entries appearing or written therein by the MBC of Wao which are all authentic and original. But aside from this uncontroverted fact, there is another substantial reason why the subject certificate should really not be excluded in the canvass. It must be emphasized that the position being contested here is that of the governor. The entries for the position of governor are written, not on the alleged manufactured and photocopied form used as second page but on the first page of the said COC. The first page of the questioned COC, where the names and number of votes garnered by all the candidates for governor in the province of Lanao del Sur in the 14 May 2001 elections are written, is an original page which is duly authenticated by the signatures and thumb marks of all the members of the MBC of Wao and of the watchers of NAMFREL and the different political parties in the said elections. A close perusal of the first page of the COC from Wao (and even of the rest of the pages) also shows that the same is clean, regular and authentic on its face without any sign of tampering or alteration. Thus, the first page of the subject COC with all the entries written therein being authentic and original, it cannot be gainsaid that the said certificate certainly reflects the actual number of votes garnered by the parties in the contested elections, as ruled also by the new board.

"xxx xxx xxx

"With the original copy of the COC from Bubong in view, we in the Commission (en banc) find no factual and legal basis whatsoever to exclude the said certificate in the canvass. We made a close scrutiny of the subject COC and found the same clean and regular on its face without even any sign of tampering or alterations made therein, similar to the findings of the new board. While it contains some erasures, such are nevertheless insignificant and truly insufficient to warrant the exclusion of the said COC in the canvass.

"In examining the said COC, prudence will dictate that the erasures appearing therein are actually mere corrections made by the MBC of Bubong to reflect the true and actual number of votes garnered by the candidates during the elections. We in the Commission (en banc) are aware of the rigors attending the canvass of election results and that the board of canvassers normally commit errors in writing entries in the COCs, returns, etc. Naturally also, the board has to effect the necessary corrections by erasing the wrong entries and replacing it with the right ones. This is a normal occurrence during canvass proceedings and we have to make allowances. Indeed, certain errors and corrections are expected to appear in the election documents.

"Thus, we hold that the ruling of the old board excluding in the canvass the COC from Bubong, which is affirmed by the Second Division (this Commission), really has no leg to stand on. A simple finding that the subject COC contains erasures is barely enough of a ground to support a ruling to immediately exclude the same in the canvass. It would be the height of exaggeration and unjustness if we in the Commission (en banc), upon examining the COC from Bubong which is clean and regular on its face, are to rule for its exclusion in the canvass upon a mere finding that it contains erasures. Furthermore, it is well-settled that in the absence of palpable errors and/or material defects which are clearly discernible on the face of an election return or a certificate of canvass, the same should be included in the canvassing by the board of canvassers. Extreme caution should likewise be exercised in excluding from the canvass a certificate of canvass as it will result in the disenfranchisement of the entire voters of a particular municipality. Finding no defects whatsoever in the subject COC, we rule for its inclusion in the canvass of the 14 May 2001 elections results for the position of governor in the province of Lanao del Sur.

"It is worth to add that we also requested from the ERSD of this Commission the original copies of the Statement of Votes (SOV) by Precinct accompanying the COC from Bubong. Having made the computations, we have compared the figures or the number of votes of the herein parties appearing in the COC with the aggregate number of votes obtained by them from the SOVs and found the results to be practically the same. Verily, the COC from Bubong must truly be included in the canvass so as not to disenfranchise the electorate of the province of Lanao del Sur."[6]

The Supreme Court's function is merely to check or to ascertain where COMELEC might have gone far astray from parameters laid down by law but not to supplant its factual findings. So long as its findings are not arbitrary and unfounded, the Court is not at liberty to discard and ignore such findings.

In a pre-proclamation controversy, the board of canvassers and the COMELEC are not required to look beyond or behind the election returns which are on their face regular and authentic. Where a party seeks to raise issues the resolution on which would necessitate the COMELEC to pierce the veil of election returns which are prima facie regular, the proper remedy would be a regular election protest and not a pre-proclamation controversy.[7]

Relative to the dubious circumstances surrounding the issuance of the original board's ruling of 02 July 2001 (wherein the COC's from the municipalities of Wao and Bubong were excluded from the canvass of votes) the COMELEC en banc held:

"We in the Commission (en banc) likewise very much affirm the findings of the new PBC in its questioned ruling of 9 July 2001. There is really something incredulous in the manner and the circumstances surrounding the issuance by the old board of its written rulings on 2 July 2001. As can be gleaned from the records, after

the canvass proceedings were suspended on 29 June 2001, the members of the old board, more particularly the Chairman and the Member-Secretary, assured the parties that they will thereafter immediately convene and issue written rulings to the inclusion or exclusion of the questioned COCs in the canvass. The said two (2) members however reneged on their promises for only the Vice-Chairman appeared on the scheduled hearings with the Chairman and the Member-Secretary always absent or nowhere to be found. This uncontroverted fact, it is worth reiterating, is exactly what impelled us to immediately grant Adiong's motion to resolve his petition to change the composition of the old board on the very same day that it was filed, or on 2 July 2001 to be exact. To this Commission (en banc), the failure of the old board to still convene and issue written rulings on 2 July 2001 is already causing disenfranchisement to the electorate of Lanao del Sur.

"Thus, it is truly a wonder that the two members of the old PBC, who always absented themselves on all the scheduled meetings after the suspension of the canvass on 29 June 2001 despite their assurances to appear, suddenly came up on 2 July 2001 with the alleged written rulings. It must be stressed that the records are bereft of any showing that the old board, particularly the Chairman and the Member-Secretary who deliberated with and signed the written rulings by themselves, set a hearing or notified the herein parties or even the Vice-Chairman of the date, time and place for the deliberation and issuance of the said rulings, much less, the manner of its promulgation. As to when, where and how the said rulings would be deliberated, issued and promulgated, only the said two (2) members of the old board knew.

"What we also find extraordinary in the instant consolidated cases is the manner by which the promulgation of the written rulings was effected by the two (2) members of the old PBC. Contrary to the provisions of law, procedures and established practice in this Commission, the herein parties including the Vice-Chairman were not notified by the two (2) members of the old board of the scheduled time and place for the issuance and/or promulgation of the written rulings, which is commonly made in open court or session. Likewise, it must be noted, and this may be the first time that we heard of this in the Commission, that the two (2) members of the old board submitted their written rulings to the Office of the Secretary of the Commission, for promulgation."[8]

The fact that private respondent has failed to file the appropriate appeal from the 02[nd] July 2001 ruling of the original PBC pursuant to Section 20 of Republic Act 7166, in relation to Section 38 of COMELEC Resolution 3848, cannot be taken as a blatant violation of the procedural rules considering the circumstances found by the COMELEC in the promulgation of the ruling. The procedure laid down in Section 20 (d & e) of Republic Act 7166, as well as in Section 38 (4 & 5) of COMELEC Resolution 3848, is to the following effect; viz:

"(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

"(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns."

The records, as well as the findings of the COMELEC en banc, would disclose that the old PBC did not convene on its scheduled hearing on 30 June 2001 where it was supposed to promulgate its ruling; instead, it merely submitted the same to the Office of the Secretary of the COMELEC on 02 July 2001. On said date (of 02 July 2001), the COMELEC, without being aware that the original PBC submitted its rulings to the Office of the Secretary of COMELEC, issued an order changing the composition of the Board of Canvassers. It was then before the new Board of Canvassers that petitioner could raise his objections to the ruling of the original board.

In sum, the COMELEC en banc has not committed grave abuse of discretion in annulling and setting aside the ruling of its Second Division and in ordering the inclusion of the COCs from the municipalities of Wao and

Bubong, Lanao del Sur, in the canvass of the 14[th] May 2001 election results for the position of governor of Lanao del Sur. The Court reiterates the rule that, unless the COMELEC is shown to have committed grave abuse of discretion, its decision will not be interfered with by this Court.[9]

WHEREFORE, the instant petition is DISMISSED, public respondent not having been shown to have committed grave abuse of discretion. Its challenged resolution, dated 10 October 2002, is AFFIRMED. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.

Tinga, J., took no part.

[1] Rollo, p. 94.

[2] Ibid.

[3] Rollo, p. 95.

[4] Rollo, pp. 82-83.

[5] Comelec Resolution, p. 24.

[6] Rollo, pp. 74-81.

[7] Dumayas, Jr. vs. COMELEC, 357 SCRA 358. Parenthetically, the COMELEC en banc already issued a resolution in SPA No. 01-400, dated 05 November 2001, unanimously denying Sarangani's petition to annul and set aside the results of the elections in Wao, Lanao del Sur for having no basis both in fact and in law.

[8] Rollo, pp. 67-68.

[9] Trinidad vs. COMELEC, 315 SCRA 175.

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