

ESPIRIDION JAGUNAP, PETITIONER, VS. COMMISSION ON ELECTIONS AND ADOLFO JAEN, RESPONDENTS.

G.R. Nos. 53062 and 53345. April 24, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In the last elections for local government officials on January 30, 1980, Espiridion Jagunap (heretofore referred to as JAGUNAP, for short), and Adolfo Jaen (JAEN, for short), were the candidates for the position of Municipal Mayor of Leganes, Iloilo. JAGUNAP was the official candidate of the Kilusang Bagong Lipunan (KBL, for short), while JAEN was the candidate of the Nacionalista Party. After the balloting and canvass of the election returns, JAGUNAP was credited with 3,113 votes against JAEN's 3,027 votes, thereby winning by a majority of 86 votes.

But, before JAGUNAP could be proclaimed the winner, or on February 6, 1980, JAEN filed an urgent petition with the Commission on Elections (heretofore referred to as COMELEC, for short), docketed therein as Comelec Case No. PP-280, entitled: "Adolfo Jaen, petitioner versus The Municipal Board of Canvassers of Leganes, Iloilo, et al., respondents," praying that the proclamation of the winners for Mayor, Vice-Mayor, and Members of the Sangguniang Bayan of Leganes, Iloilo, be deferred, and to nullify any proclamation if one had already been made; and to direct the Municipal Board of Canvassers of Leganes, Iloilo, to open the ballot boxes in the 30 Voting Centers of Leganes, Iloilo, and thereafter make the necessary corrections on errors and/or on tampered election returns, claiming, among others, that the election returns are either materially defective, falsified and/or tampered with, and prepared through or under duress or with visible and apparent discrepancies appearing thereof.[1]

On February 8, 1980, JAEN filed an amended petition which included, as ground for the suspension of the proclamation of the winners, the allegation that he is the official candidate of the Nacionalista Party but that the block votes cast for the party were not counted in his favor and considered stray votes.[2]

Acting upon both petitions, the respondent COMELEC issued Resolution No. 9070 on February 12, 1980, (1) requiring the Municipal Board of Canvassers of Leganes, Iloilo, to answer the petitions within five (5) days from receipt thereof, and for JAEN to specify the irregularities committed insofar as the election returns of the Voting Centers were concerned; and (2) annulling the proclamation of the winners, if one had already been made.[3]

The Municipal Board of Canvassers of Leganes, Iloilo, failed to file an answer thereto within the period prescribed, while JAEN submitted his "Compliance" on February 21, 1980, pointing to the specific irregularities and discrepancies in the election returns,[4] and on February 25, 1980, the COMELEC issued its Resolution No. 9278, (1) ordering "the immediate recounting of the votes in all the Thirty (30) Voting Centers in Leganes, Iloilo, and consequently, the recanvassing of the election returns therefrom and the proclamation of the winning candidates thereafter, with notice to all the parties concerned;" and (2) the designation of "a lawyer from the main office of the Comelec in Manila to act as the Chairman of the Municipal Board of Canvassers of Leganes, Iloilo." [5]

Pursuant thereto, Atty. Constante B. Leones was designated the Chairman of the Municipal Board of Canvassers of Leganes, Iloilo. The ballot boxes were opened, and a recount was made, the result of which showed that JAEN won over JAGUNAP with a majority of 107 votes, having obtained 3,303 votes against JAGUNAP's 3,096 votes.[6] Immediately thereafter, JAEN was proclaimed the duly elected Municipal Mayor of Leganes, Iloilo, on March 1, 1980,[7] and assumed office after taking his oath of office.[8]

After the proclamation of JAEN, however, the COMELEC issued Resolution No. 9431, setting aside the proclamation of JAEN. The resolution reads, as follows:

"9431. (PP No. 280). Considering that the Resolution of February 25, 1980 ordering a recounting of votes in all the 30 voting centers in Leganes, Iloilo was based on the fact that the Resolution of February 12, 1980 has not been answered by the Municipal Board of Canvassers, and the representation under oath by the Petitioner that he was considered an Independent candidate notwithstanding his submission to the Comelec Registrar of Leganes of a certificate of nomination by the Nacionalista Party (Annex 'B' of the Amended Petition); considering that it now appears that the failure of the Municipal Board of Canvassers to file an answer was due to the fact that the said Resolution of February 12, 1980 was received by said Board only on February 28, 1980 as explained in their telegram to the Law Department of this Commission received on February 20, 1980; considering that the Comelec Registrar of Leganes, Iloilo, had denied under oath (Annex 'A' of the Urgent Motion of Respondent) and denounced as spurious his alleged signature in acknowledgment of the letter nominating candidates of the Nacionalista Party (Annex 'B' of the Amended Petition) which, to say the least, raises a factual and prejudicial issue as to whether or not Petitioner was really a candidate of the Nacionalista Party and would therefore make a recounting of votes both premature and irregular being in the nature of a fishing expedition for an electoral protest; considering further as pointed out by Respondent in Petitioner's own letter (Annex 'A' of the Amended Petition), that as late as January 30, 1980, Petitioner himself expressly stated that the names of Jaen-Inyan slate are all Independent Candidates; considering finally, that the opening of ballot boxes and the use of the ballots for recounting would actually involve appreciation of ballots, an act which, in the present proceedings, cannot be legally sanctioned; the Commission RESOLVED to reconsider its Resolution of February 25, 1980 and hereby dismisses the Petition. Any canvass and/or proclamation that may have been made pursuant to the Resolution of February 25, 1980 are hereby annulled and set aside. The Municipal Board of Canvassers is hereby ordered to proclaim the winning candidates on the basis of the original canvass."[9]

In accordance therewith, JAGUNAP was proclaimed the Municipal Mayor of Leganes, Iloilo, on March 2, 1980 and he assumed office on March 3, 1980.[10]

But, on that same day, March 3, 1980, the COMELEC sent a telegraphic order to Atty. Constante B. Leones stating the following:

"IN VIEW OF THE FACT THAT ALL VOTES CAST IN ALL VOTING CENTERS OF LEGANES ILOILO WERE RECOUNTED ON MARCH 1 BY THE MUNICIPAL BOARD OF CANVASSERS BY VIRTUE OF RESOLUTION NUMBER 9278 DATED 25 FEBRUARY 1980 AND THAT MAYORALTY CANDIDATE ADOLFO JAEN GARNERED A MAJORITY OF TWO HUNDRED SEVEN VOTES AND THAT AFTER WHICH ADOLFO JAEN WAS IMMEDIATELY PROCLAIMED BY THE MUNICIPAL BOARD OF CANVASSERS AS DULY ELECTED MAYOR OF LEGANES ILOILO CMA THE COMMISSION SEES NO REASON TO SET ASIDE THE PROCLAMATION ON THE CONTRARY THE COMMISSION HEREBY AFFIRMS THE PROCLAMATION MADE BY THE MUNICIPAL BOARD OF CANVASSERS IN FAVOR OF ADOLFO JAEN AND THE OTHER WINNERS IN THE JANUARY 30 ELECTIONS IN THE MUNICIPALITY OF LEGANES ILOILO THE COMMISSION HEREBY ANNULS COMELEC RES. NO. 9431 DATED MARCH 1, 1980 END"[11]

As a consequence, on March 6, 1980, JAGUNAP filed with this Court a petition for certiorari, with a prayer for

the issuance of a temporary restraining order, to annul and set aside the said telegraphic order of March 3, 1980. The case was docketed as G.R. No. 53062. As prayed for, the Court ordered the respondents to cease and desist from enforcing and/or implementing the COMELEC telegraphic order dated March 3, 1980.[12]

After the filing of the petition, however, the COMELEC promulgated Resolution No. 9456, nullifying the disputed telegraphic order of March 3, 1980. The resolution reads, as follows:

"9456. Considering that there is no resolution adopted by the Commission annulling Comelec Resolution No. 9431 dated March 1, 1980, and considering further that there are legal and factual basis of the Urgent Motion for Reconsideration filed by respondent as in fact the records of the Commission show that candidate Adolfo Jaen is not actually an official candidate of the Nacionalista Party, the Commission RESOLVED as it hereby resolves to reiterate Resolution No. 9431 setting aside and annulling whatever canvass and/or proclamation made by the Municipal Board of Canvassers of Leganes, Iloilo pursuant to Comelec Resolution No. 9278 dated February 25, 1980, and hereby affirms the canvass and proclamation made by the original Board of Canvassers of Leganes, Iloilo, on March 2, 1980.

"The Commission FURTHER RESOLVED to nullify whatever action, if any, has been taken pursuant to the telegram sent to Atty. Constante Leones dated March 3, 1980."[13]

By reason thereof, JAEN filed a cross-petition on March 11, 1980, to annul and set aside the said Resolution No. 9456, claiming that the resolution "is patently illegal because it was issued without any notice and hearing." The Cross-Petition was docketed separately as G.R. No. 53345.[14]

On March 22, 1980, JAEN filed a Second Cross-Petition, to annul and set aside COMELEC Resolution No. 9431, dated March 1, 1980, which set aside his proclamation, on the ground that the COMELEC acted arbitrarily and capriciously in issuing the said resolution.[15]

From the records of the case it would appear that the COMELEC had authorized the proclamation of both JAEN and JAGUNAP as the elected Mayor of Leganes, Iloilo, and both had assumed the position after taking their respective oaths of office. JAEN was proclaimed on March 1, 1980, after a recount and recanvass of the votes cast in the Voting Centers of Leganes, Iloilo, pursuant to COMELEC Resolution No. 9278, dated February 25, 1980, while JAGUNAP was proclaimed on March 2, 1980, in accordance with COMELEC Resolution No. 9431, dated March 1, 1980.

JAEN assails the arbitrariness and capriciousness of the annulment of his proclamation, claiming that the annulment of his proclamation was made without due notice and hearing as required by Section 175 of the 1978 Election Code.

JAGUNAP, upon the other hand, contests the proclamation of JAEN, claiming that the said proclamation was based on a recount of votes which was illegally ordered by the COMELEC since the COMELEC has no power to order the recount in a pre-proclamation proceeding; and that the order for a recount was made without due notice and hearing.

Upon the facts of the case, We find that the COMELEC had, indeed, gravely abused its discretion, amounting to lack of jurisdiction, in annulling the proclamation of JAEN as the elected Municipal Mayor of Leganes, Iloilo. JAEN was not furnished with a copy of any petition or motion to set aside his proclamation; nor was he notified of the hearing of such petition or motion. As a matter of fact, the records of the case do not indicate that a hearing was ever conducted by the COMELEC before it ordered the annulment of the proclamation of JAEN. This to Us is an irregularity. JAEN, who has already been proclaimed by the Municipal Board of Canvassers of Leganes, Iloilo, has the right to be notified of any proceeding to set aside his proclamation, and a hearing is necessary before the COMELEC can order the annulment of his proclamation. Section 175 of the 1978 Election Code

explicitly provides that the COMELEC can order the annulment of a proclamation of a candidate-elect on any of the grounds mentioned in Sections 172, 173 and 174 thereof (defective, tampered and falsified election returns, and discrepancies in the election returns) only after due notice and hearing. Said section reads, as follows:

"Sec. 175. Suspension and annulment of proclamation. - The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may motu proprio or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof." (Underscoring for emphasis)

It results that COMELEC Resolution No. 9431, dated March 1, 1980, and COMELEC Resolution No. 9456, dated March 6, 1980, which were issued without the notice and hearing, are arbitrary, and, therefore, null and void. The proclamation of JAGUNAP, being based upon these void resolutions, is, consequently, of no legal effect, and should be set aside.

The claim of JAGUNAP that the COMELEC had no power to order a recount in this case is without merit. Under Sections 172, 173 and 174 of the 1978 Election Code, the COMELEC is authorized to order the opening of the ballot boxes and order a recount when there are material defects in the election returns; when the election returns appear to be tampered with or falsified; or when there are discrepancies in the election returns. The said sections read, as follows:

"Sec. 172. Material defects in the election returns. - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board shall return them by the most expeditious means, to the corresponding election committee for correction. Said election returns, however, shall not be returned for a recount of the ballots or for any alteration of the number of votes set forth therein; Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the election committee concerned to complete the necessary data in the election returns and affix therein their initials; Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the election committee to open the ballot box, and also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the committee to count the votes for the candidate whose votes have been omitted in the presence of the candidate affected, or his representative and thereafter complete the returns.

"Sec. 173. When election returns appear to be tampered with or falsified. - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after it has left the hands of the election committee, the board shall use the other authentic copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 163 hereof. If the other copies of the returns are likewise tampered with, altered or falsified, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicates that its identity and integrity have been violated, order the opening of the ballot box and likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the election committee to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

"Sec. 174. Discrepancies in election returns. - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a voting center or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the

ballot box had been preserved and once satisfied thereof, shall order the opening of the ballot box to recount the votes cast in the voting center solely for the purpose of determining the true result of the count of votes of the candidates concerned: Provided, however, That if upon the opening of the ballot box it should appear that there are evidences or signs of replacement or tampering of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping."

In his petition, filed with the COMELEC, JAEN alleged that "election returns are either materially defective, falsified and/or tampered, prepared through or under duress or with visible and apparent discrepancies appearing thereon." Asked to specify, JAEN submitted a "Compliance" wherein he enumerated the specific irregularities, discrepancies, tampering with, alterations and/or defects in the election returns. Obviously, the requirements of the law were complied with since the COMELEC ordered a recount and re-canvass of the election returns and the COMELEC attorney from the main office in Manila who was designated to act as the Chairman of the Municipal Board of Canvassers of Leganes, Iloilo, proceeded with the recanvass of the election returns in the presence of JAGUNAP's representatives who entered no objections thereto, nor made any protest against such proceedings.

There is, likewise, no merit in the claim of JAGUNAP that he was denied due process. In its Resolution No. 9278, dated February 25, 1980, the COMELEC ordered the recount and recanvass of the election returns and the consequent proclamation of the winning candidates "with due notice to all the parties concerned." This requirement was complied with. Before opening the ballot boxes and in proceeding with the recount and the recanvass of the election returns, Atty. Constante B. Leones, Chairman-designate of the Municipal Board of Canvassers of Leganes, Iloilo, made the following manifestation:

"Atty. Leones"

"x x x As Chairman of the Board I have sent notices to the chairman of the NP, chairman of the KBL and also to the other candidates of the NP and KBL. The board believes that we have complied with the provisions of the resolution of the Comelec and there is no detriment in our canvassing of the votes today or this afternoon. x x x."[16]

These statements are undisputed, so that JAGUNAP, who was ably represented during the proceedings, cannot now be heard to complain that he was denied due process.

WHEREFORE, judgment is hereby rendered, as follows:

- (1) The petition for certiorari with prayer for a temporary restraining order, docketed as G.R. No. 53062, is DISMISSED for lack of merit and the temporary restraining order, heretofore issued, is, consequently, lifted and set aside. The petitioner, Espiridion Jagunap, however, is granted ten (10) days from notice hereof within which to file the proper election protest or quo warranto proceedings, if he so desires; and
- (2) The cross-petitions, docketed as G.R. No. 53345, are GRANTED and COMELEC Resolution Nos. 9431 and 9456, dated March 1, 1980 and March 6, 1980, respectively, both issued in Comelec Case No. PP-280, entitled: "Adolfo Jaen, petitioner, versus The Municipal Board of Canvassers of Leganes, Iloilo, and Espiridio Jagunap, respondents", are ANNULLED and SET ASIDE.

With costs against Espiridion Jagunap.

SO ORDERED.

Barredo, Fernandez, Abad Santos, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs in the opinion of Justice Concepcion and makes the observation with reference to the Arcenas, Aguinaldo, Laguda, and Singco decisions cited in the concurring opinion of Justice Teehankee that a

pre-proclamation controversy is still viable and must be decided by this Court if the Commission on Elections had acted on the petition and the matter thereafter elevated to us prior to such local election. This is the ruling in *Aguinaldo v. Commission on Elections*, GR. 53953, January 5, 1981, by a unanimous Court, a separate concurrence being filed by Justice Teehankee.

Teehankee, J., files a separate concurring opinion.

Makasiar and Guerrero, JJ., join in the dissenting opinion of J. De Castro.

De Castro, J., see dissenting opinion.

Aquino, J., concurs. The dismissal of Jagunap's petition and the granting of Jaen's cross-petitions mean that Jaen's proclamation on March 1, 1980 is upheld. Jaen can sit as mayor.

[1] Rollo of G.R. No. 53062, p. 14.

[2] *Id.*, p. 19.

[3] *Id.*, p. 71.

[4] *Id.*, p. 72.

[5] *Id.*, p. 119.

[6] *Id.*, pp. 120-121.

[7] *Id.*, p. 122.

[8] *Id.*, p. 123.

[9] *Id.*, p. 34.

[10] *Id.*, p. 37.

[11] *Id.*, p. 38.

[12] *Id.*, p. 45.

[13] Rollo of G.R. No. 53345, p. 8.

[14] *Id.*, p. 2.

[15] Rollo of G.R. No. 53062, p. 150.

[16] *Id.*, pp. 156-157.

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SEPARATE OPINION

DE CASTRO, J.:

What seems to me to be more crucial and decisive in the resolution of this case, is a determination of the validity of COMELEC Resolution No. 9278 of 25 February 1980, under which cross-petitioner JAEN claims title to office as Municipal Mayor of Leganes, Iloilo and because of which the present controversy arose.

Records will show that before JAGUNAP could be proclaimed the winner of the 30 January 1980 elections, having obtained 3,113 votes against JAEN's 3,027 votes, the latter filed on 6 and 8 February 1980 an urgent petition[1] and an amended petition[2] respectively, both captioned "ADOLFO E. JAEN, Petitioner, versus THE MUNICIPAL BOARD OF CANVASSERS OF LEGANES, ILOILO and ESPERIDION JAGUNAP, Respondents", with the COMELEC praying, inter alia, the suspension of the proclamation of the winners for Mayor, Vice-Mayor, and Members of the Sangguniang Bayan of Leganis, Iloilo and the re-opening of the ballot boxes in the 30 voting centers in the aforesaid municipality in order to rectify the alleged gross errors made by the Citizens Elections Committee.

Acting upon both petitions, COMELEC issued on 12 February 1980 Resolution No. 9070[3] directing as follows: "(1) to require the Municipal Board of Canvassers to answer within five days from receipt of the petition and the petitioner (JAEN) to specify the irregularities allegedly committed in so far as the election returns of other voting centers are concerned; and (2) to annul the proclamation made by the Board of Canvassers, if one has already been made," and on 25 February 1980 Resolution No. 9278[4] ordering "the immediate recounting of the votes in all the Thirty (30) Centers in Leganes, Iloilo, and consequently, the recanvassing of the election returns therefrom and the proclamation of the winning candidates thereafter, with notice to all the parties concerned", among others. It is by virtue of said 25 February resolution, that JAEN was proclaimed the duly elected Municipal Mayor of Leganes, Iloilo, on 1 March 1980[5] because after a recounting and recanvassing as directed by the aforesaid Resolution, he was found to have obtained 3,303 votes against JAGUNAP's 3,096 votes.[6] He assumed office after taking his oath of office.[7]

It is to be noted, however, that the COMELEC did not require JAGUNAP to answer JAEN's petitions nor will the records show that he was informed of said petitions, in spite of his being made a party respondent. This omission is fatal considering that JAGUNAP is the principal party most adversely affected by JAEN's petitions. It likewise violates not only the provisions of Section 175 of the 1978 Election Code, quoted at page 8 of the decision, that the COMELEC may "order the suspension of the proclamation of a candidate-elect or annul any proclamation" only "after due notice and hearing," but more grievously, the due process clause of the Constitution. Thus, JAGUNAP has a valid cause for complaint, and justifiably filed on 29 February 1980 a "Very Urgent Motion for Reconsideration and/or Revocation of COMELEC Resolution of 25 February 1980 (Item No. 9278-PP No. 280) with Restraining Order..."[8] alleging therein that the 25 February COMELEC Resolution "was rendered without due process of law for movant Esperidion Jagunap," considering that he was given neither a copy of said petitions nor a chance to be heard. This allegation is reiterated in JAGUNAP's petition to this Court.[9]

When the COMELEC, to whom was addressed the Motion for Reconsideration imputing to it a serious and fatal error of law, realized the blunder it had committed, it was well within its right, if not its bounden duty without need of notice to JAEN, to correct its error, as it did with when it issued Resolution No. 9431[10] dated 1 March 1980, quoted at page 4 of the decision. The COMELEC could not disregard, much less ignore, JAGUNAP's plea of denial of due process, necessitating the setting aside of the 25 February resolution, being void for having been issued in violation of due process, constituting a grave abuse of discretion on the part of COMELEC, amounting to lack or excess of jurisdiction, the basic complaint of JAGUNAP in his petition now before this Court. Such a rectification can be made by COMELEC even *motu proprio*, thus making its rectifying 1 March Resolution free from any taint of invalidity.

The subsequent proclamation of JAGUNAP as the duly elected Mayor of Leganis, Iloilo, on 2 March 1980 in accordance with the 1 March resolution and his assumption of office on 3 March 1980 after taking his oath, were thus perfectly valid and ought to have ended the present controversy, and any question arising from the 30 January 1980 elections could be ventilated in a proper proceeding by the aggrieved party. Unfortunately, it is not so for COMELEC's issuance of the Telegraphic Order, quoted at page 5 of the decision, barely two days after the 1 March resolution, or on 3 March 1980, unavoidably impelled petitioner JAGUNAP to seek a relief, ultimately before this Court, considering that said Telegraphic Order, in effect revives the effect of the 25 February resolution, which, as already discussed, had to be set aside for being void and illegal. Again seeing its obvious mistake, COMELEC issued Resolution No. 9456 on 6 March 1980, quoted at page 6 of the decision, nullifying the disputed Telegraphic Order of 3 March 1980, during the pendency of this petition, thus rendering said petition moot and academic, were it not for the cross-petition[11] of JAEN, alleging that he was likewise denied due process by the issuance of the 1 and 6 March resolutions. From what has already been stated above, that these resolutions having been issued without notice and hearing, did not affect their validity, for they were intended by COMELEC to set aside its 25 February 1980 Resolution and its 3 March Telegraphic Order by way of correcting its own mistake, which it can do even *motu proprio*, without notice, so as to make its orders and decisions conformable to law and justice.

It may not be redundant to reiterate emphatically, that the 1 March resolution was issued to set aside the 25 February resolution, for having been issued without any notice and hearing. Any action or proceeding taken thereunder is, accordingly, void and without any binding force and effect. The proclamation and subsequent assumption of office by JAEN come in this category, for they proceed from a Resolution that cannot serve as JAEN's protecting mantle, for patently the COMELEC had no authority to issue the same, the Resolution of 25 February 1980 without observing the requirement of due process.

I am not oblivious of the summary nature and character allowed of the proceedings before the COMELEC. But the limits thereof, as pointed out by this Court in *SINGCO v COMELEC*, G.R. No. 52830, 28 November 1980, as to the ". . . need of complying with the essential requirement of procedural due process . . .", guided by the authoritative command in the leading *Ang Tibay* case[12], is equally of cogent importance and relevance. So numerous cases have reached this Court wherein the proceedings before the COMELEC have been set aside on the ground of denial of due process. Both parties herein are each complaining of denial of due process of law. It is to me JAGUNAP's plea that should be heard, as the one really deserving of just relief.

ACCORDINGLY, I am constrained to dissent and, am more disposed to setting aside the 25 February 1980 resolution as well as the Telegraphic Order of 3 March 1980, and the affirmance of the 1 and 6 March resolutions. Additionally, instead of JAGUNAP, JAEN may be granted ten (10) days from notice within which to file the proper election protest or quo warranto proceedings, if he so desires.

[1] p. 14, Rollo of G.R. No. 53062.

[2] p. 19, *Id.*

[3] p. 71, *Id.*

[4] p. 119, *Id.*

[5] p. 122, *Id.*

[6] pp. 120-121, *Id.*

[7] p. 123, Id.

[8] p. 27, Id.

[9] paragraph 4, p. 5, Id.

[10] p. 36, Id.

[11] p. 2, Rollo of G.R. No. 53345.

[12] 69 Phil. 635 (1940).

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CONCURRING OPINION

TEEHANKEE, J.:

In this case, the "flip-flopping" resolutions of Comelec[1] have finally reached the point of *reductio ad absurdum*. As stated succinctly in the main opinion of Mr. Justice Hermogenes Concepcion Jr., "(F)rom the records of the case it would appear that the Comelec had authorized the proclamation of both Jaen and Jagunap as the elected Mayor of Leganes, Iloilo, and both had assumed the position after taking their respective oaths of office. Jaen was proclaimed on March 1, 1980, after a recount and recanvass of the votes cast in the Voting Centers of Leganes, Iloilo pursuant to Comelec Resolution No. 9278, dated February 25, 1980, while Jagunap was proclaimed on March 2, 1980, in accordance with Comelec Resolution No. 9431, dated March 1, 1980."

The series of "turnabouts" came about this way:

On February 25, 1980, per Resolution No. 9278, the Comelec at the instance of Adolfo Jaen, the Nacionalista Party candidate for the position of municipal mayor of Leganes, Iloilo and who had earlier filed pre-proclamation petitions on February 6 and 8, 1980, specifying specific irregularities and tampering of election returns, ordered the immediate recount and recanvass of the votes in all the thirty (30) voting centers in Leganes under the supervision of a lawyer from the Comelec's main office in Manila, namely, Atty. Constante B. Leones, who was designated as chairman of the municipal board of canvassers. The ballot boxes were duly opened and a recount made under the supervision of the said chairman, Atty. Leones, with due notice and in the presence of the representatives of the rivals[2] and the results showed that Jaen won over his KBL opponent, Esperidion Jagunap with a majority of 107 votes (with 3,303 votes against Jagunap's 3,096 votes). Immediately thereafter, Jaen was proclaimed the duly elected municipal mayor of Leganes on March 1, 1980 and assumed the position after taking his oath of office.

After Jaen's proclamation, the Comelec did its first "turnabout" and issued *ex parte* its Resolution No. 9431 under date of March 1, 1980 setting aside its February 25, 1980 resolution for a recount and recanvass as well as Jaen's proclamation thereunder and ordered that Jagunap be proclaimed as the municipal mayor of Leganes in accordance with the original defective canvass based on the irregular and discrepant returns which showed Jagunap as the purported winner with a majority of 86 votes (with 3,113 votes as against Jaen's 3,027 votes), which proclamation was done on March 2, 1980 and Jagunap assumed the office of mayor on March 3, 1980.

On the same day (March 3, 1980), however, the Comelec, apparently realizing its error, sent a telegraphic order to its representative, Atty. Constante B. Leones, affirming the original proclamation of Jaen and annulling its Resolution No. 9431 which had set aside Jaen's proclamation.

At this stage, the case reached this Court with the filing on March 6, 1980 by Jagunap of his petition for certiorari to annul and set aside the Comelec's telegraphic order of March 3, 1980 upholding the original proclamation of Jaen. The Court, at Jagunap's instance, issued its temporary restraining order of March 6, 1980, restraining the enforcement of the said telegraphic order, thereby allowing Jagunap to continue as mayor notwithstanding that the recanvass ordered by the Comelec itself patently demonstrated that Jaen was the winner over Jagunap.

With the case pending in this Court, the Comelec did its second "turnabout" and issued again ex parte its Resolution No. 9456 under date of March 6, 1980 reiterating its Resolution No. 9431 setting aside the recount and recanvass leading to Jaen's proclamation and affirming the later proclamation of the loser Jagunap on the basis of the defective original canvass.

These "turnabout" Resolutions Nos. 9431 and 9456 were duly challenged in these proceedings by Jaen for being patently illegal, having been issued without due notice and hearing given to him.

The main opinion of Mr. Justice Concepcion correctly holds that Comelec Resolutions Nos. 9431 and 9456 setting aside Jaen's original proclamation duly made after the recount and recanvass ordered by the Comelec under the supervision of its own designated chairman of the municipal board of canvassers who was a lawyer from its Manila office, were arbitrary, having been issued without due notice and hearing required by section 175 of the 1978 Election Code and therefore null and void, and that consequently the later proclamation of Jagunap based on these resolutions could produce no legal effect.

It is likewise clearly shown from the record as pointed out in the main opinion that the recount and recanvass were ordered by the Comelec under due authority of law under sections 172, 173 and 174 of the 1978 Election Code, the texts of which are therein reproduced and that such recount and recanvass leading to Jaen's proclamation were made "in the presence of Jagunap's representatives who entered no objections thereto, nor made any protest against such proceedings." [3]

Furthermore, the present cases fall squarely under the authoritative and controlling doctrine of the Court's decisions in Arcenas[4], Aguinaldo[5], Laguda[6] and Singco[7] all against Comelec and a host of other cases cited therein, that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable and the proper recourse is an election protest or quo warranto, as the case may be. Here, these cases were filed by Jagunap only after March 6, 1980, long after the January 30, 1980 cut-off date set by the Court in the cited cases.[8]

Jaen's proclamation on March 1, 1980, after the Comelec-appointed chairman supervised the recount and recanvass, terminated the pre-proclamation controversy and Jagunap's only recourse is to file the proper election protest, if he is so minded.

The statement in the dissenting opinion of Mr. Justice Pacifico P. de Castro that Jagunap was not informed of the recount and recanvass ordered by the Comelec pursuant to Jaen's petition and that such omission is "fatal" (whereby the dissent would uphold the Comelec's "turnabout" resolutions setting aside the winner Jaen's proclamation and instead maintain the loser Jagunap in the mayor's seat) would disregard the true verdict of the electorate of Leganes, Iloilo. Furthermore, it is not borne out by the record, for as shown hereinabove, the recount and recanvass were made under the supervision of the Comelec-appointed chairman "in the presence of Jagunap's representatives who entered no objections thereto, nor made any protest against such proceedings." Finally, it

goes against the Court's settled doctrine of preventing that the loser "grab the proclamation and prolong the protest."

[1] See *Ticzon vs. Comelec*, G.R. No. 52451, March 31, 1981, separate opinions of the writer and Justice Vicente Abad Santos.

[2] See main opinion at pp. 10-11.

[3] Main opinion, at page 10.

[4] G.R. No. 54039, Nov. 28, 1980.

[5] G.R. No. 53953, Jan. 5, 1981.

[6] G.R. No. 53747, Feb. 20, 1981.

[7] G.R. No. 52830, Nov. 28, 1980.

[8] See the Chief Justice's separate opinion in *Singco*, *supra*.

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