

HABIB ALI, ET AL. PETITIONERS, VS. THE COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.

G.R. Nos. 69773-75. August 28, 1986

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In the majority decision of the Court, promulgated on November 19, 1985, rendered in the three above captioned cases, which were all decision of the Court, promulgated on November 19, 1985, rendered in the three above captioned cases, which were all consolidated, the separate petitions for certiorari filed by the respective petitioners therein were dismissed for lack of merit. On December 13, 1985, a joint motion for reconsideration of the aforesaid decision was filed by petitioner Mahadi M. Pimping, in G.R. Nos. 69765-67 and by petitioners, Habib Ali, et al., in G.R. Nos. 69773-75. Likewise, in G.R. No. 69846, a similar motion for reconsideration, dated December 20, 1985, was submitted by petitioner Rashid Sampaco thru his counsel.

In the resolution of the Court dated January 7, 1986, respondents were asked to comment on the aforesaid motions for reconsideration. On February 21, 1986, the Office of the Solicitor General, as counsel for public respondent Commission on Elections, moved to dismiss said motions for reconsideration for lack of merit, contending that said motions are pro forma, and do not raise any new and substantial argument that may justify a modification or reversal of the decision in this case.

Considering the events which thereafter transpired, and which led to a change in administration of our government, pursuant, therefore, to the provisions of Section 18 of Rule 3, of the Rules of Court, the new Solicitor General, by our resolution of April 3, 1986 and reiterated in another resolution dated April 29, 1986, was directed to submit his Comment on said motions filed by the respective petitioners therein, for reconsideration of the decision of November 19, 1985, and to state whether or not he maintains the action and position taken by his predecessor in office.

In their manifestation of compliance, dated April 22, 1986, petitioners Mahadi M. Pimping and Habib Ali, et al., in G.R. Nos. 69765-67 and G.R. Nos. 69773-75, thru a common counsel, expressed the view that the instant cases have not become moot with the change of administration and the expiration of the term of the officers involved, because the determination of the validity of the elections of private respondents will have a bearing on the right of petitioners to claim for damages.

Respondent Salam N. Pangadapun in G.R. Nos. 69765-67, complying with the Court's resolution of April 3, 1986, in her Manifestation dated May 30, 1986 states that the said case has already become moot and academic, considering that an officer-in-charge has already been appointed to the contested position.

Complying with the mentioned resolutions of this Court, the new Solicitor General, as counsel for public respondent COMELEC, submitted a manifestation, dated May 7, 1986 stating therein that the COMELEC, in its letter dated April 30, 1986, maintains the validity of its decision in installing as local elective officials in Marawi City the private respondents named in the petitions. However, public respondent COMELEC states that on the basis of the information received from the Ministry of Local Government, Messrs. Hadji Abbas M. Basman and Sultan Ali M. Mindalano have now been designated as officers-in-charge for the offices of Mayor and Vice-Mayor of Marawi City, respectively.

In the stated manifestation of the new Solicitor General, the Court finds no statement that there is any need for any modification, much less reversal of the decision rendered in this case.

In view of all the foregoing, the Court Resolved to DENY the motions for reconsideration filed by the herein petitioners in the three aforementioned cases for lack of merit and on the further consideration that the said motions have now been rendered moot and academic. Alampay, J., ponente and Narvasa, Melencio-Herrera and Gutierrez, JJ. concurred in this Resolution.

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Teehankee, C.J. maintained his dissent from the majority decision of November 19, 1985 with the concurrence of Feria, Yap, Fernan, Cruz and Paras, JJ., as follows:

While the pending motions for reconsideration of the decision may be said to have been rendered moot and academic by the appointments of officers-in-charge to the contested positions with the change of government since February 25, 1986 under a new President of the Republic, Her Excellency Corazon C. Aquino, still the glaring errors of law committed by the Comelec at the time should not be allowed to stand uncorrected and unrectified in our jurisprudence books. For brevity's sake, I reproduce herein by reference my dissenting opinion of November 19, 1985.

The main thesis of my dissent is that the Comelec may not arbitrarily decide an election protest based on alleged widespread election frauds and irregularities claimed to have been committed by the contending parties - which essentially requires the revision, recount and appreciation of the ballots cast - without conducting such revision, recount and appreciation. The reasons for this stand may be briefly restated, as follows:

(a) Commissioner Ramon H. Felipe, Jr., in abstaining from the questioned Resolution aptly stated that "I abstained in view of the lack of necessary revision of ballots in the protested and counter-protested pre-cincts in spite of the long pendency of this case for the past 4 years, which revision would have furnished us an impartial basis for a fair decision;"

(b) The Comelec's very own rules mandatorily require (not directorily, as presumed without basis or citation by the majority decision) such revision and recount of the ballots, in line with the long-established usage since elections were held in the country;

(c) Both protagonists for the vice-mayoralty prayed in their pleadings for such revision, recount and appreciation of the ballots cast in the questioned voting centers;

(d) The Comelec was remiss in not discharging its ministerial duty under its own above-cited rules to appoint the committees on revision of the ballots and to order the protagonists to submit their respective members and substitutes. The Comelec allowed four years to be spent by the experts in examining the ballots. When it realized that there was only one year more left of the office terms, it could not, without violating due process, short-circuit the proceedings brought about by its own inaction, skip the revision and recount as "dilatatory" when such recount is the very heart of election protests, and rush to half-baked judgment. It is elementary in election cases, that the private interest of the candidates is merely incidental, what matters is the public interest in the institution of free and honest suffrage and the determination of the true results and true verdict of the electorate.

Respondent Comelec disregarded its own Rules and denied due process to petitioners in the promulgation of the questioned Resolution. Under its own Resolution No. 1450, the promulgation shall be on a date previously fixed with advance notice served on the parties or their counsels. No such notice was given to petitioners-protestees. But applying a double standard, respondents-protestants were served copy of the Resolution and Order denying reconsideration and declaring the Resolution "final and executory" in their favor, on the very same day that they were dated, January 7, 1985 and January 29, 1985, respectively. Petitioners learned of the Comelec adverse action

only in the newspapers. Such discriminatory treatment allowed respondents to unlawfully assume the contested offices with the military's intervention without giving petitioners an opportunity to seek timely injunctive relief from this Court and notwithstanding the Minister of Local Government's opinion that the Comelec decision was not final and was subject to this Court's final review and decision. Needless to say, the Comelec Rule (section 23 of Res. No. 1450) making its decision "final and executory" ten (10) days after their promulgation is manifestly void and unconstitutional when Article XII-C, section 11 of the Constitution provides a thirty-day period for appeal of any Comelec decision or ruling to the Supreme Court, thus: "Any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof."

While the case may have become moot, this Court should go on record as disowning the unpredictable and improvised decisions of the Comelec in the past regime, whereby it arbitrarily disregarded its own settled rules and the parties' basic rights to due process.

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