

GABRIEL CASIMIRO AND UNIDO PARTY, PETITIONERS, VS. HON. COMMISSION ON ELECTIONS, LAS PINAS BOARD OF CANVASSERS, ROSALINO RIGUERA, ALFREDO JUNTILLA, REMIGIO RAMOS, EDUARDO CASTIL...

G.R. Nos. 84462-63. March 29, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In the local elections of 18 January 1988 Gabriel P. Casimiro was the UNIDO candidate for Mayor of the Municipality of Las Pinas, Metro Manila. Alfredo Juntilla and Rosalino Riguera were also candidates for the same position of Mayor, with Riguera having been ultimately proclaimed Mayor.

Remigio Ramos and Eduardo Castillo were both candidates. for Vice-Mayor; while Reynaldo Salvador was a candidate for Councilor, all in the same municipality.

During the canvassing of votes, the following cases, pertinent to these petitions, were filed before public respondent Commission on Elections (COMELEC):

SPCNo. 88-210

Juntilla, et al, vs. Rosalino Riguera, et al

SPCNo. 88-218

In Re: Petition to Suspend Canvass of Election Returns/Transfer the Venue for the Canvass of Election Returns to the COMELEC Main Office in Intramuros, Manila and/or Suspend the proclamation of any winning candidate for Mayor, Vice-Mayor and Councilors in the Municipality of Las Pinas, or to Declare the Nullity of Proclamation, if any.

Gabriel P. Casimiro, Petitioner.

SPCNo. 88-360

In Re: Petition to Enjoin Board of Canvassers from Canvassing of Votes of Las Pinas and/or Tabulating Unofficial Election Returns, UNIDO Party,

Petitioner.

SPC No. 88-619 In the Matter of the Pre-Proclamation Controversy in Las Pinas, M.M.

Reynaldo Salvador, Petitioner, vs. Las Pinas M.M. Board of Canvassers, et al, Respondents.

Resolving the aforesaid cases, the COMELEC (Second Division) rendered a consolidated Decision on 25 March 1988, decreeing in part:

"22. Both the law and jurisprudence on this matter clearly dictate the dismissal of this petition. This is beyond the jurisdiction of this electoral body. The issues should be properly ventilated in an election protest filed with a court of general jurisdiction.

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, Special Proceeding Cases Nos. 88-210, 88-218, 88-360 and 88-619 are hereby dismissed. The order (in Minute Resolution No. 88-251 dated 27 January 1988) restraining the proclamation of any winning candidate is hereby lifted. The Municipal Board of Canvassers of Las Pinas, Metro Manila, is hereby ordered to reconvene, complete the canvass if not yet completed, and proclaim the winning candidates, if warranted."

"SO ORDERED." (p. 113, Rollo)

With the lifting of the Restraining Order, respondent Rosalino Riguera and the other winning candidates for local officials were proclaimed.

On 8 June 1988 the COMELEC en banc denied a Motion for Reconsideration of the aforesaid Decision, as follows:

"WHEREFORE, premises considered, the instant Motion for reconsideration filed on March 30, 1988 by movants Gabriel P. Casimiro and UNIDO party, is hereby DENIED. Accordingly, the Decision of the Second Division dated March 25, 1988 dismissing SPC Nos. 88-210, 88-218, 88-360 and 88-619 is hereby SUSTAINED. The proclamation of the winning candidates for local officials of the Municipality of Las Pinas is hereby AFFIRMED.

"SO ORDERED" (pp. 139-140, Rollo)

On 13 July 1988 the COMELEC en banc disposed of a Motion for Clarification and/or Partial Reconsideration filed by Casimiro in SPC No. 88-218, thus:

"The Commission en banc notes that movant Casimiro, instead of presenting new issues or new evidence, merely invokes the Commission's sense of fairness and equity. Considering that the issue raised by movant Casimiro in this instant motion (legality of the continuation of the canvass from Las Pinas to the Comelec Central Office) is the same issue which has been squarely passed and ruled upon in the subject Resolution of June 9, 1988, the pending incident is nothing but a pro-forma motion.

"WHEREFORE, premises considered, the instant Motion for Clarification and/or Partial Reconsideration filed by movant Gabriel 'Ben' Casimiro is hereby DENIED.

"SO ORDERED"(p. 151, Rollo)

On 19 August 1988 petitioners Gabriel Casimiro and the UNIDO Party availed of the instant Petition for Certiorari and Mandamus against the COMELEC, the Las Pinas Board of Canvassers, and Rosalino Riguera as the principal respondents, docketed as G.R. Nos. 84462-63, seeking to annul and set aside:

"(a) a portion of the Decision of the Second Division of the COMELEC promulgated on March 25, 1988;

"(b) the Resolution of the COMELEC En Banc promulgated on June 8, 1988; and

"(c) the Resolution of the COMELEC En Banc dated July 13, 1988"

all for allegedly having been issued with grave abuse of discretion and in excess of jurisdiction, and praying for judgment:

x x x

x x x

x x x

"(ii) directing the respondent COMELEC to constitute a new Board of Canvassers for the purpose of recanvassing the deferred 340 election returns which were unlawfully and irregularly canvassed in the Manila COMELEC Office.

"(iii) annulling the proclamation of respondent Rosalino Riguera for having been premature and a nullity; and

"(iv) after the recanvass of the above 340 election returns and a determination that petitioner Gabriel Casimiro had won the said local elections for the Office of Mayor, that respondent COMELEC declare said petitioner Casimiro as the winner and thereafter proclaimed accordingly." (p. 46, Rollo)

Respondents were required to file their Comment, which they have, respectively, done. Replies, Rejoinders, Sur-rejoinders and a Counter-manifestation have also been presented.

In the meantime, an electoral protest (Election Case No. 88-505) was filed by Reynaldo Salvador, a candidate for Councilor in Las Pinas, before the Regional Trial Court (RTC) of Makati, Branch 137. Acting thereon, Presiding Judge Santiago Ranada, Jr. scheduled the verification of the tally sheets and the opening of seven (7) ballot boxes relevant to the protest. Accordingly, the ballot boxes were transferred from the COMELEC Main Office to the RTC, Makati.

Believing that the opening of said ballot boxes would adversely affect the outcome of this Petition, petitioners prayed before this Court for a Restraining Order enjoining Judge Ranada from enforcing his aforesaid Order.

On 20 September 1988, this Court ordered "that Status Quo be maintained in this case by not opening the ballot boxes which is scheduled on September 22, 1988 before Judge Santiago Ranada until further orders from this Court and after the Court receives aforesaid comment of the Solicitor General on the main petition and on said motion for issuance of a temporary restraining order" (p. 174, Rollo).

It also appears that on 1 September 1988 Rustico Antonio and nine (9) other defeated UNIDO candidates for Councilors of Las Pinas filed another Petition for Certiorari and Mandamus before this Court, docketed as G.R. Nos. 84678-79, against the COMELEC, the Las Pinas Board of Canvassers and the proclaimed councilors seeking the nullification of the same COMELEC Decision (2nd Division) and Resolutions (en banc) sought to be set aside in G.R. Nos. 84462-63. On 13 December 1988, upon motion duly filed in G.R. Nos. 84678-79 by Rustico

Antonio, et al, this Court ordered consolidation of all said cases considering that the issues raised "are similar and/or identical."

Petitioners' attribution of errors to the COMELEC reads:

I

"THE RESPONDENT COMELEC COMMITTED A SERIOUS ERROR AND A GRAVE ABUSE OF DISCRETION IN COMPLETELY DEPRIVING PETITIONERS OF THEIR BASIC, FUNDAMENTAL AND CARDINAL RIGHTS TO DUE PROCESS WHEN IT UPHELD THE VALIDITY OF THE CANVASSING OF ELECTION RETURNS CONDUCTED BY RESPONDENT MUNICIPAL BOARD OF CANVASSERS AT THE COMELEC MAIN OFFICE IN MANILA;

II

"THE RESPONDENT COMELEC COMMITTED A SERIOUS ERROR AND A GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE EVIDENCE PRESENTED BY PETITIONERS TO SUBSTANTIATE THEIR ELECTION CHARGE ARE NOT CLEAR, SUFFICIENT AND CONVINCING;

III

"THE RESPONDENT COMELEC SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT FOUND THAT THE CHARGES OF PETITIONERS OF TAMPERED, PADDED AND SPURIOUS ELECTION RETURNS HAVE NOT BEEN PROVED WITH SUFFICIENT AND CONVINCING EVIDENCE AND THAT THE ELECTION RETURNS CANVASSED WERE TAMPERED WITH, FRAUDULENT AND SPURIOUS;

IV

"THE RESPONDENT COMELEC SERIOUSLY ERRED AND COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE ALLEGATIONS IN ATTY. PATERNO LUBATON'S AFFIDAVIT, ONE OF THE COUNSEL OF THE PETITIONERS, REGARDING THE FRAUD, IRREGULARITIES AND ANOMALIES DURING THE CANVASSING PROCEEDINGS WERE ALL GENERALITIES THAT THE DENIAL BY THE BOARD OF CANVASSERS OF THEIR OBJECTIONS TO THE PROCEEDINGS CAN NO LONGER BE RAISED BEFORE THE RESPONDENT COMELEC;

V

"THE RESPONDENT COMELEC SERIOUSLY ERRED AND COMMITTED A GRAVE ABUSE OF DISCRETION IN FINDING THAT THE ALLEGED FAILURE OF PETITIONERS TO OBJECT TO SPECIFIC ELECTION RETURNS AT THE CANVASSING BOARD LEVEL IS FATAL TO PETITIONERS' CASE; and

VI

"THE PROCLAMATION OF CANDIDATE ROSALINO RIGUERA DESPITE THE PENDENCY OF THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS BEFORE THE RESPONDENT COMELEC WAS HASTY AND IN CONTRAVENTION OF ELECTION LAW AND RULES, HENCE, A NULLITY." (pp. 17-19, Rollo)

We find the Petitions without merit and accordingly dismiss them.

I. Petitioners contend that the canvass proceedings in the COMELEC Central Office were illegal for having been made without prior notice to them as to the date and time of canvassing for which reason they left the proceedings. They claim that their counsel was present at the COMELEC Main Office not for purposes of the canvassing on 2 February 1988 but only to accompany the transfer of the election returns and ballot boxes; that they had asked for the postponement of the canvassing for the following day as they had no watchers, tabulators

and election paraphernalia, but that postponement was precipitately denied, by reason of which they were deprived of their basic and fundamental right to due process.

The transfer of the canvassing from Las Pinas to the COMELEC Main Office in Manila was at petitioners' instance. The full text of the letter from the Municipal Board of Canvassers granting their request reads:

"Feb. 2, 1988

"The Unido Party

Las Pinas, M.M.

"Please be informed that as per order of the Commission on Elections dated 29 January 1988 the venue of the Canvass of Election Returns in the Municipality of Las Pinas will be transfer (sic) to the COMELEC Central Office at Intramuros Manila this afternoon at 1:00 P.M. February 2, 1988.

"Note that we need your representative to accompany us in transferring the remaining election returns in the Central Office." (Annex "E", supra, p. 74, Rollo)

The letter having clearly referred also to transfer of "the venue of the canvass," petitioners cannot justifiably claim that notice was lacking or that said notice was meant only for the transfer of election returns. If petitioners' representatives were absent during the canvassing it was because they had opted to leave the proceedings for reasons of their own. No grave abuse of discretion can be attributed to the COMELEC, therefore, in upholding the validity of the canvassing at its Main Office.

At any rate, when petitioners objected to the canvassing held by the Board at the COMELEC Main Office for alleged lack of prior notice, it actually contested its proceedings. The Board, by continuing with the canvass, in effect overruled the objections. Under Section 244 of the Omnibus Election Code, the proceedings of the Board having been contested, petitioners should have appealed the matter within five (5) days from the time the contested ruling or proceeding was held. As found by the COMELEC, however, said appeal was not made within the reglementary period.

Errors II, III, and IV may be considered jointly.

To substantiate their charge of anomalies and irregularities including the allegations that many election returns were canvassed more than once; that ghost precincts were credited with election returns, and that election returns were tampered with, padded and were spurious, petitioners relied on the Affidavit of Atty. Florencio Dalupang, their own Head Watcher/Representative. Petitioners claim that the totality of the circumstances recited in that Affidavit reveal a "clear pattern of anomalous acts and that the Affidavit detailed with particularity the illegalities committed, as well as the individual precincts where the anomalies existed; and that said Affidavit meets the standard of substantial evidence.

petitioners likewise submitted the Affidavit of Atty. Paterno Lubaton, one of petitioners' lawyers, which they claim showed in detail all the fraud, irregularities and anomalies concerning the election returns before and during the canvassing of the returns first in Las Pinas and later at the COMELEC main office. Petitioners claim that the latter part of the Affidavit also detailed the "patently partial and biased actuations of the Board of Canvassers, especially its Chairman." Petitioners further decry the fact that no hearing was conducted by the Second Division of the COMELEC where petitioners could have presented the affiants as their witnesses.

Obviously, the evidence relied upon mainly by petitioners to support their charges of fraud and irregularities in

the election returns and in the canvassing consisted of Affidavits prepared by their own representatives. The self-serving nature of said Affidavits cannot be discounted. As this Court has pronounced, reliance should not be placed on mere affidavits (*Pimentel, Jr. vs. COMELEC*, 140 SCRA 126, 148).

Aside from said sworn statements, the records do not indicate any other substantial evidence that would justify the exclusion of election returns in the canvassing for being fraudulent in character or a declaration that the proceedings wherein the returns were canvassed were null and void. The evidence presented by petitioners is not enough to overturn the presumption that official duty had been regularly performed (Section 5[m], Rule 131). In the absence of clearly convincing evidence, the election returns and the canvassing proceedings must be upheld. A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof (*Estrada vs. COMELEC*, 21 SCRA 1514, 1519).

Nor can COMELEC be faulted for merely requiring the parties to submit their respective Memoranda in support of their respective positions. The requirement under Section 246 of the Omnibus Election Code is that the parties be notified and heard. Petitioners were so notified. They were also given an opportunity to submit evidence in support of their allegations. They were required to submit a Memorandum in amplification of their position. Such procedure is fair, valid and acceptable and is consistent with the summary character of proceedings in election cases. As held in *Alonto vs. COMELEC* (22 SCRA 878), the policy of election laws is that pre-proclamation cases should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.

Moreover, the issue as to whether the election returns objected to by petitioners are fraudulent in character, tampered with, or spurious, clearly necessitates factual determinations on matters within the exclusive function of the Commission.

V. Petitioners claim that the COMELEC seriously erred and gravely abused its discretion in ruling that they had failed to object to specific election returns at the canvassing Board level because they did interpose written objections to the Canvassing Board. In the same breath they allege, however, that "they could not have intelligently and effectively registered their objections during the proceedings as the defects, anomalies and irregularities were not apparent or noticeable on the face of the election returns" (p. 42, Rollo). These inconsistent assertions cast doubts on the credibility of petitioners' allegations.

And even assuming that the alleged failure of petitioners to object to specific election returns at the canvassing board level is not fatal to their cause because Section 241 of the Omnibus Election Code allows them to bring their case directly to the COMELEC, the fact remains that the latter body passed upon petitioners' allegations and charges concerning the election returns and the canvassing proceedings, and the verdict of the poll body was that the charges are either unsubstantiated or mere generalities, taking note of the self-serving nature of the affidavits petitioners presented as evidence to support their charges.

VI. True, candidate Rosalino Riguera was proclaimed soon after the promulgation of the Decision of the COMELEC Second Division of 25 March 1988. It cannot be denied, however, that the Board of Canvassers has the legal obligation, after canvass of the returns, to proclaim the elected candidates (*Abes vs. COMELEC*, 21 SCRA 1252). The duty of the Board to so proclaim is ministerial after the mechanical or mathematical act of counting the votes cast has been accomplished. Neither should it be lost sight of that the Board proclaimed the winners pursuant to the COMELEC Decision dated 25 March 1988 ordering the board "to reconvene, complete the canvass if not yet completed, and proclaim the winning candidates . . ." The proclamation, therefore, was in compliance with that directive. The Motion for Reconsideration filed by petitioners was dated 29 March 1988 (p.

126, Rollo) while the proclamation was made right after the promulgation of the COMELEC Second Division's Decision on 25 March 1988. Hence, petitioners' allegation that the proclamation was improper because it was made during the pendency of a Motion for Reconsideration suffers from inaccuracy.

Finally, it must be stressed that private respondent Rosalino Riguera and the other winning candidates had already been proclaimed and had assumed office. The Petitions below had ceased to be pre-proclamation controversies. As held in *Padilla vs. COMELEC* (137 SCRA 424) and in a number of cases, a pre-proclamation controversy is no longer viable at this point of time and should be dismissed, the proper remedy being an electoral protest before the proper forum. Instead of the submission of mere affidavits, the parties would be able to present witnesses subject to the right of confrontation. Recourse to such a remedy would settle the matters in controversy conclusively and once and for all.

WHEREFORE, the instant Petitions are hereby **DISMISSED** for petitioners' failure to demonstrate that public respondent COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in issuing the questioned Decision and Resolutions.

The status quo Order directed to the Regional Trial Court of Makati, Branch 137, restraining the said Branch from opening the seven (7) ballot boxes in connection with the electoral protest filed before it by Reynaldo Salvador is hereby **LIFTED**.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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