

**FLORENCIO SALVACION, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROMEO YSIDORO, RESPONDENTS.***G.R. Nos. 84673-74. February 21, 1989*

Ponente: GANCAYCO, J.

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**GANCAYCO, J.**

The facts of this case are undisputed. In the postponed election that was held on February 1, 1988 in the Municipality of Leyte, Leyte, after all election returns from the various precincts were canvassed, objections were raised to the inclusion and/or exclusion of four (4) precincts, namely: the election returns from Precinct Nos. 12, 13, 14 and 26. Petitioner and private respondents were candidates for election as mayor. The Municipal Board of Canvassers conducted a formal investigation of the incidence relative thereto and after twelve (12) consecutive days of trial, the Board issued an order dated February 21, 1988, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Board reiterates its unanimous ruling to include, as it hereby includes, in the canvass the election returns of Precinct Nos. 14, 26 and 13; and further rule (sic) to exclude, as it hereby excludes, the election return of Precinct No. 12 from the canvass. (Italics supplied.)"[1]

On February 22, 1988, private respondent filed with public respondent Commission on Elections (COMELEC) a notice of appeal from said ruling as to the exclusion of the election return from Precinct No. 12. Petitioner also appealed the ruling as to the inclusion in the canvass of the election returns from Precincts Nos. 13, 14 and 26.

Both appeals were heard by the First Division of public respondent. On May 30, 1988, a Resolution was promulgated by said Division upholding the ruling of the Municipal Board of canvassers and directing it to reconvene and to complete the canvass of election returns from all the Precincts of Leyte, Leyte excluding therefrom the election return from Precincts No. 12 and including therein the election returns from Precincts Nos. 13, 14 and 26; and on the basis of such completed canvass, proclaim all the winning candidates for all the local elective offices of the Municipality of Leyte in the election held thereat on February 1, 1988.

On June 3, 1988, the Municipal Board of Canvassers of the Municipality of Leyte, Leyte, after due notice to all interested parties, reconvened and implemented said Resolution as a result of which the official number of votes obtained by the parties was as follows:

Petitioner Salvacion - 3,715 votes

Respondent Ysidoro - 3,626 votes.

Said Board then immediately proclaimed petitioner as the duly elected mayor of said municipality. Petitioner took his oath of office and assumed the position of Municipal Mayor of Leyte, Leyte on the same day.

Private respondent filed a motion for reconsideration with the public respondent en banc to which an opposition was filed by petitioner. On June 16, 1988, a hearing was held after which the parties were given ten (10) days within which to file their respective memoranda, and thereafter the case was considered submitted for resolution.

On July 21, 1988, public respondent en banc promulgated its resolution reversing the resolution of the First Division by ordering the inclusion in the canvass the election return from Precinct No. 12.[2] Attached thereto was the "Vote and Opinion" of Commissioner Dario Rama rendered on June 16, 1988.[3] Commissioner Leopoldo L. Africa wrote a separate dissenting opinion concurred in by Commissioner Alfredo Abueg.

Petitioner filed a motion for reconsideration of said resolution. On August 23, 1988, public respondent en banc promulgated its resolution en banc denying the motion and affirming in toto its resolution dated July 21, 1988. Three members dissented.[4]

Hence the herein petition for certiorari and prohibition with preliminary injunction and a prayer for the issuance of a temporary restraining order wherein it is alleged that public respondent committed a grave abuse of discretion in rendering its Resolution dated August 27, 1988. Petitioner seeks to prohibit public respondent from enforcing said resolution.

Petitioner contends that public respondent cannot disturb the findings of the Municipal Board of Canvassers and of its First Division there being no showing of grave abuse of discretion on their part. Petitioner adds that the finding made by the Board regarding the election return of Precinct No. 12 is that, "it was prepared under circumstances of duress, threats, coercion and intimidation" so that the Board acted correctly in not counting any votes from said precinct. It is also pointed out that contrary to the requirements of the law that the election return shall be accomplished simultaneously or as the ballots are counted by the Board of Election Inspectors,[5] the questioned election return was actually prepared in another place, in a "shop" after all the ballots were counted by said Board of Election Inspectors in another place.

Petitioner invoke the dissenting opinion of Commissioner Africa that a "return prepared under duress intimidation and coercion is by reason of these circumstances, no return at all, without regard to the seriousness or authenticity thereof."

Moreover, petitioner argues that inasmuch as he had already been lawfully proclaimed and had assumed office, it was patently erroneous and highly irregular for public respondent to now amend or alter the result of the election as announced and implemented by the Municipal Board of Canvassers. Only through the intervention of the competent court in a regular election contest can said results be altered or amended.[6]

Petitioner opines that the vote of Commissioner Rama is void inasmuch as the same was rendered immediately after the hearing of June 16, 1988 and before the memoranda of the parties were submitted thereby showing that he prejudged the case. Petitioner also observed that private respondent admitted the irregularity in the preparation of the election return of Precinct No. 12 and its nullity when in his Notice of Appeal he declared he was agreeable to the holding of a special election for said precinct. And that the least public respondent should have done following Section 235 of the Omnibus Election Code was to order the Board of Election Inspectors to recount the votes in Precinct No. 12, if only to ascertain the true results. Finally, it is averred that private respondent failed to file his statement of contributions and expenditures as required under Section 107 of the Omnibus Election Code and Resolution No. 1939 of public respondent dated November 16, 1987, so that private respondent has no lawful right to the position for which petitioner was proclaimed.

The petition is devoid of merit.

In the questioned Resolution of public respondent dated August 23, 1988, its Resolution No. 88-783 promulgated on March 25, 1988 is reproduced:

RESOLVED, as it hereby resolves to suspend the execution/implementation of any decision of a Division upon the filing of a motion for the reconsideration thereof. Provided, that the said motion for reconsideration was

filed on time. (p. 29, Rollo)

Thus, it ruled that as private respondent's motion for reconsideration of the Resolution of the First Division of public respondent of May 30, 1988 was filed within five (5) days from his receipt of the same, the execution of said Resolution on the matter of the winning candidate for Mayor was suspended. The alleged proclamation of petitioner was declared invalid.

In the Resolution of the public respondent dated July 21, 1988, the following disquisition was made:

"The only issue to be resolved is the correctness of the ruling of the Municipal Board of Canvassers as sustained by the First Division to exclude from canvass the election returns pertaining to Precinct No. 12 as the ground that the same was prepared under duress, threats, intimidation or coercion.

We find for the petitioner.

While the statement of the legal doctrine on the board of canvassers' authority to excludes from canvass election returns which are prepared under conditions of coercion or threats is correct, the First Division failed to apply a crucial part of the doctrines that the circumstances must affect the regularity or the genuineness of the contested returns. In other words, the conditions of threat intimidation, duress and coercion must have resulted in the preparation of election returns that falsifies the true results of the voting at the precinct level, as for example, candidate A obtained five (5) votes in a precinct, and by reason of force or intimidation the Board of Election Inspectors was compelled to make an entry of fifty (50) votes for such candidate. If the election returns reflects the results of the voting at the precinct level, any coercion and intimidation that may have been committed in the course of its preparation may give rise to legal, including criminal liability but will not justify the exclusion of the returns.

This is quite clear from the ruling in *Espino v. Zaldivar*, L-22325. December 11, 1967, 21 SCRA 1204, cited, by the First Division, where the Supreme Court held:

We do not discern in the law a purpose to throw the burden on courts, where it is patent - as in the case here that tampering of the returns occurred after they had left the hands of the election inspectors, just to pave the way for the proclamation of a candidate in whose favor falsification was resorted to. To tie up the hands of the board of canvassers in the situation here presented is to wink at a brazen form of wrong-doing to subvert the people's will, and in mockery crown the loser with victory. Correctly then, canvassers are given quasi-judicial power to determine whether the return is genuine and to disregard one which is obviously a forgery. Along parallel lines, this court in *Nacionalista Party v. Commission on Elections*, 85 Phil 149, 157, 158, declared that the canvassing board could accept as correct those returns transmitted to it "which are in due form", that they must "be satisfied of the genuineness of the returns—namely, that the papers presented to them are not forged and spurious" and that "where the returns are obviously manufactured xxx the board will not be compelled to canvass them", pp. 1212-1213. (Italics supplied.)

x x x x.

*Sinsuat v. Pendatun*, supra, also affirmed the propriety of rejection of election return whose entries were obviously false for being statistically improbable in accordance with the tests established by *Lagumbay v. Commission on Elections*, L-25444, January 31, 1986, 16 SCRA 175.

In both cases, the entries in the election returns, rather than the external circumstances that attended their preparation, were the decisive factors that brought about the exclusion of the returns.

Great reliance was placed by the Board of Canvassers upon the testimony of Mrs. Elisa Dagasdas, Chairman of the Board of Election Inspectors for Precinct 12, given in the course of the seven (7) day hearings that the Municipal Board of Canvassers conducted in connection with objections raised against four (4) contested election

returns, including that from Precinct No. 12.

We reproduced her testimony made on different dates on the alleged intimidation and coercion perpetrated upon the Board of Election Inspectors:

X X X X X

"It is thus clear that while partisans of petitioner used some threatening and harassing language, this did not at all affect the correctness of the counting of votes cast in Precinct No. 12 or the correct and exact recording of the votes in said precinct in the election returns. In fact the testimony of the principal witness Mrs. Dagasdas is to the effect that when she signed and thumbmarked each page of the election returns, there was no interference whatsoever from any source and the entries were all correct. There is therefore no basis for the exclusion of the returns from Precinct No. 12." (Italics supplied.)[7]

We agree. While it may be true that duress, threats, intimidation or coercion attended the preparation of the election return for Precinct No. 12, there is no showing that the same affected the regularity or the genuineness of the contested election return. There is no evidence presented to public respondent that the election return in question was falsified in such a way that the true results of the voting had been altered. The court is bound by the finding of public respondent as there is no showing that it committed a grave abuse of discretion.

It appearing that the questioned Resolution of public respondent had already been implemented and the private respondent had been proclaimed as the elected mayor of the Municipality of Leyte, Leyte by the inclusion of the election return for Precinct No. 12 and that he has taken his oath of office and assumed the duties of said Office the remedy of the petitioner is not a pre-proclamation contest but an electoral protest filed at the proper time before the competent court.

WHEREFORE, the petition is DISMISSED for lack of merit. No costs.

**SO ORDERED.**

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

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[1] Page 6, Rollo.

[2] Annex G to petition.

[3] Annex G-1 to petition.

[4] Annex A to petition.

[5] Citing Section 210. Omnibus Election Code.

[6] Citing *De Leon vs. Imperial*, G.R. No. L-5758, March 30, 1954, 94 Phil. 680.

[7] Pages 85 to-87 and 96, Rollo.

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