

RAMON D. DUREMDES, PETITIONER, VS. COMMISSION ON ELECTIONS, PROVINCIAL BOARD OF CANVASSERS OF ILOILO, LAKAS NG BANSA AND CIPRIANO B. PENAFLORIDA, RESPONDENTS.

G.R. Nos. 86362-63. October 27, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

At stake in this election controversy is the Vice-gubernatorial position of the Province of Iloilo.

The chronology of the facts and of the case follows:

1. In the 18 January 1988 elections, petitioner Ramon D. DUREMDES, private respondent Cipriano B. PENAFLORIDA, and Rufino Palabrica ran for the office of Vice-Governor of the Province of Iloilo.

DUREMDES was the official candidate of the Literal Party (LP) and PDP-Laban coalition, while PENAFLORIDA was the official candidate of the Lakas ng Bansa (Lakas).

2. During the canvass of votes by the Provincial Board of Canvassers of Iloilo, which lasted from 20 January to 31 January 1988, PENAFLORIDA objected verbally to some 110 election returns from various precincts, which he followed up with written objections. The Board overruled the same in separate Orders either because they were not timely filed or that the formal defects did not affect the genuineness of the returns, or that in case of allegations of tampering, no evidence was presented to support the charge. The Board thus ordered the inclusion of the questioned election returns. This was reflected in a separate column under the heading "Contested/Deferred Votes" in the "Certificate of Votes of Candidates" (Form No. 13-A, Annex "K," Petition, p. 60 Rollo).

3. Under date of 29 January 1988, PENAFLORIDA and the Lakas filed with the COMELEC an "Appeal by Way of a Petition for Review," from the aforesaid rulings of the Board pleading, among others, for the exclusion of the questioned election returns and for PENAFLORIDA's proclamation as the elected Vice-Governor of Iloilo (Annex "L," *ibid.*, p. 62, Rollo).

4. On 30 January 1988, PENAFLORIDA filed, also with the COMELEC, a Petition seeking the annulment of election returns and the suspension of the proclamation of any candidate, docketed as SPC Case No. 88-448 (Annex "Q," *ibid.* p. 96, Rollo).

5. On 31 January 1988, in a "Certification of Canvass of Votes and Proclamation of the Winning Candidates for Provincial Offices" (Form No. 26, Annex "N," *ibid.*, p. 84. Rollo), the Board proclaimed DUREMDES as the duly elected Vice-Governor, together with the duly elected Governor and only eight (8) members of the Sangguniang Panlalawigan of Iloilo. Certified to was that DUREMDES had garnered 157,361 votes (the number of his uncontested votes) in 2,377 precincts.

Apparently, the Board had made the proclamation upon DUREMDES' "Manifestation and Motion," dated the same day, 31 January 1988, that "the contested returns will not adversely affect the uncontested results of the

election (See Section 245. Omnibus Election Code) x x x because of the absolute certainty that candidate Ramon Duremdes has obtained the highest number of votes, whether or not the contested votes were excluded."

6. The tabulated data in the Certificate of Votes of Candidates (Annex "K," Petition) is reproduced below in so far as the protagonists herein are concerned, with the totals and/or remainders supplied by us:

"Non-Contested"

"Contested/Deferred Votes"

"Grand Total"

DUREMDES

157,361

13,373

171,734

PENAFLOIDA

- 150,075

+ 4,427

- 154,502

7,286

17,800

17,232

6. On 2 February 1988, DUREMDES took his oath and assumed office (Annex "O," *ibid.*).

7. Also on 2 February 1988, an "Intervention with Motion to Dismiss", was filed by DUREMDES and two other candidates for the Sangguniang Panlalawigan, seeking the denial of PENAFLOIDA's Petition for Annulment before the COMELEC, for lack of merit.

8. On 12 February 1988, Perla S. Zulueta (also an Intervenor in SPC Case No. 88-448), filed SPC Case No. 88-653 pleading that she be proclaimed as one of the winning candidates in the 10-member Iloilo Sangguniang Panlalawigan.

9. On 8 March 1988, PENAFLOIDA filed an Amended Petition challenging, in addition, the legality of the composition of the Provincial Board of Canvassers, "a ground just known lately," and praying for a recanvassing of the objected election returns.

10. On 4 April 1988, the COMELEC granted a Motion for the consolidation of SPC Case No. 88-653 with SPC Case No. 88-448.

11. On 20 June 1988, PENAFLORIDA filed with the COMELEC a Supplemental Petition ("in amplification of the Amended petition for verification and correction") charging, among others, that DUREMDES was proclaimed "on the basis of increased votes in the unofficial and separately tallied Statement of Votes, more than what was actually reflected in the Election Returns."

12. On 20 September 1988, the COMELEC (Second Division), after hearing, issued a Per Curiam Resolution sustaining the rulings of the Board of Canvassers on PENAFLORIDA's objections, as well as DUREMDES' proclamation. The decretal portion of that Resolution reads:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

"1. Sustaining and affirming the rulings of the Provincial Board of Canvassers of Iloilo on the objections interposed by petitioner on the inclusion in the canvass of the questioned returns;

"2. Sustaining the proclamation of the winning candidate for Vice-Governor;

"3. Directing the Provincial Board of Canvassers to immediately reconvene and to include in the canvass the questioned election return; and thereafter to proclaim the winning candidates for the Ninth (9th) and Tenth (10th) slots for the Sangguniang Panlalawigan of the Province of Iloilo; and

"4. Directing the Law Department of the Commission to conduct a thorough investigation into the matter of the reported falsification of the transcripts of the stenographic notes of Stenographer Nelly C. Escana to determine the parties responsible therefor and to cause the filing of the necessary criminal complaint against those probably guilty thereof as the evidence may warrant and if the assistance of the National Bureau of Investigation or any other investigative arm of the Government for that purpose is necessary, to request for such assistance.

"No pronouncement as to costs." (pp. 137-138, Rollo) (Italics supplied).

13. On 27 September 1988, PENAFLORIDA moved for reconsideration, whereupon, the Second Division certified and elevated the case to the COMELEC en banc.

14. On 4 October 1988, PENAFLORIDA filed a Motion to Suspend Implementation of the Second Division Resolution of 20 September 1988 pending resolution of his Motion for Reconsideration, which suspension was granted by the COMELEC on 5 October 1988.

15. In the meantime, on 10 December 1988, the Board reconvened for the purpose of proclaiming the 9th and 10th placers for the Sangguniang Panlalawigan of Iloilo. It was at the scheduled promulgation of 15 December 1988 that the Chairman of the Board openly admitted the existence of discrepancies between the entries of votes in the Statement of Votes and the votes reflected in the questioned election returns (p. 6, COMELEC en banc Decision).

16. On 12 January 1989, the COMELEC en banc rendered the assailed Per Curiam Decision with the following disposition:

"WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered:

"1. Affirming the following parts of the dispositive portion of the Resolution of the Second Division promulgated on 20 September 1988:

‘1. Sustaining and affirming the rulings of the Provincial Board of Canvassers of Iloilo on the objections interposed by petitioner on the inclusion in the canvass of the questioned returns.

'2. Directing the Provincial Board of Canvassers to immediately reconvene and to include in the canvass the questioned election returns; and thereafter to proclaim the winning candidates for the Ninth (9th) and Tenth (10th) slots for the Sangguniang Panlalawigan of the Province of Iloilo; and

'3. Directing the Law Department of the Commission to conduct a thorough investigation into the matter of the reported falsification of the transcripts of the stenographic notes of Stenographer Nelly Escana to determine the parties responsible therefor and to cause the filing of the necessary criminal complaint against those probably guilty thereof as the evidence may warrant, and if the assistance of the National Bureau of Investigation or any other investigative arm of the Government for that purpose is necessary, to request for such assistance.'

"2. Reversing that part of the dispositive portion which reads:

'2. Sustaining the proclamation of the winning candidate for Vice-Governor and Setting aside the proclamation of Intervenor Ramon Duremdes as Vice-Governor of Iloilo.'

"3. Declaring as null and void the proclamation of Intervenor Ramon Duremdes;

"4. Directing the Provincial Board of Canvassers of Iloilo to immediately reconvene and to include in the canvass of votes for Vice-Governor the questioned/contested returns. for that purpose, the Board shall make a formal tabulation of the results of the contested returns and shall prepare a new Statement of Votes and Certificate of Canvass; and

"5. Directing the Provincial Board off Canvassers to thereafter proclaim the winning candidate for Vice-Governor of Iloilo" (pp. 38-40, Rollo). (Italics supplied)

His proclamation having been nullified by the COMELEC, DUREMDES avails of this recourse.

On 17 January 1989, the Court ordered that the status quo existing prior to the promulgation of the above COMELEC en banc Decision be maintained until further orders.

DUREMDES faults the COMELEC with grave abuse of discretion for having disregarded the well-settled doctrines (1) that matters of protest, objections or issues not originally raised before the Board of Canvassers upon the opening of the returns, cannot be raised for the first time before the COMELEC; and (2) that after a proclamation has been made, a pre-proclamation controversy is no longer viable, the proper recourse being an election protest.

It is true that, before the Board of Canvassers, PENAFLOIDA did not raise in issue the matter of the discrepancies between the number of votes appearing in the Statement of Votes and that in the Election Returns. As a matter of fact that matter is not even listed as one of the issues that may be raised in pre-proclamation controversies under Section 243 of the Omnibus Election Code.[1]

Nonetheless, as aptly stated in the assailed COMELEC en banc Decision:

"Indeed, errors in the Statement of Votes do not indubitably appear to be issues that may be raised in a pre-proclamation controversy under Section 243 of the Omnibus Election Code. In this respect, the law is silent as to when the same may be raised. We are, however, not unmindful of the fact that the statement of votes supports the certificate of canvass and shall be the basis of proclamation (Sec. 231, paragraph 2). Consequently, any error in the Statement of Votes would affect the proclamation made on the basis thereof. The true will of the electorate may thus be not fully and faithfully reflected by the proclamation" (at pp. 7-8).

We find no grave abuse of discretion in the foregoing COMELEC pronouncement. The Statement of Votes is a tabulation per precinct of the votes garnered by the candidates as reflected in the election returns. Its preparation

is an administrative function of the Board of Canvassers. As pointed out by the Solicitor General, "it is a purely mechanical act of the Board of Canvassers in the performance of which the Commission has direct control and supervision," pursuant to Section 227 of the Omnibus Election Code.

"Sec. 227. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers.

xxx xxx xxx"

By virtue of that power, added to its overall function to "decide all questions affecting elections" (Article IX[C] Section 2[3], 1987 Constitution), a question pertaining to the proceedings of said Board may be raised directly with the CCMELEC as a pre-proclamation controversy.

"Sec. 241. Definition. - A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the exploration, transmission, receipt, custody and appreciation of the election returns" (Omnibus Election Code). (*Italics supplied*).

When so elevated, the COMELEC acts in the exercise of its original jurisdiction for which reason it is not indispensable that the issue be raised before the Board of Canvassers during the canvassing. The COMELEC is not discharging its appellate jurisdiction under Section 245 of the Omnibus Election Code, which has to do with contests regarding the inclusion or exclusion in the canvass of any election returns, with a prescribed appellate procedure to follow.[2]

Cognizance may also be taken of the fact that at the time PENAFLORIDA filed the Supplemental Petition on 20 June 1988, there was no clear-cut rule on the matter. It was only in the COMELEC Rules of Procedure, which took effect on 15 November 1988, wherein it was provided under subparagraph (2), paragraph (a), Section 4 of Rule 27, that the matter of correction of the statement of votes may be the subject of a pre-proclamation case which may be filed directly with the Commission. Nonetheless, there should be no question, considering the aforequoted Section 241 in relation to Section 227 of the Omnibus Election Code, that the issue is one that can be raised directly with the COMELEC. It is a procedure that best recommends itself specially considering that the Statement of votes is a vital component in the electoral process. It supports the Certificate of Canvass and is the basis for proclamation.

"SEC. 231. Canvass by the board,-

"x x x xxx"

"The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement, of the votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay. Failure to comply with this requirement shall constitute an election offense.

"xxx x x x "

DUREMDES also calls attention to Rule 13, Section 1 (g) of the COMELEC Rules of Procedure, which does not allow the filing of supplemental pleadings. As stated heretofore, however, these Rules took effect only on 15 November 1988, or five months after the Supplemental Petition was filed. Said rule, therefore, cannot be given retroactive effect the legal truth being that laws of procedure may be retroactively applied provided no substantial rights are impaired (*Bernardo vs. Court of Appeals*, G.R. No. 30821, December 14, 1988).

That discrepancies exist between the entries in the Statement of Votes and that reflected in the questioned election returns, was openly admitted by the Chairman of the Board of Canvassers at the scheduled promulgation on 15 December 1988 of the 9th and 10th placers of the Sangguniang Panlalawigan (p. 6, COMELEC Decision). What is more, it is also admitted by the parties except that PENAFLOIDA assails the correctness of the Statement of Votes, while DUREMDES maintains its correctness but avers the possibility of the tampering of the questioned election returns (p. 7, *ibid.*).

Under the circumstances, therefore, and considering that any error in the Statement of Votes would affect the proclamation made on the basis thereof, and primordially, in order to determine the true will of the electorate, the COMELEC Decision ordering the Board of Canvassers to reconvene and prepare a new Statement of Votes and Certificate of Canvass should be upheld.

"The Commission on Elections has ample power to see to it that elections are held in a clean and orderly manner and it may decide all questions affecting the elections. It has original jurisdiction on all matters relating to election returns, including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to insure that the true will of the people is known. Such clerical error in the statement of votes can be ordered corrected by the COMELEC" (*Villaroya vs. Comelec*, L-79646-47, 13 November 1987, 155 SCRA 633).

It is DUREMDES' further submission that his proclamation could not be declared null and void because a pre-proclamation controversy is not proper after a proclamation has been made, the proper recourse being an election protest. This is on the assumption, however, that there has been a valid proclamation. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation (*Agum vs. COMELEC*, L-28955, 28 May 1968, 23 SCRA 883).

DUREMDES' proclamation must be deemed to have been null and void. It was made on 31 January 1988 after PENAFLOIDA had filed with the COMELEC on 29 January 1988 an "Appeal by Way of a Petition for Review" from the rulings of the Board, and on 30 January 1988, a Petition for the annulment of election returns and the suspension of the proclamation of any candidate (SPC Case No. 88-448). The COMELEC had not resolved either Petition at the time the proclamation was made. Pursuant to Sections 245, *supra*, and 238 of the Omnibus Election Code, therefore, the Board of Canvassers should not have proclaimed any candidate without waiting for the authorization by the COMELEC. Any proclamation thus made is void *ab initio*.

"SEC. 238. Canvass of remaining or unquestioned returns to continue. - In cases under Sections 233, 234, 235 and 236 hereof, the board of canvassers shall continue the canvass of the remaining or unquestioned election returns. If, After the canvass of all the said returns, it should be determined that the returns which have been set aside will affect the result of the election, no proclamation shall be made except upon orders of the Commission after due notice and hearing. Any proclamation made in violation hereof shall be null and void."

In this case, with 110 contested election returns and 25,930 ballots questioned (COMELEC Resolution, September 20, 1988, p. 4, p. 115. Rollo), DUREMDES' margin of 7,286 non-contested votes could very well be offset.

Moreover, DUREMDES' proclamation was made on the basis of an official canvass of the votes cast in 2,377 precincts only (Annex "N," Petition), when there were actually 2,487 precincts. The votes in 110 precincts, therefore, were not included, which is exactly the number of 110 election returns questioned by PENAFLOIDA. Further, DUREMDES was certified to have garnered 157,361 votes (*ibid.*), which number represents the non-contested votes only, and clearly excludes the totality of the "contested/deferred votes" of the candidates concerned.

DUREMDES' proclamation having been based on an incomplete canvass, no grave abuse of discretion can be ascribed to the COMELEC for directing the Provincial Board of Canvassers of Iloilo "to immediately reconvene and to include in the canvass of votes for Vice-Governor the questioned/contested returns." All the votes cast in an election must be considered because to disregard returns is in effect to disenfranchise the voters (*Mutuc vs. COMELEC*, L-28517, February 21, 1968, 22 SCRA 662). A canvass can not be reflective of the true vote of the electorate unless all returns are considered and none is omitted (*Datu Sinsuat vs. Pendatun*, L-31501, June 30, 1970, 33 SCRA 630).

Over and above all else, the determination of the true will of the electorate should be the paramount consideration.

"Election contests involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. . . Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate" (*Juliano vs. CA and Sinsuat*, 20 SCRA 808, 818-19, July 28, 1967).

WHEREFORE, absent any grave abuse of discretion on the part of respondent Commission on Elections, this Petition for Certiorari is hereby DISMISSED. The status quo Order heretofore issued is hereby ordered LIFTED. No costs.

SO ORDERED.

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

[1] SEC. 243. Issues that may be raise in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceeding of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

[2] SEC. 245. Contested election returns. - Any candidate, political party or coalition of political parties, contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under this article or in Sections 234, 235 and 236 of Article XIX shall submit their verbal objections to the chairman of the board of canvassers at the time the questioned return is presented for inclusion or exclusion, which objections shall be noted in the minutes of the canvassing.

The board of canvassers upon receipt of any such objections shall automatically defer the canvass of the contested returns and shall proceed to canvass the rest of the returns which are not contested by any party.

Within twenty-four hours from and after the presentation of a verbal objection, the same shall be submitted in

written form to the board of canvassers. Thereafter, the board of canvassers shall take up each contested return, consider the written objections thereto and summarily rule thereon. Said ruling shall be made orally initially and then reduced to writing by the board within twenty-four hours from the time the oral ruling is made.

Any party adversely affected by an oral ruling on its/his objection shall immediately state orally whether it/he intends to appeal said ruling. The said intent to appeal shall be stated in the minutes of the canvassing. If a party manifests its intent to appeal, the board of canvassers shall set aside the return and proceed to rule on the other contested returns. When all the contested returns have been ruled upon by it, the board of canvassers shall suspend the canvass and shall make an appropriate report to the Commission, copy furnished the parties.

The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party and any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.

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