

**BENJAMIN P. ABELLA AND SILVESTRE T. DE LA CRUZ, PETITIONERS,
VS. ADELINA INDAY LARRAZABAL, PROVINCIAL BOARD OF
CANVASSERS OF LEYTE AND COMMISSION ON ELECTIONS,
RESPONDENTS.**

G.R. Nos. 87721-30. December 21, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The Court has ordered the consolidation of G.R. Nos. 87721-30 and G.R. No. 88004 involving the same parties and the same election in 1988 for the office of provincial governor of Leyte. Challenged in these petitions for certiorari are the resolutions of the respondent Commission on Elections dismissing the pre-proclamation and disqualification cases filed by the herein petitioners against private respondent Adelina Larrazabal.

Petitioner Benjamin P. Abella was the official candidate of the Liberal Party for provincial governor of Leyte in the local election held on February 1, 1988. The private respondent is the wife of Emeterio V. Larrazabal, the original candidate of the Lakas ng Bansa-PDP-Laban who was disqualified by the Commission on Elections on January 18, 1988, for lack of residence.[1] On January 31, 1988, the day before the election, she filed her own certificate of candidacy in substitution of her husband.[2] The following day, at about 9:30 o'clock in the morning, Silvestre de la Cruz, a registered voter of Tacloban City, filed a petition with the provincial election supervisor of Leyte to disqualify her for alleged false statements in her certificate of candidacy regarding her residence.[3] This was immediately transmitted to the main office of the Commission on Elections, which could not function, however, because all but one of its members had not yet been confirmed by the Commission on Appointments. De la Cruz then came to this Court, which issued a temporary restraining order on February 4, 1988, enjoining the provincial board of canvassers of Leyte "from proclaiming Adelina Larrazabal as the winning candidate for the Office of the Governor in the province of Leyte, in the event that she obtains the winning margin of votes in the canvass of election returns of said province." [4] On March 1, 1988, the Commission on Elections having been fully constituted, we remanded the petition thereto "for appropriate action, including maintenance or lifting of the Court's temporary restraining order of February 4, 1988." [5]

In the meantime, petitioner Abella, after raising various verbal objections (later duly reduced to writing) during the canvass of the election returns, seasonably elevated them to the Commission on Elections in ten separate appeals docketed as SPC Nos. 88-627 to 88-627-I. Pending resolution of these cases, Abella intervened on March 7, 1988, in the disqualification case, docketed as SPC No. 88-546, and the following day filed a criminal complaint with the Law Department of the COMELEC charging the private respondent with falsification and misrepresentation of her residence in her certificate of candidacy.

On March 22, 1988, the public respondent consolidated the pre-proclamation and disqualification cases with the Second Division. On February 3, 1989, this Division unanimously upheld virtually all the challenged rulings of the provincial board of canvassers, mostly on the ground that the objections raised were merely formal and did not

affect the validity of the returns or the ballots, and ordered the proclamation of the winner after completion of the canvass.[6] On that same date, the disqualification case was also dismissed by a 2-1 decision, and the matter was referred to the Law Department for "preliminary investigation for possible violation of Section 74 of the Omnibus Election Code." [7]

The motion for reconsideration of the resolution on the pre-proclamation cases was denied by the COMELEC en banc on April 13, 1989, with no dissenting vote.[8] These cases are the subject of G.R. Nos. 87721-30, where we issued on April 18, 1989, another temporary restraining order to the provincial board of canvassers of Leyte "to CEASE and DESIST from resuming the canvass of the contested returns and/or from proclaiming private respondent Adelina Larrazabal Governor of Leyte."

The motion for reconsideration of the resolution on the disqualification case was also denied by the COMELEC en banc on May 4, 1989, but with three commissioners dissenting.[9] The dismissal of this case is the subject of G.R. No. 88004.

Our decision follows.

In G.R. Nos. 87721-30, the ruling of this Court is that the respondent Commission on Elections committed no grave abuse of discretion in its decision dated February 3, 1989, and in its en banc resolution dated April 13, 1989, denying reconsideration.

The petitioner contends that in refusing to consider the objections raised by him to 26 election returns (later reduced to 24) before the board of canvassers because the rulings thereon were not in writing, the COMELEC has effectively and illegally denied him the right to appeal through no fault of his.

The basis of such refusal is Section 245 of the Omnibus Election Code providing in part as follows:

Sec. 245. Contested election returns. - x x x.

x x x

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 oral 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.

It is clear from this provision that the board of canvassers is under the obligation to make a written ruling on the formal objections made by any of the parties, who may then appeal the same to the COMELEC. It is equally clear that the failure or refusal of the board of canvassers to discharge this obligation should not in any way prejudice the objecting party's right to elevate the matter to the COMELEC for proper review. Otherwise, all that a board of canvassers partial to one of the candidates has to do to favor him would be to refuse to make a written ruling on his opponent's objections and thereby prevent their review by the COMELEC.

In the case at bar, however, there does not appear to be any such prejudice. The issue is the refusal of the COMELEC to consider objections to 24 election returns on which the board of canvassers had not made a written ruling. But it would seem that, strictly speaking, no ruling was necessary, or even proper. By the petitioners' own

contention "in all those 24 returns, the Christian name, nickname or maternal surname of private respondent's husband was used with her Christian name or nickname which, as we will show at length infra, did not constitute a valid vote for private respondent. If so, the total 1,912 votes in these returns credited for private respondent should be discounted." [10] This matter was obviously beyond the competence of the board of canvassers to resolve. Neither was it cognizable in a pre-proclamation controversy before the COMELEC as defined in Section 243 of the Omnibus Election Code.

This provision reads as follows:

Sec. 243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings 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.

The inclusion or exclusion in the canvass of certain election returns where votes allegedly cast for Emeterio Larrazabal were counted for his wife is an issue appropriate in an election contest and not in a pre-proclamation controversy. And it is also immaterial that, as also contended, the inclusion of such votes would affect the over-all results of the election and swing it in his favor. The accepted rule is that as long as the returns appear to be authentic and duly accomplished, the board of canvassers cannot look beyond them to verify allegations of irregularities in the casting or the counting of the votes. [11] These issues cannot be resolved by the board of canvassers. A long line of decisions has established the doctrine that the board of canvassers has only the ministerial task of tallying the votes as reported in the election returns and cannot exercise the judicial power of deciding an election contest. [12]

Pre-proclamation controversies are summary in nature. According to Section 246 of the Omnibus Election Code:

Sec. 246. Summary proceedings before the Commission. - All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court.

And the reason for this rule is obvious. As we stressed in *Alonto v. COMELEC*, [13] "the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible." That is why such questions as those involving the appreciation of the votes and the conduct of the campaign and the balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.

The Court cannot accept the petitioner's averment that the public respondent made short shrift of his objections and resolved them arbitrarily, without considering the evidence submitted. We see no such arbitrariness. On the contrary, we find that the questioned resolution of the COMELEC en banc, which unanimously affirmed the unanimous decision of its Second Division, was based on the facts as assessed by the public respondent in the light of the applicable election laws and jurisprudence. The basic decision of the Second Division was 33 pages

long and dealt in detail with the specific objections, the rulings of the board of canvassers, and the action thereon of the COMELEC.[14]

In *Aratuc v. Commission on Elections*,^[15] speaking of the need to preserve the "independence and all the needed concomitant powers" of the Commission on Elections, Justice Antonio P. Barredo declared that "it is but proper that the Court should accord the greatest measure of presumption of regularity to its course of action x x x to the end that it may achieve its designed place in the democratic fabric of our government." There is no reason for not applying that policy in the case before us.

The contention that the dismissal of the pre-proclamation controversy would render the disqualification case moot and academic is also untenable. The two cases are independent of each other and one may be resolved separately without affecting the other.

The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the elections on the basis of the election returns duly authenticated by the boards of inspectors and admitted by the board of canvassers. The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. Obviously, the mere fact that a candidate has been proclaimed elected does not signify that his disqualification is deemed condoned and may no longer be the subject of a separate investigation.

In SPC No. 88-546, the petitioners seek to disqualify the private respondent on the ground that she misrepresented her residence in her certificate of candidacy as Kananga, Leyte. The charge is that she was in fact and under the law a resident of Ormoc City like her husband, who was disqualified precisely on that account from running for provincial governor of Leyte.

In the course of the hearing on this issue, the private respondent moved for clarification of the nature of the proceeding and asked the COMELEC to determine under what law her qualifications were being challenged. That determination was embodied in the decision of the Second Division dated February 3, 1989, and the en banc resolution dated May 4, 1989, which are now assailed in G.R. No. 88004.

According to the COMELEC, the proceeding was not intended against an alleged nuisance candidate under Section 69 of the Election Code as it was obvious that the private respondent was a serious bona fide candidate, nor was it a petition for quo warranto under Section 253 which could be filed only after the proclamation of the respondent. Neither could it be considered a petition to deny due course to the certificate of candidacy under Section 78 of the Code as this was not prayed for by the petitioners, besides the fact that the petition was not filed before the election. Finally, it could also not be considered a petition for disqualification under Section 68 of the Code because the private respondent was not being charged with the commission of any of the election offenses mentioned in that section. Concluding, the COMELEC held that the subject of the petition, to wit, misrepresentation in the certificate of candidacy, was actually a violation of Section 74 and, pursuant to its rules, should be prosecuted as an election offense under Section 262 of the Code. It therefore dismissed SPC No. 88-546 and referred it to its Law Department for proper action.

The Court holds that the dismissal was improper. The issue of residence having been squarely raised before it, it should not have been shunted aside to the Law Department for a round-about investigation of the private respondent's qualification through the filing of a criminal prosecution, if found to be warranted, with resultant disqualification of the accused in case of conviction. The COMELEC should have opted for a more direct and speedy process available under the law, considering the vital public interest involved and the necessity of resolving the question at the earliest possible time for the benefit of the inhabitants of Leyte.

In the view of the Court, the pertinent provision is Section 78 in relation to Section 6 of R.A. No. 6646.

Section 78 provides:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Section 6 of R.A. 6646 states as follows:

Section 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

In rejecting this remedy, the COMELEC makes much of the fact that the petition was filed on the very day of the election and not before the election as required by Section 78. Disregarded, however, is the other more important fact that the private respondent's certificate of candidacy was filed only on January 31, 1988, the day before the election, and that the petition to disqualify her was filed almost immediately afterwards, in the morning of election day itself. Under the circumstances, petitioner de la Cruz can hardly be faulted for not having filed his challenge earlier, that is, during the remaining hours before midnight of January 31, 1988. To make such an unreasonable requirement is to make a rather strained reading of the law beyond its obvious purpose.

Interestingly, as Commissioner Haydee B. Yorac observed in her dissenting opinion, the private respondent had all of eighteen days from her husband's disqualification to file her own certificate of candidacy but waited to do so until practically the last day, and a Sunday at that. This raises the not untenable conjecture that the filing was timed precisely to delay until too late the expected challenge to her claimed residence and to thus foreclose all inquiry into her credentials. In fairness, it may also be assumed that she had good reasons for filing her certificate of candidacy one day before the election. In any event, given the time allowance to file the challenge under normal circumstances (twenty-five days under Section 78 and five days under COMELEC Res. No. 1928)[16] one cannot say that the challenge in this case, although not filed earlier, was unseasonable.

The above-stressed circumstances should explain the necessity for continuing the investigation of the private respondent's challenged disqualification even after the election notwithstanding that such matter is usually resolved before the election. Independently of these circumstances, such proceedings are allowed by Section 6 of R.A. 6646 "if for any reason a candidate is not declared by final judgment before an election to be disqualified x x x."

The Court believes that, conformably to law and in the particular interest of the people of Leyte, the question of the private respondent's residence should be resolved by the respondent COMELEC directly and as soon as possible. To this end, SPC No. 88-546 should be recalled from its Law Department and returned to the Second Division for the resumption of the hearing thereon and the reception of the evidence of the parties. This should be done with all deliberate dispatch so that the delay that has attended the disposition of this case since the local election held on February 1, 1988 may at last be ended.

Acting on the allegations contained in the petition, and in the exercise of its discretion, the Court, as earlier related, issued a temporary restraining order that has held in abeyance the canvass of the contested election returns

and the proclamation by the provincial board of canvassers of the private respondent as Governor of Leyte. This order is now referred to the COMELEC. Pending the final disposition of the case, it may maintain or lift the said order under Section 6 of R.A. 6646 on the basis of its own assessment of the evidence against the private respondent.

WHEREFORE, judgment is hereby rendered as follows:

1. In G.R. Nos. 87721-30, the decision dated February 3, 1989, and the resolution dated April 13, 1989, are **AFFIRMED** and the petition is **DISMISSED**.
2. In G.R. No. 88004, the decision dated February 3, 1989, and the resolution dated May 4, 1989, are **REVERSED** and **SET ASIDE**. Respondent Commission on Elections is **ORDERED** to directly hear and decide SPC Case No. 88-546 under Section 78 of the Omnibus Election Code, with authority to maintain or lift our temporary restraining order of April 18, 1989, according to its own assessment of the evidence against the private respondent.

The parties are enjoined to resolve this case with all possible speed, to the end that the regular Governor of Leyte may be ascertained and installed without further delay.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Sarmiento, J., no part.

[1] G.R. No. 88004, Rollo, pp. 102-104.

[2] Ibid., p. 48.

[3] Id., pp. 113-118.

[4] id., p. 179.

[5] id., pp. 182-184.

[6] G.R. Nos. 87721-30, Rollo, pp. 18-50.

[7] G.R. No. 88004, Rollo, pp. 26-40.

[8] G.R. Nos. 87721-30, Rollo, pp. 51-56.

[9] G.R. No. 88004, Rollo, pp. 47-61; penned by Commissioner Abueg, Jr., with Commissioners Africa, Rama and Yorac, dissenting.

[10] G.R. Nos. 87721-30, Rollo, p. 316.

[11] *Dizon v. Provincial Board of Canvassers*, 52 Phil. 47; *Nacionalista Party v. Comelec*, 85 Phil. 149; *Ong v. Comelec*, 22 SCRA 241.

[12] *City Board of Canvassers v. Moscoso*, 118 Phil. 934; *Abes v. Comelec*, 21 SCRA 1252; *Demafiles v. Comelec*, 21 SCRA 1462; *Lucman v. Dimapuro*, 33 SCRA 387; *Guiao v. Comelec*, 137 SCRA 356.

[13] 22 SCRA 878.

[14] G.R. Nos. 87721-30, Rollo, pp. 18-50.

[15] 88 SCRA 251.

[16] Published in the November 10, 1987 issue of the Manila Times and the Philippine Daily Inquirer.

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