

SALACNIB F. BATERINA, CANDIDO BALBIN, GUILLERMO BALLESTEROS, NATHANIEL ESCOBAR, BENJAMIN GALAPIA, LEONARDO ROLDAN, FILEMON SISON, ERWIN REYES-ULEP, EVELYN VALDEZ, OCTAVIO VILLAN...

G.R. Nos. 95347-49. January 06, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioners assail the en banc Resolution of the Commission on Elections (COMELEC), dated 6 September 1990, affirming the Resolution, dated 23 March 1988, and Decision dated 5 June 1989, rendered by its First and Second Divisions, respectively. The aforesaid Resolutions and Decision ruled adversely against petitioners in the pre-proclamation cases initiated by them before the COMELEC.

Petitioner Salacnib F. Bateria was a candidate for Governor of Ilocos Sur in the special local elections held on 25 January 1988. The other petitioners, Octavio Villanueva and Evelyn Valdez, Felimon Sison, Leonardo Roldan, Gil Ballesteros, Benjamin Galapia, Erwin Reyes-Ulep, and Nathaniel Escobar, were candidates for Vice Governor and Provincial Board Members, respectively, in the same local elections. Petitioners ran under the banner of the Lakas ng Bansa. Private respondent Evaristo Singson, on the other hand, was also a candidate for Governor of Ilocos Sur. Private respondent Mariano Tajon was a candidate for Vice Governor. The rest of the private respondents were candidates for the other disputed positions.

The Provincial Board of Canvassers of Ilocos Sur (BOARD) has likewise been impleaded in this Petition.

The canvassing of the election returns commenced as the ballot boxes containing the returns from the various municipalities of Ilocos Sur were received by the BOARD.

In the course of the canvass proceedings, verbal objections were raised by petitioners to certain election returns based on the grounds mentioned in Sections 233 (lost or destroyed election returns), 234 (material defects in the election returns), 235 (tampered or falsified election returns) and 236 (discrepancies in election returns), in relation to the preparation, transmission, receipt and custody of the election returns. The objections were aimed at excluding the election returns from the canvass.

Petitioners submitted to the BOARD their objections in written form within twenty four (24) hours from the time the verbal objections were made as required in Section 245 of the Omnibus Election Code. They also submitted written protests before the BOARD, which reiterated their objections to certain election returns.

The BOARD, in several Resolutions dated 29, 30 and 31 January 1988, denied the objections and protests of petitioners mainly on the ground that the alleged defects of the election returns were merely formal and did not affect their authenticity, validity and genuineness as to warrant their exclusion from the canvass. Petitioners filed with the BOARD notices of appeal from its rulings.

On 30 January 1988, petitioners filed with the COMELEC a "Petition Contesting the Legality of the Proceedings of the Board of Canvassers with Motion to Restrain Canvassing and Proclamation and/or Suspend the Effects of any Proclamation," docketed as SPC No. 88-453 and assigned to the First Division (Suspension of Proclamation Case). The Petition sought the suspension of the canvassing and proclamation of any winning candidate.

On 31 January 1988 the BOARD issued the "Certification of Canvass of Votes and Proclamation of the Winning Candidates for Provincial Offices, January 18, 1988 Elections," proclaiming respondents Evaristo C. Singson as the duly elected Governor of Ilocos Sur, Mariano M. Tajon as Vice Governor and the others as Members of the Sangguniang Panlalawigan of the province.

On 1 February 1988, petitioners filed with the COMELEC an "Appeal," docketed as SPC No. 88-490 and assigned to the Second Division, wherein petitioners prayed that the Resolutions of the BOARD denying their protests be set aside. On the same date, petitioners also filed an "Appeal Memorandum," docketed as SPC No. 88-506, which was assigned likewise to the Second Division. The "Appeal Memorandum" was an appeal from the rulings of the BOARD denying petitioners' written objections to the inclusion in the canvass of certain election returns. Petitioners prayed for their exclusion from the canvass. An "Addendum to Appeal Memorandum" was filed by petitioners on 8 February 1988 appealing the other rulings of the BOARD denying their objections.

On 9 February 1988, petitioners followed up their Petition in the Suspension of Proclamation Case (SPC No. 88-453) and sought the suspension of the effects of the proclamation of private respondents as well as the annulment of the proclamation, or in the alternative, the declaration of a failure of elections in Ilocos Sur.

On 23 March 1988, the First Division of the COMELEC issued a Minute Resolution dismissing the Suspension of Proclamation Case (SPC No. 88-453) filed on 30 January 1988, on the ground that the winning candidates had already been proclaimed on "21 January 1988" (should be 31 January 1988). It advised the petitioners to file instead an election protest with the COMELEC if desired (p. 104, Rollo).

Petitioners appealed the dismissal of the Petition alleging error in that the proclamation was made on 31 January 1988, not 21 January, as stated in the First Division Resolution. Petitioners also alleged that the First Division failed to consider the other petition filed by them in the same SPC No. 88-453, dated 9 February 1988, thereby effectively dismissing said petition without notice and hearing in violation of Sections 242 and 246 of the Omnibus Election Code.

On 5 June 1989, the Second Division of the COMELEC promulgated a decision in SPC Nos. 88-490 and 88-506 (Rollo, p. 124) dismissing petitioners' "Appeal" and "Appeal Memorandum" on the ground that no substantial objection had been raised against the election returns in accordance with Sections 233-236 and Section 245 of the Omnibus Election Code.

On 10 June 1989, petitioners appealed the Decision of the Second Division (in SPC No. 88-490 and 88-506) to the COMELEC en banc. On 6 September 1990, that body issued a per curiam Resolution, in SPC Nos. 88-453, 88-490, and 88-506, dismissing petitioners' appeals from the rulings rendered by its First and Second Divisions on the ground that no genuine pre-proclamation controversies had been raised by petitioners.

That dismissal prompted petitioners to avail of these Certiorari proceedings.

Can the COMELEC be faulted with grave abuse of discretion in upholding the dismissal of the Suspension of Proclamation Case (SPC No. 88-453) and of petitioners' "Appeals" (SPC Nos. 88-490 and 88-506) ordered by its First and Second Divisions respectively?

The Court thinks not. The Suspension of Proclamation Case, filed on 30 January 1988 (SPC No. 88-453), was

dismissed by the First Division considering "that the winning candidates have been proclaimed on January 21, 1988" (Rollo, p. 104). Petitioners claim that the petition was dismissed because it appeared to have been filed after the proclamation of private respondents on "21 January 1988," as stated in the Resolution (Rollo, p. 14), whereas the proclamation was actually made on 31 January 1988 or after they had filed, on 30 January 1988, their Suspension of Proclamation Case (SPC No. 88-453).

Petitioners further contend that the proclamation made on 31 January 1988 is void ab initio because it was made by the BOARD without previous authority from the COMELEC in violation of Section 245 of the Omnibus Election Code, which provides :

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"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."

Petitioners' aforesaid submissions lack substance. The date "21 January 1988" appearing in the Resolution of the COMELEC First Division is plainly a typographical error. The correct date is 31 January 1988. But even if so, the mere filing of the Suspension of Proclamation Case (SPC No. 88-453) on 30 January 1988 seeking to restrain the canvassing and proclamation of the winning candidates does not automatically divest the BOARD of the authority to make a proclamation. Neither does it ipso facto annul a proclamation which may have been already made.

In this regard, petitioners' reliance on Section 245 to support their claim of nullity of the proclamation made by the BOARD for lack of authorization from the COMELEC is misplaced. That provision applies to a situation where a party, aggrieved by the rulings of the Board of Canvassers rejecting the objections to election returns raised by him, appeals the rulings to the COMELEC. In which case, no proclamation can be made by the Board of Canvassers without authorization of the COMELEC until after the latter has ruled on the objections brought to it on appeal by the losing party.

In the case at bar, when the proclamation was made by the BOARD on 31 January 1988, there was no pending appeal filed by petitioners before the COMELEC from the rulings made by the BOARD on their objections to election returns rendered on 29, 30 and 31, 1988 (Annexes B to B-17, Petition). The "Appeal" and "Appeal Memorandum," docketed as SPC Nos. 88-490 and 88-506, respectively, which appealed to the COMELEC the rulings of the BOARD denying petitioners' objections to election returns were filed by them only on 1 February 1988, after the proclamation of private respondents had been made by the BOARD on 31 January 1988. What was filed by petitioners on 30 January 1988, before the proclamation, was a petition seeking merely to restrain the canvass and proclamation or suspend the effects of any proclamation. This petition, however, is clearly not the appeal referred to in Section 245 that will operate to bar the BOARD from making any proclamation of the winning candidates without authority from the COMELEC after the latter has ruled on the objections elevated to it on appeal. Consequently, there was no legal impediment to the proclamation of private respondents by the BOARD on 31 January 1988.

In dismissing the Suspension of Proclamation Case (SPC No. 88-453), the First Division also disposed of the other petition filed in the same case by petitioners on 9 February 1988, praying that the proclamation made by the BOARD be declared null and void ab initio. As pointed out earlier, however, the proclamation was validly done by the BOARD since this is not an instance calling for the application of Section 245. Moreover, it is well settled that after the proclamation of the winning candidates, a pre-proclamation controversy ceases and is no longer

viable at this point and should be dismissed, the proper remedy of the aggrieved party being an election protest.

Notably, the proclamation was made after completion of the canvass of the election returns by the BOARD, which has the legal obligation, after said canvass, to proclaim the elected candidates, that duty being ministerial after the mechanical or mathematical act of counting the votes cast has been accomplished (*Casimiro v. Commission on Elections*, L-84462-63, 29 March 1989, 171 SCRA 468). No grave abuse of discretion can be attributed to the COMELEC, therefore, in dismissing the petitions in the Suspension of Proclamation Case (SPC No. 8-453).

Petitioners also fault the COMELEC for dismissing the "Appeal" and "Appeal Memorandum" filed by them in SPC Nos. 88-490 and 88-506, respectively, on 1 February 1988 (or one [1] day after the proclamation). These pleadings appealed the rulings of the BOARD denying their objections to election returns. Petitioners anchored their objections to the election returns on the ground that they were fraudulent. They allege that there were five hundred fifty two (552) election returns coming from various precincts of the province, which did not contain the signatures of their watchers. Petitioners claim that the absence of these signatures casts doubts on the authenticity and integrity of the election returns. Thus, petitioners point to instances where the tallies in the election returns were not closed by thumbmarks and signatures; lack of or unauthorized signatures in the envelopes; tampering of paper seals; erasures or tampering of figures, numbers and letters; irregular receipt of ballot boxes and other alleged irregularities in the preparation and delivery of election returns (Rollo, pp. 19-20).

The objections were rejected by the BOARD in several Resolutions dated 29, 30 and 31 January 1988 (Rollo, pp. 57-71) because the grounds raised for the exclusion of the election returns were merely formal defects that did not affect the authenticity and genuineness of the election returns. On appeal to the COMELEC, the rulings of the BOARD were sustained.

Again, the Court finds no grave abuse of discretion in the dismissal of the Appeals (SPC Nos. 88-490 and 88-506). While petitioners assailed the authenticity of the contested election returns, the records do not indicate that they presented any proof before the BOARD to support their allegations that the election returns were tampered with and fraudulent. Neither was there any indication in the appeals filed by petitioners before the COMELEC pointing to specific evidence that would reasonably support their allegations that the election returns objected to were not authentic. It is not enough that an election return is objected to. A mere allegation by a party that an election return is spurious does not automatically operate to exclude the same in the canvassing.

The grounds raised by petitioners for the exclusion of the election returns from the canvassing, as stated in their "Appeal Memorandum" before the COMELEC (Rollo, p. 92), refer to the failure to close the entries with the signatures of the election inspectors; lack of inner and outer paper seals; canvassing by the BOARD of copies not intended for it; lack of time and date of receipt by the BOARD of election returns; lack of signatures of petitioners' watchers; and lack of authority of the person receiving the election returns.

While the aforesaid grounds may, indeed, involve a violation of the rules governing the preparation and delivery of election returns for canvassing, they do not necessarily affect the authenticity and genuineness of the subject election returns as to warrant their exclusion from the canvassing. The grounds for objection to the election returns made by petitioners are clearly defects in form insufficient to support a conclusion that the election returns were tampered with or spurious. "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 v. Navarro*, L-28340, 29 December 1967, 21 SCRA 1514). It is only when the election returns are palpably irregular that they may be rejected (*Mutuc v. Commission on Elections*, L-28517, 21 February 1968, 22 SCRA 662). On the basis of formal defects alone, such palpable irregularity can not be said to

have been established herein.

Petitioners, however, suggest that the lack of the signatures of their watchers in the contested election returns render their authenticity questionable. Such a lack, however, is not enough to impugn the genuineness of the returns. Section 12 of Rep. Act No. 6646 (Electoral Reforms Law of 1988) provides:

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"In addition to their rights and duties under Section 179 of Batas Pambansa 881, the two principal watchers representing the ruling coalition and the dominant opposition coalition in a precinct, shall, if available, affix their signature and thumbmarks on the election returns for that precinct. If both or either of them is not available, unwilling or should they refuse to do so, any watcher present, preferably with political affiliation or alignment compatible with that of the absent or unwilling watcher, may be required by the board of election inspectors to do so." (Underscoring supplied)

The foregoing provision negates the contention that an election return is spurious owing to the failure of a watcher to affix his signature. Under this provision, a watcher signs the election returns only if he is available. If he is not, or is unwilling, or refuses to sign them, any other watcher present may be required to sign. In this case, the signature of any watcher present is not even a mandatory requirement as can be gleaned from the text of the provision. In other words, while the signing of an election return by a watcher is a measure intended to discourage the preparation of falsified returns, the absence of said signature does not give rise to a presumption that the election returns are manufactured or spurious and should consequently be excluded in the canvass. Otherwise, a party's watcher can easily cause the nullification of election returns reflecting results unfavorable to the candidate he is representing by simply refusing to sign the returns.

In fine, the BOARD correctly included the contested election returns in the canvass as they did not suffer from any serious infirmities affecting their integrity. It is the "ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities" (*Demafiles v. Commission on Elections*, L-28396, 29 December 1967, 21 SCRA 1462).

Petitioners also assail the dismissal of their petitions by the COMELEC without hearing. Suffice it to cite the ruling in *Ilarde v. Commission on Elections*, L-31446, 23 January 1970, 31 SCRA 72) that "canvass proceedings are administrative and summary in nature, and a strong prima facie case backed up by a specific offer of the evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. Otherwise, the paralyzation of canvassing and proclamation leading to a vacuum in an important office could easily be brought about." In their case before us, the petitions and appeals filed by petitioners in their pre-proclamation cases before the COMELEC did not even point prima facie to a tampering of election returns, nor to returns with patent erasures and superimpositions, but merely raised objections based on defects that are, at best, formal in nature. The COMELEC, therefore, did not gravely abuse its discretion in concluding that in the absence of genuine pre-proclamation issues a full-blown hearing was rendered unnecessary.

WHEREFORE, the Writ of Certiorari prayed for is DENIED for lack of merit.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.

Nocon, J., no part.

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