

EN BANC

[G.R. No. 181869, October 03, 2009]

**ISMUNLATIP H. SUHURI, PETITIONER, VS. THE HONORABLE
COMMISSION ON ELECTIONS (EN BANC), THE MUNICIPAL
BOARD OF CANVASSERS OF PATIKUL, SULU AND KABIR E.
HAYUDINI, RESPONDENTS.**

DECISION

BERSAMIN, J.:

In this special civil action for *certiorari*, the Court again determines whether or not the exclusion of certain election returns from the canvass due to allegations of irregularities and statistical improbability made by a candidate are proper grounds for a pre-proclamation controversy by which to annul the proclamation of his rival as duly-elected.

THE CASE

The Municipal Board of Canvassers (MBC) of Patikul, Sulu had earlier ruled against petitioner Ismunlatip H. Suhuri's plea for the exclusion of 25 election returns from the canvass of votes cast for the 2007 mayoralty race in Patikul, Sulu and then proclaimed respondent Kabir E. Hayudini as the duly-elected Mayor. Appealing to the Commission on Elections (COMELEC), Suhuri insisted on the invalidity of the proclamation because of the existing pre-proclamation controversy involving the exclusion of the 25 election returns. The COMELEC, Second Division, had sustained Suhuri's appeal and nullified Hayudini's proclamation, but the COMELEC *en banc* reversed the Second Division through the assailed resolution of January 29, 2008.

Suhuri thus assails on *certiorari* the January 29, 2008 resolution of the COMELEC *en banc* that reversed the resolution of the Second Division.^[1] He claims that the COMELEC *en banc* thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

ANTECEDENTS

Suhuri ran for the position of Municipal Mayor of Patikul, Sulu during the May 14, 2007 national and local elections. He was opposed by Hayudini and a third candidate, Datu Jun Tarsum.^[2] During the canvassing held on May 17, 2007 within the Sulu State College in Jolo, Sulu, Suhuri orally objected to the inclusion of the election returns from the following 25 precincts, namely: Precincts 09/10A, 11A/12A, 13A/14A, 15A/16A, 17A/18A, 19A/20A, and 21A/22A of Barangay Anuling; Precincts 47A/48A, 49A/50A, and 51A/52A of Barangay Bongkuang; Precincts 87A/88A, 89A/90A, 91A/92A, 93A/94A, 95A/96A, 97A/98A, and 99A/100A of Barangay Langhub; Precincts 101A/102A, 103A/104A, 105A/106A, 107A/108A, and 109A/110A of Barangay Latih; and Precincts 116A/117A, 118A/119A, and 120A

of Barangay Maligay. The affected precincts carried a total of 4,686 votes.^[3] He later filed with the MBC written petitions regarding such exclusion on May 17, 18 and 19, 2007.^[4] He asserted that the 25 election returns were "(1) [o]bviously manufactured; (2) [t]ampered with or falsified; (3) [p]repared under duress; and (4) [characterized by] [s]tatistical improbability."^[5]

The MBC ruled against Suhuri in the evening of May 19, 2007 by rejecting his objections to the 25 election returns.^[6] Then and there, he manifested his intent to appeal *vis-à-vis* the ruling. He filed his notice of appeal shortly thereafter.^[7] In the same evening, the MBC proclaimed Hayudini as the duly elected Mayor for having obtained 7,578 votes as against Suhuri's 6,803 votes based on a complete canvass of the election returns, for a margin of 775 votes in favor of Hayudini.^[8]

On May 23, 2007, Suhuri filed a petition-appeal with the COMELEC,^[9] docketed as S.P.C. No. 07-118. The petition-appeal was assigned to the Second Division.

On May 25, 2007, Suhuri likewise filed an election protest *ad cautelam* dated May 21, 2007 in the Regional Trial Court (RTC) in Patikul, Sulu to contest the results of the elections for Municipal Mayor of Patikul, Sulu.^[10] On June 28, 2007, however, the RTC held the election protest in abeyance upon Suhuri's own motion due to his pending pre-proclamation controversy in S.P.C. 07-118.

In a further move, Suhuri brought a so-called *petition to declare a failure of election with urgent motion to suspend and/or annul the canvass of the election returns* dated May 18, 2007,^[11] referring to the results from the 25 precincts in Barangays Anuling, Bongkaung, Langhub, Latih, and Maligay, all within Patikul, Sulu. However, the COMELEC *en banc* denied the petition for insufficiency of evidence on October 9, 2007.^[12]

On June 12, 2007, the COMELEC, Second Division, gave due course to Suhuri's petition-appeal.^[13]

On July 24, 2007, the COMELEC, Second Division, ruling on Suhuri's petition-appeal, excluded the 25 questioned electoral returns from the canvass for the position of Mayor of Patikul, Sulu; and voided the proclamation of Hayudini as the duly elected Mayor.^[14]

In due course, Hayudini moved for the reconsideration of the July 24, 2007 ruling of the Second Division.^[15]

Initially resolving Hayudini's *motion for reconsideration*, Commissioners Florentino A. Tuason, Jr. and Nicodemo Ferrer voted in favor of the resolution of the Second Division, while Acting Chairman Resurreccion Z. Borra, Commissioner Romeo A. Brawner and Commissioner Rene V. Sarmiento dissented.^[16] Due to the fact that the required majority vote necessary to reverse the resolution of the Second Division was not reached, the COMELEC *en banc* conducted a re-hearing on November 22, 2007 pursuant to Section 6, Rule 18 of the Comelec Rules of Procedure.^[17] At the re-hearing, Suhuri presented 20 witnesses, who affirmed and identified their respective affidavits. For his part, Hayudini waived the cross-

examination. Thereafter, the parties were required to submit their memoranda, and the appeal was then deemed submitted for resolution.^[18]

On January 29, 2008, the COMELEC *en banc* promulgated its assailed resolution,^[19] disposing:

WHEREFORE, premises all considered the Commission (En Banc) resolved as it hereby resolves to GRANT the Motion for Reconsideration. The Resolution of the Second Division is hereby REVERSED and SET ASIDE. Consequently, the proclamation of Kabir Hayudini is hereby declared VALID.

ISSUES

In his petition, Suhuri insists that:

- I. THE RESPONDENT HONORABLE COMMISSION ON ELECTIONS (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD TO REVERSE AND SET ASIDE THE 24 JULY 2007 RESOLUTION OF THE HONORABLE COMMISSSION'S SECOND DIVISION BASED ON THE REPORT OF RESPONDENT MUNICIPAL BOARD OF CANVASSERS BELATEDLY FILED AFTER RESPONDENT HAYUDINI'S MOTION FOR RECONSIDERATION, FOR THE SECOND TIME, HAS ALREADY BEEN SUBMITTED FOR DECISION; AND
- II. THE RESPONDENT HONORABLE COMMISSION ON ELECTIONS (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT THE ISSUE PROFERRED BY PETITIONER DOES NOT INVOLVE A PRE-PROCLAMATION CONTROVERSY.

RULING OF THE COURT

We uphold the assailed resolution of the COMELEC *en banc*.

I

Suhuri's Grounds Were Not Proper for a Pre-Proclamation Controversy

Were Suhuri's grounds for nullifying Hayudini's proclamation as the duly elected Mayor proper for a pre-proclamation controversy?

A pre-proclamation controversy, according to Section 1, Article XX of the *Omnibus Election Code*, refers to:

xxx 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 parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

Not every question bearing on or arising from the elections may constitute a ground for a pre-proclamation controversy. Section 243 of the *Omnibus Election Code* enumerates the scope of a pre-proclamation controversy, as follows:

Sec. 243. *Issue 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.

Clearly, Section 243, *supra*, limits a pre-proclamation controversy to the questions enumerated therein. The enumeration is restrictive and exclusive.^[20] Resultantly, the petition for a pre-proclamation controversy must fail in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Section 234, *Omnibus Election Code*); or appear to have been tampered with, falsified or prepared under duress (Section 235, *Omnibus Election Code*); or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Section 236, *Omnibus Election Code*).^[21]

To be noted, too, is that in a pre-proclamation controversy, the COMELEC is restricted to an examination of the election returns and is without jurisdiction to go beyond or behind the election returns and to investigate election irregularities.^[22] For as long as the election returns appear to be authentic and duly accomplished on their faces, the Board of Canvassers cannot look beyond or behind the election returns in order to verify allegations of irregularities in the casting or counting of votes. ^[23]

Suhuri submits that the 25 challenged election returns were defective for being manufactured, tampered with or falsified, and for statistical improbability. He lists

the following irregularities to buttress his submission, namely:^[24]

- i. The election returns for Precinct Nos. 9A/10A and 99A/100A have no signatures and thumbmarks of poll watchers. More importantly, the respective poll clerks in the two precincts did not affix their signatures in the election returns.
- ii. For Precinct Nos. 11A/12A, 17A/18A, 89A/90A, 91A/92A, 93A/94A and 95A/96A (6 of the 25 contested election returns), petitioner got zero (0)- a statistically improbable result.
- iii. For Precinct Nos. 15A/16A, there appears to be two poll watchers who affixed their signatures are the same and appear to have been made by the same and one person;
- iv. For Precinct Nos. 13A/14A, of the 210 total registered voters, respondent Hayudini garnered a perfect 210 and petitioner got one (1) - a statistically improbable result;
- v. For Precinct Nos. 21A/22A, the names of the members of the Board of Election Inspectors (BEI) and the poll watchers appear to have been made by only one person;
- vi. For Precinct Nos. 49A/50, the printed names of the poll watchers of the petitioner are printed thereon without their signature, consistent with their Affidavit that they were intimidated into leaving the polling place as early as when they had just presented their appointment papers to the members of the BEI;
- vii. For Precinct Nos. 11A/12A, there is only one poll watcher who affixed his signature;
- viii. For Precinct Nos. 51A/52A, there is the lack of signature of the third member of the BEI;
- ix. For Precinct Nos. 89A/90A, the entries for the precinct no., barangay, city/municipality and province are completely blank while names, signatures and thumb marks of the BEI are complete; and
- x. For Precinct Nos. 93A/94A, there is only one poll watcher who affixed his name and signature and with no thumb mark;^[25]

Suhuri further submits that threat, violence, duress and intimidation attended the preparation of the questioned election returns. As proof, his petition-appeal has included the following affidavits,^[26] to wit:

1. The affidavit of Benhar S. Mohammad, attesting that the supporters of Hayudini and his party-mate, gubernatorial candidate Abdulsakur Tan, prevented him from entering the polling place where he was