

EN BANC

[G.R. No. 181837, February 04, 2009]

OMAR M. "SOLITARIO" ALI, PETITIONER, VS. COMMISSION ON ELECTIONS, THE PROVINCIAL BOARD OF CANVASSERS OF LANA O DEL SUR, AND MAMINTAL A. ADIONG, JR., RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This petition for certiorari assails the Resolution^[1] dated September 20, 2007 of the Commission on Elections (Comelec) Second Division and Resolution^[2] dated January 28, 2008 of the Comelec *En Banc* in SPC No. 07-265. The Comelec Second Division had dismissed the consolidated appeals of petitioner Omar M. "Solitario" Ali (Ali) from the rulings of the Provincial Board of Canvassers (PBOC) of Lanao del Sur denying his objections to the inclusion in the canvass of the Municipal Certificates of Canvass (MCOCs) of the Municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran of the Province of Lanao del Sur during the May 14, 2007 elections. The Comelec Second Division had also dismissed Ali's Motion to Annul Proclamation and Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong. The Comelec *En Banc* had affirmed the Comelec Second Division's ruling and also dismissed Ali's motion for reconsideration.

The facts of this case are as follows:

Petitioner Omar M. "Solitario" Ali and Mamintal A. Adiong, Jr. were candidates for the position of Governor of the Province of Lanao del Sur during the May 14, 2007 elections. After elections, Adiong was proclaimed the winner.

During the canvassing by the PBOC, Ali objected to the inclusion in the canvass of the MCOCs coming from the Municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran of the Province of Lanao del Sur. Ali alleged that the MCOC of Picong should be excluded because 29 election returns were not signed by authorized members of the Board of Election Inspectors but by civilians acting without authority.^[3] In the Municipality of Ganassi, Ali alleged that ballots in six precincts were not counted, or ballots were counted without the presence of watchers.^[4] In the Municipality of Buadiposo-Buntong, Ali alleged that the total number of votes credited to the four candidates for governor exceeded the total number of voters which shows that the MCOC of Buadiposo-Buntong was manufactured.^[5] In the Municipality of Bumbaran, Ali alleged that the counting of ballots was not done in Marawi City as directed by the Comelec, but in Bumbaran.^[6] The PBOC denied all his objections. Ali then filed a consolidated appeal before the Comelec.

On July 2, 2007, Ali filed a Motion to Annul Proclamation with Prayer for the

Issuance of a Temporary Restraining Order before the Comelec.^[7]

On July 11, 2007, Ali filed a Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong, alleging that the Municipal Board of Canvassers there padded a total of 600 votes in favor of Adiong as attested to in the affidavits executed by two tabulators, Abdulcarim B. Pangcatan and Elizabeth Titiban Mla.^[8]

In a Resolution dated September 20, 2007, the Comelec Second Division dismissed Ali's consolidated appeal and Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong. It also denied his Motion to Annul Proclamation. The Comelec Second Division ruled as follows:

Records reveal that there are three (3) matters subject for resolution in the instant case. These are: (i) the main pre-proclamation case involving the appeals from the rulings of the PBOC of Lanao del Sur covering the municipalities of Picong, Ganassi, Buadiposo-Buntong and Bumbaran; (ii) the motion to annul the proclamation of private respondent Adiong on 30 June 2007; and (iii) the motion to correct manifest error involving the municipality of Buadiposo-Buntong.

To end this controversy, We deem it proper to resolve all these issues in a single resolution, taking into account all the arguments raised by both parties during the hearing of this case and the pieces of evidence submitted to this Commission.

The Omnibus Election Code particularly Section 243 thereof specifically enumerates the issues that may be raised in [a] pre-proclamation controversy, viz:

"x x x x

- 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 objections made by the appellant in the inclusion of the election returns of the different municipalities being the subject of the main appeal from the ruling of the PBOC are hereunder discussed and ruled:

1. In the Municipality of Picong.

It is the contention of the appellant that the proceedings of the Municipal Board of Canvassers were illegal, null and void *ab initio* because the 29 election returns pertaining to Picong were not signed by the proper authorities, hence, the Municipal Board of Canvasser's Certificate of Canvass was illegally prepared.

To support his allegations in this case, appellant presented the list of the names of individuals who allegedly served as BEI's in this municipality prepared by the counsel of congressional candidate Macabangkit Lanto. The list was then compared with the TENTATIVE (SIC) CHAIRMEN AND MEMBERS OF THE BOARD OF ELECTION INSPECTORS FOR THE FORTHCOMING NATIONAL AND LOCAL ELECTIONS for the Municipality of Picong duly signed and issued by DECS District Supervisor Norolyn Amerol. Appellant insisted that the BEI's who actually served during the elections were not listed in the list submitted by DECS Supervisor Amerol.

We are not convinced.

We note that the tentative list of the chairmen and members of the Board of Election Inspectors was prepared on 08 February 2007, which was long before the 14 May 2007 elections. Changes in the composition of the BEIs [were] not entirely prohibited since the list submitted by the DECS was merely a temporary list. Thus, in the absence of sufficient evidence categorically showing that the BEIs who participated in the conduct of the elections had no authority, We cannot agree to the assertion of the appellant.

Aside from the fact that the issue on the alleged replacement [of] the BEI's was not a proper subject of pre-proclamation controversy, no report or statements of violence, untoward incidents or irregularities were submitted involving the elections in Picong. Hence, the claim of the appellant that fraud and irregularities were committed during the elections in Picong has absolutely no basis.

2. In the Municipality of Ganassi

Appellant seeks for the exclusion of the Municipal Certificate of Canvass (MCOG) of Ganassi for being incomplete. The ballots pertaining to the six (6) precincts (32A, 33A, 34A, 35A, 36A and 37A, all of Ganassi) were still to be counted by the BEIs. As regards the other precincts, it is the contention of the appellant that the ballots were counted without the presence of the watchers of the appellant because they were forcibly excluded by the Election Officer during the counting of the ballots.

We are not persuaded.

As regards the exclusion based on incomplete canvass, the same has been rendered moot by the conduct of Special Elections in Lanao del Sur on 20 June 2007. The results of the elections in the six (6) precincts mentioned were already counted and canvassed by the new MBOG of Ganassi. This fact was admitted by the PBOG in its Comment dated July

12, 2007 and was never controverted by the appellant in his memorandum in support of the consolidated appeals. The PBOC in its Comment dated 12 July 2007, particularly stated that:

"With respect to the ground of exclusion based on incomplete canvass in the Municipality of Ganassi, it must be stressed that this matter became moot in view of the fact [that] after the conduct of the June 20, 2007 Special Elections in the said province, the six (6) ballot boxes that were specifically mentioned were counted and canvassed by the new MBOC of Ganassi. A municipal COC was prepared and submitted for canvass to the respondent Board."

Anent the other grounds cited by the Appellant, We, found them not to be proper subjects of [a] pre-proclamation controversy so as to warrant the exclusion of the said returns. In fine, the inclusion of said returns by the PBOC in the canvass was justified.

3. In the Municipality of Buadiposo-Buntong

It is the contention of the appellant that Municipal Certificate of Canvass (MCOC) of Buadiposo-Buntong is obviously manufactured because the total number of the votes credited to all candidates for governor in the said municipality exceeded the actual number of voters who actually voted by two thousand forty-nine (2,049).

Appellant further argues that the MBOC of Buadiposo-Buntong padded a total of six hundred (600) votes in favor of Adiong. To bolster his allegations, he cited the affidavits of two tabulators namely Abdulcarim B. Pangcatan and Elizabeth Titiban Mla, stating that they increased the votes of Adiong by more than six hundred (600) distributed to the fifty one (51) precincts of the said municipality.

We note that the appellant filed a Motion to Correct Manifest Errors in the Certificate of Canvass of Buadiposo-Buntong regarding the excess votes.

Aside from affidavits, no evidence was presented by the appellant to substantiate his allegation on the said excess votes. Although in his petition, appellant alleged that in due time he will present his evidence regarding the result of the elections per election return, to date, however no returns were presented to substantiate his claim. Thus, in the absence of proof, the result of the elections in Buadiposo-Buntong cannot be disregarded and excluded with the resulting disenfranchisement of the voters. The election returns reflecting the number of votes obtained by the candidates must be accorded *prima facie* status as *bona fide* reports of the voting for canvassing and proclamation purposes. The burden of proof is on the appellant to prove otherwise.

Moreso, by simply claiming excess votes without specifying how it occurred and what document/s shall be corrected, runs counter to the provision on manifest error under SEC. 35 of Comelec Resolution No. 7859, to wit: