

EN BANC

[G. R. No. 157004, July 04, 2003]

SALLY A. LEE, PETITIONER, VS. COMMISSION ON ELECTIONS AND LEOVIC R. DIONEDA, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Before this Court is a petition for *certiorari* with prayer for a temporary restraining order/ writ of preliminary injunction under Rule 64 of the 1997 Rules of Civil Procedure seeking to set aside the February 11, 2003 *En Banc* Resolution^[1] of the Commission on Elections (COMELEC) in SPC No. 01-124.

Sally A. Lee (petitioner) and Leovic R. Dioneda (private respondent) were candidates for mayor of Sorsogon City, Sorsogon in the May 14, 2001 elections.

During the canvassing of the election returns, counsel for private respondent objected to the inclusion of Election Return No. 41150266 for Precinct No. 28A2 in barangay Bucalbucalan, Sorsogon City on the grounds that 1) no entries were made for the position of congressman, and 2) Laban ng Demokratikong Pilipino (LDP) watchers were utilized to fill up election returns.^[2]

In her opposition to private respondent's objection, petitioner alleged that 1) the omitted entry in the election return pertains to the position of congressman which cannot be a subject of pre-proclamation controversy, 2) the utilization of the watchers, who were under the direct supervision of the Board of Election Inspectors (BEI), was limited only to the filling up of the entries affecting the party-list and justified by the severe lack of personnel to perform the task, and 3) the alleged defect does not affect the integrity of the election return.^[3]

On May 18, 2001, the Board of Canvassers (BOC), finding that the 1) questioned election return was clear and regular on its face, 2) there was no pre-proclamation for members of the House of Representatives and party list, and 3) the grounds relied upon by private respondent are all directed against the proceedings of the BEI and not the BOC, ruled for the inclusion of the return.^[4] Private respondent thereupon filed on the same day a notice of appeal of the BOC ruling.^[5]

In the meantime, or on May 19, 2001, the BOC proclaimed the winning candidates, including petitioner as city mayor.^[6]

Private respondent thus filed on May 23, 2001 before the COMELEC a petition,^[7] docketed as SPC No. 01-124, assailing the ruling of the BOC and praying for the exclusion of the questioned election return and the annulment of petitioner's proclamation.

Petitioner filed her answer^[8] to the COMELEC petition, praying for its dismissal.

By Resolution^[9] of January 10, 2003, the COMELEC Second Division granted the petition of private respondent and accordingly excluded the questioned return from the canvass and nullified the proclamation of petitioner. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the petition is GRANTED. The order of respondent Board dated May 18, 2001 including Election Return No. 41150266 from Precinct No. 28A2 of Bucalbucalan, Sorsogon City in the May 14, 2001 Elections canvass of Sorsogon City is hereby REVERSED AND SET ASIDE. **Said election return is hereby excluded from the May 14, 2001 Elections canvass of Sorsogon City.** Further, the **proclamation of private respondent Sally Lee on May 19, 2001 is hereby declared NULL and VOID ab initio** pursuant to Section 20 (i) of RA 7166.

A new City Board of Canvassers of Sorsogon City is hereby constituted to be composed of the following COMELEC lawyers:

1. Atty. Nelia Aureus - Chairperson
2. Atty. Allen Francis Abaya - Vice-Chairperson
3. Atty. Emilio Santos - Secretary

The new City Board of Canvassers of Sorsogon City is hereby directed to prepare a new Statement of Votes for the position of mayor of Sorsogon City excluding the election return from Precinct No. 28A2 of Bucalbucalan, Sorsogon City and, based on said canvass in the new Statement of Votes, proceed to proclaim the winning candidate for mayor of Sorsogon City.

The original City Board of Canvassers of Sorsogon City is hereby directed to transmit to the new Board all COMELEC forms and documents used in the canvassing including the Board's copies of all election returns canvassed in the May 14, 2001 Elections in Sorsogon City.

Finally, the Law Department is directed to conduct the necessary investigation of the members of the BEI of Precinct No. 28A2 of Bucalbucalan, Sorsogon City for the possible commission of election offenses.

SO ORDERED. (Emphasis and underscoring supplied)

Petitioner's Motion for Reconsideration^[10] of the COMELEC Second Division January 10, 2003 Resolution was denied by the COMELEC *En Banc*, by Resolution^[11] of February 11, 2003 the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Commission En Banc DENIES the Motion for Reconsideration for lack of merit. The Resolution of the Second Division promulgated on January 10, 2003 is hereby AFFIRMED.

The New City Board of Canvassers of Sorsogon City constituted by said Resolution is hereby ORDERED to convene immediately, prepare a new Statement of Votes excluding the election returns from Precinct No. 28A^[2], Bucalbucalan, Sorsogon City, and on the basis of the new Statement of Votes, proclaim the winning candidate for mayor of Sorsogon City.

The original City Board of Canvassers is directed to transmit to the new City Board of Canvassers the COMELEC documents they used in their canvass. In the event however that the old City Board of Canvassers, for any reason, fail to deliver to the new City Board of Canvassers the COMELEC documents used in the canvassing, specifically the old statement of votes and the election return for Precinct No. 28A^[2], prior to date of canvass, the new Board is hereby authorized to use the COMELEC copy of said documents.

This resolution is immediately executory.

SO ORDERED.

Hence, the present petition, alleging that:

I.

PUBLIC RESPONDENT IS WITHOUT JURISDICTION TO GO BEYOND OR BEHIND ELECTION RETURNS AND INVESTIGATE ELECTION IRREGULARITIES IN PRE-PROCLAMATION CONTROVERSY.

II.

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT RENDERED THE ASSAILED RESOLUTIONS DESPITE THE CLEAR AND APPARENT LACK OF FACTUAL AND LEGAL BASIS TO SUPPORT THE SAME.

III.

PUBLIC RESPONDENT COMMITTED PROCEDURAL LAPSES IN THE PROMULGATION OF THE ASSAILED RESOLUTIONS WHICH AFFECTS THE FAIRNESS STANDARD.^[12]

On February 18, 2003, this Court issued a *Status Quo Ante* Order^[13] enjoining the COMELEC to observe the *status quo* prevailing before the filing of the petition and refrain from implementing the assailed January 10, 2003 and February 11, 2003 Resolutions until further orders from this Court.

Section 243 of the Omnibus Election Code provides:

Section 243. *Issues that may be raised in a 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. (Emphasis supplied)

On the first assigned error, petitioner argues that as the case at bar is a pre-proclamation controversy, the COMELEC is "restricted to an examination of the election returns and is without jurisdiction to go [beyond] or behind them and investigate election irregularities,"^[14] citing the case of *Loong v. Commission on Elections*^[15] which held:

x x x

We have recently reiterated the *Dianalan* and *Dimaporo* rulings in the case of *Alfonso v. Commission on Elections*, promulgated in June, 1994. **The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify the allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence aliunde and examination of voluminous documents which take up much time and cause delay in defeat of the public policy underlying the summary nature of pre-proclamation controversies.**

x x x (Italics in the original; emphasis and underscoring supplied)

Petitioner's argument is bereft of merit.

The doctrine cited by petitioner presupposes that the returns "appear to be authentic and duly accomplished on their face." **Where, as in the case at bar, there is a prima facie showing that the return is not genuine,** several entries having been omitted in the questioned election return, the doctrine does not apply. The COMELEC is thus not powerless to determine if there is basis for the exclusion of the questioned election return.

As to the second error raised by petitioner, she claims that contrary to the findings

of the COMELEC, there is no evidence on record that an LDP watcher participated in the preparation of the questioned election return. She posits that the omission of entries was not done with malice or bad faith nor meant to subvert the true will of the people, and that the election return in question is clear and regular on its face, duly authenticated by the signatures and thumbmarks of the six watchers and all the members of the BEI. Finally, she posits that an incomplete election return is not necessarily spurious, manufactured or fraudulent to necessitate its exclusion.^[16]

While the BOC indeed found the questioned election return clear and regular on its face, it is not conclusive on the COMELEC nor on this Court in light of what transpired during the proceedings before the BOC in which the members of the BEI were examined and gave the following explanations behind the omission of entries for the position of congressman:

x x x

APP DIMAANO: Ito ba ang mga papeles o election return na inyong ginawa sa presinto.

MS. LADUB: Opo.

APP DIMAANO: Opo. Ngayon, page one tungkol senators, okay. Sa party list, meron kayong inilagay na resulta ng botohan. **Punta tayo sa page one noong local positions, tignan nyo po sa parte ng congressman kung ano ang nakalagay. Kayo po una - kayo po Ginang Jamisal.**

MS. JAMISAL: Wala ho.

APP DIMAANO: Wala ho. Kayo po Gina Labayo.

MS. LABAYO: Wala ho.

APP DIMAANO: Wala ho. Kayo ho Ladub - Ginang Ladub.

MS. LADUB. Wala ho.

APP DIMAANO. Okay, doon sa ibang position, governor, vice governor, board member, city . . . anong masasabi ninyo?

MS. JAMISAL: Okay naman po.

APP DIMAANO: Meron lahat - meron doon. Balik tayo doon sa position noong congressman at saka representative.

APP DIMAANO: Maari bang sabihin ninyo sa amin kung bakit ito inamin niyo at nakikita rito sa dokumentong ito sa election return na wala ni anong marka, ni pangalan at saka itong mga ano `yan . . . nararapat na markings. Mauna ka Ginang Jamisal.

MS. JAMISAL: Siguro ho dahil siguro medyo ano na kami over fatigue na - inaantok na. `yong nakita ko na mga naka-tally dito `yon lang at saka may mga bilang `yon lang ang pinirimahan ko