

EN BANC

[G.R. No. 148540, April 22, 2002]

MOHAMMAD ALI A. ABINAL, PETITIONER, VS. COMMISSION ON ELECTIONS AND MANGGAY GURO, RESPONDENTS.

DECISION

QUISUMBING, J.:

For resolution is this special civil action for certiorari and mandamus filed by petitioner Mohammad Ali A. Abinal, assailing the resolution of public respondent Commission on Elections (COMELEC), dated June 30, 2001, in SPA No. 01-327.^[1] In said resolution, public respondent dismissed the petition to annul election results filed by petitioner and ordered the proclamation of private respondent Manggay Guro as mayor of Marantao, Lanao del Sur. Petitioner prays that the questioned COMELEC resolution be reversed and set aside, and that the COMELEC be directed to (1) annul the results of the election in Precinct 26-A, Marantao, Lanao del Sur; and (2) order the Municipal Board of Canvassers to reconvene and canvass the votes for the mayoralty post in accordance with this Court's disposition of the present petition.

The antecedent facts are as follows:

Petitioner and private respondent were candidates in the mayoralty race in Marantao, Lanao del Sur during the local elections held on May 14, 2001. On May 25, petitioner filed with the COMELEC a petition to annul the election results in Precinct 26-A, Bgy. Cawayan Kalaw, Marantao, Lanao del Sur. Petitioner cited the following grounds in support of his petition: (1) illegal composition of the Board of Election Inspectors of Precinct 26-A, since all of them are related to private respondent within the civil degree prohibited under the Omnibus Election Code.^[2] One is a sister-in-law, another is a first cousin, and the third member is a niece; (2) illegal transfer of the polling place to a private compound, through force, coercion, and intimidation; and (3) filling up of unused ballots by flying voters and supporters of private respondent.

The petition, docketed as SPA No. 01-327, was amended on June 4, 2001 to include private respondent, the Municipal Board of Canvassers, and the Board of Election Inspectors (BEI) of Precinct 26-A as respondents. Petitioner likewise asked for the issuance of a temporary restraining order to prevent the proclamation of private respondent as the winning mayoralty candidate pending resolution of the petition.

Meanwhile, petitioner asked the Municipal Board of Canvassers to exclude from the canvassing of votes certain election returns, including those from Precinct 26-A. The MBC denied his petition, prompting him to file an appeal with the COMELEC on June 11, 2001, docketed as SPC No. 01-283. Among the matters raised in said appeal were those that were also cited in SPA No. 01-327.^[3] At the time the present

petition was filed, said appeal was still pending.

In SPA No. 01-327, private respondent denied petitioner's allegations, adding that the grounds adduced in support of the petition are proper for an election protest and not a pre-proclamation controversy. Private respondent also pointed out that petitioner failed to raise the said issues before the Municipal Board of Canvassers and that at any rate, the petition is moot and academic now.

On June 30, 2001, public respondent COMELEC dismissed SPA No. 01-327 for lack of merit. According to the COMELEC, the grounds cited by petitioner are not proper for a pre-proclamation case. Even if they were, the COMELEC ruled that the evidence presented by petitioner was unconvincing to justify the annulment of election returns in Precinct No. 26-A. In the same resolution, the COMELEC ordered the proclamation of private respondent as mayor of Marantao, Lanao del Sur.^[4] Thus, private respondent was proclaimed on that same day.^[5]

Also on June 30, 2001, the COMELEC issued Omnibus Resolution No. 4493,^[6] containing a list of cases that would remain active after June 30, 2001.^[7] Among said cases is SPC No. 01-283.

Since the COMELEC Rules of Procedure prohibit the filing of a motion for reconsideration of a ruling, resolution, order or decision of the COMELEC *en banc*,^[8] petitioner is now before this Court raising the following issues for our consideration:

- I. The Commission ordered the proclamation of Private Respondent in spite of the pendency of Petitioner's Appeal (SPC [No.] 01-283) in violation of Sec. 20 (i) of RA [No.] 7166, and in spite of Omnibus Resolution No. 4493 promulgated on the same day, including SPC [No.] 01-283 among the pre-proclamation cases which shall continue to be heard by the Commission.
- II. The Commission decided SPA [No.] 01-327 without considering Petitioner's submissions in violation of his right to fair hearing and due process.
- III. The Commission ignored clear and convincing evidence of the lack of integrity of the ballots and the election returns from Precinct 26-A which call for the annulment of the results thereof.^[9]

Petitioner claims that due to the pendency of his appeal in SPC No. 01-283, the COMELEC could only have dismissed his petition for annulment of election results in SPA No. 01-327, but not order private respondent's proclamation. Petitioner asserts that in ordering such proclamation, the COMELEC violated Section 20 (i) of Republic Act No. 7166, or the Synchronized Election Law. Said law provides:

SEC. 20. *Procedure in Disposition of Contested Election Returns.* -

x x x

- (i) 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. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.

Petitioner points out that the order for the proclamation of private respondent amounted to a dismissal, without hearing, of his appeal in SPC No. 01-283.

Petitioner also avers that the questioned resolution is based solely on private respondent's arguments in his comment to the petition filed before the COMELEC, without considering the evidence submitted by petitioner. He branded as a fabrication private respondent's contention that the poll watchers of the different candidates attested to the conduct of honest and peaceful elections in Precinct 26-A. Petitioner presented affidavits and other documents in support of his claims.^[10]

For his part, private respondent contends that the grounds raised by petitioner in his petition for annulment of election results are not proper for a pre-proclamation case. Thus, according to private respondent, the COMELEC did not gravely abuse its discretion in dismissing said petition. Even if a pre-proclamation case were proper, private respondent claims that petitioner's allegations have no merit. He points out that the members of the BEI of Precinct 26-A executed affidavits denying any familial relationship with him, and adds that it is the election officer who appoints the persons who will sit in the BEI. He asserts that even if the BEI members were indeed his relatives, petitioner failed to allege that this fact resulted to the illegal and irregular counting of votes in Precinct 26-A.

Private respondent denies that the polling place was transferred to another location, or that flying voters were able to vote in Precinct 26-A.

On the other hand, public respondent COMELEC asserts that a petition for annulment of election results could not be construed as a pre-proclamation controversy under the Omnibus Election Code. Thus, the COMELEC's dismissal thereof is proper, pursuant to its authority to issue rules and regulations concerning the conduct of elections.

As regards the alleged violation of Section 20 (i) of R.A. No. 7166, the Solicitor General as counsel for public respondent argues that petitioner's reliance on this provision of law is misplaced. According to him, the provision is directed at the board of canvassers, which is prohibited from proclaiming any candidate if the losing party has filed an appeal before the COMELEC, unless authorized by the latter. In this case, the resolution of the COMELEC dated June 30, 2001 directing the municipal board of canvassers to proclaim private respondent is sufficient authorization, contends the Solicitor General.

Additionally, the Solicitor General opines that petitioner's appeal "will definitely not prosper,"^[11] since the grounds raised therein are not valid for a pre-proclamation case.

The issues for our resolution in this case may be summarized thus: (1) Was the order to proclaim private respondent proper, considering that petitioner's appeal in SPC No. 01-283 was pending at that time? (2) Was petitioner's right to due process violated in this case? and (3) Did the COMELEC ignore evidence that would have