

## EN BANC

[ G.R. Nos. 141952-53, April 20, 2001 ]

**RODOLFO DUMAYAS, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF THE MUNICIPALITY OF CARLES, PROVINCE OF ILOILO AND FELIPE BERNAL, JR., RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

In this special civil action, petitioner Rodolfo Dumayas, Jr., seeks to nullify the Resolution promulgated March 2, 2000 by the Commission on Elections (COMELEC) *en banc*, reversing that of the Second Division dated August 4, 1998, which annulled the petitioner's proclamation as Municipal Mayor of Carles, Iloilo.

The antecedent facts of the case, as found by the COMELEC *en banc*, are as follows:

Petitioner Dumayas, Jr. and respondent Bernal, Jr. were rival candidates for the position of mayor in Carles, Iloilo last 11 May 1998 synchronized elections.

During the canvassing on 13 May 1998, election returns for precincts nos. 61A, 62A, and 63A/64A all of Barangay Pantalan were protested for inclusion in the canvass before the Municipal Board of Canvassers (MBC for brevity) by petitioner-appellant Dumayas Jr. The grounds relied upon for their exclusion are all the same- that is, "*violation of Secs. 234, 235, 236 of the Omnibus Election Code and other election laws; acts of terrorism, intimidation, coercion, and similar acts prohibited by law.*" Appellant Dumayas, Jr. submitted his evidence to the Board of Canvassers on 14 May 1998 which consist of (a) the joint affidavits executed by LAMMP watchers for precinct 61A: Teresita Oblido, Reyland de la Rosa, and Armando Flores [signed by Oblido and Flores only]; (b) affidavit of petitioner's supporter Virgilisa Capao; (c) joint affidavit of precinct 63A - watcher Nona Dichosa and precinct 62A - watcher Daniel Carmona; (d) blotter report dated 12 May 1998 of Carles PNP, Iloilo; and (d) corroborating affidavit of LAMMP supporter Honorato Gallardo.

All the affidavits submitted by petitioner contain similar attestations such as: certain local baranggay (sic) officials were inside the polling place during the casting and counting of votes, or acted as watcher of respondent; SPO3 Gilbert Sorongon who was in shorts and t-shirt armed with an armalite roamed around and inside the polling places; a CVO in uniform was roaming precinct 63A; the presence of the public officials posed threat and intimidation driving most of the watchers of other political parties away; the BEIs were so intimidated and coerced that no

election return was prepared simultaneous with the tallying; the election returns were prepared under duress; the voters were coerced to vote for certain favored candidates especially herein respondent; petitioner's watchers were made to sign or *affix their thumbmarks on the already prepared election returns*; in precinct 63A/64A, the voting ended at almost 9:00 P.M. without the BEI members writing the names of such voters.

Petitioner also submitted a certification issued by PO3 Tito Billones, Desk Officer of PNP Carles representing the blotter report (extracted from the police log book) which states that on 12 May 1998, Virgilisa Capao reported to the Police Station of Carles, Iloilo that PO3 Sorongon and Brgy. Capt. Mahilum entered Precinct 63A with (sic) the company of other CVO and Brgy. Kagawad during election. And that these people gravely intimidated the voters by telling them the names of the candidates they should vote for. It also states that PO3 Sorongon was not in his prescribed uniform when seen with hand grenades hanging on his neck and carrying an armalite roaming inside and outside the polling place.

On the other hand, respondent Bernal, Jr. in vehemently denying the allegations of petitioner, submitted joint affidavits of the members of the different Boards of Election Inspectors for precinct nos. 61A, 62A and 63A/64A.

x x x

All the supplemental affidavits of the different BEIs categorically declared that the elections in their respective precincts "*starting from the start of the voting to its closing, to the counting of votes and to the preparation and submission of election returns*" were peaceful, clean, orderly and no acts of terrorism, intimidation, coercion and similar acts prohibited by law was (sic) exerted on anybody including the voters and members of the BEIs. They all attested that the incidents alleged by petitioner's watchers did not happen. The alleged terrorism, coercion, or violation of election laws like the opening of ballots and reading the votes allegedly done by certain public officials like SPO3 Sorongon, Nody Mahilum, Anonia Barrios, Telesforo Gallardo and others are not true, the truth being that these people were only inside the polling place to exercise their right of suffrage. They also vehemently denied that the election returns were not simultaneously prepared with the tallying and counting of votes. They stressed that as public school teachers, they cannot risk their future and career and will not allow or tolerate anybody to make a mockery of the electoral process to (sic) which they were duly sworn to uphold.

Nody Mahilum and PO3 Gilbert Sorongon also executed a joint affidavit denying the accusations of Dumayas, Jr. and his watchers stating therein that they only entered their respective precinct-polling place in order to exercise their right of suffrage and that the election in the three precincts of Barangay Pantalan was orderly, peaceful, and honest which (sic) truly reflects the will of the electorate.

In the afternoon of May 14, 1998, the Municipal Board of Canvassers denied petitioner's objection to the inclusion of the contested returns and proceeded with the canvass. The results of the voting were as follows:

	<u>DUMAYAS</u>	<u>BERNAL</u>
CONTESTED PRECINCTS		
Prec. 61A	44	117
Prec. 62A	43	114
Prec. 63A/64A (clustered) 54 159		
Uncontested prec[incts] total	<u>7,636</u>	<u>7,514</u>
Over all total	7,777	7,904 <sup>[2]</sup>

Petitioner filed a Notice of Appeal before the MBC on May 15, 1998. The appeal was given due course by the COMELEC Second Division<sup>[3]</sup> which rendered a resolution dated August 4, 1998, disposing as follows:

WHEREFORE, finding the preparation of the contested election returns to be tainted with irregularities, this Commission (SECOND DIVISION) RESOLVED, as it hereby RESOLVES, to EXCLUDE Election Return No. 3000976 from Precinct No. 61-A; Election Return No. 3000977 from Precinct No. 62-A; and Election return No. 3000978 from Precinct Nos. 63-A/64-A (clustered).

Respondent Mun(i)cipal Board of Canvassers is hereby directed to RECONVENE and FINISH the canvass of the remaining or uncontested returns and thereafter, PROCLAIM the winning mayoralty candidate of Carles, Iloilo.

SO ORDERED.<sup>[4]</sup>

On August 10, 1998, private respondent Felipe Bernal, Jr., filed a motion for reconsideration of the above-cited resolution with the COMELEC *en banc*.

On August 12, 1998, an order certifying that the motion for reconsideration and records of the case were elevated to the COMELEC *en banc* was signed by Commissioner Julio F. Desamito and issued by the Clerk of the Commission.

Pending resolution of the motion for reconsideration and pursuant to the resolution of the COMELEC Second Division, Election Officer Rolando Dalen set the reconvening of the MBC on August 13, 1998, for the continuation of canvass proceedings and proclamation of winning candidates for Vice-Mayor and Municipal Councilors of Carles, Iloilo. No winner for the position of Mayor was proclaimed since private respondent was able to present a copy of his motion for reconsideration before the MBC. The MBC then reset the date for reconvening of the board on August 17, 1998, after confirming by phone with COMELEC-Manila that a motion for reconsideration

was indeed filed by private respondent. Thereafter, the MBC ruled that proclamation of the winning candidate for Mayor would proceed on August 17, 1998 unless private respondent could present a certification from the COMELEC that the motion for reconsideration was elevated to the COMELEC *en banc*.

On August 17, 1998, despite presentation of the August 12, 1998 order, petitioner was proclaimed winner of the election after excluding from the canvass the election returns from the three contested precincts in accordance with the COMELEC Second Division Resolution. The MBC, with its Vice-Chairman dissenting, justified its act by reasoning that it did not receive an official copy of the order directing the elevation of the case to the *banc*.

The following day, private respondent immediately filed an urgent motion to declare void *ab initio* the proclamation of petitioner on the ground that the resolution of the COMELEC Second Division was not yet final and executory. For his part, petitioner opposed both the motion for reconsideration and motion to declare void *ab initio* his proclamation as Mayor of Carles, asserting that private respondent failed to show palpable errors to warrant reconsideration of said resolution and maintaining, at the same time, that his proclamation was legal since respondent failed to produce the certification required by the MBC.

Meanwhile, on August 25, 1998, the duly-proclaimed Vice-Mayor Arnold Betita filed an action for *quo warranto*<sup>[5]</sup> against petitioner before the Regional Trial Court of Iloilo, Branch 66. Docketed as Spl. Civil Action No. 98-141, said petition included respondent Bernal as one of the petitioners together with Vice-Mayor Betita.

On September 18, 1998, petitioner filed before the COMELEC *en banc* a motion to expunge respondent Bernal's motion for reconsideration and motion to declare petitioner's proclamation void *ab initio*, on the ground that respondent Bernal should be deemed to have abandoned said motions by the filing of Spl. Civil Action No. 98-141 which, according to petitioner, is a formal election protest via *quo warranto* brought before the regular courts.

In a resolution dated August 24, 1999 but promulgated on March 2, 2000, the COMELEC *en banc* denied petitioner's motion to expunge, thus:

WHEREFORE, premises considered, the Resolution of the Second Division is hereby REVERSED and SET ASIDE and the proclamation of Rodolfo Dumayas, Jr. is hereby ANNULLED. A new Municipal Board of Canvassers of Carles, Iloilo is hereby constituted with the following members: Atty. Nelia Aureus, Chairman; Atty. Rosel Abad, Vice-Chairman; and Atty. Manuel Lucero, Third Member -- all of Election Contests and Adjudication Department of the Commission. They are directed to convene at Session Hall of the COMELEC -- Main Office, Manila on the tenth (10th) day from the date of promulgation of this Resolution with notice to the parties. The new board of canvassers shall complete the canvassing of all the returns and proceed with the proclamation of the true winner for the position of mayor of Carles, Iloilo. Petitioner Rodolfo Dumayas, Jr. is hereby directed to cease and desist from performing the functions of the office of mayor of Carles, Iloilo. Election Officer Rolando Dalen is hereby directed to bring to the Commission's Main Office the election returns of

Carles, Iloilo which need to be canvassed and the other election documents necessary for the canvassing and proclamation and turn them over to the new board of canvassers.

The Law Department is directed to investigate the election offense allegedly committed by PO3 Gilbert Sorongon on election day.

Let the Deputy Executive Director for Operations of the Commission implement this Resolution with dispatch giving a copy thereof to the Secretary of the Department of Interior and Local Government.

SO ORDERED.<sup>[6]</sup>

On March 13, 2000, respondent Bernal, Jr. was proclaimed by the newly-constituted Municipal Board of Canvassers as the duly-elected Mayor of the Municipality of Carles, thereby unseating petitioner Dumayas.

Hence, this instant special civil action where he alleges that:

- A. RESPONDENT COMMISSION ERRED IN NOT HOLDING THAT, PRIVATE RESPONDENT FELIPE BERNAL JR. IS DEEMED TO HAVE ABANDONED HIS MOTION FOR RECONSIDERATION BEFORE THE COMMISSION ON ELECTION EN BANC CONSIDERING THAT PRIVATE RESPONDENT, TOGETHER WITH ARNOLD BETITA FILED AN ELECTION CASE THRU A QUO WARRANTO, BEFORE THE REGIONAL TRIAL COURT OF ILOILO BRANCH 66, DOCKETED AS CASE NO. 98-141.
- B. RESPONDENT COMMISSION ERRED IN UPHOLDING THE INCLUSION FOR CANVASS THE THREE ELECTION RETURNS FOR PRECINCT NOS. 61-A, 62-A, and 63-A/64-A (CLUSTERED) BY THE MUNICIPAL BOARD OF CANVASSERS OF CARLES, ILOILO NOTWITHSTANDING THE FACT THAT THERE IS CLEAR AND SUFFICIENT EVIDENCE TO SHOW THAT THE ELECTION RETURNS FOR THESE THREE PRECINCT(S) WERE PREPARED UNDER DURESS AND NOT PREPARED SIMULTANEOUSLY WITH THE COUNTING OF VOTES.
- C. THE RESOLUTION PROMULGATED ON MARCH 2, 2000 IS ILLEGAL AS IT WAS VIOLATIVE OF ARTICLE IX (A) SECTION 7 OF THE CONSTITUTION CONSIDERING THAT ONLY FOUR COMMISSIONERS VOTED TO REVERSE THE RESOLUTION DATED AUGUST 4, 1998 OF THE SECOND DIVISION COMMISSION ON ELECTION AND THAT, TWO COMMISSIONER(S) HAVE ALREADY RETIRED, AT THE TIME OF THE PROMULGATION.<sup>[7]</sup>

The following are the issues to be resolved: (1) Should respondent Bernal, who was named as petitioner in the *quo warranto* proceedings commenced before the regular court, be deemed to have abandoned the motions he had filed with respondent Commission? (2) Did the COMELEC err in ordering the inclusion of the contested