

EN BANC

[G.R. No. 145802, April 04, 2001]

DOMINADOR T. BELAC, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROMMEL DIASEN, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This is a petition for certiorari and prohibition with prayer for a temporary restraining order and preliminary injunction, assailing the Resolutions dated February 22, 2000 and November 16, 2000 of the Commission on Elections (COMELEC) *en banc* in SPC No. 98-170.

The facts as shown by the records are:

Rommel Diasen of the LAMMP and Dominador Belac of the LAKAS-NUCD were candidates for governor in the province of Kalinga during the May 11, 1998 national and local elections.

On May 14, 1998, the Provincial Board of Canvassers started to canvass the results of the election.

On May 15, 1998, when the Certificate of Canvass and Statement of Votes for the municipality of Pinukpuk were scheduled for canvassing, Diasen objected to the inclusion of the election returns of 42 precincts in the said municipality.

On May 19, 1998, Diasen also questioned the inclusion of the election returns of 28 precincts of the town of Tinglayan.

Within twenty-four (24) hours therefrom, Diasen filed with the Kalinga Provincial Board of Canvassers a petition for exclusion of the Certificates of Canvass and Statements of Votes for Pinukpuk and Tinglayan, alleging in the main that:

1. The Certificates of Canvass and Statements of Votes were not prepared by the Board of Election Inspectors as the same were not signed by the respective watchers for the candidates' political parties.
2. There were discrepancies in the tally of votes. The official LAMMP copies of the official returns have a lesser number of votes than those appearing in the Statements of Votes for the said municipalities.

However, the Provincial Board of Canvassers proceeded to include in its canvass the results as stated in the election returns for Pinukpuk. On Diasen's objection to the inclusion of the election returns for Tinglayan, the Board ruled that it will only issue a certificate of correction since the discrepancies were caused by mere error in

indicating the entries.

On May 19, 1998, the Provincial Board of Canvassers proclaimed Belac as the duly elected governor for the province of Kalinga.

On May 21, 1998, Diasen appealed to the COMELEC (First Division) from the rulings of the Provincial Board of Canvassers.

On June 4, 1998, the COMELEC (First Division) issued a Resolution dismissing Diasen's appeal for lack of merit, thus:

"Wherefore, premises considered, the appeal is hereby dismissed for lack of merit. The rulings of the Provincial Board of Canvassers on the petition for exclusion of Certificate of Canvass and Statement of Votes are hereby affirmed. The Provincial Board of Canvassers for Kalinga is hereby directed to reconvene and continue with the canvassing with reasonable dispatch and proclaim the winning candidate if the votes from the four precincts of Tinglayan, Kalinga where there was failure of elections would not materially affect the results of the election.

"Considering that the records of the case show that additions in the COCs and SOVs of Pinukpuk for the votes of gubernatorial candidate Dominador Belac were made, the Law Department is directed to conduct a preliminary investigation for the commission of an election offense against the members of the Municipal Board of Canvassers of Pinukpuk, Kalinga.

"The Law Department is similarly directed to conduct an immediate investigation on the possible commission of electoral fraud as alluded to in the ultimate paragraph before the herein dispositive portion. The Election Officer of Pinukpuk is directed immediately to cause the transfer of the Book of Voters for the 69 precincts of Pinukpuk to the Comelec Main Office [c/o Law Department] for this purpose."

On June 19, 1998, Diasen filed a motion for reconsideration of the above Resolution which was elevated to the COMELEC *en banc*.

While the said motion was pending resolution in the COMELEC *en banc*, the Chairman of the Provincial Board of Canvassers, Atty. Nicasio Aliping, convened the Board by calling the two other members in order to proclaim Belac as the new governor. But the two members declined, so only Atty. Aliping proceeded with Belac's proclamation.

On June 28, 1998, Diasen filed with the COMELEC a separate petition (SPC No. 98-291) to dispute the proclamation of Belac.

Meanwhile, on February 22, 2000, or almost two years after the filing of Diasen's motion for reconsideration on June 19, 1998, the COMELEC *en banc* promulgated the first assailed Resolution modifying the ruling of the First Division, thus:

"WHEREFORE, premises considered, the resolution of the Commission (First Division) subject of the instant Motion for Reconsideration is hereby modified as follows:

"1) The Provincial Board of Canvassers for Kalinga is hereby directed to proceed with the canvassing of votes for the office of the provincial governor deducting from the Certificates of Canvass of the Municipalities of Tinglayan and Pinukpuk the votes reflected on the election returns from the above-excluded precincts and thereafter proclaim the winning candidate for governor;

"2) The directive to the Law Department to conduct appropriate investigations is affirmed with the modification, however, that the Board of Election Inspectors concerned for the municipalities of Pinukpuk and Tinglayan, as well as John Does, be likewise investigated for possible collusion in the commission of the election offense and election anomaly, subject of petitioner's case."

The above Resolution was penned by Commissioner Manolo Gorospe, concurred in by Commissioners Japal Guiani and Luzviminda Tancangco. Chairman Harriet Demetriou and Commissioner Julio Desamito joined Commissioner Teresita Dy-liacco Flores in her dissent. In short, the voting was 3-3.

In view of the results of the voting, Belac filed a motion praying that the COMELEC *en banc* desist from implementing the February 22, 2000 Resolution in favor of Diasen, citing Section 6, Rule 18 of the COMELEC Rules of Procedure.^[1] The COMELEC granted the motion in its February 24, 2000 order and set the re-hearing on March 9, 2000.

On February 28, 2000, pursuant to the COMELEC *en banc's* February 22, 2000 Resolution, the Provincial Board of Canvassers proclaimed Diasen as the duly elected governor. On the same date, Diasen took his oath of office as governor of Kalinga Province.

On March 9, 2000, after receiving Atty. Aliping's Report on March 3, 2000 on Diasen's proclamation, the COMELEC *en banc* issued an order:

"1. To direct Rommel Diasen to cease and desist from discharging the duties and functions of the Office of the Governor of Kalinga Province until further orders of this Commission during the pendency of this case;

"2. To require both parties to comment on the report of Atty. Nicasio M. Aliping, Jr., Regional Election Attorney and Chairman of the Provincial Board of Canvassers of Kalinga, x x x, and to include in said comment why the proceedings of the Provincial Board of Canvassers on February 25, 2000 and the subsequent proclamation of Atty. Rommel Diasen on 28 February 2000 be declared null and void."

Thereafter, the COMELEC *en banc* re-scheduled the re-hearing of Diasen's motion for reconsideration (in view of the 3-3 voting) set on March 9 to March 23, 2000. The parties agreed to file their respective memoranda.

Meanwhile, on October 3, 2000, the COMELEC (Second Division) issued a Resolution in SPC Case No. 98-291 declaring null and void the proclamation of Belac as governor, holding that:

"The proclamation of respondent Belac by the PBC Chairman alone against the votes of the other two members of the PBC is illegal because the Omnibus Election Code (Section 255) provides that a *majority vote of all the members of the Board of Canvassers shall be necessary to render a decision.*"

On November 16, 2000, Belac filed his "Manifestation with Formal Motion" claiming that the votes of Commissioners Gorospe and Guiani in the assailed Resolution dated February 22, 2000 should not be considered since they retired on February 15, 2000, or before the promulgation, citing the recently decided case of *Ambil vs. COMELEC*.^[2] In this case, the Supreme Court held that "one who is no longer a member of the Commission at the time the final decision or resolution is promulgated cannot validly take part in that resolution or decision."

Chairman Demetriou denied Belac's motion.

On November 16, 2000, the Commission *en banc*, now with new members in view of the retirement of Commissioners Manolo Gorospe and Japal Guiani, promulgated the second challenged Resolution, the dispositive portion of which reads:

"WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED. Accordingly, We hereby:

"1. AFFIRM the proclamation of Petitioner-Appellant ROMMEL W. DIASEN as the duly elected Governor of Kalinga by Public Respondent Provincial Board of Canvassers of Kalinga;

"2. RECALL and LIFT the Order promulgated on March 9, 2000 directing Petitioner-Appellant to cease and desist from performing the duties and functions of the Office of Governor for the province of Kalinga;

"3. AFFIRM the directive to the LAW DEPARTMENT to conduct appropriate investigations of the Board of Election Inspectors for the municipalities of Pinukpuk and Tinglayan, as well as John Does, for possible collusion in the commission of election offenses and irregularities, subject in the above-entitled case; and

"4. FURNISH a copy of this Resolution to the Office of the President, the Secretary of Interior and Local Government, the Chairman of the Commission on Audit, and the Secretary of the Sangguniang Panlalawigan of Kalinga Province, for their guidance and information."

The above Resolution was concurred in by Commissioners Julio Desamito, Luzviminda Tancangco, Ralph Lantion and Rufino Javier. Commissioner Teresita Dy-Liaco-Flores again wrote a dissenting opinion, joined by Chairman Demetriou.

Hence, this petition by Dominador Belac on the following grounds:

"First Ground

"Respondent COMELEC committed grave abuse of discretion amounting to lack and/or excess of jurisdiction and in fact implicitly deprived petitioner of DUE PROCESS, when it manifestly, deliberately and utterly FAILED AND REFUSED to act WITH DISPATCH on private respondent's SUMMARY Petition on Pre-Proclamation Controversy; the Supposed Final Resolution on Mere REHEARING promulgated only on November 16, 2000, AFTER MORE THAN 30 MONTHS from the filing of the Petition, clearly violated petitioners' right to due process, to a speedy disposition of cases and an (sic) clearly an act of grave abuse of discretion.

"Second Ground

"The November 16 Questioned Resolution (Annex `A') was absolutely useless and was indeed superfluous (sic) and totally NULL AND VOID, considering that the same was supposed to be a Final Resolution on a supposed REHEARING under Rule 18, Section 6 of the COMELEC Rules, wrongfully premised on a supposed previous EQUALLY DIVIDED VOTE in the February 22, 2000 Resolution of the COMELEC En Banc, However, legally, procedurally and truthfully there was no such prior Equally Divided Resolution/Vote that would have required a Rehearing, as the COMELEC En Banc patently erred in counting and accepting even the null and void VOTES/signatures of two (2) Commissioners who retired on February 15, 2000 - prior to the February 22, 2000 promulgation.

"Third Ground

"RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT EXCLUDED FROM CANVASS FORTY TWO (42) ELECTION RETURNS FOR PINUKPUK AND TWENTY EIGHT (28) ELECTION RETURNS FOR TINGLAYAN, DESPITE UTTER LACK OF LEGAL AND FACTUAL BASES THEREFOR AND IN GROSS AND WANTON DISREGARD OF LAW AND WELL-SETTLED JURISPRUDENCE."

Public respondent COMELEC *en banc* and private respondent Rommel Diasen filed their respective comments on the petition.

Respondent COMELEC, in its comment, states that based on evidence on record, there were serious irregularities, tampering and falsification of the questioned election returns in the contested precincts at Pinukpuk and Tinglayan. On this ground, "although an exception," the COMELEC can rule on the exclusion of the