

EN BANC

[G.R. No. 125586, June 29, 2000]

DR. TERESITA G. DOMALANTA AND DR. AGRIPINA B. FRANCISCO, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, AQUILINO Q. PIMENTEL, JR. AND THE OFFICE OF THE STATE PROSECUTOR, DEPARTMENT OF JUSTICE, MANILA, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Challenged in this petition for *certiorari* and prohibition is COMELEC *En Banc* Resolution No. 96-1616 dated May 28, 1996^[1] which -

RESOLVED:

1. to file an Information against PES Vitaliano Fabros, Provincial Prosecutor Pacifico Paas, and Division Schools Superintendent Olympia Marquez, Chairman, Vice-Chairman, and Member-Secretary, respectively of the provincial Board of Canvassers, Isabela together with its staff members, namely : Dr. Teresita Domalanta, Agripina Francisco, Dante Limon, Eduardo Tamang and George Noriega, before the Regional Trial Court of Isabela for violation of Section 27 (b) of Republic Act No. 6646, the prosecution of which shall be handled by the Chief State Prosecutor Zenon de Guia, with the duty to submit periodic report[s] thereon after every hearing of the case; and
2. to file an administrative complaint against said respondents for grave misconduct, gross dishonesty, and conduct unbecoming public officials to the prejudice of the best interest of the public service;
3. to preventively suspend the respondents for a period of ninety (90) days reckoned from receipt of this resolution.

From the record, it appears that on August 4, 1995, then senatorial candidate Aquilino Pimentel, Jr. filed a complaint-affidavit^[2] charging Provincial Election Supervisor (PES) Vitaliano Fabros, Provincial Prosecutor Pacifico Paas and Division Superintendent of Schools Dr. Olympia Marquez, Chairman, Vice-Chairman and Member-Secretary, respectively, of the Provincial Board of Canvassers of Isabela with alleged violation of Section 27 (b) of Republic Act No. 6646, otherwise known as the Guingona Electoral Reform Law of 1987.

The case, docketed as E.O. Case No. 95-408 entitled "Aquilino Pimentel, Jr. v. PBC of Isabela" for alleged violation of the Omnibus Election Code was thereafter

referred to the Law Department of the Commission of Elections (COMELEC) for evaluation and report. The COMELEC's Law Department summarized the facts of the controversy in its evaluation report dated May 20, 1996,^[3] thus:

The instant case stemmed from the alleged irregularity committed by the Provincial Board of Canvassers of Isabela in crediting unauthorized additional votes, thus: (a) Twenty seven thousand seven hundred fifty five (27,755) to Juan Ponce Enrile, (b) Seven thousand (7,000) to Ramon Mitra, and (c) Ten thousand (10,000) to Gregorio Honasan.

After the submission of the counter-affidavits of the respondents, Pimentel filed on September 1, 1995 an amended complaint impleading the members of the staff of the Board namely: Dr. Teresita Domalanta, Agripina Francisco, Dante Limon, Eduardo Tamang and George Noriega, as additional respondents.

Aquilino Pimentel alleged that the unauthorized additional number of votes were included in the total votes for senatorial candidates Enrile, Mitra and Honasan in the Provincial Certificate of Canvass duly signed and thumbmarked by the members of the PBC of Isabela and which same was submitted to the Comelec as National Board of Canvassers which was included in the canvass on which the proclamation was based. In order to prove his charge, complainant submitted in evidence the Certificate of Canvass supported by Statement of Votes per precinct of Santiago City, Municipalities of Angadanan, Cauayan, Cordon, Delfin Albano, Echague, San Mariano, San Pablo, Ilagan and San Mateo. A comparison of the votes indicated in the Statement of Votes by city/municipality and that of the municipal/city Certificate of Canvass was submitted by the complainant which is hereunder reproduced:

Municipality	Votes as indicated in the Municipality/City Certificate of Canvass	Votes as indicated in the Statement of Votes by Municipality/City prepared by the Provincial Board of Canvassers of Isabela	Discrepancy
Santiago City			
Enrile	15,454	16,454	+1,000
Angadanan			
Enrile	5,996	7,996	+2,000
Mitra	3,888	4,888	+1,000
Cauayan			
Enrile	13,710	19,710	+6,000
Honasan	11,205	21,205	+10,000

Cordon			
Enrile	6,794	9,794	3,000
Delfin Albano			
Enrile	3,972	4,972	+1,000
Echague			
Enrile	10,552	15,552	+5,000
San Mariano			
Enrile	5,683	8,253	+2,570
San Pablo			
Enrile	2,418	3,438	+1,020
Ilagan			
Mitra	14,457	20,457	+6,000
San Mateo			
Enrile	9,424	15,589	+6,165

In their defense, Provincial Election Supervisor Vitaliano Fabros, Provincial Prosecutor Pacifico Paas and Division Superintendent of Schools Dr. Olympia Marquez, Chairman, Vice-Chairman and Member-Secretary, respectively, of the Provincial Board of Canvassers of Isabela were in unison in vehemently denying the charges imputed against them and declared that they faithfully performed their poll duties assigned to them.

PES Vitaliano Fabros, in his counter-affidavit, asserted that it could not have been possible not to read the actual figures reflected in the municipality/city Certificate of Canvass considering the presence of counsels and watchers of candidates and political parties and if ever there are discrepancies between the city/municipal Certificate of Canvass and that of the Provincial Certificate of Canvass the same may be attributable to human fatigue.

Respondent Pacifico Paas declared that he assumed the opening of the envelopes containing the election returns by municipality and broke the corresponding paper seals and handed the same to the Chairman who in turn assumed the reading of votes through a microphone with the tabulators and recorders reflecting the figures in the Statement of Votes and further declared that he had no direct view over the votes read by Chairman Fabros nor had he interfered save for one or two election returns in the reading. He even vigorously denied any privy (sic) to the discrepancy of the figures indicated in the "Statement of Votes by Municipality" and "Provincial Certificate of Canvass" because he honestly

believed that these are the true and faithful reproduction of the figures indicated in the Provincial Board of Canvasser's copy of the election returns provided them which were used in the canvass.

Respondent Dr. Olympia Marquez stated that it was Chairman Fabros who read the votes obtained by the candidates through an amplifier sound system and correspondingly the recorders tabulated the figures as read into the Statement of Votes by municipality; that she did not so much interfere in the opening of the envelopes and the election returns, nor in the reading of the votes in the duration of the canvassing and that she conveniently sat side by side with the recorders and periodically see to it that votes correspondingly read and announced were faithfully reflected in the Statement of Votes.

Respondents Dr. Teresita Domalanta and Agripina Francisco, in their joint counter-affidavit, categorically denied the charges, and declared that they faithfully recorded the votes obtained by the candidates as read and announced by the Chairman of the Provincial Board of Canvassers and during the recording Dr. Olympia Marquez periodically checked the correctness of the entries in the Tally Sheet for the Statement of Votes; that they recorded the votes obtained by local candidates in some municipalities including senatorial candidates whose surname begins with letter "T" and that they did not participate in the preparation of the Provincial Certificate of Canvass.

Respondents Dante Limon and Eduardo Tamang, in their joint-affidavit, vehemently denied the charges. They claimed that their assigned duty is only to record the names of candidates and their corresponding number of votes obtained as announced by PBC Chairman, Atty. Vitaliano Fabros because they have no access to the votes written in the Municipal Certificate of Canvass.

Respondent George Noriega, in his counter-affidavit likewise denied the charges and averred that he had no direct knowledge in the preparation of the alleged falsified Provincial Certificate of Canvass, and as Tabulator, he only added what was recorded in the Statement of Votes prepared by other persons and denied any participation in the alleged falsification of the Statement of Votes.

On the basis of the foregoing factual findings, the COMELEC's Law Department recommended that:

1. an information be filed against Provincial Election Supervisor Vitaliano Fabros, Provincial Prosecutor Pacifico Paas, and Division Superintendent of Schools Dr. Olympia Marquez, Chairman, Vice-Chairman and Member-Secretary, respectively of the Board of Canvassers of Isabela before the Regional Trial Court Isabela for violation of Section 27 (b) of Republic Act No. 6646, the prosecution of which shall be handled by Regional Election Director Samuel Barangan of Region II, with the duty to submit periodic progress report[s] after every hearing of the case;
2. an administrative complaint against said respondent for

- grave misconduct, gross dishonesty, and conduct unbecoming public officials to the prejudice of the best interest of the service; and
3. the cases against Dr. Teresita Domalanta, Agripina Francisco, Dante Limon, Eduardo Tamang and George Noriega be dismissed for insufficiency of evidence to establish a probable cause.

In justifying its stand, the COMELEC Law Department reasoned as follows:

Respondents stand charged with alleged violation of Section 27 (b) of Republic Act No. 6646 which provides:

Section 27. *Election offenses.* - In addition to the prohibited acts and election offenses enumerated in Section 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense.

x x x

x x x

x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers with, increases or decreases votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.
(Underscoring ours)

There is no question there was indeed an increase in the number of votes obtained by senatorial candidates Enrile, Mitra and Honasan which the complainant called it [a] glaring discrepancy. An examination of the Municipal Certificate of Canvass with its Statement of votes per precinct in relation to the Provincial Certificate of Canvass as supported by the Statement of Votes by City/Municipality would show that the votes of the aforementioned candidates were illegally increased in Santiago City and in the nine (9) municipalities of Isabela.

The crucial and pivotal issue for determination in the case at bar is whether or not the respondent's alleged act of increasing the number of votes garnered by senatorial candidates Enrile, Mitra and Honasan constitutes a violation of Section 27 (b) of Republic Act No. 7168.

By a general overview, in order to have judicious evaluation of the case, it is imperatively necessary to define MISTAKE, NEGLIGENCE and GROSS NEGLIGENCE which may aid in arriving [at] an intelligent findings (*sic*).

Mistakes, concededly committed by public officers are not actionable without any clear showing that they were motivated by malice or gross negligence amounting to bad faith.^[4]

Negligence is the omission to do something which a reasonable man guided by those consideration[s] which ordinarily regulate the conduct of human affairs would do, or the doing of something which a prudent and