

## EN BANC

[ G.R. No. 125798, June 19, 1997 ]

### **HADJI HAMID LUMNA PATORAY, PETITIONER, VS. COMMISSION ON ELECTIONS AND TOPAAN D. DISOMIMBA, RESPONDENTS.**

#### **D E C I S I O N**

**PUNO, J.:**

In this petition for *certiorari* and prohibition, with a prayer for the issuance of a temporary restraining order (TRO) , petitioner Hadji Hamid Lumna Patoray assails the June 28, 1996 Resolution of the COMELEC (Second Division) annulling his proclamation as mayor-elect of Tamparan, Lanao del Sur, and the August 16, 1996 Order of the COMELEC en banc holding in abeyance the recanvassing of votes cast in election precinct numbers 16 and 20-A.

The facts. In the May 8, 1995 elections, petitioner HADJI HAMID LUMNA PATORAY and private respondent TOPAAN D. DISOMIMBA were the closest rivals for the mayoralty post in the municipality of Tamparan, Lanao del Sur. The counting of the ballots showed that petitioner won over private respondent by a slim margin of twenty-five (25) votes, with petitioner receiving 3,778 votes and private respondent garnering 3,753 votes.

During the canvass of the election returns, private respondent objected to the inclusion of four (4) returns from precinct nos. 16, 17, 19 and 20-A. The municipal board of canvassers (MBC) overruled his objections. Private respondent appealed to the COMELEC.

In its July 12, 1995 Resolution, the COMELEC modified the decision of the MBC and excluded from the canvass only the two election returns from precinct nos. 16 and 20-A. With the exclusion of these returns, the twenty-five (25) votes margin of petitioner was wiped out, with private respondent now receiving the highest number of votes at 3,612 and petitioner coming in second with 3,419 votes.

Accordingly, petitioner came to this Court on *certiorari*<sup>[1]</sup> impugning the July 12, 1995 Resolution of the COMELEC.

In our En Banc Decision,<sup>[2]</sup> dated October 24, 1995, we noted that since there was a discrepancy between the "taras" and the written figures of the votes received by the candidates in the election return for precinct 16, the COMELEC (Second Division) should have also ordered a recount of the ballots or used the Certificate of Votes cast in precinct no. 16 to determine the true number of votes obtained by each party, after determining that the ballot box has not been tampered with pursuant to Section 236 of the Omnibus Election Code.<sup>[3]</sup> As to the election return for precinct no. 20-A, we ruled that the COMELEC erred in resorting to the Certificate of Votes in excluding the return in said precinct. Since the return was incomplete for it lacked

the data as to provincial and congressional candidates, the applicable provision would be Section 234 of the Omnibus Election Code which deals with material defects in election returns. Thus, we ruled that the COMELEC should have first determined the integrity of the ballot box, ordered the opening thereof and recounted the ballots therein after satisfying itself that the integrity of the ballots is intact.<sup>[4]</sup> We then directed the COMELEC to issue another Order in accordance with said Decision.

Accordingly, the COMELEC En Banc issued its January 18, 1996 Order<sup>[5]</sup> implementing our Decision. However, without first ascertaining whether the integrity of the ballots and ballot boxes are intact, COMELEC immediately ordered the MBC to reconvene in the COMELEC Office, Manila, as a Special Board of Election Inspectors and recount the ballots cast in precincts 16 and 20-A, prepare new election returns, enter the new totals of the votes and then proclaim the winner.

Forthwith, private respondent filed a motion with the COMELEC to hold in abeyance the recount of the ballots until after it has determined that the integrity of the ballot boxes and the ballots therein had been duly preserved pursuant to Sections 234 and 235 of the Omnibus Election Code.

In an Order, dated January 25, 1996, the COMELEC denied said motion and held that there is "no need to preliminarily determine that the identity and integrity of the ballots therein have been duly preserved" for the recount of votes is not done upon the initiative of this Commission but upon orders of the Supreme Court.<sup>[6]</sup> This Order was not challenged by private respondent who even participated in the recount.

Pursuant to COMELEC's January 18, 1996 Order, the MBC, acting as the special Board of Election Inspectors, reconvened on January 25, 1996 at the Comelec Office in Manila to recount the ballots and recanvass the returns from precinct nos. 16 and 20-A. During the canvass, private respondent objected to the inclusion of the ballots from precincts 16 and 20-A on the ground that "the election returns are manufactured, fabricated or not authentic considering that the election returns include votes or ballots which are spurious, marked and invalid ballots."<sup>[7]</sup>

The MBC rejected these objections holding that they cannot be considered in a pre-proclamation case. It proceeded with the recounting and recanvassing of votes where petitioner obtained a total of 3,778 votes as against private respondent's 3,753 votes. On January 26, petitioner was proclaimed as the duly-elected mayor of Tamparan, Lanao del Sur.<sup>[8]</sup> On the same day, private respondent moved to declare the recount as null and void.<sup>[9]</sup> Instead of definitively passing upon the issue of whether or not the integrity of the ballot boxes and ballots for precincts 16 and 20-A was preserved, and thereafter rule on whether or not the two returns should be excluded, the COMELEC en banc merely noted<sup>[10]</sup> the motion in view of petitioner's proclamation. On January 30, petitioner took his oath and assumed the Office of the Mayor of Tamparan.

On February 5, 1996, private respondent filed an election protest with the RTC of Marawi City. He also filed with the COMELEC (Second Division) a petition for the annulment of petitioner's proclamation<sup>[11]</sup> on the ground that the MBC did not

comply with Section 20 of R.A. 7166 in failing to rule on his objection during the canvass.

On June 28, 1996 the COMELEC (Second Division) issued a Resolution<sup>[12]</sup> granting the petition and annulling petitioner's proclamation. It held that the MBC should have allowed private respondent to adduce evidence before it ruled on the objections, as provided under Section 20 of R.A. 7166. It thus concluded that at the time of the proclamation, private respondent's objections were still pending before the MBC. COMELEC thus directed the MBC to reconvene and recanvass the two election returns, observing strictly the requirements of Section 20 R.A. 7166, and proclaim the winner accordingly.

Petitioner filed a motion for reconsideration<sup>[13]</sup> with the COMELEC en banc alleging that the procedure in R.A. 7166 on pre-proclamation cases apply only when there is a valid ground for a pre-proclamation controversy. Petitioner claimed that since the objections raised by private respondent pertained to the casting and appreciation of ballots, the proper remedy was an election protest. Hence, private respondents objection was correctly overruled by the MBC.

On August 1, 1996, the COMELEC en banc issued an order,<sup>[14]</sup> thus:

"Pending consideration of the Motion for Reconsideration, the Commission hereby orders as follows:

- "1. To direct the parties to maintain the status quo prevailing prior to the filing of the petition and this motion for reconsideration;
- "2. To direct the Municipal Board of Canvassers to reconvene and recanvass the election returns pertaining to Precinct Nos. 16 and 20-A, strictly observing Section 20 of R.A. 7166;
- "3. To constitute a new Municipal Board of Canvassers of Tamparan, Lanao del Sur x x x;
- "4. To direct the previous Municipal Board of Canvassers of Tamparan to turn over all election documents pertaining to its canvass to the new Municipal Board of Canvassers herein created.

"SO ORDERED."

On August 13, 1996, private respondent filed a Motion for Clarification<sup>[15]</sup> with the COMELEC en banc. He pointed that after the COMELEC Division annulled petitioner's proclamation and ordered a recanvassing of the two returns, petitioner filed a motion for reconsideration with the en banc. Pending the resolution of this motion, the en banc, in its August 1 Order, directed the parties to maintain the status quo prior to the annulment of petitioner's proclamation, yet, at the same time, ordered the recanvassing of the returns. Private respondent sought to clarify who, in the meantime, shall act as mayor of Tamparan. He also pointed that the August 1 Order of the en banc was highly questionable considering that by ordering a recanvass of the returns, the en banc in effect sustained that portion of the June 28 Resolution of the Division directing a recount, without resolving in its entirety the motion for