

## EN BANC

[ G.R. No. 120318, December 05, 1997 ]

**RICARDO "BOY" CANICOSA, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF CALAMBA LAGUNA AND SEVERINO LAJARA, RESPONDENTS.**  
**D E C I S I O N**

**BELLOSILLO, J.:**

RICARDO "BOY" CANICOSA and SEVERINO LAJARA were candidates for mayor in Calamba, Laguna, during the 8 May 1995 elections. After obtaining a majority of some 24,000 votes<sup>[1]</sup> Lajara was proclaimed winner by the Municipal Board of Canvassers. On 15 May 1995 Canicosa filed with the Commission on Elections (COMELEC) a Petition to Declare Failure of Election and to Declare Null and Void the Canvass and Proclamation because of alleged widespread frauds and anomalies in casting and counting of votes, preparation of election returns, violence, threats, intimidation, vote buying, unregistered voters voting, and delay in the delivery of election documents and paraphernalia from the precincts to the Office of the Municipal Treasurer. Canicosa particularly averred that: (a) the names of the registered voters did not appear in the list of voters in their precincts; (b) more than one-half of the legitimate registered voters were not able to vote with strangers voting in their stead; (c) he was credited with less votes than he actually received; (d) control data of the election returns was not filled up in some precincts; (e) ballot boxes brought to the Office of the Municipal Treasurer were unsecured, i.e., without padlocks nor self-locking metal seals; and, (f) there was delay in the delivery of election returns. But the COMELEC en banc dismissed the petition on the ground that the allegations therein did not justify a declaration of failure of election.

Indeed, the grounds cited by Canicosa do not warrant a declaration of failure of election. Section 6 of BP Blg. 881, otherwise known as the Omnibus Election Code, reads:

*Sec. 6. Failure of election.* - If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

Clearly, there are only three (3) instances where a failure of election may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.

None of the grounds invoked by Canicosa falls under any of those enumerated.

Canicosa bewails that the names of the registered voters in the various precincts did not appear in their respective lists of voters. But this is not a ground to declare a failure of election. The filing of a petition for declaration of failure of election therefore is not the proper remedy. The day following the last day for registration of voters, the poll clerk delivers a certified list of voters to the election registrar, election supervisor and the COMELEC, copies of which are open to public inspection. On the same day, the poll clerk posts a copy of the list of registered voters in each polling place. Each member of the board of election inspectors retains a copy of the list which may be inspected by the public in their residence or in their office during office hours.<sup>[2]</sup>

Fifteen (15) days before the regular elections on 8 May 1995 the final list of voters was posted in each precinct pursuant to Sec. 148 of RA No. 7166. Based on the lists thus posted Canicosa could have filed a petition for inclusion of registered voters with the regular courts. The question of inclusion or exclusion from the list of voters involves the right to vote <sup>[3]</sup> which is not within the power and authority of COMELEC to rule upon. The determination of whether one has the right to vote is a justiciable issue properly cognizable by our regular courts. Section 138, Art. XII, of the Omnibus Election Code states:

Sec. 138. *Jurisdiction in inclusion and exclusion cases.* - The municipal and metropolitan trial courts shall have original and exclusive jurisdiction over all matters of inclusion and exclusion of voters from the list in their respective municipalities or cities. Decisions of the municipal or metropolitan trial courts may be appealed directly by the aggrieved party to the proper regional trial court within five days from receipts of notice thereof, otherwise said decision of the municipal or metropolitan trial court shall decide the appeal within ten days from the time the appeal was received and its decision shall be immediately final and executory. No motion for reconsideration shall be entertained by the courts (Sec. 37, PD 1896, as amended).

On the other hand, Canicosa could have also filed with the COMELEC a verified complaint seeking the annulment of the book of voters pursuant to Sec. 10, of RA No. 7166:

Sec. 10. *Annulment of the List of Voters.* - Any book of voters the preparation of which has been affected with fraud, bribery, forgery, impersonation, intimidation, force or any other similar irregularity or which is statistically improbable may be annulled after due notice and

hearing by the Commission motu proprio or after the filing of a verified complaint: Provided, that no order, ruling or decision annulling a book of voters shall be executed within sixty (60) days before an election.

If indeed the situation herein described was common in almost all of the 557 precincts as alleged by Canicosa,<sup>[4]</sup> then it was more expedient on his part to avail of the remedies provided by law in order to maintain the integrity of the election. Since Canicosa failed to resort to any of the above options, the permanent list of voters as finally corrected before the election remains conclusive on the question as to who had the right to vote in that election, although not in subsequent elections.<sup>[5]</sup>

Canicosa also avers that more than one-half (1/2) of the legitimate registered voters were not able to vote, instead, strangers voted in their behalf. Again, this is not a ground which warrants a declaration of failure of election. Canicosa was allowed to appoint a watcher in every precinct. The watcher is empowered by law to challenge any illegal voter. Thus, Secs. 199 and 202, Art. XVII, of the Omnibus Election Code, provide:

Sec. 199. Challenge of illegal voters. - (a) Any voter, or watcher may challenge any person offering to vote for not being registered, for using the name of another or suffering from existing disqualification. In such case, the board of election inspectors shall satisfy itself as to whether or not the ground for the challenge is true by requiring proof of registration or identity of the voter x x x x

Sec. 202. Record of challenges and oaths. - The poll clerk shall keep a prescribed record of challenges and oaths taken in connection therewith and the resolution of the board of election inspectors in each case and, upon the termination of the voting, shall certify that it contains all the challenges made x x x x

The claim of Canicosa that he was credited with less votes than he actually received and that the control data of the election returns was not filled up should have been raised in the first instance before the board of election inspectors or board of canvassers. Section 179, Art. XV, of the Omnibus Election Code clearly provides for the rights and duties of watchers -

Sec. 179. Rights and duties of watchers. - x x x x The watchers x x x shall have the right to witness and inform themselves of the proceedings of the board of election inspectors x x x to file a protest against any irregularity or violation of law which they believe may have been committed by the board of election inspectors or by any of its members or by any persons, to obtain from the board of election inspectors a certificate as to the filing of such protest and/or of the resolution thereon x x x and to be furnished with a certificate of the number of votes in words and figures cast for each candidate, duly signed and thumbmarked by the chairman and all the members of the board of election inspectors x x x x

To safeguard and maintain the sanctity of election returns, Sec. 212, Art. XVIII, of the Omnibus Election Code states -

Sec. 212. Election returns. - x x x x Immediately upon the accomplishment of the election returns, each copy thereof shall be sealed in the presence of the watchers and the public, and placed in the proper envelope, which shall likewise be sealed