

**EN BANC**

**[ G.R. No. 136282, February 15, 2000 ]**

**FRANCISCO D. OCAMPO, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF STA. RITA, PAMPANGA AND ARTHUR L. SALALILA, RESPONDENTS.**

**[G.R. No. 137470]**

**FRANCISCO D. OCAMPO, PETITIONER, VS. ARTHUR L. SALALILA, RESPONDENT.**

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

**KAPUNAN, J.:**

The case before us hinges on the question of whether or not to include in the canvass the contested election returns.

The facts are as follows:

Francisco D. Ocampo and Arthur L. Salalila were candidates for Mayor in the Municipality of Sta. Rita, Province of Pampanga during the May 11, 1998 elections. There were 78 precincts in said municipality. During the canvassing of the election returns which started on May 12, 1998 and ended on May 14, 1998 petitioner moved for the exclusion of the election returns in 8 precincts from Barangay Basilia considering that the turnout of votes was allegedly lopsided against his favor. The results were as follows:

<i>Precinct No.</i>	<i>VOTES RECEIVED BY</i>	
	<i>OCAMPO</i>	<i>SALALILA</i>
1. 88-A-1	0	165
2. 89-A-1	0	104
3. 90-A & 90-A-1	3	192
4. 92-A	0	152
5. 93-A & 94-A	7	236
6. 99-A & 100-A	7	205
7. 104-A	5	155
8. 105-A	3	115 <sup>[1]</sup>
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	25 votes	1,324 votes

The grounds for the exclusion of the election returns in the aforementioned precincts were: *i.e*: (1) that the same were obviously manufactured; (2) they were defective for they contained no data on the number of registered votes in the precinct, actual number of votes cast and the number of valid votes cast; and (3) other alleged discrepancies in the data on votes cast and total number of registered voters and excess ballots.<sup>[2]</sup>

Finding the contested election returns to be genuine and authentic and without merit, the Municipal Board of Canvassers (MBC) ruled to order the inclusion in the canvass of the contested election returns.<sup>[3]</sup>

On May 16, 1998, petitioner went to see the Chairman of the MBC at his office to file his Notice of Appeal. Since the latter was not present, petitioner instead filed said notice with Board Members Nelia Salvador and Diosdado L. Amio who, however, refused to accept the same in line with the Board's earlier ruling not to receive anymore the Notice of Appeal. Upon request, a Certification to that effect was issued by Nelia Salvador and Disodado Amio on the same date.<sup>[4]</sup>

On May 18, 1998, petitioner went to the COMELEC and filed a formal appeal.<sup>[5]</sup> This was docketed as SPC No. 98-056. On June 29, 1998, the COMELEC Second Division, rendered a Resolution stating the following:

x x x

Respondent MBC should have at least suspended its canvass in so far as the question or contested election returns were concerned. x x x x

In precinct 88-A-1 the election return is lacking in material data as there were no entries as to the number of registered voters in the precinct, the actual number of votes cast and the number of valid votes cast. In such a situation it is incumbent upon the MBC to call the members of the Board of Election Inspectors (BEI) to complete the data which failed to do so.

In precinct 89-A-1 there was a discrepancy in the figure of the total number of valid votes cast and the number of votes received by private respondent Salalila. Moreover, two (2) member (sic) of the BEI did not affixed (sic) their thumbmark in the questioned election returns rendering their authenticity doubtful. There is material discrepancy in the election return as it is (sic) states therein that there were 197 voters who actually voted. And also it was also stated therein that there were 22 excess ballots and therefore the number of voters who actually voted will be 219 in excess of the 215 total number of registered voters for the precinct.

In precincts 92-A the return states that there were 153 voters who actually voted and private respondent Salalila received 152 votes while petitioner got zero (0), one (1) vote therefore is clearly missing.

In 93-A and 94-A there were an excess of the number of voters who actually voted. The election returns shows that there were 245 voters who actually voted yet there were 27 excess ballots found in the ballot

box, but the number of voters in the precinct is only 272, meaning there was a one hundred per cent (100%) turn-out of voters for those precinct but the election return states that there were only 245 who actually voted.

In precinct 99-A, 100-A and 104-A there were also no entries on the data of voters and ballots. Again the MBC should have at least called the members of the BEI to complete the data in the election return and explain why they failed to do the same.

In precinct 105-A it is obvious that there were discrepancies in the material data in that the total number of registered voters in the precinct is 141 while the total number accordingly of the voters who actually voted is 121 but found out inside the ballot box were 144 valid ballots which obviously in excess of three (3) from the total number of the registered voters for the precinct.

But more than the above findings what is significant is that in Precincts 93-A and 94-A there were erasures in the election return which accordingly was made to reflect the correct votes received by petitioner and private respondent. According to the Chairman of BEI, private respondent received 96 votes while, petitioner received 4 votes instead of 97 yet the election returns states that petitioner received only three votes instead of four as claimed but (sic) the Chairman of the BEI. Such erasures manifest (sic) on the election return puts the authenticity of the same in issue and should have been excluded in the canvass.

While it is true that the Board of Canvassers is essentially a ministerial body and has no power to pass upon questions of whether there are illegal voters or other election frauds. (*Dizon v. Provincial Board*, 52 Phil 47; *Sangki v. Comelec*, 21 SCRA 1392), it is also true that in case of patent irregularity in the election returns, such as patent erasures and super-impositions in words and figures on the face of the returns submitted to the board, it is imperative for the board to stop the canvass of such returns so as to allow time for verification. A canvass and proclamation made withstanding such patent defects in the returns which may affect the result of the election, without awaiting remedies, is null and void. (*Purisima v. Salonga*, 15 SCRA 704).

WHEREFORE, the Commission (Second Division) resolves to GIVE DUE COURSE to the appeal and the eight (8) contested election returns are hereby ordered excluded from the canvass for the position of the municipal mayor of Sta. Rita, Pampanga.

The proclamation made by respondent MBC on May 14, 1998 proclaiming private respondent as duly elected Mayor of Municipality of Sta. Rita, Pampanga is hereby SUSPENDED.

Respondent MBC is hereby directed to reconvene and issue a new certificate of canvass of votes excluding the election returns subject of this appeal and on the basis of which proclaim the winning candidate for Mayor of the Municipality of Sta. Rita, Pampanga.

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

On July 3, 1998, private respondent Salalila filed a motion for reconsideration.<sup>[7]</sup>

On November 19, 1998, the COMELEC *en banc* promulgated the questioned Resolution reversing the findings of the Comelec Second Division. The decretal portion of which states:

WHEREFORE, in view of the foregoing, the *Resolution* promulgated by this Commission (Second Division) on 29 June 1998 is hereby reversed and set aside. The suspension of the effects of the proclamation of the respondent/appellee, ARTHUR L. SALALILA, is hereby lifted. His proclamation as MAYOR of the municipality of Sta. Rita, Pampanga on 14 May 1998 is hereby confirmed.

SO ORDERED.<sup>[8]</sup>

Hence, petitioner Ocampo filed the instant petition citing the grave abuse of discretion committed by the COMELEC *en banc* in reversing the findings of the COMELEC Second Division. A temporary restraining order was also prayed for to enjoin the effects of private respondents Salalila's proclamation as municipal mayor.

On December 15, 1998, this Court issued a Temporary Restraining Order directing the COMELEC to cease and desist from enforcing its Resolution, dated November 19, 1998 in SPC No. 98-056.

Meanwhile, on March 1, 1999, petitioner filed a separate petition before this Court to cite private respondent Salalila for contempt. This was docketed as G.R. No. 137470. In this petition, petitioner claimed that despite the issuance of a Temporary Restraining Order by this Court on December 15, 1998 in G.R. No. 136282, private respondent Salalila continued to act as the Mayor of Sta. Rita, Pampanga.

Petitioner would like to impress upon this Court that the returns in the subject precincts (25 votes with zero 0 votes in three precincts, as against private respondents Salalila's 1,333 votes) were statistically improbable considering that he was a re-electionist and with assigned watchers therein. Although he admits that the precincts were private respondent Salalila's bailiwick, precedence dictates that every election document coming from a candidate's bailiwick must be carefully scrutinized.

Petitioner claims that the election returns did not contain data as required in Section 212 of the Omnibus Election Code which reads:

The returns shall also show the date of the election, the polling place, the *barangay* and the city or municipality in which it was held, the total number of ballots found in the compartment for valid ballots, the total number of valid ballots withdrawn from the compartment for spoiled ballots because they were erroneously placed therein, the total number of excess ballots, the total number of marked or void ballots, and the total number of votes obtained by each candidate, writing out the said number in words and figures and, at the end thereof, the board of

election inspectors shall certify that the contents are correct. The returns shall be accomplished in a single sheet of paper, but if this is not possible, additional sheets may be used which shall be prepared in the same manner as the first sheet and likewise certified by the board of election inspectors.

x x x

Petitioner further contends that these data on voters and ballots are just as important as the data on votes credited to the candidate on the same election returns. The absence such data without any explanation or correction on the part of the Board of Election Inspectors who prepared those election documents renders them invalid. Violations of Sections 234 and 235 relating to material defects in the election returns and tampered or falsified election returns are considered election offenses under Section 262 of the Omnibus Election Code.<sup>[9]</sup>

The pertinent provisions read as follows:

*Sec. 234. Material defects in the election returns.-* If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction. *Provided,* That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: *Provided, further,* That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

*Sec. 235. When election returns appear to be tampered with or falsified.* - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election