

EN BANC

[G.R. No. 192289, January 08, 2013]

KAMARUDIN K. IBRAHIM, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROLAN G. BUAGAS, RESPONDENTS.

DECISION

REYES, J.:

Before us is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order^[1] filed under Rule 64 of the Rules of Court assailing the following resolutions of the public respondent Commission on Elections (COMELEC):

(a) Minute Resolution No. 09-0946^[2] (December 22, 2009 Resolution), dated December 22, 2009, disqualifying the petitioner herein, Kamarudin K. Ibrahim (Ibrahim), from the 2010 Vice-Mayoralty race in Datu Unsay, Maguindanao for supposedly not being a registered voter of the said municipality; and

(b) Resolution^[3] (May 6, 2010 Resolution) issued on May 6, 2010, relative to SPA Case No. 10-002 (MP) LOCAL, denying Ibrahim's opposition^[4] to Resolution No. 09-0946.

Antecedent Facts

On December 1, 2009, Ibrahim filed his certificate of candidacy to run as Vice-Mayor of Datu-Unsay in the May 10, 2010 elections. Thereafter, respondent Rolan G. Buagas (Buagas), then Acting Election Officer in the said municipality, forwarded to the COMELEC's Law Department (Law Department) the names of 20 candidates who were not registered voters therein. The list^[5] included Ibrahim's name, along with those of two candidates for mayor, one for vice-mayor and 16 for councilor.

In a Memorandum^[6] dated December 10, 2009, the Law Department brought to the attention of the COMELEC *en banc* the names of 56 candidates running for various posts in Maguindanao and Davao del Sur who were not registered voters of the municipalities where they sought to be elected. The Law Department recommended the retention of the said names in the Certified List of Candidates, but for the COMELEC to *motu proprio* institute actions against them for disqualification and for violation of election laws. Thereafter, the COMELEC *en banc* issued the herein assailed December 22, 2009 Resolution approving, but with modification, the Law Department's recommendation in the following wise:

1. to *disqualify* the foregoing candidates for not being registered voters of the respective municipalities where they seek to be *elected without*

prejudice to their filing of an opposition within two (2) days from publication hereof; and

2. to file election offense cases against said candidates for violation of Sec. 74 in relation to Sec. 262 of the Omnibus Election Code.^[7] (Italics ours)

On January 8, 2010, Ibrahim and 50 other candidates filed a Petition/Opposition^[8] to assail the Resolution dated December 22, 2009. In the Petition/Opposition, which was docketed as SPA 10-002 (MP) LOCAL, it was stressed that some of those affected by the Resolution dated December 22, 2009 had participated as candidates in the 2004 and 2007 elections. If indeed they were not registered voters, they should have been disqualified then. Further, it was emphasized that the candidates who filed the Petition/Opposition were permanent residents and were domiciled at the place where they sought to be elected.

The COMELEC *en banc* denied the Petition/Opposition through the herein assailed Resolution dated May 6, 2010. The COMELEC declared that the Resolution dated December 22, 2009 was anchored on the certification, which was issued by Buagas and Acting Provincial Election Supervisor of Maguindanao, Estelita B. Orbase, stating that Ibrahim, among other candidates, were not registered voters of Datu Unsay, Maguindanao. The certification was issued in the performance of official duty, hence, the presumption of regularity attached to it in the absence of contrary evidence. Ibrahim and company failed to adduce evidence proving their allegations of registration and residence.

In the May 10, 2010 elections, during which time the Resolution dated May 6, 2010 had not yet attained finality, Ibrahim obtained 446 votes, the highest number cast for the Vice-Mayoralty race in Datu Unsay.^[9] However, the Municipal Board of Canvassers (MBOC), which was then chaired by Buagas, suspended Ibrahim's proclamation on the basis of Section 5, Rule 25^[10] of the COMELEC Rules of Procedure.^[11]

Issue

Whether or not the COMELEC *en banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Resolutions dated December 22, 2009 and May 6, 2010.

Arguments in Support of the Instant Petition

Ibrahim posits that the MBOC is a ministerial body created merely "to take the returns as made from the different voting precincts, add them up and declare the result."^[12] As long as the returns are on their face genuine and are signed by the proper officers, *sans* indications of being spurious and forged, they cannot be rejected on the ground of alleged questions on the qualifications of voters and the existence of electoral frauds and irregularities. Further, since Ibrahim received the highest number of votes for Vice-Mayor, all possible doubts should be resolved in favor of his eligibility, lest the will of the electorate, which should be the paramount consideration, be defeated.^[13]

In its Manifestation and Motion in Lieu of Comment,^[14] the Office of the Solicitor General (OSG) proposes for the instant Petition to be granted. The OSG points out that in *Cipriano v. Commission on Elections*,^[15] this court nullified, for lack of proper proceedings before their issuance, the resolutions issued by the COMELEC relative to the cancellation of a certificate of candidacy. The OSG emphasizes that similarly, Ibrahim was disqualified as a candidate without prior notice and hearing and he was given the chance to file an opposition only after the issuance of the Resolution dated December 22, 2009.

Further citing *Bautista v. Comelec*,^[16] the OSG argues that jurisdiction over petitions to cancel a certificate of candidacy pertains to the COMELEC sitting in division and not to the COMELEC *en banc*. The COMELEC *en banc* can only take cognizance of petitions to cancel a certificate of candidacy when the required number of votes for a division to reach a decision, ruling, order or resolution is not obtained, or when motions for reconsideration are filed to assail the said issuances of a division.

The OSG likewise refers to Section 4(B)(3)^[17] of Resolution No. 8696^[18] to stress that generally, the COMELEC cannot *motu proprio* file petitions for disqualification against candidates. Section 5^[19] of the same resolution, however, provides the only exception to the foregoing, to wit, that certificates of candidacy of those running for the positions of President, Vice-President, Senator and Party-List maybe denied due course and canceled *motu proprio* by the COMELEC based on grounds enumerated therein. While there was a Petition for Disqualification^[20] filed by Bai Reshal S. Ampatuan against Ibrahim and company, it was not the basis for the COMELEC *en banc's* issuance of the Resolutions dated December 22, 2009 and May 6, 2010. Instead, the certification issued by Buagas was the basis for the subsequent actions of the Law Department and the COMELEC *en banc* leading to the issuance of the herein assailed resolutions.

The OSG also invokes Section 16^[21] of COMELEC Resolution No. 8678^[22] to assert that the MBOC had no authority to order the suspension of Ibrahim's proclamation. Upon motion, the suspension of a winning candidate's proclamation can be ordered during the pendency of a disqualification case before the COMELEC. However, only the COMELEC, as a tribunal, has the authority to issue orders relative to cases pending before it. The MBOC cannot substitute its own judgment for that of the COMELEC's. The MBOC can suspend a winning candidate's proclamation only when an actual issue within the Board's jurisdiction arises in the course of conducting a canvass. The aforementioned issues include the commission of violent and terrorist acts or the occurrence of a calamity at the canvassing site. Absent any determination of irregularity in the election returns, as well as an order enjoining the canvassing and proclamation of the winner, it is a mandatory and ministerial duty of the MBOC concerned to count the votes based on such returns and declare the result.^[23]

It is also the OSG's position that Section 5, Rule 25^[24] of the COMELEC Rules of Procedure was irregularly worded for using the word "shall" when Section 6^[25] of Republic Act (R.A.) No. 6646,^[26] which the rules seek to implement, merely employed the word "may". The use of the word "may" indicates that the suspension

of a proclamation is merely directory and permissive in nature and operates to confer discretion.^[27]

The COMELEC's Contentions

In the Compliance^[28] filed with the court, the COMELEC assails as improper Ibrahim's immediate resort to the instant Petition for *Certiorari* under Rule 64 of the Rules of Court. Despite the issuance of the herein assailed resolutions, Ibrahim's name was not stricken off from the certified list of candidates during the May 10, 2010 elections and the votes cast for him were counted. Hence, no actual prejudice was caused upon him as the COMELEC did not even direct the MBOC to suspend his proclamation. It was the MBOC's ruling which resulted to the suspension of his proclamation. Such being the case, Ibrahim should have instead filed a pre-proclamation controversy before the COMELEC anchored on the supposed illegality of the MBOC's proceedings. Section 241 of Batas Pambansa Blg. 881 (BP 881), otherwise known as the Omnibus Election Code (OEC), defines pre-proclamation controversies as referring to any questions "pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised xxx in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." Had Ibrahim instituted instead a pre-proclamation controversy, the COMELEC could have corrected the MBOC's ruling, if indeed, it was erroneous.

The COMELEC further argues that Ibrahim was not denied due process as he and the other candidates referred to in the Resolutions dated December 22, 2009 and May 6, 2010 were given the opportunity to file their opposition. Ibrahim did file his Petition/Opposition and sought reliefs from the *COMELEC en banc*. Now, he should not be allowed to repudiate the proceedings merely because the result was adverse to him. Moreover, the OSG's invocation of the doctrines enunciated in *Bautista v. Comelec*^[29] is misplaced because in the said case, there was a total absence of notice and hearing.

The COMELEC emphasizes that Ibrahim was undeniably not a registered voter in Datu Unsay when he ran as Vice-Mayor in the May 10, 2010 elections. He cannot possess any mandate to serve as an elected official as by his act and willful misrepresentations, he had deceived the electorate.

Our Ruling

We grant the instant Petition.

Before resolving the merits of the petition, the court shall first dispose of the procedural issue raised by the COMELEC.

Ibrahim properly resorted to the instant Petition filed under Rule 64 of the Rules of Court to assail the Resolutions dated December 22, 2009 and

**May 6, 2010 of the
COMELEC *en banc*.**

The COMELEC seeks the dismissal of the instant Petition on the basis of a technical ground, to wit, that Ibrahim's resort to a petition for certiorari filed under Rule 64 of the Rules of Court to challenge the Resolutions dated December 22, 2009 and May 6, 2010 is improper. Ibrahim should have instead filed before the COMELEC a pre-proclamation controversy to allow the latter to correct the MBOC's ruling if it was indeed erroneous.

The claim fails to persuade.

Section 7, Article IX of the 1987 Constitution in part substantially provides that any decision, order or ruling of any of the Constitutional Commissions may be brought for review to the Supreme Court on *certiorari* within 30 days from receipt of a copy thereof. The orders, ruling and decisions rendered or issued by the COMELEC *en banc* must be final and made in the exercise of its adjudicatory or quasi-judicial power.^[30] Further, Section 1, Rule 64 of the Rules of Court states that it shall govern the review of final judgments and orders or resolutions of the COMELEC and the Commission on Audit.

A pre-proclamation controversy is defined in Section 241 of the OEC as referring to "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233,^[31] 234,^[32] 235^[33] and 236^[34] in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." Section 243 of the OEC restrictively enumerates as follows the issues which can be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The illegality of the proceedings of the board of canvassers is the first issue which may be raised in a pre-proclamation controversy. To illustrate, the proceedings are to be considered as illegal when the board is constituted not in accordance with law, or is composed of members not enumerated therein, or when business is transacted *sans* a quorum.