

## EN BANC

[ G.R. NO. 171821, October 09, 2006 ]

### DANILO "DAN" FERNANDEZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND TERESITA LAZARO, RESPONDENTS.

#### DECISION

##### YNARES-SANTIAGO, J.:

This petition for certiorari and prohibition under Rule 64 of the Rules of Court seeks to reverse the March 9, 2006 *En Banc* Resolution<sup>[1]</sup> of public respondent Commission on Elections (COMELEC) in SPC No. 04-105, denying petitioner's motion for reconsideration of the April 12, 2005 Resolution<sup>[2]</sup> of COMELEC's First Division (First Division) dismissing the petition to annul private respondent Teresita Lazaro's proclamation as duly elected Governor of Laguna.

In the May 10, 2004 national and local elections, petitioner and private respondent ran for governor of Laguna. During the canvassing of the certificates of canvass by the Provincial Board of Canvassers (PBOC), petitioner moved to suspend the proceedings claiming tampering of election returns for San Pablo City and Biñan, Laguna, which allegedly increased private respondent's votes. The PBOC denied the motion ruling that the issues raised should be ventilated before the City and Municipal Board of Canvassers. On May 16, 2004, the PBOC proclaimed private respondent as governor.

On May 19, 2004, petitioner sought to nullify the proclamation of private respondent with the First Division of the COMELEC, docketed as SPC No. 04-105, alleging that the PBOC proceedings was flawed and irregular. Private respondent moved to dismiss the petition, alleging that petitioner did not file written and formal objections with the appropriate Board of Canvassers and that he failed to produce evidence of fraud in relation to the certificates of canvass of San Pablo City and Biñan.

Meanwhile, the First Division suspended private respondent's proclamation and directed the Election Records and Statistics Department (ERSD) to examine whether the photocopied election returns submitted by petitioner were prepared in sets or groups by only one person. The suspension was later lifted upon private respondent's motion and the order for examination of the election returns stayed.

More than a month after, however, the First Division again directed the ERSD to cause the examination of the election returns from the disputed cities and municipalities. It also ordered the concerned Boards of Canvassers to deliver copies of the election returns used in the canvassing. Private respondent questioned these orders arguing that she never knew of election returns being presented during any of the hearings on the petition and that petitioner never prayed for the examination thereof.

On April 12, 2005, the First Division dismissed the petition to annul private respondent's proclamation. Petitioner's motion for reconsideration was denied for lack of merit by the COMELEC En Banc on March 9, 2006, hence, this petition<sup>[3]</sup> alleging grave abuse of discretion of public respondent for deliberately failing to mention the outcome of the examination of the election returns as ordered by the First Division.

The petition lacks merit.

Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. Grave abuse of discretion means such capricious and whimsical exercise of judgment as would amount to lack of jurisdiction; it contemplates a situation where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law.<sup>[4]</sup> In a certiorari proceeding, as in the instant case, it is imperative for petitioner to show caprice and arbitrariness on the part of the court or agency whose exercise of discretion is being assailed.

No grave abuse of discretion attended public respondent's decision to affirm the actions taken by the PBOC and the First Division because it only applied Section 17 of Republic Act No. 7166<sup>[5]</sup> mandating that matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code on the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

In the instant case, it was incumbent for petitioner to raise his oral objections to the chairman of the **city** and **municipal** board of canvassers of San Pablo and Biñan, respectively, at the time the questioned returns or certificates of canvass is presented for inclusion in the canvass. However, petitioner questioned the election returns for San Pablo City and Biñan on the ground of fraud only before the **provincial**, and not before the appropriate city and municipal, boards of canvassers. In fact, petitioner belatedly questioned the election returns for Calamba City and four other municipalities, to wit: Cabuyao, San Pedro, Sta. Rosa and Nagcarlan, in his petition with the First Division when he attached the contested election returns in his memorandum.

Petitioner cannot justify raising belatedly the issue of tampering before the PBOC for allegedly discovering the fraud only a few hours from the start of the proceedings as this would run counter to the mandatory rule requiring protestants to present objections to the inclusion or exclusion of election returns at the time the questioned returns are presented for inclusion in the canvass. Thus —

The Court finds that the charge of grave abuse of discretion is more apparent than real. Section 20 of R.A 7166 and Section 36 of COMELEC Resolution 2962 requires that an oral objection to the inclusion or exclusion of election returns in the canvassing shall be submitted to the Chairman of the Board of Canvassers at the time the questioned return is presented for inclusion in the canvass. It is not denied by petitioner that the objections interposed were made after the election returns in certain precincts were included in the canvass. Such belated objections are fatal

to petitioner's cause. **Compliance with the period set for objections on exclusion and inclusion of election returns is mandatory.** Otherwise, to allow objections after the canvassing would be to open the floodgates to schemes designed to delay the proclamation and frustrate the electorate's will by some candidates who feels that the only way to fight for a lost cause is to delay the proclamation of the winner. It should be noted that proceedings before the Board of Canvassers is summary in nature which is why the law grants the parties a short period to submit objections and the Board a short period to rule on matters brought to them. Petitioner's plea for a liberal interpretation of technical rules and allow his untimely objections cannot be granted in this case. Liberal construction of election laws applies only when it becomes necessary to uphold the people's voice.<sup>[6]</sup> (Emphasis added)

The fact that COMELEC's First Division ordered the examination of election returns notwithstanding petitioner's belated objections thereto would not change the outcome of this case. For one, it eventually dismissed the petition to annul private respondent's proclamation after the parties submitted their pleadings and participated in hearings on the matter. For another, public respondent upheld the validity of the First Division's dismissal of the petition and expressly ruled that there was no need to resort to the technical examination of the returns.

We have ruled in *Ocampo v. Commission on Elections*<sup>[7]</sup> that:

[F]indings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. The COMELEC, as an administrative agency and a specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, has more than enough expertise in its field that its findings or conclusions are generally respected and even given finality. We do not find the instant case an exception to this avowed rule.

We agree with public respondent's findings, thus -

For one, the irregularity in the preparation of the election returns should have been brought before the Boards of Canvassers of San Pablo City and Biñan, respectively, at the time the said returns were being canvassed by the said boards. This is required under Section 17 of Republic Act No. 7166, to wit:

**Section 17.** *Pre-proclamation Controversies: How Commenced.* - Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and