

EN BANC

[G.R. No. 135613, March 09, 2000]

ARTHUR V. VELAYO, PETITIONER, VS. COMMISSION ON ELECTIONS AND ERNESTO NATIVIDAD, RESPONDENTS.

D E C I S I O N

PUNO, J.:

In this special civil action for certiorari, petitioner Arthur V. Velayo seeks to set aside the Resolution issued by respondent Commission on Elections dated October 6, 1998 annulling his proclamation, and directing the Board of Canvassers of Gapan, Nueva Ecija to convene immediately, exclude Precincts 44A, 44A2, 50A and 50A1, and immediately proclaim the winning candidate for Mayor of Gapan, Nueva Ecija.

Petitioner Arthur V. Velayo and private respondent Ernesto Natividad were among the candidates for mayor of Gapan, Nueva Ecija in the May 11, 1998 elections. The Municipal Board of Canvassers constituted to canvass the election results was composed of Linda Sandoval^[1] as Chairman, Eduardo Pancho^[2] as Vice Chairman and Eustaquita Tolentino^[3] as member.

On May 12, 1998, the canvass of election returns started. Private respondent orally sought the exclusion of Election Return Nos. 4245882 (Precinct 36A) and 4900753 (Precinct 103). Election Return No. 4245882 was objected on the ground that it is incomplete and contains material defects.^[4] Election Return No. 4900753 was objected on the ground of material defects and that it does not contain the thumbmarks of official watchers.^[5] The Board denied the objections and continued with the canvass.

On May 13, 1998, private respondent filed with the COMELEC (2nd Division) **SPC No. 98-002.**^[6] The petition is entitled "In the Matter of the Challenge and Objection to the Composition and Proceedings of the Municipal Board of Canvassers of Gapan, Nueva Ecija and for Annulment of Certain Election Returns Illegally Canvassed and for Suspension of Canvass of Election Returns Pending Substitution of the Challenged Members Thereof." **The petition did not name any respondent. Not the Municipal Board of Canvassers. Neither petitioner Velayo.** On the same date, the private respondent^[7] sent a letter to the Board seeking the disqualification of its Chairman and Vice Chairman for alleged bias and gross violations of the law and COMELEC Rules and Regulations. On May 14, 1998, the Board denied the prayer to suspend the canvass "there being no valid and compelling reason to do so" and the request for disqualification. On May 16, 1998, the private respondent sought reconsideration of the Board's ruling.^[8] His effort did not succeed and he filed a verified Notice of Appeal.^[9] **On May 17, 1998, the Board proclaimed petitioner as the duly elected Mayor of Gapan, Nueva**

Ecija with a vote of 10,697. Private respondent garnered 10,427 votes.

On May 18, 1998, the private respondent filed **another case** with the COMELEC (2nd Division), **SPC No. 98-050** entitled "In the Matter of the Appeal from the Adverse Ruling of the Municipal Board of Canvassers for Gapan, Nueva Ecija, dated 14 May 1998, Seeking the Disqualification of Ms. Linda D. Sandoval and Eduardo Pancho to Sit as Chairman and Vice Chairman thereof; to Suspend the Canvass and to Suspend/Annul the Proclamation of the Winning Candidates."^[10] **Again, the petition did not name the Municipal Board of Canvassers or the petitioner Velayo as respondents. Neither were they furnished copies of the petition.** The petition prayed:

"WHEREFORE, it is most respectfully prayed that after due proceedings, judgment be rendered, as follows:

1. Declaring as null and void all acts and proceedings had by the Municipal Board of Canvassers from 13 May 1998 when the same have been challenged by the petitioner as illegal up to its last act thereof particularly the canvass of election returns for the local elections only;
2. Ordering the substitution/replacement of Ms. Linda Sandoval and Mr. Eduardo Pancho as chairperson and vice chairman of the Municipal Board of Canvassers for Gapan, Nueva Ecija, and once substituted/replaced, directing the substituted members of the Board to proceed with dispatch in the canvass of the election returns;
3. Suspending the proclamation of the winning candidates until after a faithful and impartial canvass of the returns shall have been had by the substituted members of the Board, and the pre-proclamation controversies bearing on the questioned matter resolved by this Honorable Commission; and
4. Annuling the proclamation, if any shall have been illegally done by the Board on the basis of the sham, pre-determined and manipulated canvass of the returns as complained of herein.

Petitioner prays for other relief just and proper in the premises."

In the morning of May 19, 1998, Natividad filed **a third case, SPC No. 98-073**, entitled "In the matter of the appeal from the written rulings dated 13, 14 and 15 May 1998 of the Municipal Board of Canvassers for Gapan, Nueva Ecija, on contested Election Returns No. 4900678 of Precinct No. 9A3/9A4 dated 13 May 1998; contested Returns Nos. 4900775 of Precinct No. 43A2; 4900776 of Precinct No. 43A3; 4900828 of Precinct No. 61A2; 4900780 of Precinct No. 45A/45A1; 4900789 of Precinct No. 99A; 4900774 of Precinct No. 43A1; 4900792 of Precinct Nos. 50A and 50A2; 4900844 of Precinct No. 68A; 4900779 of Precinct No. 44A2; and 4900811 of Precinct No. 98A2 all dated 14 May 1998 and contested Election Returns No. 4900777 of Precinct No. 56A2."^[11] Later in the day, he submitted documentary evidence in support of his appeal.^[12] **Again, neither the Board nor the petitioner was named respondent in the appeal. They were not furnished copies of the petition.**

On May 21, 1998, the private respondent filed a **Supplemental Appeal** in SPC No. 98-073. It was entitled "In the Matter of the Supplemental Appeal from the Written Rulings dated 17 May 1998 of the Municipal Board of Canvassers for Gapan, Nueva Ecija, on Contested Election Returns Nos. 4900773 of Precinct No. 43A; 4900775 of Precinct No. 43A2; 4900777 of Precinct No. 44A; and 4900789 of Precinct No. 44A1. Annexed to the pleading were the documentary evidence of the private respondent.

[13] Again, both the Board and the petitioner were not made parties in the Supplemental Appeal. They were not furnished copies of the Appeal.

On June 8, 1998, **the private respondent filed a motion for admission of new and additional evidence.**^[14] In SPC 98-050, he submitted **twenty (20) affidavits**. In SPC 98-073, he submitted eight (8) affidavits. Petitioner was not furnished a copy of the motion.

On June 9, 1998, the COMELEC (2nd Division)^[15] dismissed SPC No. 98-002, SPC No. 98-050 and SPC No. 073 in an Order which reads:

"In view of the proclamation by the Municipal Board of Canvassers of Gapan, Nueva Ecija, of all the winning candidates for the municipal positions of said municipality on May 17, 1998, as evidenced by duly signed Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices **[C.E. form No. 25]** with Serial No. 03490337, this Commission **[Second Division]** RESOLVED, as it hereby RESOLVES TO DISMISS this instant petition for being MOOT AND ACADEMIC.

"SO ORDERED."^[16]

It is alleged by the private respondent that he received a copy of the Order on June 22, 1998.

On June 25, 1998, the private respondent filed a **Motion for Reconsideration** contending that the Order of dismissal is contrary to law and the evidence. He sought to restrain the proclamation of the petitioner.^[17] **Again, petitioner was not furnished with a copy of the Motion.** On July 3, 1998, the records of the three (3) cases were elevated to the COMELEC *en banc* for resolution of private respondent's Motion for Reconsideration.^[18] **Again, petitioner was not furnished a copy of the Order.**

On October 6, 1998, the COMELEC *en banc* issued the questioned Resolution,^[19] the dispositive portion of which reads:

"WHEREFORE, premises considered, the proclamation of Arthur V. Velayo is hereby **ANNULLED**. The Board of Canvassers of Gapan, Nueva Ecija is hereby **DIRECTED** to convene immediately, **exclude Precincts 44A, 44A2 and 50A & 50A1^[20]** and immediately proclaim the winning candidate for mayor of Gapan, Nueva Ecija.

"Further, they are directed to immediately inform the Commission of their action thereon.

"SO ORDERED."

In so ruling, the **COMMISSION en banc** held that:

"A close perusal of the above-entitled cases would show that the above objections and appeals were made strictly in accordance with law, however, the Board in defiance of Section 245 and Section 20 of Republic Act 7166, particularly sub-paragraph (i) included the assailed election returns without giving opportunity to the aggrieved party to go on appeal to the Commission.

"Said Section 20(i) of R.A. 7166 states:

The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections to it on appeal by the losing party. Any proclamation made in violation thereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.

"In this case, it is clear that the objected election returns will adversely affect the results of the elections.

"Thus, after close perusal of the above-cited objected election returns, the Commission finds that the election returns of 44A, 44A2, and 50A1/A2 should be excluded from the canvass. It is worth noting that in these precincts 44A and 44A2 petitioner Natividad got zero votes which is statistically improbable. The affidavits of the following watchers respectively to wit: Rolando C. Gamboa, Eduardo Mallare and Eduardo Surio together with the police report of Miguel S. Inductivo of the threats received by Danilo Simon, all watchers of petitioner, all in the dialect which attest to the incident wherein they were prevented and threatened from entering the polling place by four [un]identified men and they were able to witness these men threatening the teachers and telling them to tamper the election return in such a way that they will not be noticed by other people and they will have no problem.

"Watchers play a vital role in protecting the votes especially during the counting of votes in the precinct level. The fact that the watchers were prevented and in fact heard the teachers threatened to have the election returns altered makes the whole election process a mockery in these precincts as the returns are no longer reflective of the true results of the elections. It is no wonder then that in these precincts Natividad got zero votes.

"Further, since there was already an objection against the two members of the Board of Canvassers and their illegal proceedings they cannot proceed to canvass, to cite Section 244 of the Omnibus Election Code:

Section 244. Contested composition or proceedings of the board. – When the composition or proceedings of the board of canvassers are contested, the board of canvassers shall,

within twenty-four hours, make a ruling thereon with notice to the contestant who, if adversely affected, may appeal the matter to the Commission within five days after the ruling with proper notice to the board of canvassers. After due notice and hearing, the Commission shall decide the case within ten days from the filing thereof. During the pendency of the case, the board of canvassers shall suspend the canvass until the Commission orders the continuation or resumption thereof and citing their reasons or grounds therefor.

"Thus, the action of the Board in proclaiming the winning candidate for mayor in the Municipality of Gapan is illegal for violation of Section 20(a) to (i) of R.A. 7166 and Section 244 of the Omnibus Election Code."^[21]

It was only then that petitioner was informed of the Resolution by telegram on October 8, 1998.

In a letter^[22] dated October 9, 1998, the Board, thru its new Chairman, Belen Rivera, informed Velayo that it will convene on October 16, 1998. **On October 17, 1998, it proclaimed the private respondent as Mayor with a vote of 10,420.**

In this special civil action for certiorari, petitioner contends:

"1. The questioned Resolution (Annex "A") of October 6, 1998 is ultra vires and void ab initio because it was issued ex-parte, without notice and opportunity afforded the petitioner to be heard and therefore, violative of due process.

"2. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it did not dismiss respondent Natividad's Motion for Reconsideration on SPC Nos. 98-002, 98-050 and 98-073 for being filed out of time.

"3. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it excluded the votes cast in Precincts 44A, 44A2, 50A and 50A1 as manufactured and contrary to statistical probabilities without the required notice and hearing consistent with due process.

"4. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it annulled the proclamation of petitioner without the required notice and hearing consistent with due process.

"5. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it did not dismiss said pre-proclamation cases for the reason that the grounds relied upon by respondent Natividad are proper grounds for election protests."

In its Manifestation and Motion (in lieu of Comment), the Solicitor General agreed with the petitioner and opined that the COMELEC gravely abused its discretion when it issued the impugned resolution.^[23] COMELEC filed its own Comment sustaining its resolution. So did the private respondent.