

## **EN BANC**

**[ G.R. No. 134163-64, December 13, 2000 ]**

**MUSLIMIN SEMA, PETITIONER, VS. COMMISSION ON ELECTIONS  
AND RODEL MAÑARA, RESPONDENTS.**

**[G.R. No. 141249-50]**

**RODEL MAÑARA, PETITIONER, VS. COMMISSION ON ELECTIONS  
AND MUSLIMIN SEMA, RESPONDENTS.**

**[G.R. No. 141534-35]**

**RODEL MAÑARA, PETITIONER, VS. COMMISSION ON ELECTIONS  
AND MUSLIMIN SEMA, RESPONDENTS.**

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

**KAPUNAN, J.:**

Muslimin Sema\* and Rodel Mañara were two (2) of the eleven (11) candidates for city mayor of Cotabato City during the May 11, 1998 elections.

During the canvassing of the election returns from the three hundred sixty-two (362) precincts of Cotabato City by the City Board of Canvassers (CBC), numerous petitions for exclusion of election returns were filed. For his part, Sema objected to thirty (30) election returns from the following precincts, namely: Precinct Nos. 295A/A1, 274A/275A, 46A2, 262A/263A, 218A/219A, 178A, 255A/256A, 158A/158A1, 214A/214A1, 104A/104A1, 154A/154A1, 92A, 212A/212A1, 109A/109A1, 184A1; 175A1, 168A/168A1, 233A/233A1, 209A/209A1, 121A1, 275A, 198A/198A1, 237A/237A1, 176A, 213A1/213A2, 241A, 167A, 180A, 103A, 264A/265A/266A and thereafter, filed a petition for exclusion of such returns with the CBC on the ground that the same contained material defects, were allegedly tampered with or falsified, prepared under duress, threat, coercion, and intimidation, or substituted with fraudulent ones. If the 30 election returns were to be excluded, Sema and Mañara would obtain 13,338 and 12,484 votes, respectively. Including the 30 election returns, the votes of Sema and Mañara would be 13,713 and 15,442, respectively.

On May 22, 1998, the CBC issued an order dismissing one hundred-sixteen (116) petitions for exclusion of election returns including the petitions for exclusion filed by Sema with respect to thirteen (13) of the thirty (30) contested returns he filed.

On May 23, 1998, the CBC issued another order dismissing fifty-five (55) petitions for exclusion of election returns including Sema's petitions for exclusion with respect to fifteen (15) of the remaining seventeen (17) contested returns. In effect then, only two (2) election returns remained contested.

No appeal was taken from these orders.

Nonetheless, on May 30, 1998, the CBC issued another order dated May 29, 1998, this time granting Sema's petition for exclusion of the thirty (30) election returns. A copy of this order was actually served upon Mañara in the morning of May 31, 1998. On May 30, 1998, counsel for Mañara, already aware of the existence of the May 29, 1998 order, questioned the illegal proceedings of the CBC saying that it had previously ruled upon the inclusion of twenty-eight (28) of said thirty (30) contested returns. In addition, Mañara questioned the composition of the CBC, the legality of its proceedings and the capacity of the board to act fairly and judiciously. The latter did not rule on his objection.

Upon the resumption of the canvassing in the evening of May 31, 1998, counsel for Mañara again called the CBC's attention to the fact that it had already ruled upon and dismissed the petition for exclusion of Sema in its Orders dated May 22, and 23, 1998, and which orders had already become final and executory because no appeal was taken therefrom. But the CBC ignored the manifestation, explaining that the previous orders did not include Sema's objections. Consequently, Mañara's counsel manifested his intent to appeal from the May 29, 1998 order of the CBC.

On May 31, 1998, Sema and the other winning candidates for the City of Cotabato were proclaimed by the CBC. Notably, said proclamation was based on the canvass of only three hundred thirty-two (332) election returns, thirty (30) returns having been excluded from the total of three hundred sixty-two (362) returns pursuant to the CBC's Order of May 29, 1998.

On June 2, 1998, Mañara filed his written notice of appeal with the CBC.

On June 5, 1998, Mañara filed his appeal with the Commission on Elections (COMELEC), docketed as SPC No. 98-240, questioning the exclusion of the thirty (30) election returns in the canvass and the proceeding of the CBC in promulgating the May 29, 1998 order which he claimed to be illegal. The appeal was anchored on the following grounds: (1) the CBC exceeded its authority in its ruling of May 29, 1998 excluding from the canvass the 30 election returns, considering that the CBC had already dismissed the petition for exclusion in its orders dated May 22 and 23, 1998; (2) the CBC was illegally constituted when it issued its ruling of May 29, 1998 because it was presided by Casan Macadatu, who had already been replaced by Atty. Lintang Bidol effective May 25, 1998; and (3) the CBC's proclamation of Sema as Mayor of the City of Cotabato was invalid as it was only on May 31, 1998 that the CBC completed the canvassing of 362 election returns and it was in the morning of the same day when the Board was not in session that Mañara was furnished with a copy of the CBC's questioned ruling of May 29, 1998; such being the case, it was only at nightfall of May 31, 1998 when the Board held session that Mañara was able to manifest his intent to appeal from the said ruling.

On June 9, 1998, Mañara filed with the COMELEC a petition for annulment of the proclamation of Sema which was docketed as SPC No. 98-262.

Initially, the hearing of Mañara's appeal and petition for annulment of proclamation was set on June 19, 1998 before the COMELEC *en banc*. However, the hearing was cancelled and the two (2) cases were referred to the First Division of the COMELEC

instead.

Said cases were then heard on June 27, 1998 by the First Division of the COMELEC after which they were submitted for resolution.

On June 29, 1998, the First Division of the COMELEC issued an order which reads as follows:

Without prejudice to the issuance at a later time of a formal Resolution in these cases, but based on the pleadings, the evidence adduced by the parties during the hearing on June 27, 1998, and the facts established therein, the effects and consequences of the proclamation for the position of City Mayor per Certificate of Canvass of Votes and Proclamation dated May 31, 1998 issued by the City Board of Canvassers of Cotabato City is HEREBY SUSPENDED.

Respondent Muslimin Sema is directed to cease and desist from taking his oath of office as City Mayor and/or from discharging the functions of said office.

The Clerk of the Commission is directed to furnish a copy of this order to the Hon. Secretary of the Department of Interior and Local Government, and Land Bank of the Philippines, thru its branch at Cotabato City.

The Regional Election Director, Atty. Hector Masna shall serve immediately to the parties a copy of this Order.<sup>[1]</sup>

Despite the above order of the COMELEC, Sema assumed the office of the city mayor of Cotabato and commenced to discharge the functions of said office.

On July 3, 1998, Sema filed a petition for certiorari and prohibition before this Court to annul the order of the COMELEC dated June 29, 1998 with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction directing the COMELEC to desist from enforcing the questioned order. The case was docketed as G.R. Nos. 134163-64. As grounds therefor, Sema alleged that:

The pendency of the appeal which was apparently filed out of time and the petition for annulment of proclamation is not a sufficient basis to enjoin petitioner from discharging the functions of the contested office especially where, as here, he had already taken his oath of office and assumed the same in accordance with law.

The evidence submitted by the private respondent before the Comelec proved beyond doubt that his appeal (SPC No. 98-240) was filed out of time and that he failed to comply with the requirements of a pre-proclamation controversy.<sup>[2]</sup>

On July 14, 1998, this Court issued a resolution directing the parties to maintain the *status quo* prevailing at the time of the issuance of the order of the COMELEC dated

June 29, 1998 in SPC Nos. 98-240 and 98-262.<sup>[3]</sup>

On August 17, 1999, this Court directed the COMELEC to resolve SPC Nos. 98-240 and 98-262 within thirty (30) days from receipt of the resolution and to make a report of the same to the Court within five (5) days from its promulgation.<sup>[4]</sup>

On September 17, 1999, the COMELEC filed a manifestation and motion for extension of time to resolve SPC Nos. 98-240 and 98-262 stating that the Commissioner to whom the cases were raffled to and assigned for writing of the Commission's opinion was out of the country and would be back on October 8, 1999. Consequently, it asked for a period of thirty (30) days from October 8, 1999 or until November 7, 1999 to resolve the said cases.<sup>[5]</sup>

On October 19, 1999, the Court noted the manifestation and granted the motion for extension of time to resolve the said cases.<sup>[6]</sup>

On October 27, 1999, the COMELEC submitted its compliance<sup>[7]</sup> to the Court's Resolution of August 17, 1999 and attached therewith a copy of the resolution of the First Division of the COMELEC dated October 18, 1999<sup>[8]</sup> denying due course to SPC No. 98-240 for having been filed out of time, dismissing SPC No. 98-262 for lack of merit and affirming the proclamation of Sema as mayor of Cotabato City.

On November 5, 1999, Mañara filed his comment on the COMELEC's compliance stating, among other things, that the same is premature since it is only a resolution of the First Division and not a final resolution of the Commission *en banc*.<sup>[9]</sup>

Consequently, on December 7, 1999 this Court issued a resolution directing the COMELEC *en banc* to resolve SPC Nos. 98-240 and 98-262 with finality within a non-extendible period of thirty (30) days from receipt of the resolution and to forthwith make a report thereon to the Court within five (5) days from the promulgation of the resolution.

On January 19, 2000, respondent COMELEC submitted its compliance and reported that it issued a resolution<sup>[10]</sup> on January 2, 2000 denying the motion for reconsideration filed by Mañara.<sup>[11]</sup>

On January 24, 2000, Sema filed a manifestation with motion to consider G.R. Nos. 134163-64 closed and terminated.

On January 27, 2000, Mañara filed a counter-manifestation with motion to resolve the petition in G.R. Nos. 134163-64 on the merits.

On February 14, 2000, Sema filed a motion for leave of court to file an incorporated reply to Mañara's counter-manifestation.

All motions were noted by this Court.

Previously, or on January 13, 2000, Mañara filed a petition for certiorari captioned "petition *ex abundanti cautela*", docketed as G.R. Nos. 141249-50, questioning the COMELEC Resolutions dated October 18, 1999 and January 2, 2000. He prayed that

the proclamation of Sema as mayor of Cotabato City be annulled and that the COMELEC be ordered to canvass the thirty (30) election returns excluded by the CBC. This petition, however, was dismissed by the Court on January 25, 2000 for lack of a verified statement on material dates. An addendum to said petition was noted without action by the Court on February 8, 1999.<sup>[12]</sup>

On February 7, 2000, Mañara seasonably<sup>[13]</sup> filed a petition for certiorari, docketed as G.R. Nos. 141534-35.<sup>[14]</sup> Aside from questioning the non-observance of the COMELEC of its own Rules of Procedure, the petition challenges the illegal proclamation of Sema which proceeded from the illegal proceedings of the CBC in excluding thirty (30) election returns in the canvassing of votes for mayor in the City of Cotabato when it had earlier ruled for the inclusion of twenty-eight (28) of said returns. It ascribes to the COMELEC the following errors, *viz*:

A

WHETHER OR NOT THE COMMISSION ACTED WITH JURISDICTION OR SOUND DISCRETION, OR WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF DISCRETION IN ALLOWING ONE AND THE SAME COMMISSIONER AS PONENTE FOR BOTH THE CHALLENGED RESOLUTIONS;

B

WHETHER OR NOT THE COMMISSION ACTED WITH JURISDICTION OR SOUND DISCRETION, OR WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ALLOWING A COMMISSIONER OF THE SECOND DIVISION TO SIGN AS MEMBER OF THE FIRST DIVISION ON THE CHALLENGED SPLIT RESOLUTION, ANNEX "A" HEREOF, NOTWITHSTANDING THE FACT THAT THERE WAS NO VACANCY IN THE COMPOSITION OF THE FIRST DIVISION;

C

WHETHER OR NOT THE COMMISSION ACTED WITH SOUND DISCRETION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT PRIORLY RESOLVING THE CRISES IN QUORUM OF THE COMMISSION EN BANC SO AS TO ACCORD TO PETITIONER THE EQUAL PROTECTION OF THE LAW;

D

WHETHER OR NOT THE COMMISSION ACTED WITH SOUND DISCRETION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN BY-PASSING IN ITS CHALLENGED SPLIT RESOLUTION THE ISSUES RAISED BY PETITIONER IN HIS SPC NO. 98-240 AND SPC NO. 98-262;