

EN BANC

[G.R. No. 133840, November 13, 1998]

**CIPRIANO "EFREN" BAUTISTA, PETITIONER, VS. THE
COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF
CANVASSERS OF NAVOTAS, METRO MANILA AND MIGUELITA
DEL ROSARIO, RESPONDENTS.**

DECISION

MELO, J.:

Petitioner assails the order of the Commission on Elections dated May 28, 1998 which dismissed the petition he filed seeking to declare illegal the proceedings of the Municipal Board of Canvassers of Navotas for failing to include in the canvass the Bautista stray votes contained in a separate tally sheet.

Petitioner Cipriano "Efren" Bautista and private respondent were duly registered candidates for the position of Mayor of Navotas, Metro Manila in the elections of May 11, 1998. Aside from said candidates, a certain Edwin "Efren" Bautista, hereinafter referred to as Edwin Bautista, also filed a certificate of candidacy for the same position of mayor. His certificate of candidacy was filed at midnight on March 27, 1997, the last day for such filing. In fact, the filing was done at the very last minute.

On April 1, 1998, petitioner filed a petition praying that Edwin Bautista be declared a nuisance candidate. The COMELEC saw merit in the petition and in a resolution dated April 30, 1998, declared Edwin Bautista a nuisance candidate and consequently ordered the cancellation of his certificate of candidacy for the position of mayor.

Accordingly, the name of Edwin Baustista was not included in the list of candidates for the position of mayor for Navotas. Copies of said list were distributed by the Office of the Election Officer of Navotas to the boards of election inspectors (BEI).

On May 8, 1998, Edwin Bautista filed a motion for reconsideration. As a result, on May 10, 1998, the Election Officer of Navotas issued a directive to the BEI to include the name of Edwin Bautista in the certified list of candidates. Conversely, on the afternoon of the same day, the Election Officer issued another directive to the BEI recalling his earlier directive for the inclusion of Edwin Bautista pending resolution of his motion for reconsideration.

In view of the conflicting directives, the Regional Election Director of the National Capital Region, responding to a request made by Atty. Gauttier T. Dupaya, counsel for petitioner, gave instructions to the BEI to tally separately either in some other portion of the same election return not intended for the tallying of votes for the candidates for mayor, or in separate sheet of paper, the votes for "EFREN

BAUTISTA", "EFREN", "E. BAUTISTA" and "BAUTISTA". Said instructions were affirmed in a Memorandum of the then COMELEC Chairman, directing the BEI to "proceed with the counting of the votes for local officials excluding the votes case for 'Bautista', 'Efren' and 'Efren Bautista' as stray but to segregate such stray votes into a separate improvised tally sheet in order to count the total stray votes."

On May 13, 1998, the COMELEC denied Edwin Bautista's motion praying for the reconsideration of the April 30, 1998 resolution declaring him a nuisance candidate.

When the canvass of the election returns was commenced, the Municipal Board of Canvassers of Navotas refused to canvass as part of the valid votes of petitioner the separate tallies of ballots on which were written "EFREN BAUTISTA", "EFREN", "E. BAUTISTA", and "BAUTISTA". Said ballots were tallied by the BEI separately either on some portion of the election return not intended for votes for mayoralty candidates or in separate sheets of paper. In view of this refusal, objections to the inclusion of the election returns were raised during the canvass. Consequently, on May 20, 1998, petitioner filed with the COMELEC a Petition to Declare Illegal the Proceedings of the Municipal Board of Canvassers which was docketed as SPC No. 98-10. The assailed order resolving said petition reads in relevant part as follows:

The issue before this Commission En Banc is whether or not the ruling of the Board of Canvassers not to include in the canvass the "Bautista stray votes" contained in the separate tally sheet constitutes an illegal proceeding thereof?

We rule in the negative.

The duty of the Board of Canvassers is only to canvass what is on the face of the election returns and not to go beyond it. Obviously, the stray votes in the separate tally sheet cannot be said to be entries in the election returns. Thus, the ruling of respondent board not to include in the canvass the Bautista stray votes is correct.

Further, under the Omnibus Election Code, Section 211 (4) which provides:

"4. When two or more words are written on the same line on a ballot all of which are surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter."

Thus, under the circumstances stray votes cannot be considered a vote for either party.

WHEREFORE, premises considered, the instant petition of Cipriano "Efren" Bautista is hereby DISMISSED for lack of merit.

(pp. 24-25, Rollo)

Meanwhile, on May 18, 1998, the disqualified nuisance candidate Edwin "Efren" Bautista, filed a petition for certiorari with the Court, docketed as G.R. No. 133607,

where he assailed the actions of the COMELEC Second Division and of respondent COMELEC En Banc, declaring him a nuisance candidate and ordering the cancellation of his certificate of candidacy. The Court dismissed said petition on May 21, 1998, ruling that there is no showing that the COMELEC committed grave abuse of discretion in declaring Edwin Bautista a nuisance candidate. Edwin Bautista's motion for reconsideration of our resolution was denied with finality on July 7, 1998.

The instant petition posits the following grounds for nullification of the assailed COMELEC order:

UTTER LACK AND DISREGARD OF DUE PROCESS IN THE ISSUANCE OF THE QUESTIONED ORDER; and

RESPONDENT COMELEC COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN DENYING THE INCLUSION AS PART OF PETITIONER'S VALID VOTES THE VOTES THAT WERE SEPARATELY TALLIED BY THE BOARDS OF ELECTION INSPECTORS AND THE RESPONDENT BOARD.

Let us first examine the due process issue as regards the issuance of the questioned order.

The petition resolved by COMELEC in the assailed resolution was lodged to declare illegal the proceedings of the Municipal Board of Canvassers of Navotas due to non-inclusion of votes which herein petitioner claims to be valid. On this score, we agree with petitioner that the matter falls under the category of special cases, particularly a pre-proclamation controversy raising the issue of the illegality of the proceedings of the board of canvassers (Sec. 3, Rule 27, Part V, Comelec Rules of Procedure).

Section 2 of the above-stated Rule provides that all pre-proclamation controversies shall be heard summarily after due notice. Hence, the COMELEC only has to give notice to the parties by issuing summons and by serving a copy of the petition. The proceedings being summary, the COMELEC may rely on whatever pleading that may have been filed by the parties. A hearing wherein the parties engage in oral argument is not required.

In *Zaldivar vs. Sandiganbayan* (166 SCRA 316 [1988]), we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded either through oral arguments or pleadings, there is no denial of procedural due process. As reiterated in *National Semiconductor (HK) Distribution, Ltd. vs. NLRC* (G.R. No. 123520, June 26, 1998), the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. Hence, in *Navarro III vs. Damaso* (246 SCRA 260 [1995]), we held that a formal or trial-type hearing is not at all times and not in all instances essential. Plainly, petitioner was not denied due process.

We nevertheless find merit in petitioner's second argument.

The Municipal Board of Canvassers denied the inclusion, as part of petitioner's valid votes, of those vote that were separately tallied by the BEI and the Board of

Canvassers.

When petitioner raised the matter to the COMELEC, the commission upheld the act of the Board of Canvassers, stating that the same cannot go beyond the election returns. In its Comment, the Office of the Solicitor General opines that the improvised sheets of paper containing the tally of Bautista stray votes cannot be legally considered in the canvass.

An examination of the foregoing incidents bring us to the following legal queries: (1) Did the "EFREN BAUTISTA" (or EFREN/E. BAUTISTA/E. BAUTISTA) votes which were tallied in separate sheets of paper categorically pertain to petitioner? Stated otherwise, did said separate tally reflect the intention of the voters?; (2) What is the legal effect of the final declaration made by the COMELEC that Edwin Bautista was a nuisance candidate? Further, what are the implications of the final and conclusive ruling of this Court on the issue? and (3) Will there be a disenfranchisement of the voters' will if the "EFREN BAUTISTA" votes separately tallied are not counted as votes for petitioner?

At the outset, and initially setting aside all the ramifications of the substantive issue of the instant petition, the primordial concern of the Court is to verify whether or not on the day of the election, there was only one "Efren Bautista" as a validly registered candidate as far as the electorate was concerned.

We find significant reference in the resolution of the COMELEC dated April 30, 1998 declaring Edwin Bautista a nuisance candidate, the *ratio decidendi* of which reads as follows:

While Section 69 of the Omnibus Election Code does not explicitly provide for grounds to declare a nuisance candidate, it states clearly some tests, viz:

Sec. 69. Nuisance candidates. - The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy, if it shown that said certificate has been filed **to put the election process in mockery or disrepute; or to cause confusion among the voters by the similarity** of the names of the registered candidates; or by other circumstances or acts which **clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.**

In the present case, it has been established that respondent's known appellation or nickname is not "Efren" as stated in his Certificate of Candidacy, but "Boboy" or "Boboy Tarugo". Two "EFRENS" and two "BAUTISTAS" will necessarily confuse the voters and render worthless vote for an 'Efren' or 'Bautista' during the appreciation of ballots, thus preventing the determination of the choice and true will of the electorate. Respondent's lack of financial means to support a campaign as an independent candidate is manifested by his inability to file his Income Tax Returns for calendar years 1995 and 1996. This only amplifies the fact that he has no bona fide intention to run for the position of municipal