

## EN BANC

[ G.R. No. 122391, August 07, 1997 ]

**FELIPE L. LAODENIO, PETITIONER, VS. COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF MAPANAS, NORTHERN SAMAR AND ROGELIO LONGCOP, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

FELIPE L. LAODENIO, petitioner, and ROGELIO LONGCOP, respondent, were candidates for the position of Mayor of Mapanas, Northern Samar, during the 8 May 1995 elections. On 15 May 1995 Longcop was proclaimed winner by the Municipal Board of Canvassers.

On 20 May 1995 Laodenio filed a petition with respondent Commission on Elections (COMELEC) to annul the proclamation of Longcop and to declare illegal the constitution of the Municipal Board of Canvassers as well as its proceedings. He alleged in his petition that -

During the canvass, respondent board of canvassers adjourned repeatedly starting May 9, 1995, after the poll clerk of precinct no. 7-A testified before the Board that the election returns for the said precinct was tampered with and falsified to increase the total votes cast in favor of respondent Longcop from 88 to 188.

On 10 May 1995, the Board resumed its canvass but it adjourned again at past 5:00 o'clock in the afternoon as it has (sic) not yet decided on what to do with the election returns for precinct (sic) nos. 7-A and 5-A. When it adjourned on May 10, 1995 it announced that it will (sic) only resume canvass on 12 May 1995 at the capital town of Catarman, Northern Samar. The Board however reconvened on 12 May 1995 in Mapanas and proceeded with the canvass. The respondent board thereafter adjourned and surreptitiously reconvened on 15 May 1995, with a new chairman who was allegedly appointed by the Provincial Election Supervisor.

When the election returns from Precinct (sic) Nos. 5-A and 7-A were (sic) about to be canvassed, petitioner manifested his oral objections thereto and likewise submitted his written objections on the same day, 12 May 1995.

The respondent board however did not give the petitioner opportunity to file an appeal (from?) its decision to proceed with the canvass of the election returns from precinct (sic) nos. 7-A and 5-A.

The respondent board of canvassers was informed by Elie Acquiat (poll clerk) that the election returns from precinct no. 7-A was tampered, and the votes for the respondent Longcop was increased from 88 to 188. Similarly, the BEI Chairman of Precinct 5-A Arnulfo Nueva and the third member Dolor Rowela informed the board of canvassers that the election returns from precinct 5-A was tampered by increasing the votes for the respondent Longcop from 117 to 173. With the testimony of those witnesses, the board should have proceeded in accordance with Section 235 of the Omnibus Election Code but the board disregarded the clear mandate of the law and closed its eyes to the overwhelming evidence of falsification and lent its hand to the consummation by canvassing the falsified election returns.<sup>[1]</sup>

On 25 May 1995 petitioner filed an election protest before the Regional Trial Court.

On 28 August 1995 respondent COMELEC dismissed the petition of Laodenio for lack of merit.<sup>[2]</sup> It was of the view that the adjournments were justified and were not improperly prolonged as claimed by petitioner; he was in fact deemed to have acquiesced to the new composition of the Municipal Board of Canvassers when he actively participated in the proceedings therein; there was no showing that he manifested on time his intent to appeal the rulings of the Board, neither was there any proof that he appealed therefrom; and, on the authority of *Padilla v. Commission on Elections*<sup>[3]</sup> the pre-proclamation controversy was no longer viable since Longcop had already been proclaimed and had assumed office. On 23 October 1995 the motion for reconsideration was denied.<sup>[4]</sup>

Petitioner raises these issues: (1) The direct filing of a petition with COMELEC to contest the illegal conduct of the Board of Canvassers is allowed under Rule 27, Sec. 4, of the COMELEC Rules of Procedure; and, (2) The pre-proclamation controversy was not rendered moot and academic by the filing of an ordinary election protest.

Laodenio claims that a petition may be filed directly with COMELEC pursuant to Rule 27, Sec. 4, of the COMELEC Rules of Procedure when, as in this case, the issue involves the illegal composition of the Board of Canvassers or the canvassing was a ceremony that was pre-determined and manipulated to result in nothing but a sham proceeding and there was disregard of manifest irregularities in the questioned returns. In particular, petitioner argues that the Board was illegally constituted on 15 May 1995 since the new Chairman was appointed merely by the Provincial Election Supervisor and not by respondent COMELEC, in clear contravention of Sec. 10 of COMELEC Resolution No. 2756. Also, the Board proceeded illegally when it canvassed tampered election returns unmindful of Sec. 235 of the Omnibus Election Code which refers to election returns that appear to be tampered with or falsified.

This argument is devoid of merit. Apparently, it emanates from a misapprehension of the applicability of certain election laws. Sec. 17 of R.A. 7166<sup>[5]</sup> provides -

*Sec. 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 the certificates of canvass shall be brought in the first instance before the board of canvassers only.

As evidenced by the Minutes of the Board, petitioner indeed raised the matter of illegal composition of the Board at the first instance before said Board when his counsel questioned the authority of the new Chairman. However, after seeing the notice of the Provincial Election Supervisor, his counsel agreed to the opening of the canvassing. In fact, petitioner thereafter actively participated in the proceedings. Consequently, COMELEC concluded that -

x x x x Such acts could be justifiably taken as acquiescence to the new composition of the Board. Otherwise, had he felt aggrieved thereby, he should have elevated the issue on appeal to the Commission x x x x [6]

Particularly, Sec. 19 of R.A. 7166 provides -

Sec. 19. *Contested Composition or Proceedings of the Board; Period to Appeal; Decision by the Commission.* - Parties adversely affected by a ruling of the board of canvassers on questions affecting the composition or proceedings of the board may appeal the matter to the Commission within three (3) days from a ruling thereon x x x x

Although Sec. 17 of R.A. 7166 and Sec. 5, par. (a)(1) (not Sec. 4 as erroneously cited by petitioner), of Rule 27 of the COMELEC Rules of Procedure also allow filing of a petition directly with respondent COMELEC when the issue involves the illegal composition of the Board, Sec. 5, par. (b), of the same Rule requires that it must be filed immediately when the Board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the Board, or immediately at the point where the proceedings are or begin to be illegal. In the present case, the petition was filed five (5) days after respondent Longcop had been proclaimed by the Board. At any rate, the real issue appears to be - not what it appears to petitioner - whether he can still dispute the composition of the Board after having actively participated in the proceedings therein. In this regard, we sustain respondent COMELEC.

Section 20 of R.A. 7166 (not Sec. 235 of the Omnibus Election Code as mistakenly invoked by petitioner) outlines the procedure in the disposition of contested election returns -

Sec. 20. *Procedure in Disposition of Contested Election Returns.* - (a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

x x x x

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by