

EN BANC

[G.R. Nos. 107814-107815, May 16, 1996]

GOV. TUPAY T. LOONG, BARIK SAMPANG, KARTINI MALDISA, YASSER HASSAN, AND HADJA SAPINA RADJAIE, PETITIONERS, VS. THE COMMISSION ON ELECTIONS; PROVINCIAL BOARD OF CANVASSERS OF SULU; MUNICIPAL BOARD OF CANVASSERS OF TALIPAO & ABDUSAKUR TAN, RESPONDENTS.

[G.R. NO. 120826. MAY 16, 1996]

GOV. TUPAY T. LOONG AND KIMAR TULAWIE, PETITIONERS, VS. THE COMMISSION ON ELECTIONS; PROVINCIAL BOARD OF CANVASSERS OF SULU; ABDUSAKUR TAN AND MUNIB ESTINO, RESPONDENTS.

[G.R. NO. 122137. MAY 16, 1996]

GOV. TUPAY T. LOONG AND KIMAR TULAWIE, PETITIONERS, VS. THE COMMISSION ON ELECTIONS; ABDUSAKUR TAN, AND MUNIB ESTINO, RESPONDENTS.

[G.R. NO. 122396. MAY 16, 1996]

GOV. TUPAY T. LOONG AND KIMAR TULAWIE, PETITIONERS, VS. HON. COMMISSIONER MANOLO B. GOROSPE OF THE COMMISSION ON ELECTIONS, RESPONDENTS.

DECISION

HERMOSISIMA, JR., J.:

Under our resolution, dated January 16, 1996, we directed the consolidation of the following four cases:

- (1) G.R Nos. 107814-107815, entitled, "Gov. Tupay T. Loong, Barik Sampang, Kartini Maldisa, Yasser Hassan, and Hadja Sapina Radjaie vs. The Commission on Elections; Provincial Board of Canvassers of Sulu; Municipal Board of Canvassers of Talipao and Abdusakur Tan";
- (2) G.R No. 120826, entitled, "Gov. Tupay T. Loong and Kimar Tulawie vs. The Commission on Elections; The Provincial Board of Canvassers of Sulu; Abdusakur Tan and Munib Estino";
- (3) G.R No. 122137, entitled, "Gov. Tupay T. Loong and Kimar Tulawie vs. The Commission on Elections, Abdusakur Tan and Munib Estino"; and

(4) G.R. No. 122396, entitled, "Gov. Tupay T. Loong and Kimar Tulawie vs. Hon. Commissioner Manolo Gorospe of the Commission on Elections."

As we render judgment upon these consolidated petitions, the appropriate backgrounder on each of them is in order.

G.R. NO. 107814-107815

The petition was one for Certiorari seeking to nullify two resolutions^[1] of the Commission on Elections (COMELEC) promulgated in pre-proclamation cases^[2] filed by petitioner Tupay T. Loong who prayed that the proceedings of the Municipal Board of Canvassers of Talipao, Sulu, be set aside on the ground that the certificates of canvass were manufactured, fictitious and falsified. The COMELEC dismissed the petitions, hence, Loong's recourse to this Court in a petition for certiorari. In our resolution, dated January 26, 1993, we affirmed the dismissal because we found no grave abuse of discretion committed on the part of the public respondent in rendering the questioned resolutions. Entry of judgment as regards that resolution was effected on March 19, 1993.^[3]

G.R. NO. 120826

This is a petition for Certiorari assailing an Order^[4] by the COMELEC, dated June 16, 1995, suspending the proclamation of petitioners as winners in the May 8, 1995 elections for Governor and Vice-Governor of the province of Sulu, for Prohibition praying that COMELEC be prohibited from conducting a technical comparison of signatures and thumbmarks affixed in COMELEC CE Forms 1 and 2, and for Mandamus seeking to compel respondent to reconvene and proclaim petitioners Tupay T. Loong and Kimar Tulawie as the duly elected Governor and Vice-Governor, respectively, of Sulu.

Culled from the pleadings in this case are the following pertinent facts:

In the May 8, 1995 elections held in the Province of Sulu, petitioner Tupay T. Loong and private respondent Abdusakur Tan ran for the position of Governor, while petitioner Kimar Tulawie and private respondent Munib Estino were candidates for the position of Vice-Governor. After the canvass of the election returns of sixteen (16) of the eighteen (18) municipalities of Sulu, respondent Provincial Board of Canvassers (PBC) recommended to the COMELEC a re-canvass of the election returns of Parang and Talipao. COMELEC, accordingly, relieved all the regular members of the Municipal Board of Canvassers (MBC) and ordered such recanvass by senior lawyers from the COMELEC office in Manila. During the re-canvass, private respondents objected to the inclusion in the canvass of the election returns of Parang. The reconstituted MBC, however, merely noted said objections and forwarded the same to respondent PBC for resolution.

Subsequently, the MBC submitted its certificate of canvass to respondent PBC for canvass on the provincial level. Respondent PBC, however, denied aforesaid objections of private respondents, on the ground that only the certificate of canvass was forwarded to it and that private respondents allegedly failed to object to the

canvass of said certificate. The canvass of respondent PBC showed petitioners to have overwhelmingly won in the municipality of Parang.

On June 23, 1995, private respondents appealed to the COMELEC, and such appeal was docketed as SPC No. 95-310^[5] which essentially questioned the aforesaid action by respondent PBC. However, SPC 95-310, in which private respondents formally submitted their appeal from the omnibus ruling of respondent PBC denying their objections to the election returns and/or certificate of canvass, was dismissed by the COMELEC in an Order promulgated on October 20, 1995.^[6] Significantly, much earlier, that is, on June 9, 1995, private respondents had already filed a petition docketed as SPA No. 95-284^[7] which prayed that the elections in Parang, Sulu, be set aside and annulled on the ground that there was failure of election in said municipality due to massive fraud. Hearing on SPA No. 95-284 was held on June 28, 1995.^[8]

After said hearing, the Commission issued an Order, dated July 4, 1995, directing the Provincial Election Supervisor of Sulu to bring to the COMELEC central office the CE Form 2 which pertains to the list of voters with voting records used in the May 8, 1995 elections and the books of voters for all precincts. Anticipating that the COMELEC would use the said documents to conduct a technical examination of the signatures and thumbmarks affixed in the list of voters with voting records (CE Form 2) and in the registration forms (CE Form 1), petitioners Loong and Tulawie prayed that the COMELEC inform them as to whether or not it would conduct a technical examination of CE Forms 1 and 2, which examination, petitioners argued in their motion, has been Proscribed in pre-proclamation controversies, by this Court in the landmark case of *Dianalan vs. COMELEC*,^[9] and that, in the alternative, the same examination be conducted as regards CE Forms 1 and 2 of the municipalities of Siasi, Panglima Estino, Tapul, Pata and Kalinggalang Caluang, where private respondents allegedly committed rampant fraud during the elections.

In an Order,^[10] dated July 18, 1995, the COMELEC directed its Voters Identification Division to verify and examine the list of voters with the voting records used in the May 8, 1995 elections together with the books of voters of all precincts for the municipality of Parang, Sulu, and to submit a report thereon within fifteen (15) days.

On July 21, 1995, petitioners countered by filing with the COMELEC a Petition to Declare a Failure of Election in the Municipalities of Tapul, Panglima Estino, Pata, Siasi and Kalinggalang Caluang, on the similar ground of massive fraud resulting in a statistical improbability in the election results. Said petition was docketed as SPA No. 95-289, which, however, was dismissed by the COMELEC in its En Banc Resolution dated December 13, 1995.

G.R. No. 122137

This is a petition for *Certiorari* assailing two COMELEC En Banc Resolutions,^[11] both dated October 9, 1995, issued in the aforesaid election cases of SPA No. 95-284 and SPA No. 95-289 which were ordered consolidated for purposes of disposition, the petitions being that they involve the same parties and are so closely connected

that resolution of one would necessarily and materially affect the outcome of the other. The parties in both petitions contend that no election was ever conducted and no voting took place in the aforementioned municipalities covered by their respective petitions. The COMELEC disposed of pending incidents in the consolidated cases SPA No. 95-284 and SPA No. 95-289 in this wise:

"WHEREFORE, we summarize the Commission's rulings, considered adopted by unanimous or majority vote, as follows:

In SPA No. 95-284,

- (1) To annul the results of the elections in the municipality of Parang, Sulu, as to the positions of Governor and Vice-Governor;
- (2) In the meantime, to reserve its ruling on whether or not to hold special elections in the said municipality;
- (3) To hold in abeyance the proclamation of the winning candidates for Governor and Vice-Governor, until further orders from the Commission;
- (4) To relieve the present Chairman and members of the Provincial Board of Canvassers of Sulu, and to appoint to their respective positions: Atty. Nimia B. Suero, Chairman; Atty. Alexander A. Villanueva, Vice-Chairman, and Atty. Teresita C. Suarez, Member-Secretary, who are directed to immediately re-convene in Manila and proclaim the winning candidates for Sangguniang Panlalawigan of the First District of Sulu, on the basis of the canvass duly conducted.

In SPA No. 95-289,

- (1) To set the petition for hearing and resolve the questions therein raised on (a) the timeliness of the petition, and, (b) whether or not to order a technical examination of CE Forms 1 and 2 used in the 1995 elections for Governor and Vice-Governor in the Municipalities of Panglima Estino, Tapul, Pata, Siasi and Kalingalang Caluang, Sulu.

SO ORDERED."^[12]

In essence, petitioners claim that the assailed resolutions of the COMELEC were issued with grave abuse of discretion and without jurisdiction insofar as the COMELEC order, on the basis of the results of the technical examination of the thumbmarks of the voters affixed in CE Forms 1 and 2, the annulment of the elections in Parang, Sulu, respecting the positions of Governor and Vice-Governor because, petitioners asseverate, such technical examination has been held by this Court to be prohibited in pre-proclamation controversies. Moreover, petitioners charged the COMELEC to have violated their fundamental right to due process when it annulled the elections of Parang, Sulu, on the basis of the results of said technical examination without giving petitioners prior opportunity to be confronted with and

to refute, the said results.

On December 14, 1995, petitioners filed an Urgent Motion for the Issuance of a Temporary Restraining Order and Supplemental Petition for *Certiorari*.^[13] Said pleading further assailed another En Banc Resolution^[14] issued by the COMELEC on December 13, 1995, in consolidated cases SPA No. 95-284 and SPA No. 95-289. In that resolution, the COMELEC ruled:

"At this late date and using hindsight, one is inclined to ask, were herein petitioners so complacent in a pre-determined lead in Parang, that, given their awareness of the irregularities in the five (5) municipalities, the alleged lopsided results therein would not upset their victory? Faced with the possible undoing of the Parang election results, would petitioners move to maintain their lead with a parallel undoing of what they perceive as pro-Tan-and-Estino results in other municipalities? In SPA 95-284, respondents Loong and Tulawie propose to submit for examination the CE Forms 1 and 2 in these five municipalities 'in the event' and only then, a similar examination is conducted on the Parang documents!

It is urged that parties come to this Commission with a shared purpose to uphold the sacredness of an election. Looking to the Constitution for guidance, we are constrained to withhold from petitioners in SPA 95-289 the means which would otherwise be theirs had they been motivated with the principles of fairness and integrity in a political rivalry such as the 1995 provincial elections in Sulu. As with the Courts, one must come to the Commission for adjudication of his rights with clean hands.

We rule for the annulment of the elections in Parang, Sulu. We also rule to dismiss the petition for a declaration of failure of elections in the municipalities of Panglima Estino, Kalinggalang Caluang, Pata, Tapul and Siasi.

One final word on the matter of determining the provincial winners following the annulment of a municipal election:

The approach to this issue was varied in the October 9, 1995 resolution. We have re-assessed our position and abandoned the option of a special election. We take cognizance of the fact that the lists of voters used in the May 8, 1995 elections have been annulled by Republic Act No. 8046. A registration was conducted in Sulu, including Parang, last August 19 and 20. If the new list of voters is to be used, there will be the legal oddity of using a list which was not in existence at the time the original election (May 8, 1995) was held. A special election, to be sure, is a mere continuation of the election first held. On the other hand, if the voters list in the May 8, 1995 elections is used, there is the anomaly of using a nullified list of voters.

Upon these considerations we have abandoned the alternative of calling a special election in Parang.

There is really no compulsion for the calling of a special election. The