

## **LEANDRO I. VERCELES, PETITIONERS, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF VIRAC, CATANDUANES, AND THE PROVINCIAL BOARD OF CANVASSERS OF CATANDUANES, RESPON...**

*G.R. No. 105227. September 18, 1992*

Ponente: BELLOSILLO, J.

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### **BELLOSILLO, J.:**

In G.R. No. 105227, petitioner Leandro Vercelles, candidate for Governor of Catanduanes, seeks to annul Resolution No. 92-1485 of respondent Commission on Elections (COMELEC) En Banc of May 14, 1992, which enjoined the City/Municipal Board of Canvassers from ruling on objections to election returns relating to provincial offices, for being violative of the Omnibus Election Code and R.A. No. 7166.

In G.R. Nos. 105870-74, petitioner Benjamin Borja, Jr., candidate for mayor of Pateros, seeks to set aside the Resolution of the COMELEC En Banc dated June 27, 1992, which denied his appeals for exclusion of certain election returns and directed the Municipal Board of Canvassers to complete canvass and proclaim winners despite the pendency of disqualification proceedings against respondent Capco, Jr.

In G.R. No. 105939, petitioner Ombawa Madum, a mayoralty candidate in Marawi City, questions COMELEC Resolution No. 2489 of June 29, 1992, which dismissed his petition for recount of votes in 35 precincts and to declare failure of election in four others, paving the way for the proclamation of respondent Basman as elected mayor.

These cases are consolidated as they involve pre-proclamation controversies, to wit: G.R. No. 105227 assailing the legality of the proceedings of the Municipal Board of Canvassers of Catanduanes; G.R. Nos. 105870-74 for exclusion of certain election returns of Pateros, M.M.; and, G.R. No. 105939 for the recount of votes in 35 precincts in Marawi City.

It appearing that no restraining order was issued in these cases and the winning candidates have already been proclaimed, these pre-proclamation issues have thereby been rendered moot and academic when the proclaimed elected officials commenced their terms in the afternoon of June 30, 1992, pursuant to Section 16 of R.A. 7166, which provides:

"All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari."

While the issue of failure of election in G.R. No. 105939 may proceed conformably with Our ruling in *Jardiel v.*

COMELEC and Aves,[1] the same must, nevertheless, be dismissed as it does not appear from the petition that the number of votes affected by the annulment of election in four (4) precincts would materially alter the result of the elections.

WHEREFORE, the foregoing petitions to the extent that they involve pre-proclamation controversies are hereby dismissed without prejudice to filing regular election protests in accordance with Our resolution in Sarmiento v. COMELEC and other cases of the same nature and promulgated on the same date.[2] The running of the period of filing protests shall be deemed suspended by the pendency of these cases.

G.R. No. 105939, insofar as the issue of failure of election is concerned, is dismissed for lack of merit.

Narvasa, C.J., Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Melo, JJ., concur.

Gutierrez, Jr., Cruz, and Feliciano, JJ., on leave.

Campos, Jr., J., no part.

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[1] G.R. No. 58575, September 21, 1983, 124 SCRA 650, 661.

[2] G.R. No. 105628; *Alfelor v. Comelec*, G.R. No. 105725; *Verceles, Sr. v. Comelec*, G.R. No. 105727; *Typoco, Jr. v. Comelec*, G.R. No. 105730; *Genova Jr. v. Comelec*, G.R. No. 105771; *Manliclic v. Comelec*, G.R. No. 105778; *Rabat v. Comelec*, G.R. No. 105797; *Sinsuat v. Comelec*, G.R. No. 105919; and, *Velasco v. Comelec*, G.R. No. 105977, all promulgated August 6, 1992.

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