

NORODIN M. MATALAM, PETITIONER, VS. COMMISSION ON ELECTIONS AND ZACARIA A. CANDAO, RESPONDENTS.

G.R. No. 123230. April 18, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Law and jurisprudence mandate that pre-proclamation controversies should be resolved in summary proceedings; thus, the Comelec and the Boards of Canvassers, in resolving these disputes, need not look beyond the face of the election returns. So too, petitioner must show that the exclusion of the contested returns will materially change the standing of the aggrieved parties. In the case at bench, the Court affirms once again these well-entrenched doctrines in our legal system.

This petition for certiorari under Rule 65 of the Rules of Court assails the Resolution[1] dated August 24, 1995 of the Commission on Elections (Comelec), Second Division, in the consolidated cases of SPC No. 95-029, SPC No. 95-279, SPC No. 95-185 and SPC No. 95-291, the dispositive portion of which states:

“WHEREFORE, premises considered, that the Commission on Elections (Second Division) resolves to DISMISS the appeals and AFFIRM the rulings of the Provincial Board of Canvassers. The proclamation of respondent Candao as Governor of the Province of Maguindanao earlier set aside and declared null and void is hereby reconsidered and ordered revived.”[2]

Also assailed herein is the Comelec en banc Resolution[3] dated January 16, 1996 denying the motion for reconsideration, to wit:

“In keeping with the ruling of the Supreme Court in *Alfonso vs. Commission on Elections*, 232 SCRA 777, that, ‘It is a matter of public policy that pre-proclamation controversies shall be resolved in summary proceedings,’ and it appearing that the instant motion for reconsideration is without merit and does not offer much in terms of new issues or substantial matters to warrant the reversal or setting aside of the questioned Resolution of the Second Division, the Commission En Banc RESOLVES to DENY the Motion for Reconsideration. Accordingly, the resolution of the Second Division is hereby AFFIRMED.

The Motion filed subsequently on September 6, 1995 by herein petitioners-movants for technical examination of CE Forms 1 and 2 of the Municipality of Maganoy, Maguindanao is likewise hereby DENIED for having become moot and academic.”[4]

In its assailed Resolutions, Public Respondent Comelec disposed of the following four cases:[5]

1. SPC Case No. 95-029, initiated by the local candidates from the Municipality of Maganoy, Maguindanao, seeking to nullify the election results in and the consequent proclamation of the candidates in said municipality. Petitioner Norodin Matalam filed a petition for intervention, contending that the election returns in the said municipality were falsified, fabricated and manufactured.
2. SPC Case No. 95-185, filed by Petitioner Matalam to enjoin the Provincial Board of Canvassers of

Maguindanao from tabulating the certificate of canvass from Maganoy, Maguindanao;

3. SPC No. 95-279, filed also by Petitioner Matalam to set aside the proceedings of the Municipal Board of Canvassers of Datu Piang, Maguindanao;

4. SPC No. 95-291, filed by Petitioner Matalam to exclude the certificates of canvass from the Municipality of Datu Piang.

The Facts

Petitioner Norodin M. Matalam and Private Respondent Zacaria A. Candao were both candidates for Governor of the Province of Maguindanao in the May 8, 1995 elections.

During the canvass of the election returns in the municipalities of Datu Piang and Maganoy, both in the Province of Maguindanao, Petitioner Matalam challenged before the respective Municipal Boards of Canvassers (“MBC”) the authenticity of the election returns in said towns. Because the MBC merely noted his objections, petitioner reiterated the same before the Provincial Board of Canvassers (“PBC”). In those two municipalities, petitioner was credited with only 3,641 votes, while private respondent received 44,654 votes. It is the contention of petitioner that the exclusion of the results is enough to overhaul the lead of Candao.[6]

Because the Provincial Board of Canvassers rejected the pleas of petitioner and included the challenged certificates of canvass for Datu Piang and Maganoy in the provincial canvass, petitioner filed the above-mentioned petitions before the Comelec.

During the pendency of the said petitions, the Provincial Board of Canvassers on June 30, 1995 proclaimed Respondent Candao as the duly elected governor of Maguindanao.

Citing Section 20 (1) of Republic Act No. 7166 which requires that proclamations of winning candidates during the pendency of an appeal or petition should be authorized by the Comelec, the Second Division of Respondent Commission subsequently nullified on July 11, 1995 the said proclamation of Candao.

On August 24, 1995, as earlier stated, the Comelec Second Division denied, via the assailed Resolution, the petitions questioning the proceedings in the Municipal and Provincial Boards of Canvassers and, at the same time, reinstated the proclamation of Respondent Candao. The Comelec held that “in the absence of a strong evidence establishing the spuriousness of the returns, the basic rule that the election returns shall be accorded prima facie status as bona fide reports of the results of the count of the votes for canvassing and proclamation purposes must perforce prevail.”[7]

Petitioner filed a motion for reconsideration. Subsequently, he also filed a motion for technical examination of the signatures and thumbmarks of the registered voters of Maganoy appearing in the Voter’s Affidavit and the List of Voters (CE Forms 1 and 2, respectively) for the purpose of proving that no election was conducted therein.

On January 16, 1996, the Comelec en banc denied the motions for reconsideration and technical examination. Hence, this petition for certiorari, praying for the following reliefs:

“a) upon filing of this petition, a restraining order be issued enjoining the execution and implementation of the resolutions of August 24, 1995 and January 16, 1996 until further orders by the Honorable Court upon such bond as may be required;[8]

b) after due hearing, the resolutions of August 24, 1995 and January 16, 1996 be reversed and set aside;

c) that the proclamation of the private respondent Candao be declared null and void;

d) that the certificates of canvass of Datu Piang and Maganoy be ordered excluded in the canvassing by the Provincial Board of Canvassers of Maguindanao;

e) that the petitioner Gov. Norodin Matalam be ordered proclaimed by the Provincial Board of Canvassers of Maguindanao as the duly elected governor in the May 8, 1995 elections;

f) in the alternative, the Comelec be ordered to conduct a technical examination of CE Forms 1 and 2 of Maganoy, Maguindanao used in the May 8, 1995 elections, and thereafter, the certificate of canvass of Maganoy be ordered excluded and petitioner be ordered proclaimed as the duly elected governor of Maguindanao.”[9]

In his memorandum, petitioner added the following prayer:

“7. Or as a second alternative, after the technical examination, a Special Election be conducted in Datu Piang and Maganoy, in the event only that the Hon. Court will not order the proclamation of the winner on the basis of the remaining MBC Certificates of Canvass of the 18 towns of Maguindanao including the results of the Special Elections of May 27, 1995 in 5 precincts of Datu Piang and 6 precincts of Maganoy.”[10]

The Issue

Petitioner contends that the election returns of Datu Piang were falsified and spurious, because they were prepared notwithstanding the alleged failure to count all the ballots therein. Petitioner asserts that the counting of votes for 165 precincts inside the old Municipal Building was disrupted and cut short by grenade explosions which allegedly resulted in chaos and pandemonium. In describing the aftermath of the incident, petitioner cites the report of Election Officer E.J. Klar of Datu Piang, to wit:

- “1. Only 3 precincts have complete documents including tally boards duly accomplished by the BEIs;
 2. Some boxes only contained detached stubs;
 3. Some boxes or majority of the boxes not sealed nor padlocked;
 4. Counted and uncounted ballots were mixed together inside the ballot boxes;
 5. xxx the tally boards were also scattered all around the Treasurer’s Office.
 6. Only 39 precincts received their election returns and these were also missing;
 7. There are BEIs who also brought their tally board to their house;
 8. Some BEIs cannot be found or refused to appear;
- So we can begin the transferring from the tally board to the election return after the matching.
I’ll just send you my report next time.”[11]

Relying on the dissenting opinion of Commissioner Regalado E. Maambong, petitioner points out that Section 212 of the Omnibus Election Code requires that the preparation of election returns must be simultaneous with the counting of ballots.

Petitioner further contends that the election returns and certificates of canvass for the Municipality of Maganoy were falsified and spurious, as no election was actually conducted therein. The results reflected in the Statement of Votes (SOV) by precinct were allegedly farcical, with Petitioner Matalam and his congressional candidate receiving one or no vote at all in a number of precincts, while Candao and his congressional candidate were credited with all the votes cast therein. In some precincts, the number of votes received by Candao even exceeded the number of registered voters.[12]

Petitioner also alleges that the SOV by precinct, the “Municipal Certificate of Canvass and the proclamation papers of Maganoy” were signed in blank a day before the elections, as evinced by the sworn statement of the Municipal Treasurer and concurrent Vice-Chairperson of the MBC. Also presented was a certification from the Maganoy Election Officer that only two barangays received ballot boxes and election paraphernalia. Furthermore,

joint affidavits were presented by barangay captains and officials declaring that the Boards of Election Inspectors failed to report for duty in their respective polling precincts on election day.

In view of these, petitioner argues that the Comelec should have granted the motion for technical examination to determine whether the signatures and thumbmarks affixed in CE Forms 1 and 2 belong to the voters therein, as it had done *motu proprio* in SPA No. 95-284 involving the Municipality of Parang, Sulu.

Private Respondent Candao vigorously denies the contentions that no counting of votes was conducted in Datu Piang^[13] and that no election was held at all in Maganoy. He rebuts the respective statements of the Maganoy Municipal Treasurer and the Municipal Election Officer that there were no elections in the said municipality in May 1995, pointing to their earlier joint affidavit declaring the elections in Maganoy as free, orderly and peaceful. Candao argues further that the receipt of zero vote by some candidates for public office does not necessarily make the returns statistically improbable.

The public respondent, in its comment, contends principally that the allegations in the petition are insufficient to warrant the issuance of the writ of certiorari. The resolution of the present issue of fraud is within the powers of public respondent, the findings of which deserve great credence, in the absence of compelling evidence of a clear and arbitrary abuse.^[14] Public respondent suggests that the proper recourse of private respondent is an election protest.^[15]

The ultimate issue posed is whether the questioned election returns for the municipalities of Maganoy and Datu Piang could be the proper subjects of a pre-proclamation controversy and, corollarily, whether said returns should be excluded from the canvass.

The Court's Ruling

The petition is not meritorious.

May the Comelec in a Pre-Proclamation Case Go Beyond the Face of the Election Returns?

The Omnibus Election Code defines a pre-proclamation controversy as “any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.”^[16]

Section 243 of the same Code enumerates the issues that may be raised in a pre-proclamation controversy, to wit:

“SEC. 243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.”

Stressing that the said enumeration is restrictive and exclusive, the Court in *Sanchez vs. Commission on Elections*[17] held that:

“The scope of pre-proclamation controversy is limited to issues enumerated under Section 243 of the Omnibus Election Code. The enumeration therein of the issues that may be raised in pre-proclamation controversy, is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (sec. 234), appear to have been tampered with, falsified or prepared under duress (sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents, *Sanchez*’ petition must fail.[18]”

In an obvious attempt to satisfy the restrictive requirements of Sec. 243 and *Sanchez*, the petitioner claims that the election returns were “spurious and obviously manufactured,”[19]and “prepared under irregular circumstances.” In this light, petitioner characterizes the present case as a pre-proclamation controversy.[20]

In seeking to prove his characterization, however, petitioner does not claim that the election returns are “incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies x x x” which irregularities appear on their face; or “ x x x were prepared under duress, threats, coercion, or intimidation or they are obviously manufactured or not authentic.” Neither has he denounced as “illegal” the composition or proceedings of the board of canvassers. Rather, he maintains that there were irregularities aliunde, e.g., (a) the counting of votes in *Datu Piang* was not completed; (b) no election was conducted in *Maganoy*; and (c) grenade explosions marred the counting of votes in *Datu Piang*.

That the election returns were obviously manufactured must be evident from the face of the said documents themselves.[21] In a pre-proclamation controversy, the *Comelec*, as a rule, is restricted to an examination of the election returns and is without jurisdiction to go beyond or behind them and investigate election irregularities. Indeed, in the recent case of *Loong vs. Comelec*,[22] the Court, through Mr. Justice Regino Hermosisima, Jr., declared that “the prevailing doctrine in this jurisdiction xxx is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes.”[23] (Underscoring supplied.)

Justifying the circumscribed scope of pre-proclamation controversies, *Loong* cited the earlier ruling of the Court in *Dipatuan vs. Comelec*[24] and held:

“The policy consideration underlying the delimitation both of substantive ground and procedure is the policy to determine as quickly as possible the result of the election on the basis of the canvass. Thus, in the case of *Dipatuan vs. Commission on Election*, we categorically ruled that in a pre-proclamation controversy, *Comelec* is not to look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues resolution of which would compel or necessitate *COMELEC* to pierce the veil of election returns which appear *prima facie* regular on their face, has his proper remedy in a regular election protest. By their very nature, and given the obvious public interest in the speedy determination of the results of elections, pre-proclamation controversies are to be resolved in summary proceedings without the need to present evidence aliunde and certainly without having to go through voluminous documents and subjecting them to meticulous technical examinations which take up considerable time.”[25](Underscoring supplied.)

The petition must fail because it effectively implores the Court to disregard the statutory norm that pre-proclamation controversies are to be resolved in a summary proceeding. He asks the Court to ignore the fact that the election returns appear regular on their face, and instead to determine whether fraud or irregularities attended the election process. Because what he is asking for necessarily postulates a full reception of evidence

aliunde and the meticulous examination of voluminous election documents, it is clearly anathema to a pre-proclamation controversy which, by its very nature, is to be heard summarily and decided on as promptly as possible.[26] A party seeking to raise issues the resolution of which would compel or necessitate the Comelec to pierce the veil of election returns which appear prima facie regular on their face, has his proper remedy in a regular election protest, wherein the parties may litigate all the legal and factual issues raised by them in as much detail as they may deem necessary or appropriate.[27]

The public interest that animates the rule requiring summary resolution of pre-proclamation controversies was previously explained by the Court thus:

“The public policy involved in the rule that pre-proclamation controversies shall be resolved in summary proceedings, is very real and insistent. The public interest requires that the position for the filling of which the election was held should be filled as promptly as possible, even if the proclamation of the winning candidates should be provisional in nature, in the sense that such would be subject to the results of the election protest or protests that may be expected to be filed. The Court is bound by high duty and responsibility to give effect to this public policy which is enshrined in statutory norms.”[28]

In the present case, petitioner clearly asks too much, for he wants the Comelec and the Court to look beyond the face of the documents, contrary to the clear mandate of Loong.

Technical Examination Not Proper in a Pre-Proclamation Controversy

Petitioner also prays for a technical examination of CE Forms 1 and 2. Again, a technical examination runs counter to the nature and scope of a pre-proclamation controversy. In *Dimaporo vs. Comelec*,[29] the Court denied a similar supplication for the reexamination of *Dianalan vs. Comelec*[30] in order to allow a technical examination of the handwriting and fingerprints in the voter’s affidavits and voting lists. In *Dimaporo*, the Court held:

“Petitioners ask the Court to re-examine its decision in *Dianalan v. Commission on Elections*, so as to permit petitioners to subject to handwriting and fingerprint examination the voter’s affidavits and voting lists and other voting records in the contested precincts. We are not persuaded by petitioners’ arguments on this point. It is important to bear in mind that the nature, scope and ambit of a pre-proclamation controversy as set out in *Dianalan* and *Dipatuan* and the other cases there cited are determined by statutory provisions: Section 243 (entitled “Issues that may be Raised in Pre-Proclamation Controversy”), 245 (“Contested Election Returns”) and 246 (“Summary Proceedings before the Commission”) of the Omnibus Election Code. As pointed out above in *Dipatuan*, these statutory provisions reflect a very definite view of what public policy requires on the matter. It may well be true that that public policy may occasionally permit the occurrence of “grab the proclamation and prolong the protest” situations; that public policy, however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public at large. For those who disagree with that public policy, the appropriate recourse is not to ask this Court to abandon case law which merely interprets faithfully existing statutory norms, to engage in judicial legislation and in effect to rewrite portions of the Omnibus Election Code. The appropriate recourse is, of course, to the Legislative Department of the Government and to ask that Department to strike a new and different equilibrium in the balancing of the public interests at stake.”[31]

It is interesting to note that the counsel who prayed for technical examination in *Dimaporo* is “Pedro Q. Quadra,”[32] while the counsel for petitioner in this case who now makes the same request is “Pete Quirino-Quadra.”[33]

In support of his prayer for a technical examination, petitioner also cites the Comelec ruling in SPA No. 95-284, in which the Comelec ordered a similar technical examination in Parang, Sulu.

It is well to stress that SPA No. 95-284, which was the subject in *Loong vs. Comelec*[34] recently decided by the Court, involved a petition to annul the election results or to declare a failure of election, an action which is different from the present pre-proclamation controversy.[35] *Loong* distinguished between the two actions, thus:

“While, however, the Comelec is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the Comelec is duty bound to investigate allegations of fraud, terrorism, violence, and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. Thus, the Comelec, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters’ signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. Needless to say, a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections.”[36]

Presumption That Election Returns Are Valid Not Overcome

Petitioner *Matalam* contends that the presumption of regularity of the election returns for *Datu Piang* and *Maganoy* had been overcome by his “overwhelming evidence,” as presented principally by the *Klar* Report. We cannot sustain this view.

The Comelec evaluated the evidence presented by the parties, and its conclusion is contrary to petitioner’s. The Comelec held that “in the absence of a strong evidence establishing spuriousness of the returns, the basic rule that the election returns shall be accorded prima facie status as bona fide reports of the results of the count of the votes for canvassing and proclamation purposes must perforce prevail.”[37] There appears no reason for the Court to disturb this factual finding of the Comelec.

It is axiomatic that factual findings of administrative agencies which have acquired expertise in their field are binding and conclusive on the Court. An application for certiorari against actions of the Comelec is confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process, considering that the Comelec is presumed to be most competent in matters falling within its domain.[38]

At the outset, it is already clear that, as a rule, there is no necessity for the Comelec to examine in a pre-proclamation controversy allegations of irregularity that had allegedly attended the preparation of election returns which, however, do not appear on the face of the said documents. We hold, just the same, that the Comelec has not committed a grave abuse of discretion in ruling that petitioner had failed to present strong evidence sufficient to overcome the presumption that the election returns and the certificates of canvass were valid.

In respect of the election returns of *Datu Piang*, the Comelec relied on the following report of Atty. Jose Beltran, Provincial Election Supervisor of Maguindanao (and disregarded the aforementioned Report of E.J. Klar which, on the other hand, petitioner cited):

“x x x

The elections in *Datu Piang*, Maguindanao on May 8, 1995, was initially held in a peaceful and orderly manner;

From the distribution of the ballot boxes, election documents and other election paraphernalia in the morning of May 8, 1995, up to the opening of the precincts and actual casting of votes, no untoward incident was reported by the Acting Election Officer *Eliza Gasmin*;

The counting of votes as agreed upon by the contending mayoralty candidates was centralized in the old

Municipal townhall;

The counting of votes started simultaneously at about seven o'clock in the evening and as reported by Election Officer Gasmin, almost all of the Boards of Election Inspectors completed their counting;

At about 10:30 that same evening when the Board of Election Inspectors were preparing their election returns, grenade explosion occurred and there was pandemonium in the canvassing hall. The Boards of Election Inspectors scampered to safety leaving their ballot boxes and election materials behind. One person was killed and scores of other persons were wounded.

The following day, Election Inspector Gasmin with the help of her staff and Treasury personnel, gathered the ballot boxes and other election materials and kept them in the Treasurer's Office;

The Treasurer's Office and its premises were cordoned by military authorities and no one was allowed inside the Treasurer's Office.

Election Officer Gasmin reported this incident to the Provincial Election Supervisor.

The Provincial Supervisor immediately invited to a conference the contending parties and it was agreed upon by and among themselves that an inventory and segregation of the ballot boxes and documents be done before any counting and canvassing be made.

Election Officer Gasmin failed to recall the different Board of Election Inspectors. The BEI refused to serve if the venue of the counting and/or canvassing is not transferred to a safer place.

A new acting Election Officer in the person of Election Officer Eleuterio Klar was designated. Mr. Klar was able to convince the contending parties to transfer to Cotabato City.

On May 26, 1995, the transfer was effected, sorting and inventory were undertaken and after that the counting resumed.

On June 3, 1995, while counting was being completed a grenade explosion inside the gymnasium in Cotabato City occurred. One soldier was wounded.

On June 5, 1995, partial proclamation was done by the Municipal Board of Canvassers for the position of Mayor, Vice-mayor and three Councilors. On June 6, 1995, proclamation of 3 additional councilors was made.

To summarize, the conduct of election in Datu Piang was peaceful and orderly until a trend of the winning mayoralty candidate was established at about 10:30 pm on election day.”[39] (Underscoring supplied.)

We note that almost all of the Boards of Election Inspectors had completed the counting of votes when the grenade explosions disrupted the proceedings. Moreover, as soon as it was safe to do so, the election officials took steps to safeguard the election documents by gathering and keeping them in the Treasurer's Office, under constant watch of military authorities that had cordoned off the area. Thereafter, with the agreement of the parties, an inventory of election documents was conducted and the counting was continued on June 3, 1995. Although the counting was again marred by a grenade explosion, the winning candidates were proclaimed on June 5, 1995 and on June 6, 1995. There have been no allegations that the election documents had been tampered with, substituted, manufactured or in any way compromised by reason alone of the disruption in the proceedings. Neither does petitioner allege that the election returns are irregular on their face. Under the circumstances, we find no sufficient reason to hold that the election officials, amidst trying conditions, had not adequately safeguarded the sanctity of the election process or preserved the documents used therein. We find it difficult to ascribe substance to the prayer for the wholesale exclusion of all of said election returns in Datu Piang.

Petitioner also asks for the exclusion of all the election returns and the certificates of canvass in Maganoy on the

ground that no election was actually conducted in said town. This allegation lacks sufficient factual basis.

Petitioner relied on the sworn statement dated July 11, 1995 of Daud K. Dimapalao, the Municipal Treasurer and Vice-Chairman of the Municipal Board of Canvassers of Maganoy, Maguindanao that “there was never any election in Maganoy, Maguindanao and I myself when I went to Maguindanao National High School, Poblacion, Maganoy, in order to vote, there was no precinct established thereat open for election and I am one of those who failed to cast a vote.”[40]

We find, however, that Dimapalao himself executed an earlier and contrary statement dated May 13, 1995 not only admitting that elections were actually conducted in Maganoy, but certifying as well that these were free, orderly and peaceful.[41] Furthermore, the election officer himself, Abas Saga, reiterated in his affidavit dated June 30, 1995 the peaceful and lawful conduct of the elections.[42] In view of the inconsistent statements of the municipal treasurer, the Comelec cannot be faulted for not giving credence thereto and relying instead on the positive statement of the election officer in that locale, whose primary function is to oversee the enforcement of election laws.

All in all, we cannot ascribe grave abuse of discretion amounting to lack or excess of jurisdiction against the Comelec for granting prima facie status of validity to the election returns of Datu Piang and Maganoy, for the purpose of resolving the pre-proclamation controversy.

It is well to stress that the Court here merely sustains the Comelec position that the challenged election returns are prima facie regular on their face and may be validly included in the challenged certificates of canvass. The Court is not ruling that fraud or terrorism or other irregularities aliunde had or had not attended the elections in Maguindanao. This is NOT in issue in a pre-proclamation controversy such as the one before us. This is to be resolved ultimately in a proper electoral protest after the appreciation of sufficient credible evidence.

Statistical Improbability

Petitioner also argues that the results reflected in various election returns of Maganoy were statistically improbable. He identifies several precincts where Candao and his running mate received the same number of votes, while petitioner and his running mate uniformly received zero. In some other precincts, Candao’s total even exceeded the number of registered voters. In 20 precincts, Candao and Datumanong were credited with the same number of votes while Matalam and Mentang were credited with few scattered votes.[43] Petitioner’s argument is based on *Lagumbay vs. Comelec*[44] in which the Court invalidated several election returns as evidently fraudulent and statistically improbable because all the eight senatorial candidates of one party garnered all the votes, while all the eight candidates of the other party got nothing.

However, there is a cogent reason why the exclusion of the allegedly statistically improbable election returns cannot be ruled upon. Even if we assume arguendo that the said election returns for Maganoy were in fact statistically improbable, this alone cannot warrant petitioner’s proclamation. Contrary to the requirement of Section 243 (d) of the Omnibus Election Code,[45] petitioner has failed to demonstrate that the results reflected in the allegedly “statistically improbable” returns for the Municipality of Maganoy alone would materially affect the results of the gubernatorial contest. Petitioner merely stated that the nullification of all the returns for both municipalities of Datu Piang and Maganoy would overhaul the lead of Private Respondent Candao. Although petitioner alleged the number of votes received by the parties from each of the two municipalities, he has not shown, as earlier observed,[46] their respective vote totals by precincts and/or by towns for the entire Province of Maguindanao. In view of this, petitioner has utterly failed to persuade the Court that the nullification of some or even all of the returns from the Municipality of Maganoy alone would materially affect the standing of the parties, i.e., that petitioner would win the canvass. In his motion for reconsideration dated August 25, 1995 before the

Respondent Comelec,[47] Petitioner Matalam contended that the “alleged result of the canvassing of the certificates of canvass (for the entire province) are as follows:

Candao 157, 844

Matalam 119, 445

(that) (t)he alleged results of Maganoy and Datu Piang are as follows:

Municipality Candao Matalam

Maganoy 30,605 146

Datu Piang 14,049 3,495

Totals 44,654 3,641

(and that) (w)ith the exclusion of Maganoy and Datu Piang, the results are as follows:

Matalam 115,804

Candao 113,190.”

An analysis of the above figures supplied by petitioner will show (1) that the exclusion of all the elections returns in the two towns involved, taken together, would be necessary to enable petitioner to win; and (2) that the exclusion of the alleged statistically improbable returns, in fact, of even all the returns in the town of Maganoy alone would not result in petitioner’s victory and proclamation. In short, the rejection of such returns from Maganoy would not alter the election results: Candao would still win.

In Dimaporo, the Court did not rule on a similar allegation of statistically improbable election returns, as the nullification thereof would not have materially affected the election results. In this light, petitioner has not given the Court sufficient reason to consider his prayer for the nullification of the Maganoy election returns even if we agree to uphold his plea of “statistical improbability.”

Epilogue

As already adverted to, both law (principally Sec. 243 of the Omnibus Election Code) and extant jurisprudence restrict the grounds that may be invoked to nullify election returns in a pre-proclamation controversy. Aside from the public interest[48] that impels the prompt disposition of these cases, there is another substantial -- not just technical -- reason why such grounds are limited and why election irregularities in general cannot be the subjects of pre-proclamation suits. The boards of canvassers, particularly municipal and provincial, before whom such pre-proclamation controversies are initiated through timely objections by the parties during the canvass, are ad hoc bodies that exist only for the interim task of canvassing election returns. They do not have the facilities, the time and even the competence to hear, examine and decide on alleged election irregularities,[49]unlike regular courts or the Comelec itself or the electoral tribunals (Presidential, Senate, and House) which are regular agencies of government tasked and equipped for the purpose. While this Court has time and again expressed its abhorrence for the nefarious “grab the proclamation and prolong the protest” strategy of some candidates, nonetheless, it recognizes the very limited jurisdiction of municipal and provincial boards of canvassers. Unless the petitioners can show cogently and clearly their entitlement to the summary exclusion of clearly unacceptable election returns, this Court will always uphold the constitutional and legal presumption of regularity in the performance of official functions, and authenticity of official documents. And because the Court is not a trier of facts, it will have to rely, absent any clear showing of grave abuse of discretion, on the factual findings of the Commission on Elections -- the authority tasked by the Constitution to administer and enforce election laws.

In the present case, the Court notes the passion, energy and vigor with which petitioner and his counsel have pleaded their cause. But, while they may have presented enough allegations to warrant an election protest, they have failed to satisfy the very restrictive grounds required in a pre-proclamation controversy.

The Court agonized over its inability to fully look into the election irregularities alleged by petitioner, due to the very limited scope of a pre-proclamation controversy. Thus, the Court reminds lawyers handling election cases to make a careful choice of remedies. Where it becomes apparent that a pre-proclamation suit is inadequate, they should immediately choose another timely remedy, like a petition to annul the election results or to declare a failure of elections or even an election protest, so that the election irregularities may be fully ventilated and properly adjudicated by the competent tribunal. They owe this not only to their clients but to the proper administration of justice.

WHEREFORE, the petition for certiorari is hereby DISMISSED for its failure to show grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Commission on Elections. No costs.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and Torres, Jr., JJ., concur.

Davide, Jr., J., in the result.

Hermosisima, Jr., J., on leave.

[1] Penned by Presiding Commissioner Remedios Salazar-Fernando and concurred in by Commissioners Manolo B. Gorospe and Teresita Dy-Liacco Flores.

[2] Rollo, p. 37.

[3] Signed by Chairman Bernardo P. Pardo and Commissioners Remedios S. Fernando, Manolo B. Gorospe, Graduacion A. Reyes-Claravall, Julio F. Desamito and Teresita Dy-Liacco Flores. Commissioner Regalado E. Maambong filed a dissenting opinion.

[4] Ibid, pp. 68-69.

[5] Petition, p. 8; rollo, p. 10.

[6] Petition, pp. 7-8; rollo, p. 9-10. In the text of his petition, the petitioner has not included a tabulation of the canvass by precincts and/or by towns for the entire province. He has limited himself to the presentation of the figures for the two towns of Maganoy and Datu Piang only.

[7] Comelec Resolution dated 24 August 1995, p. 3; rollo, p. 37.

[8] Upon the filing of the petition, the Court resolved only to direct the filing of a Comment, denying in effect the prayer for the issuance of a TRO.

[9] Petition, p. 29; rollo, p. 31.

[10] Petitioner's memorandum, p. 35; rollo, p. 443.

[11] Petition for certiorari, p. 15; rollo, p. 17.

[12] Id., p. 20; rollo, p. 22.

[13] Private respondent's comment, p. 8; rollo, p. 294.

- [14] Public respondent's comment, pp. 5-6; rollo, pp. 337-338.
- [15] Memorandum of public respondent, p. 5; rollo, p. 467.
- [16] Section 241, Omnibus Election Code.
- [17] 153 SCRA 68, August 12, 1987.
- [18] Ibid., p. 75.
- [19] Petitioner's memorandum, pp. 3-4; rollo, pp. 411-412.
- [20] Ibid., p. 1; rollo, p. 409.
- [21] *Dipatuan vs. Comelec*, 185 SCRA 86, 93, May 7, 1990.
- [22] *Gov. Tupay T. Loong, Barik Sampang, Kartini Maldisa, Yasser Hassan, and Hadja Sapina Radjae vs. The Commission on Elections, Provincial Board of Canvassers of Sulu, Municipal Board of Canvassers of Talipao, and Abdusakur Tan*, G.R. Nos. 107814-15, and other consolidated cases, May 16, 1996.
- [23] Ibid, pp. 20-21.
- [24] 185 SCRA 86, May 7, 1990.
- [25] Ibid., p. 19.
- [26] Section 246, Omnibus Election Code.
- [27] *Dimaporo vs. Comelec*, 186 SCRA 769, June 26, 1990.
- [28] [Ibid.,] p. 783.
- [29] 186 SCRA 769, June 26, 1990.
- [30] *Supra*.
- [31] 186 SCRA at pp. 786-787.
- [32] 186 SCRA, at p. 772.
- [33] Rollo, p. 32.
- [34] *Supra*.
- [35] *Ong vs. Comelec*, 221 SCRA 474, April 22, 1993.
- [36] *Loong vs. Comelec*, *supra*, p. 21.
- [37] *Comelec (Second Division) Resolution*, p. 3; rollo, p. 37.
- [38] *Padilla vs. Comelec*, 137 SCRA 424, July 9, 1985; *Aratuc vs. Comelec*, 88 SCRA 251, February 8, 1979.
- [39] Memorandum of Atty. Jose Beltran to Comelec Chairman Bernardo Pardo; rollo, pp. 315-316.
- [40] Rollo, p. 93.
- [41] Ibid., p. 304.
- [42] Ibid., pp. 305-306.

[43] Petition, pp. 20-21; rollo, pp. 22-23.

[44] 16 SCRA 175, January 31, 1966.

[45] Supra.

[46] See, footnote no. 6.

[47] Annex B of the Petition, pp. 19-20; rollo, pp. 57-58.

[48] See footnote no. 29.

[49] In Lagumbay which involved senatorial elections, the Comelec sat as the Board of Canvassers. In contrast to the Provincial Board of Canvassers, the Comelec is a more permanent body which is adequately equipped to dig deep into a controversy.

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