JESUS L. CHU, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF USON, MASBATE AND SALVADORA O. SANCHEZ, RESPONDENTS.

G.R. No. 135423. November 29, 1999

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-135423/

GONZAGA-REYES, J.:

Assailed in this petition for certiorari under Rule 65 is the September 1, 1998 resolution of the Commission on Elections (Comelec) en banc in SPC No. 98-109, denying petitioner's motion for reconsideration and affirming the June 8, 1998 order of its Second Division.[1] The aforesaid order upheld the ruling of the Municipal Board of Canvassers of Uson, Masbate to include in its canvassing the 37 election returns objected to by petitioner.

Petitioner Jesus L. Chu and private respondent Salvadora O. Sanchez (Sanchez) were candidates for municipal mayor of Uson, Masbate in the May 11, 1998 elections. While the election returns were being canvassed by the Municipal Board of Canvassers of Uson, Masbate (MBC), petitioner objected to the inclusion in the canvass of some of the election returns.[2] Petitioner alleged that Sanchez, with the aid of armed men, entered into the polling places where the centralized counting was being conducted, and exerted undue influence and intimidation upon the board of election inspectors (BEI) who were then counting the votes and preparing the election returns.[3] Thus, according to petitioner, the votes reflected in these returns are no longer reflective of the will of the electorate and should not be included in the canvass.[4]

Petitioner claims that he orally objected to the inclusion of seventy-four (74) election returns. Yet, he was only able to file written objections within 24 hours from the time the oral objections were made as required under section 245 of the Omnibus Election Code (the "Code")[5] for thirty-seven (37)[6] election returns. Petitioner attributed this shortcoming to the MBC's refusal to give him the prescribed form when it convened on the evening of May 11, 1998. It was only on May 12, 1998, at 5 p.m., after the MBC had already finished canvassing forty (40) election returns, that the MBC furnished petitioner with a single copy of the required forms, which petitioner had to photocopy in another municipality.[7]

On May 15, 1998, the MBC rejected petitioner's objections, finding that the affidavits submitted by petitioner were not sufficient to support his allegations that they were prepared under duress and giving more weight to the affidavits executed by the BEI.[8] Petitioner appealed to the Comelec and on June 8, 1998, public respondent's Second Division denied petitioner's appeal and directed the MBC to reconvene and include in the canvass the 37 election returns and, thereafter, proclaim the winning candidate. Its disquisition was as follows -

While the appeal interposed by the appellant show [sic] that the ground adduced fall [sic] under paragraph (c) of Section 243 of the Omnibus Election Code, there is, however nothing in the statements of the witnesses that would remotely evinced [sic] the alleged intimidation, duress, coercion or undue influence supposedly exerted by the private respondent and the armed men during the counting of votes and the preparation of the election returns....

The question to be resolved is whether or not the objections are valid and sufficient to cause the exclusion of these 37 election returns of the enumerated precincts from the canvass. The evidence presented by the petitioner are insubstantial and lacks the specifics required to prove that respondent indeed committed the acts imputed to her which, as a consequence, would suffice to render the subject election returns defective or invalid. Unless palpable errors and/or material defects are clearly discernible on the faces of these returns, the Board of Canvassers is duty bound to canvass the same. The Board cannot look beyond or behind these election returns because its function is purely ministerial.

Apropos thereto, the Supreme Court in Casimiro vs. Commission on Elections, March 29, 1989, 171 SCRA 468, said:

> "Obviously the evidence relied upon by petitioner to support their charges of fraud and irregularities in the election returns and in the canvassing consisted of Affidavits prepared by their own representatives. The self-serving nature of said Affidavits cannot be discounted. As this Court has pronounced, reliance should not be placed on mere affidavits.
>
> Aside from said sworn statements, the records do not indicate any other substantial evidence that would justify the exclusion of election returns in the canvassing for being fraudulent in character or a declaration that the proceedings wherein the returns were canvassed were null and void. The evidence presented by petitioners is not enough to overturn the presumption that official duty had been regularly performed (Section 5[m], Rule 131). In the absence of clearly convincing evidence, the election returns and the canvassing proceedings must be upheld. A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon the most convincing proof."

Perforce, for insufficiency of evidence, the ruling of the Municipal Board of Canvassers of Uson, Masbate, dated May 15, 1998, to include in the canvass these 37 election returns is AFFIRMED.[9]

Petitioner received the Comelec's order on June 17, 1998. The following day, on June 18, 1998, upon the receipt of a telegram sent by the Comelec, the MBC proclaimed Sanchez as the winning candidate. On June 22, 1998, petitioner filed a motion for reconsideration of the Second Division's order, with an additional prayer for the annulment of the proclamation of Sanchez. However, on September 1, 1998 the Comelec en banc denied petitioner's motion. Hence, this special civil action, wherein petitioner raises the following issues -

> - Whether or not the proclamation of Salvadora Sanchez as the winning mayoralty candidate of Uson, Masbate before the lapse of the five-day reglementary period within which the losing party [herein petitioner] may file his motion for reconsideration is valid?
>
> - Whether or not the September 1, 1998 resolution of the Comelec en banc affirming the June 8, 1998 order of its second division is valid albeit the fact that if failed to rule on the remaining 37 election returns which were likewise objected to by petitioner and the results thereof will materially affect the outcome of the election?
>
> - Whether or not public respondent Comelec gravely abused its discretion amounting to lack or excess of jurisdiction when it rendered the September 1, 1998 resolution in SPC Case No. 98-109?[10]

The petition is without merit.

The Code provides that a pre-proclamation controversy refers to 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.[11]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Section 243 of the Code enumerates the specific issues that may be raised in a pre-proclamation controversy as follows:

> (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 the 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.

In addition to the restrictive and exclusive scope of its subject matter, all pre-proclamation controversies on election returns or certificates of canvass shall be disposed of summarily - first, by the board of canvassers, and then, by the Comelec.[12] It is a well-entrenched rule in jurisprudence that, in a pre-proclamation controversy, the board of canvassers and the Comelec are not to look beyond or behind election returns which are on their face regular and authentic returns. In such summary proceedings, there is no room for the presentation of evidence aliunde, the inspection of voluminous documents, and for meticulous technical examinations which take up considerable time. A party seeking to raise issues the resolution of which would compel or necessitate the Comelec to pierce the veil of election returns which are prima facie regular on their face, has his proper remedy in a regular election protest.[13]

The legislative intent behind the summary disposition of pre-proclamation controversies is to give life to the policy that the canvass and proclamation be delayed as little as possible for it is in the public interest that the position for which the election was held should be filled promptly, even though the proclamation of the winning candidates be provisional in nature, in that the same may still be subject to the results of the election protests that may be subsequently filed.[14] Also, the boards of canvassers, particularly municipal, city and provincial, before whom such pre-proclamation controversies are initiated, are merely ad hoc bodies, existing only for the interim task of canvassing election returns and thus, do not have the facilities, the time, nor the competence to hear, examine and decide on alleged election irregularities, unlike regular courts, the Comelec or the electoral tribunals (Presidential, Senate, and House) which are regular agencies of the government tasked and equipped for the purpose.[15]

In order to justify his objection to the inclusion of the 74 election returns in the canvassing, petitioner alleged the following election irregularities - (1) Sanchez replaced some members of the BEI with her relatives and sympathizers; (2) the respective assignments of the other BEI members were changed without prior approval by the Comelec; (3) after the voting, the members of the BEI were instructed to bring to Uson Central School the ballot boxes for a centralized counting despite the fact that the elections were peaceful and orderly and hence, there was no need to transfer the venue of the counting of the ballots; (4) that, considering the distance of some barangays from Uson, it took several hours for the ballot boxes to reach the school, during which time many irregularities could have transpired, destroying the sanctity of the ballot boxes; (5) during the counting of the ballots and the preparation of the returns, Sanchez and her fully armed bodyguards entered the polling places and spoke with the members of the BEI who, due to very strong fear for their lives, were forced to disregard the ballots and instead to favor Sanchez, giving her a wide margin over petitioner; (6) Sanchez, together with her relatives and supporters, observed the proceedings before the BEI, resulting in the intimidation of the members thereof; (7) Sanchez' bodyguards threatened petitioner's watchers in order to prevent them from performing their

functions; and (8) some members of the MBC were forced by Sanchez' bodyguards to immediately proclaim Sanchez. In support of his allegations, petitioner submitted the affidavits of members of the BEI and of his own supporters[16] and a certified true copy of an excerpt from the blotter of the Uson Police Department.[17]

The only issue raised by petitioner which may possibly be the subject of a pre-proclamation controversy is the entry of Sanchez and her armed bodyguards in the polling places during the counting of ballots and the preparation of the election returns, which allegedly caused the intimidation and undue influence of the members of the BEI, resulting in the "sudden and radical change" in the election returns.[18] This would appear to fall under section 243 (c) of the Code, which provides that one of the issues properly pertaining to a pre-proclamation controversy is that -

> [t]he election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic.

However, petitioner does not claim that there are any defects or irregularities apparent from a physical inspection of the election returns. Neither did the MBC nor the Comelec make any finding that the returns contained any palpable errors or material defects. To prove the intimidation which petitioner asserts was exerted upon the members of the BEI by Sanchez and her supporters would require the reception of evidence aliunde in a full-blown proceeding, wherein the parties are permitted to file pleadings and to introduce the testimonies of their witnesses and other documentary evidence to substantiate their allegations before the proper tribunal. Such election irregularities cannot be proven in a summary proceeding like a pre-proclamation controversy, but rather should be properly raised in an election protest.

In the recent case of Salih vs. Comelec,[19] we held that returns will not be excluded on the mere allegations that the returns are manufactured or fictitious when the returns, on their face, appear regular and wanting of any physical signs of tampering, alteration, or other similar vice. Thus, if there had been sham voting or minimal voting which was made to appear as normal through the falsification of the election returns, such grounds are properly cognizable in an election protest and not in a pre-proclamation controversy.

And in Matalam vs. Comelec,[20] the Court, in rejecting petitioner's claims that the election returns were spurious, obviously manufactured and prepared under irregular circumstances, explained that

> [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 [petitioner] 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 as promptly as possible.

Petitioner claims that the proclamation of Sanchez was premature since, at the time of such proclamation, the Comelec's June 8, 1998 order was not yet final and executory pursuant to paragraphs (h) and (i) of section 20 of RA 7166 which provides -

> SEC. 20. Procedure in Disposition of Contested Election Returns. -
>
> xxx xxx xxx
>
> (h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

> (i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.

Petitioner also cites sections 13, Rule 18 and section 2, Rule 19 of the Comelec Rules of Procedure which states as follows-

Rule 18 - Decisions

Sec. 13. Finality of Decisions or Resolutions.

> xxx xxx xxx
>
> (b) In Special Actions and Special Cases a decision or resolutions of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.
>
> xxx xxx xxx

Rule 19 - Motions for Reconsideration

Sec. 2. Period for Filing Motions for Reconsideration. - A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.

According to petitioner, since he received the Comelec's June 8, 1998 order only on June 17, 1998, the same attained finality and may be fully executed only on June 24, 1998; that he had five days from receipt of the assailed order to file a motion for reconsideration or until June 22, 1998; and that the proclamation of Sanchez as the winning candidate by the MBC on June 18, 1998 is void ab initio for at the time there was no final judgment which the board could lawfully implement.[21]

Petitioner also asks this Court to declare that the Comelec committed a reversible error in failing to pass upon his objections to the inclusion of the thirty-seven (37) election returns which he was unable to embody in the prescribed form, as required by section 20 (c) of RA 7166, reasoning that such failure was attributable to the MBC. [22]

In light of our ruling that the electoral irregularities enumerated by petitioner are not proper to a pre-proclamation controversy for so long as the election returns appear to be authentic and duly accomplished on their face, the other issues raised by petitioner have necessarily become moot and academic.[23] The MBC, in rejecting petitioner's objections and proclamaing Sanchez, and the Comelec, in upholding the MBC, are entitled to the legal presumption of regularity in the performance of their official functions,[24] which petitioner has failed to rebut.

Even assuming that petitioner had availed of the proper remedy, still the proclamation of Sanchez by the MBC did not have to await the resolution of his motion for reconsideration by the Comelec en banc since it was validly made upon the authority of the order issued by the Comelec's Second Division, ordering the MBC to reconvene and include the 37 election returns in the canvass and thereafter, proclaim the winning candidate. In this respect, our ruling in Casimiro vs. Comelec[25] is squarely in point. We held in this case that the proclamation of the winning candidate by the board of canvassers was authorized by the ruling of the Comelec's Second Division ordering the board to "reconvene, complete the canvass if not yet completed, and proclaim the winning

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

candidates..." even though such proclamation was made before the filing of the motion for reconsideration with the Comelec en banc.

We wish to stress that our ruling in this case merely sustains the Comelec's position that, in the absence of "palpable errors and/or material defects [which] are clearly discernible on the faces of these returns," the board of canvassers should include in the canvass the 37 election returns[26] and that, by ruling thus, we have no intention of passing upon the verity of petitioner's imputations of electoral irregularities and acts of terrorism, which we reiterate is not in issue in a pre-proclamation controversy, but should be resolved in a proper electoral protest.[27]

WHEREFORE, the instant petition is DISMISSED for petitioner's failure to demonstrate that public respondent Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its resolution dated September 1, 1998.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Pardo, J., No part. Was Comelec Chairman.

---

[1] Composed of Julio F. Desamito (Presiding Commissioner) and Japal M. Guiani.

[2] Rollo, 40, 326.

[3] Ibid., 184.

[4] Ibid., 5.

[5] Batas Pambansa Blg. 881.

[6] It is noted that in his petition filed with this Court, petitioner alleges that he was only able to file proper and timely objections to thirty-four (34) election returns. However, his appeal with the Comelec and the June 8, 1998 order of the Comelec's Second Division both state that petitioner filed written objections to thirty-seven (37) election returns. Rollo, 9, 40, 184.

[7] Ibid., 8-9.

[8] Ibid., 187.

[9] Ibid., 41-42.

[10] Petitioner's Memorandum, 14.

[11] Code, sec. 241.

[12] Republic Act No. 7166 -

SEC. 18. Summary Disposition of Pre-proclamation Controversies. - All pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence elevated to it by the board of canvassers, be disposed of summarily by the Commission within seven (7) days from receipt thereof. Its decisions shall be executory after the lapse of seven (7) days from receipt by the losing party of the decision of the Commission.

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 324, 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.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objections, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

The evidence attached to the objection or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each and every page thereof.

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

[13] Matalam vs. Comelec, 271 SCRA 733 (1997); Loong vs. Comelec, 257 SCRA 1 (1996); Dimaporo vs. Comelec, 186 SCRA 769 (1990); Dipatuan vs. Comelec, 185 SCRA 86 (1990).

[14] Dimaporo vs. Comelec, supra note 13; Dipatuan vs. Comelec, supra note 13.

[15] Matalam vs. Comelec, supra note 13.

[16] Petitioner's memorandum, 9-13.

[17] Rollo, 41, 186.

[18] Ibid., 20.

[19] 279 SCRA 19 (1997).

[20] Supra note 13.

[21] Petitioner's Memorandum, 15-18.

[22] Ibid., 19-24.

[23] Matalam vs. Comelec, supra note 13.

[24] Rules of Court, Rule 131, sec.3 (m).

[25] Casimiro vs. Comelec, 171 SCRA 468 (1989).

[26] Rollo, 42.

[27] Matalam vs. Comelec, supra note 13.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.