

ARTHUR V. VELAYO, PETITIONER, VS. COMMISSION ON ELECTIONS AND ERNESTO NATIVIDAD, RESPONDENTS.

G.R. No. 135613. March 09, 2000

Ponente: PUNO, J.

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PUNO, J.:

In this special civil action for certiorari, petitioner Arthur V. Velayo seeks to set aside the Resolution issued by respondent Commission on Elections dated October 6, 1998 annulling his proclamation, and directing the Board of Canvassers of Gapan, Nueva Ecija to convene immediately, exclude Precincts 44A, 44A2, 50A and 50A1, and immediately proclaim the winning candidate for Mayor of Gapan, Nueva Ecija.

Petitioner Arthur V. Velayo and private respondent Ernesto Natividad were among the candidates for mayor of Gapan, Nueva Ecija in the May 11, 1998 elections. The Municipal Board of Canvassers constituted to canvass the election results was composed of Linda Sandoval[1] as Chairman, Eduardo Pancho[2] as Vice Chairman and Eustaquita Tolentino[3] as member.

On May 12, 1998, the canvass of election returns started. Private respondent orally sought the exclusion of Election Return Nos. 4245882 (Precinct 36A) and 4900753 (Precinct 103). Election Return No. 4245882 was objected on the ground that it is incomplete and contains material defects.[4] Election Return No. 4900753 was objected on the ground of material defects and that it does not contain the thumbmarks of official watchers.[5] The Board denied the objections and continued with the canvass.

On May 13, 1998, private respondent filed with the COMELEC (2nd Division) SPC No. 98-002.[6] The petition is entitled "In the Matter of the Challenge and Objection to the Composition and Proceedings of the Municipal Board of Canvassers of Gapan, Nueva Ecija and for Annulment of Certain Election Returns Illegally Canvassed and for Suspension of Canvass of Election Returns Pending Substitution of the Challenged Members Thereof." The petition did not name any respondent. Not the Municipal Board of Canvassers. Neither petitioner Velayo. On the same date, the private respondent[7] sent a letter to the Board seeking the disqualification of its Chairman and Vice Chairman for alleged bias and gross violations of the law and COMELEC Rules and Regulations. On May 14, 1998, the Board denied the prayer to suspend the canvass "there being no valid and compelling reason to do so" and the request for disqualification. On May 16, 1998, the private respondent sought reconsideration of the Board's ruling.[8] His effort did not succeed and he filed a verified Notice of Appeal.[9] On May 17, 1998, the Board proclaimed petitioner as the duly elected Mayor of Gapan, Nueva Ecija with a vote of 10,697. Private respondent garnered 10,427 votes.

On May 18, 1998, the private respondent filed another case with the COMELEC (2nd Division), SPC No. 98-050 entitled "In the Matter of the Appeal from the Adverse Ruling of the Municipal Board of Canvassers for Gapan, Nueva Ecija, dated 14 May 1998, Seeking the Disqualification of Ms. Linda D. Sandoval and Eduardo Pancho to Sit as Chairman and Vice Chairman thereof; to Suspend the Canvass and to Suspend/Annul the Proclamation of the Winning Candidates." [10] Again, the petition did not name the Municipal Board of Canvassers or the

petitioner Velayo as respondents. Neither were they furnished copies of the petition. The petition prayed:

"WHEREFORE, it is most respectfully prayed that after due proceedings, judgment be rendered, as follows:

1. Declaring as null and void all acts and proceedings had by the Municipal Board of Canvassers from 13 May 1998 when the same have been challenged by the petitioner as illegal up to its last act thereof particularly the canvass of election returns for the local elections only;
2. Ordering the substitution/replacement of Ms. Linda Sandoval and Mr. Eduardo Pancho as chairperson and vice chairman of the Municipal Board of Canvassers for Gapan, Nueva Ecija, and once substituted/replaced, directing the substituted members of the Board to proceed with dispatch in the canvass of the election returns;
3. Suspending the proclamation of the winning candidates until after a faithful and impartial canvass of the returns shall have been had by the substituted members of the Board, and the pre-proclamation controversies bearing on the questioned matter resolved by this Honorable Commission; and
4. Annuling the proclamation, if any shall have been illegally done by the Board on the basis of the sham, pre-determined and manipulated canvass of the returns as complained of herein.

Petitioner prays for other relief just and proper in the premises."

In the morning of May 19, 1998, Natividad filed a third case, SPC No. 98-073, entitled "In the matter of the appeal from the written rulings dated 13, 14 and 15 May 1998 of the Municipal Board of Canvassers for Gapan, Nueva Ecija, on contested Election Returns No. 4900678 of Precinct No. 9A3/9A4 dated 13 May 1998; contested Returns Nos. 4900775 of Precinct No. 43A2; 4900776 of Precinct No. 43A3; 4900828 of Precinct No. 61A2; 4900780 of Precinct No. 45A/45A1; 4900789 of Precinct No. 99A; 4900774 of Precinct No. 43A1; 4900792 of Precinct Nos. 50A and 50A2; 4900844 of Precinct No. 68A; 4900779 of Precinct No. 44A2; and 4900811 of Precinct No. 98A2 all dated 14 May 1998 and contested Election Returns No. 4900777 of Precinct No. 56A2." [11] Later in the day, he submitted documentary evidence in support of his appeal. [12] Again, neither the Board nor the petitioner was named respondent in the appeal. They were not furnished copies of the petition.

On May 21, 1998, the private respondent filed a Supplemental Appeal in SPC No. 98-073. It was entitled "In the Matter of the Supplemental Appeal from the Written Rulings dated 17 May 1998 of the Municipal Board of Canvassers for Gapan, Nueva Ecija, on Contested Election Returns Nos. 4900773 of Precinct No. 43A; 4900775 of Precinct No. 43A2; 4900777 of Precinct No. 44A; and 4900789 of Precinct No. 44A1. Annexed to the pleading were the documentary evidence of the private respondent. [13] Again, both the Board and the petitioner were not made parties in the Supplemental Appeal. They were not furnished copies of the Appeal.

On June 8, 1998, the private respondent filed a motion for admission of new and additional evidence. [14] In SPC 98-050, he submitted twenty (20) affidavits. In SPC 98-073, he submitted eight (8) affidavits. Petitioner was not furnished a copy of the motion.

On June 9, 1998, the COMELEC (2nd Division) [15] dismissed SPC No. 98-002, SPC No. 98-050 and SPC No. 073 in an Order which reads:

"In view of the proclamation by the Municipal Board of Canvassers of Gapan, Nueva Ecija, of all the winning candidates for the municipal positions of said municipality on May 17, 1998, as evidenced by duly signed Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices [C.E. form No. 25] with Serial No. 03490337, this Commission [Second Division] RESOLVED, as it hereby RESOLVES TO DISMISS this instant petition for being MOOT AND ACADEMIC.

"SO ORDERED." [16]

It is alleged by the private respondent that he received a copy of the Order on June 22, 1998.

On June 25, 1998, the private respondent filed a Motion for Reconsideration contending that the Order of dismissal is contrary to law and the evidence. He sought to restrain the proclamation of the petitioner.[17] Again, petitioner was not furnished with a copy of the Motion. On July 3, 1998, the records of the three (3) cases were elevated to the COMELEC en banc for resolution of private respondent's Motion for Reconsideration.[18] Again, petitioner was not furnished a copy of the Order.

On October 6, 1998, the COMELEC en banc issued the questioned Resolution,[19] the dispositive portion of which reads:

"WHEREFORE, premises considered, the proclamation of Arthur V. Velayo is hereby ANNULLED. The Board of Canvassers of Gapan, Nueva Ecija is hereby DIRECTED to convene immediately, exclude Precincts 44A, 44A2 and 50A & 50A1[20] and immediately proclaim the winning candidate for mayor of Gapan, Nueva Ecija.

"Further, they are directed to immediately inform the Commission of their action thereon.

"SO ORDERED."

In so ruling, the COMMISSION en banc held that:

"A close perusal of the above-entitled cases would show that the above objections and appeals were made strictly in accordance with law, however, the Board in defiance of Section 245 and Section 20 of Republic Act 7166, particularly sub-paragraph (i) included the assailed election returns without giving opportunity to the aggrieved party to go on appeal to the Commission.

"Said Section 20(i) of R.A. 7166 states:

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

"In this case, it is clear that the objected election returns will adversely affect the results of the elections.

"Thus, after close perusal of the above-cited objected election returns, the Commission finds that the election returns of 44A, 44A2, and 50A1/A2 should be excluded from the canvass. It is worth noting that in these precincts 44A and 44A2 petitioner Natividad got zero votes which is statistically improbable. The affidavits of the following watchers respectively to wit: Rolando C. Gamboa, Eduardo Mallare and Eduardo Surio together with the police report of Miguel S. Inductivo of the threats received by Danilo Simon, all watchers of petitioner, all in the dialect which attest to the incident wherein they were prevented and threatened from entering the polling place by four [un]identified men and they were able to witness these men threatening the teachers and telling them to tamper the election return in such a way that they will not be noticed by other people and they will have no problem.

"Watchers play a vital role in protecting the votes especially during the counting of votes in the precinct level. The fact that the watchers were prevented and in fact heard the teachers threatened to have the election returns altered makes the whole election process a mockery in these precincts as the returns are no longer reflective of the true results of the elections. It is no wonder then that in these precincts Natividad got zero votes.

"Further, since there was already an objection against the two members of the Board of Canvassers and their illegal proceedings they cannot proceed to canvass, to cite Section 244 of the Omnibus Election Code:

Section 244. Contested composition or proceedings of the board. – When the composition or proceedings of

the board of canvassers are contested, the board of canvassers shall, within twenty-four hours, make a ruling thereon with notice to the contestant who, if adversely affected, may appeal the matter to the Commission within five days after the ruling with proper notice to the board of canvassers. After due notice and hearing, the Commission shall decide the case within ten days from the filing thereof. During the pendency of the case, the board of canvassers shall suspend the canvass until the Commission orders the continuation or resumption thereof and citing their reasons or grounds therefor.

"Thus, the action of the Board in proclaiming the winning candidate for mayor in the Municipality of Gapan is illegal for violation of Section 20(a) to (i) of R.A. 7166 and Section 244 of the Omnibus Election Code." [21]

It was only then that petitioner was informed of the Resolution by telegram on October 8, 1998.

In a letter [22] dated October 9, 1998, the Board, thru its new Chairman, Belen Rivera, informed Velayo that it will convene on October 16, 1998. On October 17, 1998, it proclaimed the private respondent as Mayor with a vote of 10,420.

In this special civil action for certiorari, petitioner contends:

"1. The questioned Resolution (Annex "A") of October 6, 1998 is ultra vires and void ab initio because it was issued ex-parte, without notice and opportunity afforded the petitioner to be heard and therefore, violative of due process.

"2. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it did not dismiss respondent Natividad's Motion for Reconsideration on SPC Nos. 98-002, 98-050 and 98-073 for being filed out of time.

"3. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it excluded the votes cast in Precincts 44A, 44A2, 50A and 50A1 as manufactured and contrary to statistical probabilities without the required notice and hearing consistent with due process.

"4. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it annulled the proclamation of petitioner without the required notice and hearing consistent with due process.

"5. The Comelec committed grave abuse of discretion amounting to lack of jurisdiction when it did not dismiss said pre-proclamation cases for the reason that the grounds relied upon by respondent Natividad are proper grounds for election protests."

In its Manifestation and Motion (in lieu of Comment), the Solicitor General agreed with the petitioner and opined that the COMELEC gravely abused its discretion when it issued the impugned resolution. [23] COMELEC filed its own Comment sustaining its resolution. So did the private respondent.

We grant the petition.

FIRST. Private respondent maintains that the filing of his Motion for Reconsideration on June 25, 1998 was within the 5-day reglementary period as he received a copy of the June 9, 1998 Order of the COMELEC only on June 22, 1998. We do not agree with the private respondent for he cannot count the 5-day reglementary period from the date he received the June 9, 1998 Order of the COMELEC. Section 2, Rule 19 of the COMELEC Rules of Procedure clearly provides that private respondent's Motion for Reconsideration should be "x x x filed within five (5) days from the promulgation thereof," thus:

"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."

A party cannot feign ignorance of the date of promulgation of a decision or resolution because it is previously fixed and notice is served upon him in advance. Thus, Section 5, Rule 18 of the COMELEC Rules of Procedure provides:

"Sec. 5. Promulgation. - The promulgation of a decision or resolution of the Commission or a Division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram."

SECOND. Respondent COMELEC failed to be faithful to section 3 of Rule 27 of the 1993 COMELEC Rules of Procedure which provides that "all pre-proclamation controversies shall be heard summarily after due notice x x x." [24]

The records will show that petitioner was not furnished any notice of the pre-proclamation proceedings against him from beginning to end. Respondent Natividad did not give petitioner copies of his notices of appeal from the rulings of the Municipal Board of Canvassers. Nor was petitioner given copies of private respondent's petitions and motions filed with the COMELEC. Even the COMELEC's Second Division failed to notify petitioner about the promulgation of its Order dated June 9, 1998 which dismissed the pre-proclamation cases against him for being moot and academic. He was not also given a copy of private respondent's Motion for Reconsideration against said Order. Also, he was not furnished a copy of the July 4, 1998 Order of the Comelec (2nd Division) which elevated respondent Natividad's Motion for Reconsideration to the COMELEC en banc. All that petitioner received from the COMELEC on October 8, 1998 was its en banc resolution annulling his proclamation.

It cannot be denied that petitioner Velayo is a real party in interest. As the proclaimed Mayor, petitioner stands to be prejudiced by whatever action COMELEC may take on the appeals filed by respondent Natividad. His non-inclusion as respondent and his lack of notice of the proceedings in the COMELEC which resulted in the cancellation of his proclamation constitute clear denial of due process.

THIRD. The Court agrees with the Solicitor General that pre and post proclamation proceedings should be resolved summarily but not ex parte. We quote his sound submission, viz.:

"The record shows that petitioner had no participation whatsoever in all the proceedings conducted before the COMELEC. He was not furnished with a copy of any of the three (3) petitions filed by private respondent before the COMELEC (Annexes B, B-1 and B-2, Petition). This fact is admitted by private respondent himself in his Comment on the Petition dated November 12, 1998, thus:

- Petitioner has no legal personality to file the special civil action herein under Rule 65 of the Rules of Court because he is/was not a party to the three pre-proclamation cases, namely, SPC Nos. 98-002, 98-050 and 98-073 filed by answering respondent before public respondent Commission on Election hereafter referred to as the COMELEC.

(p. 1, Private Respondent's Comment; emphasis ours)

In *Jagunap v. Commission on Elections*, 104 SCRA 204 (1981), this Honorable Court ruled that a proclamation of a winning candidate can be set aside only after due notice and hearing, viz:

Upon the facts of the case, We find that the COMELEC had, indeed, gravely abused its discretion, amounting to lack of jurisdiction, in annulling the proclamation of JAEN as the elected Municipal Mayor of Leganes, Iloilo. JAEN was not furnished with a copy of any petition or motion to set aside his proclamation; nor was he notified of the hearing of such petition or motion. As a matter of fact, the records of the case do not indicate that a hearing was ever conducted by the COMELEC before it ordered the annulment of the proclamation of JAEN. This to Us is an irregularity. JAEN, who has already been proclaimed by the Municipal Board of Canvassers of Leganes, Iloilo, has the right to be notified of any proceeding to set aside his proclamation, and a hearing is necessary before the COMELEC can order the annulment of his proclamation. Section 175 of the

1978 Election Code explicitly provides that the COMELEC can order the annulment of a proclamation of a candidate-elect on any of the grounds mentioned in Sections 172, 173 and 174 thereof (defective, tampered and falsified election returns, and discrepancies in the election returns) only after due notice and hearing. Said section reads as follows:

Sec. 175. Suspension and annulment of proclamation. – The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may motu proprio or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof.

It results that COMELEC Resolution No. 9431, dated March 1, 1980, and COMELEC Resolution No. 9456, dated May 6, 1980, which were issued without the notice and hearing, are arbitrary, and therefore, null and void. The proclamation of JAGUNAP, being based upon these void resolutions, is, consequently, of no legal effect, and should be set aside.

Furthermore, Section 246 of B.P. Blg. 881, otherwise known as the Omnibus Election Code of the Philippines, as amended by Section 18 of R.A. 7166, provides that pre-proclamation cases must be disposed of summarily but not ex parte, viz:

Section 246. Summary disposition of pre-proclamation controversies. – All pre-proclamation controversies on election returns on certification 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.

x x x

A judicial proceeding, order or injunction, etc. is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only and without notice to, or contestation by any person adversely interested. An ex parte hearing is one in which the court or tribunal hears only one side of the controversy (Black's Law Dictionary, Sixth Edition, p. 576).

In the case at bar, petitioner's proclamation as Mayor of Gapan, Nueva Ecija by the Municipal Board of Canvassers on May 17, 1998 was not only summarily annulled by the COMELEC. It was annulled ex parte, i.e., solely on the basis of the evidence presented by private respondent, absolutely depriving petitioner an opportunity to present his rebuttal evidence. This ex parte annulment of petitioner's proclamation is null and void for being repugnant to the due process clause of the Constitution and, should, therefore, be set aside conformably with Jagunap (supra)."

It is true that RA No. 7166 provides for summary proceedings in pre-proclamation cases and does not require a trial type hearing. Nevertheless, summary proceedings cannot be stretched to mean ex parte proceedings. Summary simply means with dispatch, with the least possible delay. It signifies that the power may be exercised without a trial in the ordinary manner prescribed by law for regular judicial proceedings. But although the proceedings are summary, the adverse party nevertheless must at the very least be notified so that he can be apprised of the nature and purpose of the proceeding.[25] In the case at bar, all the proceedings were conducted by the respondent COMELEC without the participation of the petitioner. Worse, respondent Natividad was allowed to file various motions without the knowledge of the petitioner. Plainly, these ex parte proceedings offend fundamental fairness and are null and void.

FOURTH. To be sure, Republic Act No. 7166 introduced several electoral reforms and some of them relate to the disposition of pre-proclamation controversies. Among others, it provides that pre-proclamation controversies on

election returns or certificates of canvass must be disposed of summarily by the COMELEC on the basis of the records and evidence adduced in the Board of Canvassers. Thus, section 20 of RA No. 7166 which repealed Section 245 of the Omnibus Election Code provides:

"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 Section 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.

(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 objection, 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 an 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 the 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."

Appeal from the decision of the Board of Canvassers is governed by Section 18 of RA 7166, viz.:

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

In the case at bar, we have carefully examined the records and it does not clearly appear that the COMELEC annulled the proclamation of Velayo on the basis of the official records and evidence adduced by the parties before the Board of Canvassers. The importance of these official records and evidence cannot be overemphasized. The records contain the contested election returns, the objections of the aggrieved party, the opposition of the prevailing party, the evidence of the parties, and the rulings of the Board of Canvassers. R.A. No. 7166 explicitly provides that it is only on the basis of these official records that the COMELEC can decide the pre-proclamation controversy in a summary manner. Without the official records, the respondent COMELEC cannot validly decide a pre-proclamation controversy. There is no showing that the official records of the Board of Canvassers were forwarded to the respondent COMELEC and were used to cancel Velayo's proclamation.

FIFTH. Worse still, the respondent COMELEC annulled the proclamation of petitioner Velayo on the basis of new and additional evidence submitted by the private respondent. These new and additional evidence were not presented before the Board of Canvassers. Petitioner Velayo was not furnished these evidence and given the chance to refute them. In SPC No. 98-050, these pieces of new and additional evidence are:

"(1) Affidavit of Isagani V. Manuel dated 18 May 1998 consisting of two pages attached hereto as Annex A and made an integral part hereof;

(2) Affidavit of Romeo Natividad dated 20 May 1998 consisting of two (2) pages copy of which is attached hereto as Annex B and made an integral part hereof;

(3) Affidavit of Danilo Natividad dated 19 May 1998 consisting of two (2) pages copy of which is attached hereto as Annex C and made an integral part hereof;

(4) Joint affidavit of Dindo C. Alvarez and Berlin Alvarez (dated) 20 May 1998 consisting of two (2) pages copy of which is attached hereto as Annex D and made an integral part hereof;

(5) Joint affidavit of Myrna Angelina Cosio and Rachel G. Navarro dated 19 May 1998 copy of which is attached hereto as Annex E and made an integral part hereof;

(6) Joint affidavit of Lourdes M. Malaca and Adelwiso P. Malaca dated 19 May 1998 copy of which is attached hereto as Annex F and made an integral part hereof;

(7) Joint affidavit of Leovigildo Angeles and Joselito Arcilla dated 20 May 1998 copy of which is attached hereto as Annex G and made an integral part hereof;

(8) Joint affidavit of Francisco Angeles and Hilario Garcia dated 18 May 1998 copy of which is attached hereto as Annex H and made an integral part hereof;

(9) Joint affidavit of Arlene Ayroso and Jamaiza Garcia dated 20 May 1998 copy of which is attached hereto as Annex I and made an integral part hereof;

(10) Joint affidavit of Belinda Reyes and Corazon Reyes dated 20 May 1998 copy of which is attached hereto as Annex J and made an integral part hereof;

(11) Joint affidavit of Elenita Pablo and Ariel Gutierrez dated 20 May 1998 copy of which is attached hereto as

Annex K and made an integral part hereof;

(12) Joint affidavit of Francisco Mauro and Bernardo Santos dated 19 May 1998 copy of which is attached hereto as Annex L and made an integral part hereof; Slxmis

(13) Joint affidavit of Lorenzo Rueda and Ceferino Sta. Maria consisting of two (2) pages copy of which is attached hereto as Annex M and made an integral part hereof;

(14) Joint affidavit of Rommel Oanes and Jonnel Robello dated 19 May 1998 copy of which is attached hereto as Annex N and made an integral part hereof;

(15) Joint affidavit of Enrico Matias and Ronald Tolentino dated 20 May 1998 copy of which is attached hereto as Annex O and made an integral part hereof;

(16) Joint affidavit of Cesar Natividad and Belinda Tinio dated 20 May 1998 copy of which is attached hereto as Annex P and made an integral part hereof;

(17) Joint affidavit of Fernando Caralde and Angelito Nepomuceno dated 18 May 1998 copy of which is attached hereto as Annex Q and made an integral part hereof;

(18) Joint affidavit of Evaristo Bunag and Donald Alvarez dated 19 May 1998 copy of which is attached hereto as Annex R and made an integral part hereof;

(19) Joint affidavit of Roberto Manipon and Gerry Fernandez dated 20 May 1998 copy of which is attached hereto as Annex S and made an integral part hereof; and

(20) Joint affidavit of Roberto dela Cruz and Leonardo Reyes dated 20 May 1998 copy of which is attached hereto as Annex T and made an integral part hereof."[26]

In SPC 98-073, the new and additional evidence are the following:

"(1) Election Returns No. 4900773 (Precinct No. 43A)

Certification by the PNP, Gapan Police Station, Gapan, Nueva Ecija, that the complaint of Danilo Simon that he was threatened as watcher of Precinct No. 43A by four (4) unidentified men as follows: 'Magsilayas na kayo dito pagpapatayin ko kayo,' was entered in the Police Blotter of Gapan Police Station on 11 May 1998 copy of which is attached hereto as Annex Y and made an integral part hereof and accompanied by the affidavit of Danilo Simon dated 14 May 1998, Annex Y-1 hereof.

Joint affidavit of Nestor Pascual and Gerry Mangahas dated 22 May 1998 copy of which is attached hereto as Annex Z and made an integral part hereof;

(2) Election Returns No. 4900774 (Precinct No. 43A1)

Joint affidavit of Perfecto San Gabriel and Rico Andres dated 22 May 1998 copy of which is attached hereto as Annex AA and made an integral part hereof;

(3) Election Returns No. 4900775 (Precinct No. 43A2)

Joint affidavit of Editha Pasco and Jose San Gabriel dated 22 May 1998 copy of which is attached hereto as Annex BB and made an integral part hereof;

(4) Election Returns No. 4900776 (Precinct No. 43A3)

Joint affidavit of Eladio Bartolome and Edgar Gatus dated 22 May 1998 copy of which is attached hereto as Annex CC and made an integral part hereof;

(5) Election Returns No. 4900777 (Precinct No. 44A)

Joint affidavit of Rolando Linsangan and Samuel Lazaro dated 22 May 1998 copy of which is attached hereto as Annex DD and made an integral part hereof;

(6) Election Returns No. 4900778 (Precinct No. 44A1)

Joint affidavit of Ramon Natividad and George Lazaro dated 22 May 1998 copy of which is attached hereto as Annex EE and made an integral part hereof;

(7) Election Returns No. 4900779 (Precinct No. 44A2)

Joint affidavit of Eduardo A. Santiago and Guillermo Gatus dated 22 May 1998 copy of which is attached hereto as Annex FF and made an integral part hereof;

(8) Election Returns No. 4900779 (Precinct No. 44A2)

Joint affidavit of Francisco delos Santos and Cesar Nanalis dated 22 May 1998 copy of which is attached hereto as Annex GG and made an integral part hereof; and

(9) Election Returns No. 4900792 (Precinct No. 50A1/50A2)

Joint affidavit of Roberto S. Delegiado and Eduardo Hernandez dated 22 May 1998 copy of which is attached hereto as Annex HH and made an integral part hereof."[27]

Again, it cannot be gainsaid that petitioner was denied due process by the respondent COMELEC.

SIXTH. Even granting that the respondent COMELEC can consider the new and additional evidence of the private respondent, their examination will show that their evidentiary value cannot justify the annulment of the proclamation of petitioner Velayo. The COMELEC relied on the affidavits of the watchers of the private respondent, namely: Rolando C. Gamboa, Eduardo Mallare and Eduardo Surio together with the police report of Miguel S. Inductivo on the alleged threats received by Danilo Simon.

The Affidavits[28] of Danilo Simon read:

(1) "REPUBLIC OF THE PHILIPPINES)

PROVINCE OF NUEVA ECIJA) S.S.

MUNICIPALITY OF GAPAN)

AFFIDAVIT

Ako si Danilo Simon, may sapat na gulang, asawa at naninirahan sa Mangino, Gapan, Nueva Ecija ng naaayon sa batas ay nagsasaad ng sumusunod:

Na, nuong ika-11 ng Mayo 1998 ay inutusan ako ni Ernesto L. Natividad na magdala ng itinalaga sa mga presinto sa Kapalangan, Mahipon, Bungo at Makabaklay, Gapan, Nueva Ecija.

Na, isinagawa ko ang pagdadala ng pagkain ng watchers ng bandang ika 10:00 ng umaga.

Na, ng dumating ako sa eskuwelahan ng Kapalangan na siyang pinagdadausan ng botohan ay natuklasan ko na walang watchers ang Liberal Party o mga kandidato nito sa mga lugar ng botohan sa Kapalangan.

Na ng malaman ko ang ganitong pangyayari ay ipinagbigay alam ko kay Ginoong Ernesto L. Natividad na kandidato para Mayor ng Gapan, Nueva Ecija na siyang kandidato opisyal ng Liberal Party.

Sa katotohanan ng lahat, ay kusang loob kong nilagdaan ang Affidavit na ito ngayong ika-14 ng Mayo 1998 dito sa Gapan, Nueva Ecija.

(SGD). DANILO SIMON

Nagsasalaysay"

(2) "REPUBLIKA NG PILIPINAS)
LALAWIGAN NG NUEVA ECIJA) S.S.
BAYAN NG GAPAN)

SINUMPAANG SALAYSAY

Ako, si Danilo Simon, may asawa, Pilipino at naninirahan sa Mangino, Gapan, Nueva Ecija ng naaayon sa batas ay nagsasaad ng sumusunod:

Na, nuong ika-11 ng Mayo 1998, nagpunta ako sa Himpilan ng Pulisya ng Gapan, Nueva Ecija at inireport ko ang tungkol sa ginawa sa mga watchers ng Liberal Party sa mga presinto sa Kapalangan.

Na, kalakip nito ang kopya ng Police Blotter.

Sa katotohanan ng lahat ay kusang loob akong lumagda ngayong ika-14 ng Mayo 1998 dito sa Gapan, Nueva Ecija. Korte

(SGD). DANILO SIMON
Nagsasalaysay"

The police report of SPO1 Miguel Inductivo[29] reads:

"Republic of the Philippines
National Police Commission
PHILIPPINE NATIONAL POLICE
GAPAN POLICE STATION
Gapan, Nueva Ecija
-o0o-
May 14, 1998
GPS-IN
SUBJECT: Certification
TO WHOM IT MAY CONCERN:

This is to CERTIFY, that it appear(s) in the Police Blotter of Gapan Police Station, Gapan, Nueva Ecija on page 0741 with entry number 0829 dated 11 May 1998, the following entries and read as follows:

THREAT

'Danilo Simon y Nunez, 43 years old, married, driver, election watcher, resident of Mangino, Gapan, Nueva Ecija personally appeared and complained to this station that on or about 111800 (sic) May 1998 inside Precinct No. 43A, Kapalangan, Gapan, Nueva Ecija his watcher I.D. and Watcher Appointment was grabbed from his hand and threw by four (4) unidentified men and threatened him "Magsilayas kayo dito pag papatayin ko kayo." Complainant further relayed he and his companion watcher Manny Legaspi of Kapalangan, Gapan, Nueva Ecija left the said voting precinct due to the incident.'

(SGD) DANILO SIMON

Case reported and recorded by SPO2 RUPERTO H. SIMON PNP.

Issued upon request of Mr. Danilo N. Simon, for whatever any legal purpose it may serve.

FOR THE CHIEF OF POLICE

(SGD) MIGUEL S. INDUCTIVO
SPO1 PNP
Investigator"

The Affidavit[30] of Eduardo Mallare reads:

"REPUBLIC OF THE PHILIPPINES)
PROVINCE OF NUEVA ECIJA) S.S.
MUNICIPALITY OF GAPAN)

A F F I D A V I T

Ako, si Eduardo Mallare, may asawa at naninirahan sa Sta. Cruz, Gapan, Nueva Ecija matapos makapanumpa ng naaayon sa batas ay malaya at kusang loob na nagsasaad ng sumusunod:

Na, ako ay inapoint ni G. Ernesto Natividad bilang watcher sa presinto 44A2 sa Kapalangan, Gapan, Nueva Ecija;

Na, ayaw akong kilalaning watcher ng mga maestra na nakatalaga sa presinto 44A2 at hindi rin ako binigyan ng CVC;

Na, hindi ako pinayagang umalis ng compound ng eskwelahan ng Kapalangan hangga't hindi tapos ang mga ginagawa ng mga titsters;

Na, nadinig na sinabihan ng mga lalake ang mga titser sa presinto 44A2 na gawing malinis ang pagreretoke ng election return.

Lumagda ako sa salaysay na ito ng kusang loob ngayong ika-14 ng Mayo 1998 dito sa Gapan, Nueva Ecija.

(SGD) EDUARDO MALLARE
Nagsasalaysay"

The Affidavit[31] of Eduardo Surio reads:

"REPUBLIC OF THE PHILIPPINES)
PROVINCE OF NUEVA ECIJA) S.S.
MUNICIPALITY OF GAPAN)

A F F I D A V I T

Ako, si Eduardo Surio, may asawa at naninirahan sa San Lorenzo, Gapan, Nueva Ecija matapos makapanumpa ng naaayon sa batas ay malaya at kusang loob na nagsasaad ng sumusunod:

Na, itinalaga ako ni G. Eto Natividad bilang watcher niya sa presinto 50A1-50A2 sa Mahipon, Gapan, Nueva Ecija;

Na, hindi ako pinayagang pumasok sa loob ng presinto ng apat na lalake at ipinasabi sa titsters na hindi ako puwede sa loob ng presinto at binawal din akong umalis ng bakuran ng eskwelahan hanggat hindi nila ako pinaaalis;

Na, nadinig ko na sinabihan ng mga lalake ang mga titsters na ayusin ang election return para masiyahan ang kanilang amo.

Sa katunayan ng lahat ay kusang loob akong lumagda ngayong ika-14 ng Mayo 1998 dito sa Gapan, Nueva Ecija.

(SGD) EDUARDO SURIO
Nagsasalaysay"

The Affidavit[32] of Rolando Gamboa reads:

"REPUBLIC OF THE PHILIPPINES)
PROVINCE OF NUEVA ECIJA) S.S.

MUNICIPALITY OF GAPAN)

A F F I D A V I T

Ako, si Rolando C. Gamboa, may asawa at nakatira sa Mangino, Gapan, Nueva Ecija matapos makapanumpa ng ayon sa batas ay malaya at kusang loob na nagsasaad ng sumusunod:

Na, inapoint akong watcher ni G. Eto Natividad sa presinto 44A sa Kapalangan, Nueva Ecija nuong May 11, 1998;

Na, hindi ako nakapasok sa kwarto na kinalalagyan ng presinto 44A dahil binawal ako ng limang lalake at sinabihan na huwag akong umuwi hangga't hindi naguuwian ang mga titsers sa presinto 44A;

Na, hindi ako nakakuha ng CVC dahil ayaw akong bigyan ng mga titsers dahil utos daw sa kanila;

Na, narinig ko na inutusan ang mga titsers ng limang lalaki na gawing maganda o mataas ang bilang ng boto ng Velayo na hindi halatain ang pagsasaayos.

Nilagdaan ko ang salaysay na ito ng kusang loob ngayong ika-14 ng Mayo 1998 dito sa Gapan, Nueva Ecija.

(SGD) ROLANDO C. GAMBOA

Nagsasalaysay"

Taken together, these affidavits do not constitute substantial evidence to justify the cancellation of petitioner Velayo's proclamation. As aforesated, Simon, Mallare, Surio ang Gamboa are all watchers of the private respondent and hence are not impartial witnesses. A circumspect examination of these affidavits will show their worthlessness, thus: (1) affidavits of Danilo Simon. In his first Affidavit, he said: "Na, ng dumating ako sa eskuwelahan ng Kapalangan na siyang pinagdadausan ng botohan ay natuklasan ko na walang watchers ang Liberal Party o mga kandidato nito sa mga lugar ng botohan sa Kapalangan." Such a statement does not establish anything wrong with any election return. In his second Affidavit executed on the same date, he changed his statement by alleging: "Na, nuong ika-11 ng Mayo 1998, nagpunta ako sa Himpilan ng Pulisya ng Gapan, Nueva Ecija at inireport ko ang tungkol sa pananakot na ginawa sa mga watchers ng Liberal Party sa mga presinto sa Kapalangan." In the second Affidavit he also mentioned threats to watchers of the Liberal Party. Nevertheless, he did not state the nature of the threat, the names of the watchers, the names of the culprit and whether the threats affected the elections. In the police blotter, Simon further embroidered his report. He alleged therein that it was he whose watcher ID and Appointment were grabbed and thrown away by four unidentified men and who threatened "Magsilayas kayo dito pagpapatayin ko kayo." Also, he added, that his companion watcher Manny Legaspi left the precinct due to the incident. The changes in Simon's story destroy his credibility. Indeed, the police did not even investigate his report. In any event, Simon's affidavits did not establish that the voters of private respondent failed to vote. They did not prove that any election return was particularly tampered. They did not prove any electoral malpractice of petitioner Velayo or any of his people. It bears stressing that petitioner Velayo and private respondent Natividad were not the only candidates for mayor of Gapan; (2) the affidavit of Ernesto Mallare was no better. He merely alleged he was not recognized by the teachers as a watcher; that he was not allowed to leave the school compound; and that he heard some men tell the teachers in Precinct 44A2 "na gawing malinis ang pagrere-toke ng election return." The affidavit is meaningless for it does not name the teachers concerned and the men who gave the order to tamper the election return and whether or not the teachers obeyed. It is also incredible that he was allowed to stay in the precinct while efforts to tamper with the returns were being made. It is also incredible that he did not report to the police his illegal detention and the tampering of the election returns; (3) likewise the affidavit of Eduardo Surio has but a scrap value. He merely alleged he was barred from entering and leaving the precinct by men whom he did not identify. He said the same men ordered the teachers whom he did

not identify "na ayusin ang election returns para masiyahan ang kanilang amo." He did not say whether the teachers obeyed, what election returns were doctored, and the identity of the "amo." Such generalizations do not constitute evidence, let alone evidence of any illegal act or omission on the part of petitioner Velayo to justify cancellation of his proclamation. Surio also failed to make a police report; (4) the affidavit of Rolando C. Gamboa is likewise bereft of value. It did not name names. It alleged "na narinig ko na inutusan ang mga titsters ng limang lalaki na gawing maganda o mataas ang bilang ng boto ng Velayo na hindi halatain ang pagsasaayos." Again, it is not clear whether the teachers complied. It is not clear whether the Velayo referred to is petitioner Arthur Velayo. He also did not report to the police.

To repeat, all these affiants are watchers of respondent Natividad. The truthfulness of their affidavits is highly suspect. The more impartial witnesses like the teachers were not presented by Natividad. Indeed, these complaints of the affiants do not appear to have been raised by Natividad during the canvassing of the election returns in Precincts 44A, 44A2 and 50A1 and 50A2. Thus, some of the election returns in Precinct Nos. 44A and 44A2, 50A and 50A2 were not excluded because the objections merely related to formal defects and did not affect the integrity and authenticity of the returns.[33] In fine, the affidavits of private respondent Natividad are insufficient proofs to annul petitioner Velayo's proclamation for as we held in *Casimiro, et al. v. COMELEC, et al.*: [34]

"Obviously, the evidence relied upon mainly by petitioners 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 x x x.

"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 nor 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. x x x 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 in the canvass must be approached with extreme caution, and only upon the most convincing proof."

Finally, respondent COMELEC's resort to the doctrine of statistical improbability is flawed. As observed by petitioner Velayo, from experiences in past elections, respondent COMELEC should be aware that it is possible for one candidate or even a few candidates to get zero votes in one or a few precincts. In his Memorandum, petitioner Velayo attached some Statement of Votes as Annexes A to A-5, where it can be readily gleaned that there were not a few candidates who obtained zero votes in certain precincts in that particular election.

Standing alone and without more, the bare fact that a candidate for public office received zero votes in one or two precincts can not adequately support a finding that the subject election returns are statistically improbable. A no-vote for a particular candidate in election returns is but one strand in the web of circumstantial evidence that those election returns were prepared under "duress, force and intimidation." [35] In the case of *Una Kibad v. Comelec*, [36] we warned that the doctrine on statistical improbability must be viewed restrictively, the utmost care being taken lest in penalizing the fraudulent and corrupt practices, which indeed is called for, innocent voters become disenfranchised, a result which hardly commends itself. This specially applies to the case at bar where respondent COMELEC's ruling is premised on questionable affidavits of private respondent's witnesses, and election returns which appear to be regular on their face. Moreover, the doctrine of statistical improbability involves a question of fact and a more prudential approach prohibits its determination *ex parte*.

IN VIEW WHEREOF, the Resolution of the respondent COMELEC (en banc) dated October 6, 1998 is hereby SET ASIDE, the proclamation of private respondent Ernesto Natividad is declared NULL and VOID and

COMELEC is ordered to REINSTATE petitioner Arthur V. Velayo as Mayor of Gapan, Nueva Ecija, effective immediately upon receipt of this decision. Costs against private respondent.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Mendoza, J., see concurring opinion.

Vitug, J., see dissenting opinion.

Pardo, J., no part.

[1] Acting Election Officer.

[2] Municipal Treasurer.

[3] District Supervisor.

[4] See Original Records of SPC 98-002, p. 8.

[5] Ibid., p. 9.

[6] Ibid., pp. 1-6.

[7] Original Records of SPC 98-050, p. 2.

[8] Ibid., p. 13.

[9] Ibid., p. 14.

[10] Ibid., pp. 1-14.

[11] Ibid., pp. 1-18.

[12] Ibid., pp. 20-38.

[13] Ibid., pp. 58-73.

[14] Original Records of SPC 98-002, pp. 27-129.

[15] Signed by Julio F. Desamito (Presiding Commissioner) and Japal M. Guiani, Commissioner.

[16] Rollo, p. 267.

[17] Original Records of SPC 98-073, pp. 82-92.

[18] Ibid., pp. 101-102.

[19] Rollo, pp. 23-31.

[20] Precinct 50A2 is clustered with Precinct 50A1 because only one election return was prepared for said cluster. Hence, Precinct 50A2 was also excluded from the canvassing; Rollo, pp. 108-110.

[21] Rollo, pp. 27-30.

[22] Ibid., p. 88.

[23] Rollo, pp. 215-230.

[24] Section 3. Summary hearing and disposition of pre-proclamation controversies. – All pre-proclamation controversies shall be heard summarily after due notice provided that pre-proclamation controversies on election returns or certificates of canvass shall, on the basis of the records and evidence to it by the board of canvassers, be disposed of summarily by the Commission en banc within seven (7) days from receipt thereof x x x.

[25] Cox v. Dixie Power, Co., 16 P.2d 916.

[26] Original Records of SPC 98-002, pp. 35-36; 47-72.

[27] Ibid., pp. 38-39; 77-87.

[28] Original Records of SPC 98-073, pp. 27-28.

[29] Ibid., p. 29.

- [30] Ibid., p. 33.
[31] Ibid., p. 38.
[32] Ibid., p. 68.
[33] Original Records of SP 98-002, pp 117-118, 119, 121.
[34] 171 SCRA 468 (1989).
[35] Sangki v. COMELEC, et al., 21 SCRA 1392 (1967).
[36] 23 SCRA 588 (1968).

SEPARATE OPINION

MENDOZA, J., concurring in the judgment:

Sec. 246 of the Omnibus Election Code provides:

Summary proceeding before the Commission. - All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court.

This provision has been amended by R.A. No. 7166, §18 of which provides:

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

The amendment has the following effects:

1. In the disposition of pre-proclamation controversies involving election returns and certificates of canvass, the previous requirement of notice and hearing has been eliminated.
2. The COMELEC is directed to decide such pre-proclamation controversies solely on the basis of records and evidence elevated to it by boards of canvassers.
3. The COMELEC is directed to decide the case within seven (7) days from receipt thereof.
4. The COMELEC's decision becomes executory upon the lapse of seven (7) days from receipt by the losing party of the decision.

The requirement of notice and hearing in the disposition of pre-proclamation controversies was singled out in the explanatory note to Senate Bill No. 1861, which became R.A. No. 7166, as a major reason for delays in resolving pre-proclamation cases appealed to the COMELEC. There is, thus, no doubt of Congress's intention to do away with the need for notice and hearing in the COMELEC in the disposition of pre-proclamation controversies involving election returns and certificates of canvass.

Nor is notice and hearing required by the Due Process Clause of our Constitution. The parties have already been duly heard before the board of canvassers, and their case elevated to the COMELEC on the basis of the records of the board. On the other hand, there is a need for pre-proclamation controversies to be summarily disposed of in order to remove any uncertainty as to the results of the election. This can only be achieved by limiting the appeal to a review of the evidence in the records of the board of canvassers.

In the case at bar, the COMELEC bent over to accommodate private respondent by allowing him to file numerous

pleadings and affidavits, when §18 of R.A. No. 7166 clearly directs that it dispose of pre-proclamation controversies, using the records and evidence elevated to it by the board of canvassers as basis for its decision.

Not only did the COMELEC disregard the clear mandate of the law. As detailed in the opinion of the Court written by Justice Puno, the COMELEC employed a systematic pattern of exclusion to the prejudice of petitioner. It was that conduct of the case and not any lack of notice and hearing that, in my opinion, deprived petitioner of due process.

I, therefore, vote to grant the petition in this case and to set aside the resolution dated October 6, 1998 of the COMELEC en banc and to order the reinstatement of petitioner Arthur V. Velayo as mayor of Gapan, Nueva Ecija.

DISSENTING OPINION

VITUG, J.:

In a democratic society, the immense power of the State is placed in the hands of the people. Whether this apothegm is truly genuine or merely a farce depends on how the institution values the sanctity and strength of the ballot through which that power is wielded.

The COMELEC is entrusted with the task of seeing to it that the results of any election reflect the true will of the electorate, and it has been correspondingly accorded broad powers, administrative and judicial, to carry out that mandate.

Brought up for consideration by the Court is a special civil action for certiorari at the instance of Arthur Velayo which seeks to set aside the resolution, dated 06 October 1998, of public respondent Commission on Elections ("COMELEC"), setting aside his proclamation, directing the Board of Canvassers of Gapan, Nueva Ecija, to immediately convene to exclude precincts 44A-1, 44A-2 and 50A and 50A-1, and to proclaim the winning candidate for Mayor of Gapan, Nueva Ecija.

Conjectures aside, the case and material factual settings are not in serious dispute. In the last national and local elections, held on 11 May 1998, petitioner Arthur Velayo and private respondent Ernesto Natividad were among the candidates for the elective mayoralty post in the Municipality of Gapan, Nueva Ecija. During the official canvass of the election returns of the votes cast for national, provincial and municipal officials on 12 May 1998, a representative of Natividad orally sought the exclusion from the canvass of Election Returns No. 424, 5882 and 4900753. The Municipal Board of Canvassers refused to defer the canvass of the returns. On even date, Natividad filed SPC 98-002[1] with the COMELEC, seeking to disqualify the Chairman and the Vice-Chairman of the Board of Canvassers for alleged illegal proceedings, i.e., for proceeding to canvass the orally objected returns, and to annul any canvass of said returns. The next day, 13 May 1998, Natividad submitted to the Board a letter asking for the disqualification of its Chairman and Vice-Chairman for alleged bias, partiality and gross violations of the law and COMELEC rules and regulations. The concerned officials ruled against their disqualification.

In a petition, dated 16 May 1998, Natividad filed another case, docketed SPC 98-050,[2] with the Comelec, received by the latter on 18 May 1998, which sought to declare null and void the proceedings conducted by the Board on 13 May 1998, to disqualify the Board Chairman and Vice-Chairman, and to annul any proclamation of winners for the local elections.

On 17 May 1998, the Board of Canvassers proclaimed, among other candidates, Velayo to be the duly elected Mayor of Gapan, Nueva Ecija.

On 19 May 1998, Natividad filed his petition, docketed SPC No. 98-073,[3] appealing from the written rulings, dated 13, 14 and 15 May 1998, of the Municipal Board of Canvassers "on Contested Election Returns No. 4900678 of Precinct No. 9A-3/9A4."

All the aforesaid pre-proclamation and post-proclamation cases were all assigned to the Second Division of COMELEC. On 09 June 1998, respondent COMELEC [Second Division] issued an Order, which read:

"In view of the proclamation by the Municipal Board of Canvassers of Gapan, Nueva Ecija, of all the winning candidates for the municipal positions of said municipality on May 17, 1998, as evidenced by duly signed Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices[C.E. form No. 25] with Serial No. 03490337, this Commission [Second Division] RESOLVED, as it hereby RESOLVES TO DISMISS this instant petition for being MOOT AND ACADEMIC.

"SO ORDERED."[4]

On 23 June 1998, respondent Natividad moved for the reconsideration of the aforesaid order of the COMELEC [Second Division]

The COMELEC [Second Division], on 03 July 1998, issued an Order, directing the elevation of the entire records of the subject cases to the COMELEC En Banc for proper disposition. On 06 October 1998, COMELEC (en banc) issued its now assailed resolution, the dispositive portion of which read:

"WHEREFORE, premises considered, the proclamation of Arthur V. Velayo is hereby ANNULLED. The Board of Canvassers of Gapan, Nueva Ecija is hereby DIRECTED to convene immediately exclude Precincts 44A, 44A2 and 50A & 50A1 and immediately proclaim the winning candidate for Mayor of Gapan, Nueva Ecija.

"Further, they are directed to immediately inform the Commission of their action thereon."[5]

In thus resolving, the COMELEC (en banc) ratiocinated:

"The objection to these election returns are on the grounds that they are prepared under 'duress, force and intimidation.' Petitioner submitted the affidavits of his witnesses attached as Annex 'A' to 'T.' Also submitted as evidence for the exclusion of election returns for Precincts 43A, 43A1, 43A2, 43A3, 44A, 44A1, 44A2 and 50A1/50A2 are the Annex Y, police blotter and affidavits of Danilo Simon, joint affidavits of Nestor Pascual and Gerry Mangahas; Rico Andres and Perfecto San Gabriel; Editha Pasco and Jose San Gabriel; Eladio Bartolome and Edgar Gatus; Rolando Linsangan and Samuel Lazaro; Ramon Natividad and George Lazaro; Eduardo A. Santiago and Guillermo Gatus; Francisco de los Santos and Cesar Nanalis and Roberto S. Delegiado and Eduardo Hernandez.

"A close perusal of the above-entitled cases would show that the above objections and appeals were made strictly in accordance with law, however, the Board in defiance of Section 245 and Section 20 of Republic Act 7166, particularly sub-paragraph (i) included the assailed election returns without giving opportunity to the aggrieved party to go on appeal to the Commission.

"Said Section 20 (I) of R.A. 7166 states:

"The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections 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.'

"In this case, it is clear that the objected election returns will adversely affect the results of the elections.

"Thus, after close perusal of the above cited objected election returns, the Commission finds that the election

returns of 44A, 44A2 and 50A1A2 should be excluded from the canvass. It is worth noting that in these precincts 44A and 44A2 petitioner Natividad got zero votes which is statistically improbable. The affidavits of the following watchers respectively to wit: Rolando C. Gamboa, Eduardo Mallare and Eduardo Surio together with the police report of Miguel S. Inductivo of the threats received by Danilo Simon all watchers of petitioner, all in the dialect which attest to the incident wherein they were prevented and threatened from entering the polling place by four identified men and they were able to witness these men threatening the teachers and telling them to tamper the election return in such a way that they will not be noticed by other people and they will have no problem.

"Watchers play a vital role in protecting the votes especially during the counting of the votes in the precinct level. The fact that the watchers were prevented and in fact heard the teachers threatened to have the election returns altered makes the whole election process a mockery in these precincts as the returns are no longer reflective of the true results of the elections. It is no wonder then that in these precincts Natividad got zero votes.

"Further, since there was already an objection against the two members of the Board of Canvassers and their illegal proceedings they cannot proceed to canvass, to cite Section 244 of the Omnibus Election Code:

"Section 244. Contested composition or proceedings of the board. - When the composition or proceedings of the board of canvassers are contested, the board of canvassers shall, within twenty-four hours, make a ruling thereon with notice to the contestant who, if adversely affected, may appeal the matter to the Commission within five days after the ruling with proper notice to the board of canvassers. After due notice and hearing, the Commission shall decide the case within ten days from the filing thereof. During the pendency of the case, the board of canvassers shall suspend the canvass until the Commission orders the continuation or resumption thereof and citing their reasons or grounds therefor."

"Thus, the action of the Board in proclaiming the winning candidate for mayor in the Municipality of Gapan is illegal for violation of Section 20(a) to (i) of R.A. 7166 and Section 244 of the Omnibus Election Code." [6]

Forthwith, petitioner instituted the instant petition for certiorari to annul the 06th October 1998 resolution of the COMELEC. Respondents were ordered by the Court to comment on the petition. On 14 October 1999, petitioner filed with this Court a "Very, Very Urgent Petition for the Issuance of a Temporary Restraining Order Against Respondents and the Gapan Municipal Board of Canvassers," which the Court simply NOTED, while awaiting the comment of public respondent and which the Court ultimately denied pending a final resolution on the case.

Pursuant to the resolution of the COMELEC, dated 06 October 1998, the MBC of Gapan, Nueva Ecija, reconvened on 17 October 1998 and canvassed the votes for Mayor of Gapan excluding the votes cast in the aforementioned four precincts. On even date, Natividad was proclaimed by the Gapan Municipal Board of Canvassers as being the duly elected Mayor of Gapan, Nueva Ecija.

In his present recourse, Velayo has anchored the petition on the following grounds:

"1) The questioned resolution (Annex "A") of October 6, 1998 is ultra vires and void ab initio because it was issued ex-parte, without notice and opportunity afforded the petitioner to be heard and therefore, violative of due process.

"2) The COMELEC committed grave abuse of discretion amounting to lack of jurisdiction when it did not dismiss respondent Natividad's motion for reconsideration on SPC Nos. 98-002, 98-050 and 98-073 for being filed out of time.

"3) The COMELEC committed grave abuse of discretion amounting to lack of jurisdiction when it excluded the votes cast in Precincts 44A, 44A2, 50A and 50A1 as manufactured and contrary to statistical probabilities without the required notice and hearing consistent with due process.

"4) The COMELEC committed grave abuse of discretion amounting to lack of jurisdiction when it annulled the proclamation of petitioner without the required notice and hearing consistent with due process.

"5) The COMELEC committed grave abuse of discretion amounting to lack of jurisdiction when it did not dismiss said pre-proclamation cases for the reason that the grounds relied upon by respondent Natividad are proper grounds for election protests." [7]

Petitioner Velayo, in fine, has raised two principal issues, to wit: (a) whether or not Natividad's motion for reconsideration has been filed out of time and (b) whether or not the COMELEC has gravely abused its discretion in issuing its questioned 06th October 1998 resolution ex parte.

The Solicitor General has joined Velayo in asserting that the COMELEC acted with grave abuse of discretion in giving due course to Natividad's motion for reconsideration despite its having been belatedly filed.

The pertinent provisions of the COMELEC Rules of Procedure read:

"Section 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."

The order issued by the COMELEC [Second Division] dismissing Natividad's petition was promulgated on 09 June 1998. He moved for reconsideration of said order on 25 June 1998. [8]

In his comment, Natividad explained that the filing of the motion for reconsideration on 25 June 1998 was within the reglementary period because he received a copy of the 9th June 1998 order of the COMELEC only on 22 June 1998, [9] and thus, he had until 27 June 1998 within which to move for a reconsideration.

In *Bulaong vs. COMELEC*, [10] where an Order of the COMELEC, dated 09 September 1992, was received by the petitioner (therein) on 16 September 1992, the Court held that he had until 21 September 1992 within which to file his motion for reconsideration. Applying this rule, the filing of the motion for reconsideration by Natividad on 25 June 1998 of the COMELEC order, dated 09 June 1998, received by him on 22 June 1998, was still within the 5-day reglementary period.

On the second issue, invoking the case of *Bince vs. COMELEC*, [11] where the Court stated that after the proclamation of a candidate and the taking of his oath, an annulment of the proclamation or suspension of its effects, either partially or totally, without notice and hearing violated the right of said proclaimed candidate to due process and rendered the order annulling it null and void, petitioner Velayo would decry the alleged failure of COMELEC to observe due process in the issuance ex parte of its 6th October 1998 resolution. He claimed that he was not furnished with a copy of the three petitions filed by Natividad before the COMELEC but this asseveration was disputed by Natividad who contended that "Velayo was given the opportunity to be heard and [to] submit his written and verified evidence but failed."

My colleagues in the majority have decreed for petitioner.

I respectfully disagree.

Prior to its amendment by Republic Act No. 7166, Section 246 then read:

"SEC. 246. Summary proceeding before the Commission. - All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court."

All pre-proclamation controversies involving provincial, city or municipal offices are now governed by the amendatory provisions of Sections 17, 18, 19 20, 21 and 22 of Republic Act No. 7166.[12] The pertinent provisions of Sections 245 of the Omnibus Election Code, as thus amended, specifically on the inclusion and exclusion of election returns, reads in full:

"SEC 245. 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.

"(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 objection, 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 an 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. (Sec. 20 of RA 7166)."

The decision of the Board of Canvassers may be appealed to the Commission in the manner prescribed under Section 246; viz:

"SEC. 246. 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 decision shall be executory after the lapse of seven (7) days from receipt by the losing party of the decision of the Commission." (As amended by Sec. 18, R.A. 7166)

Unlike the old rule, which has clearly prescribed "due notice and hearing," the amendatory law deletes that requirement and directs the Commission on Elections to instead summarily dispose of all pre-proclamation controversies on election returns or certificates of canvass explicitly "on the basis of the records and evidence to be elevated to it by the board of canvassers."

The decision in *Bince vs. COMELEC*,^[13] relied upon by petitioner is rooted in the rulings of *Farinas vs. COMELEC*,^[14] *Reyes vs. COMELEC*,^[15] and *Gallardo vs. COMELEC*,^[16] all decided prior to the passage of Republic Act 7166. Most importantly, as amended by R.A. 7166, pre-proclamation controversies specifically relating to election returns or certificates of canvass are now required to be disposed of summarily by the Commission on the basis of the records and evidence elevated to it by the board of canvassers. This intent is unequivocally, expressed in the explanatory note of the Senate version of R.A. 7166, Senate Bill No. 1861, viz:

"This bill proposes to set the national and local elections for May 11, 1992 and provide for the necessary implementing details. It also endorses reforms and measures to ensure the conduct of free, orderly, honest, peaceful and credible elections.

"Specifically it seeks to:

xxx xxx xxx

"12. Provide a mechanism for the summary disposition of pre-proclamation controversies. A pre-proclamation controversy is a unique extraordinary remedy in the Philippine election law. It is supposed to be summary in character by the nature of proceedings. Yet, the Commission is continually faced with prolonged and broadened issues that are more properly pursued through an election protest. Two major reasons for delays are the requirement of 'due notice and hearing' and the scope for raising objections on election returns at the Commission level, even when such were not raised before the board of canvassers. The proposed amendments would authorize the Commission to dispose of pre-proclamation controversies on the basis of the records and evidence presented to the board of canvassers and mandates short time periods for their resolution and execution."^[17]

Evidently, the law seeks to do away with an otherwise protracted electoral process and to leave any election controversy between the parties to be later resolved in an appropriate election protest.

The COMELEC is responsible for enforcing and administering all laws and regulations relative to the conduct of elections. First and foremost, it must ensure that the true results of the elections are properly reflected. The COMELEC exercises, in this area, direct supervision and control over the proceedings of the board of canvassers and discharges its administrative, not adjudicative, authority to superintend the election process. It may be well to heed the advice of this Court in one case.^[18]

"While normally the procedure of bringing to the Commission objections to the actuations of boards of canvassers has been quite loosely referred to in certain quarters, even by the Commission and by this Court ... as an appeal, the fact of the matter is that the authority of the Commission in reviewing such actuations does

not spring from any appellate jurisdiction conferred by any specific provision of law, for there is none such provision anywhere in the Election Code, but from the plenary prerogative of direct control and supervision endowed to it by the above-quoted provisions of Section 168. And in administrative law, it is a too well settled postulate to need any supporting citations here, that a superior body or office having supervision and control over another may do directly what the latter is supposed to do or ought to have done."

In its above function, the COMELEC can act *ex parte* and the law can cut down on, such as it has now done, the additional niceties of notice and hearing which almost invariably can result in unwarranted delays. A pre-proclamation controversy involving election returns is confined to an examination of such returns on their face. A full reception of evidence aliunde and the meticulous examination of voluminous election documents would be "clearly anathema to a pre-proclamation controversy which, by its very nature, is to be heard summarily and decided on as promptly as possible." [19] A party feeling aggrieved for some other grounds is not without recourse for he can, in due time, avail himself of an election protest. The underlying reason, this Court said in *Sison vs. COMELEC*, [20] "is the policy of the election law that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. That is why such questions which require more deliberate and necessarily longer consideration are left for examination in the corresponding election protest."

The foregoing disquisition has focused on the statutory aspect of notice and hearing then prescribed by the old Section 246 and later dispensed with per the amendatory R.A. 7166, a matter that is undoubtedly within the legislative authority of Congress.

The Constitutional requirement of due process, it might be explained, is not here involved. Section I, Article III, of the 1987 Constitution provides that "(n)o person shall be deprived of life, liberty or property without due process of law." The Court need not belabor too much the fact that the case at bar involves neither "life" nor "liberty" contemplated by the fundamental law. "Life", in the context of the due process clause is the right to be alive or the right to be secured in one's limb against physical harm. [21] "Liberty," includes the right to exist and the right to be free from arbitrary personal restraint or servitude. [22] The term of course, is not dwarfed into mere freedom from physical restraint for, indeed, it can embrace the right of an individual to enjoy the faculties with which he has been endowed, [23] subject only to such restraints as are necessary for the common welfare. The United States Supreme Court, while recognizing that the right to hold specific private employment free from unreasonable governmental interference comes within the "liberty" concept of the Fifth Amendment, [24] holds however, that a person employed in public service does not have the same constitutional prerogative. [25] Nor does the right asserted by petitioner fall within the concept of "property ." The statement of the Court in *Bince vs. COMELEC* [26] that the right to public office is akin to property as also being a "protected right" should only be taken within context. The avowal is anchored on the cases of *Segovia vs. Noel* [27] and *Borja vs. Agoncillo*, [28] but not without a caveat --- "the subject of said cases more properly belong to the Law on Public Officers and the Civil Service System whose establishment is authorized by the Constitution itself." [29] Truly, no one has a vested right to public office. In a popular representative government, a public office is a trust where no one man has a proprietary or contractual right. [30] In his historical and analytical treatise on the origin, development and the state of due process law, Dr. Rodney L. Mott wrote that political privileges, such as the right to hold office, have not been thought of as being subject to the limitations of due process and may apparently be curtailed or extended at will without any limitation on due process of law. He did opine, however, that in an extreme case, which he exemplified by giving the hypothetical instance of a state legislature providing that "Republicans should forever be disfranchised," might exceptionally induce courts to apply the principle. [31]

Petitioner complains of having been deprived of the benefits of his proclamation. There is, however, no proclamation to even speak of. By the clear language of Section 45(i) of the Omnibus Election Code, 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," and that any proclamation made in violation thereof "shall be void ab initio x x x." As so mandated, a notice of appeal having been filed with it, the board of canvassers should have waited for the resolution of COMELEC thereon before any proclamation by it. The proclamation sans such authority is, by the unmistakable declaration of the law, null and void. Unfortunately, the majority holding of this Court would have the effect of ignoring this law.

Petitioner would insinuate that COMELEC annulled his proclamation not necessarily on the basis of the official records of the case. The undisputed facts, heretofore recited, would inevitably show that the proclamation made by the board of canvassers was unauthorized by the Commission in patent violation of Section 20 of Republic Act No. 7166. The COMELEC could not have made this pronouncement without the records having been elevated to it. It should not, in any case, be right to assume an irregularity in the performance of official acts; quite the contrary, since the COMELEC, said the Court in one case,[32] was conceived by its very "charter as the effective instrument to preserve the sanctity of popular suffrage, endowed with independence and all the other concomitant powers, it is but proper that the Court should accord the greatest measure of presumption of regularity to its course of action and choice of means in performing its duties, to the end that it may achieve its designed place in the democratic fabric of our government."

Indeed, when the COMELEC directed the exclusion of the election returns, based on the doctrine of statistical improbability, it could only mean that it did act on the basis of the records elevated to it, and would preclude the idea of any further need of evidence aliunde, as so heretofore explained, to show the palpability of fraud. Even if it were to be assumed that COMELEC erred in this appreciation or in its assessment, it would have been at most a case of an error of judgment much too far from the grave abuse of discretion that can deny it lawful jurisdiction and permit the extraordinary relief of an action for certiorari to prevail against it.

Accordingly, I vote to DISMISS the petition.

[1] "In the Matter of the Challenge and Objection to the Composition and Proceedings of the Municipal Board of Canvassers of Gapan, Nueva Ecija and for Annulment of Certain Returns Illegally Canvassed and For Suspension of Canvass of Election Returns Pending Substitution of the Challenged Members thereof."

[2] "In the Matter of the Appeal from the Adverse Ruling of the Municipal Board of Canvassers for Gapan, Nueva Ecija, Dated 14 May 1998 Seeking the Disqualification of Ms. Linda D. Sandoval and Eduardo Pancho to Sit as Chairman and Vice Chairman thereof; to Suspend the Canvass and to Suspend/Annul Proclamation of the Winning Candidates"

[3] "In the Matter of the Appeal From the Written Rulings Dated 13, 14 and 15 May 1998 of the Municipal Board of Canvassers for Gapan, Nueva Ecija, on Contested Election Returns No. 4900678 of Precinct No. 9A3/9A4 Dated 13 May 1998; Etc."

[4] Rollo, p. 267.

[5] Records, Annex 8.

[6] Ibid.

[7] Rollo, pp. 8-9.

[8] Petition, Rollo, p. 12.

[9] Comment of Respondent Natividad, Rollo, p. 150.

[10] 220 SCRA 745.

[11] 218 SCRA 782.

[12] SEC. 16, R.A. 7166.

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 Section 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.

SEC. 18. Amended Sec. 246 of the Omnibus Election Code.

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. The Commission shall summarily decide the case within five days from the filing thereof. (Amended SEC. 244 of the Omnibus Election Code).

SEC. 20. Now SEC. 245 of the Omnibus Election Code.

SEC. 21. Partial Proclamation. - Notwithstanding the pendency of any pre-proclamation controversy, the Commission may summarily order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.

SEC. 22. Election Contests for Municipal Officers.- All election contests involving municipal offices filed with the Regional Trial Court shall be decided expeditiously. The decision may be appealed to the Commission within five (5) days from promulgation or receipt of a copy thereof by the aggrieved party. The Commission shall decide the appeal within sixty (60) days after it is submitted for decision, but not later than six (6) months after the filing of the appeal, which decision shall be final, unappealable and executory.

[13] The case involves the application of Sec. 242 of the Omnibus Election Code.

[14] G. R. No. 81763, 03 March 1988.

[15] G. R. No. 81856, 03 March 1988.

[16] G. R. No. 85974, 02 May 1989.

[17] Senate S. No. 1861, Introduced by the Committee on Electoral Reforms and People's Participation and Committee on Constitutional Amendments, Revision of Codes and Laws, Senators Gonzales, Lina, Jr., Guingona, Aquino, Estrada, Saguisag, Tañada, Pimentel, Jr., and Mercado.

[18] *Aratuc vs. Commission on Elections*, 88 SCRA 251.

[19] *Matalam vs. COMELEC*, 271 SCRA 733; see also *Dipatuan vs. COMELEC*, 185 SCRA 86.

[20] G.R. No. 134096, 03 March 1999; see also *Loong vs. COMELEC*, 257 SCRA 1.

[21] Bernas, *The Constitution of the Republic of the Philippines, A Commentary*, 1st Edition, (1987), page 41.

[22] *Rubi vs. Provincial Board of Mindoro*, 39 Phil. 660.

[23] *Id.* See also *Meyer vs. Nebraska*, 262 U.S. 390, 399.

[24] *U.S. vs. Robel*, 389 US 258, 19 L Ed 2d 508, 88 S Ct 419.

[25] *Board of Trustees vs. Owens* (3d District) 206 Cal App 2d, 23 Cal Rptr 710

[26] 218 SCRA 782.

[27] 47 Phil. 543

[28] 46 Phil. 432

[29] See *Morfe vs. Mutuc*, 22 SCRA 424.

[30] *Cornejo vs. Gabriel*, 41 Phil. 432, citing *Taylor vs. Beckman*, 178 U.S. 548, cited in Bernas, Joaquin SJ, *The Constitution of the Republic of the Philippines*, 1987 Ed., p. 40.

[31] *Due Process of Law*, Rodney L. Mott, Ph.D., Published by the Bobbs-Meriel Company, p. 595.

[32] *Aratuc vs. Commission on Elections*, supra., p. 271.

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