MS. BAIRANSALAM LAUT LUCMAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND MOSAMA M. PANDI, RESPONDENTS.

G.R. NO. 166229. June 29, 2005

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-166229/

AUSTRIA-MARTINEZ, J.:

Petitioner Bairansalam Laut Lucman and private respondent Mosama M. Pandi were mayoralty candidates in Poona-Bayabao, Lanao del Sur, during the May 10, 2004 elections.

During the canvassing of votes, private respondent objected to the inclusion of ten election returns, although only six of these are subjects of the present controversy, to wit:[1]

Precinct Number

Election Returns Number

Objection/s

1A

01201094

1) The election returns is obviously manufactured and/or falsified
2) It is not authentic
3) It contains alterations

1B/C

01201091

1) Obviously manufactured

3A

0120109

1) Obviously manufactured
2) Incomplete

8A

01201093

1) Obviously manufactured and/or falsified
2) Incomplete

8B/8C

01201106

1) The election returns is obviously manufactured
2) It is incomplete, it lacks statistical data

14A/14B

01201096

1) Obviously manufactured

The Municipal Board of Canvassers (Board) overruled private respondent's objections on the disputed returns,[2] and proclaimed petitioner as the winning candidate, as shown in the Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices, signed on May 19, 2004.[3] Petitioner won over private respondent by a margin of 16 votes.

Private respondent filed with Commission on Elections (COMELEC) an appeal from the ruling of the Board, docketed as SPC 04-184, alleging massive fraud and irregularities in the conduct of the elections, e.g., force, threat and intimidation were employed on the voters, double voting, substitution of voters, snatching of ballots, padding of ballots and existence of flying voters.[4] Private respondent also contended that the contested election returns should have been excluded from the canvass, and that the Board was precipitate in proclaiming petitioner as the winning candidate, as private respondent has manifested on record that he is intending to appeal the Board's ruling.[5] Private respondent admits that the exclusion of the contested returns is a ground for election protest, but he also argues that the COMELEC may go beyond the face of the returns to determine whether the elections in the precincts involved are a sham.

Private respondent also filed a motion to annul proclamation and/or to suspend the effects of proclamation pendente lite.[6]

Petitioner filed his Comment and/or Answer to the appeal, arguing that the grounds relied upon by private respondent are not proper in a pre-proclamation controversy but in an election protest. Petitioner also argues that her proclamation is valid; the petition is defective for failure to include indispensable parties; and that private respondent failed to inform the Board that he is appealing its ruling, as required by Section 20 of Republic Act No. 7166, or The Electoral Reforms Law of 1991.[7]

On June 16, 2004, a hearing on the appeal was held, wherein counsel for petitioner and private respondent, and several Board of Election Inspectors of Poona-Bayabao appeared, and Ms. Monera P. Macadato, Poll Clerk of Precinct 3A was called to the witness stand.[8] Presiding Commissioner Resurreccion Z. Borra, for the First Division, then issued an order on the same date, requiring the parties to submit their simultaneous memoranda.[9]

On September 30, 2004, the COMELEC's First Division issued the assailed order, with the following dispositive portion:

> In order therefore to resolve the issues raised in this Appeal the Commission (FIRST DIVISION) hereby ORDERS the document examiners of the Commission on Elections to conduct an examination of the List of Voters with Voting Record of the precincts involved in this case as well as the VRRs pertaining to the contested precincts in the Municipality of Poonabayabao to determine whether or not actual voting by the duly registered voters of said precincts were conducted during the elections of May 10, 2004;
>
> Considering that we have annulled the proclamation of BAIRAMSALAM (sic) LAUT LUCMAN as duly

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

> elected mayor of Poonabayabao, Lanao del Sur, it is hereby ordered that the Vice-Mayor of said Municipality assumed (sic) the position pursuant to the provisions of the Local Government Code, until the final resolution of this petition.
>
> SO ORDERED.[10]

Commissioner Virgilio O. Garcillano dissented to the majority opinion on the ground that the petition involves issues proper to an election protest and not a pre-proclamation controversy.[11]

Petitioner moved to reconsider the assailed Order, and in an Order dated October 13, 2004, Commissioner Borra ordered and certified the motion for reconsideration to the Commission en banc.[12] Thereafter, the Commission en banc, in an Order dated October 14, 2004, issued a temporary restraining order and a status quo ante order, directing the parties to maintain the status prevailing before the issuance of the September 30, 2004 Resolution.

On December 14, 2004, the COMELEC en banc issued the assailed Resolution denying petitioner's motion for lack of merit.[13] The dispositive portion of said Resolution reads:

> WHEREFORE, in view of the foregoing, the Commission (en banc) RESOLVED, as it hereby RESOLVES to DENY the Motion for Reconsideration for lack of merit. The Order of the Commission (First Division) dated 30 September 2004 is hereby AFFIRMED. Accordingly, in implementation of the directive therein, the document examiners of the Commission on Elections are hereby ordered to conduct an examination of the List of Voters with Voting Record of the precincts involved in this case as well as the VRRs pertaining to the contested precincts in the Municipality of Poonabayabao to determine whether or not actual voting by the duly registered voters of said precincts were conducted during the elections of May 10, 2004, and thereafter submit a report thereon.
>
> The Temporary Restraining Order/Status Quo Ante Order dated 14 October 2004 is hereby lifted.
>
> SO ORDERED.[14]

On December 17, 2004, Commissioner Mehol Sadain issued a Constancia protesting his lack of participation in the En Banc Resolution. Commissioner Sadain stated that although he was out on official business at the time the Resolution was routed to his office, he should have been allowed to vote thereon, or at least, informed of the urgency of its promulgation so that he may cast his vote or allow its promulgation without his signature.[15]

Petitioner then filed the present special civil action for certiorari and prohibition with prayer for the issuance of temporary restraining order/preliminary injunction, based on the following grounds:

> PUBLIC RESPONDENT ACTED WITHOUT, IN EXCESS OR WITH GRAVE ABUSE OF DISCRETION IN ANNULLING THE PROCLAMATION OF THE PETITIONER.
>
> PUBLIC RESPONDENT ACTED IN EXCESS OR WITH GRAVE ABUSE OF DISCRETION IN ORDERING THE DOCUMENT EXAMINERS TO EXAMINE THE LIST OF VOTERS WITH VOTING RECORDS AND THE VRRs.
>
> PUBLIC RESPONDENT ACTED WITHOUT, IN EXCESS OR WITH GRAVE OF DISCRETION (sic) IN TAKING COGNIZANCE OF THE APPEAL WITHOUT THE INDISPENSABLE PARTIES IMPLEADED AND WITHOUT THE MANDATORY REQUIREMENTS OF SECTION 20, RA 7166 COMPLIED.
>
> PUBLIC RESPONDENT ACTED WITHOUT JURISDICTION IN TAKING COGNIZANCE OF THE MOTION TO RECONSIDER THE CHALLENGED INTERLOCUTORY ORDER OF SEPTEMBER 30, 2004.[16]

The pivotal issue in this case is whether the appeal from the Board of Canvassers to the COMELEC (First

Division) interjected by private respondent makes a case for a pre-proclamation controversy.

Section 241 of the Omnibus Election Code defines a pre-proclamation controversy as "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns."

Under Section 243 of the same Code, the issues that may be raised in a pre-proclamation controversy, are as follows:

> SEC. 243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:
>
> (a) Illegal composition or proceedings of the board of canvassers;
>
> (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code;
>
> (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
>
> (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The foregoing enumeration is restrictive and exclusive.[17]

In the present case, the objections initially raised by private respondent before the Municipal Board of Canvassers were proper in a pre-proclamation controversy, i.e., the election returns is obviously manufactured and/or falsified, it is not authentic, it contains alterations. However, in his appeal to the COMELEC, he further alleged that the elections held in the precincts clustered in the Pooni Lomabao Central Elementary were tainted with massive election irregularities. According to private respondent, there were "massive substitution of voters, snatching of ballots from the voters by people identified with the Lucman who filled them up against the will of the voters, force or coercion, threats, intimidation, casting of votes by double registrants in the same precincts (double entry), and flying voters ..."[18] Private respondent also alleged that the counting of votes on May 11, 2004, were not prepared simultaneously with the appreciation of the ballots/counting of votes, in violation of Section 44 of COMELEC Resolution No. 6667 (March 16, 2004). Also, private respondent's watchers were threatened by petitioner's watchers, forcing them to leave the counting room, and that the Board of Election Inspectors merely copied the entries on the tally boards and records of votes made by petitioner's watchers. Finally, private respondent alleged that the denial to his objections to the contested election returns were not made by the Municipal Board of Canvassers in the prescribed form, and that despite his manifestation that he will appeal the Board's ruling on the returns, it proceeded with petitioner's proclamation.[19]

Obviously, the foregoing allegations pertain not only to the preparation, transmission, receipt, custody and appreciation of the election returns, but to the conduct of the elections as well.

Pre-proclamation controversies are limited to challenges directed against the Board of Canvassers and proceedings before said Board relating to particular election returns to which private respondent should have made specific verbal objections subsequently reduced to writing. A pre-proclamation controversy is limited to an examination of the election returns on their face. As a rule, the COMELEC is limited to an examination of the election returns on their face.[20] It is beyond the COMELEC's jurisdiction to go beyond the face of the returns

or investigate election irregularities.[21]

The proceedings in a pre-proclamation controversy are summary in nature.[22] Reception of evidence aliunde, such as the List of Voters with Voting Record and the VRRs, is proscribed.[23] Issues such as fraud or terrorism attendant to the election process, the resolution of which would compel or necessitate the COMELEC to pierce the veil of election returns which appear to be prima facie regular, on their face, are anathema to a pre-proclamation controversy. Such issues should be posed and resolved in a regular election protest, which is within the original jurisdiction of the Regional Trial Court (RTC).[24] In a regular election protest, the parties may litigate all the legal and factual issues raised by them inasmuch detail as they may deem necessary or appropriate.[25]

In Macabago vs. COMELEC,[26] the Court reiterated:

> That the padding of the List of Voters may constitute fraud, or that the Board of Election Inspectors may have fraudulently conspired in its preparation, would not be a valid basis for a pre-proclamation controversy either. For, whenever irregularities, such as fraud, are asserted, the proper course of action is an election protest.
>
> Such irregularities as fraud, vote-buying and terrorism are proper grounds in an election contest but may not as a rule be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through the misdeeds, precisely, of only a relative few. Otherwise, elections will never be carried out with the resultant disenfranchisement of the innocent voters, for the losers will always cry fraud and terrorism (GAD vs. COMELEC, G.R. No. 78302, May 26, 1987, 150 SCRA 665).

Hence, as correctly argued by petitioner, private respondent's cause of action before the COMELEC is proper for an election protest and not a pre-proclamation controversy, and the COMELEC committed grave abuse of discretion in entertaining private respondent's petition/appeal. Consequently, all subsequent actions by the COMELEC in relation to private respondent's appeal are null and void, and correctible by the present special civil action for certiorari.

Following the disposition of the Court in Macabago vs. COMELEC,[27] the dismissal of private respondent's petition/appeal before the COMELEC is without prejudice to the filing of a regular election protest before the proper RTC, the period for the filing of which is deemed suspended by the filing of private respondent's petition/appeal.

In light of the foregoing ruling, the Court need not delve on the other issues posed by petitioner as these necessarily have been rendered moot and academic[28] thereby.

WHEREFORE, the petition is GRANTED. The assailed Order dated September 30, 2004 of the First Division and Resolution En Banc dated December 14, 2004 are SET ASIDE on ground of lack of jurisdiction. Private respondent's appeal to the First Division and the appeal to the COMELEC En Banc are DISMISSED, without prejudice to the filing of a regular election protest, the period for the filing of which is deemed suspended by the filing of the petition before the COMELEC until the finality of herein decision.

The proclamation of petitioner by the Municipal Board of Canvassers is maintained and petitioner should be allowed to assume her office as mayor of Poona-Bayabao, Lanao del Sur.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

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

---

[1] Rollo, pp. 63-68, Annexes “E” to “E-5.”

[2] Id., pp. 69-72, Annexes “F” to “F-3.”

[3] Id., pp. 73-74, Annexes “G” to “G-1.”

[4] Id., pp. 82-83, Petition/Appeal.

[5] Id., pp. 83-85.

[6] Id., pp. 100-108.

[7] Id., pp. 113-120, Answer and/or Comment.

[8] Id., p. 160.

[9] Ibid.

[10] Id., pp. 52-53.

[11] Id., pp. 54-56.

[12] Id., pp. 258-259.

[13] Id., pp. 41-45.

[14] Id., pp. 44-45.

[15] Id., pp. 282-283.

[16] Id., pp. 19-20.

[17] Dagloc vs. COMELEC, G.R. Nos. 154442-47, December 10, 2003, 417 SCRA 574, 590.

[18] Rollo, p. 77.

[19] Id., pp. 76-81.

[20] Bandala vs. COMELEC, G.R. No. 159369, March 3, 2004, 424 SCRA 267, 274.

[21] Matalam vs. COMELEC, G.R. No. 123230, April 18, 1997, 271 SCRA 733, 745.

[22] Chu vs. COMELEC, G.R. No. 135423, November 29, 1999, 319 SCRA 482, 491.

[23] Macabago vs. COMELEC, G.R. No. 152163, November 18, 2002, 392 SCRA 178, 185.

[24] Ibid., p. 186.

[25] Supra., Bandala case, p. 276.

[26] Supra., Macabago case, p. 186.

[27] Supra., Macabago case, p. 189.

[28] Supra., Chu case, p. 494.

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.