

HARLIN CASTILLO ABAYON, PETITIONER, VS. COMMISSION ON ELECTIONS AND RAUL A. DAZA, RESPONDENTS.

G.R. No. 181295. April 02, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Certiorari and Prohibition under Rule 65 of the Revised Rules of Court seeking to set aside the Resolution[1] dated 28 January 2008 of the Commission on Elections (COMELEC) en banc in EPC No. 2007-62, which affirmed the Order dated 8 October 2007 of the COMELEC First Division[2] dismissing the election protest of petitioner Harlin Castillo Abayon (Abayon) for having been filed out of time.

Abayon and respondent Raul Daza (Daza) were candidates for the Office of Governor of the Province of Northern Samar during the 14 May 2007 elections.[3]

On 19 May 2007, Abayon filed a pre-proclamation protest before the Provincial Board of Canvassers (PBoC) of Northern Samar, docketed as SPC No. 07-037, entitled, "IN THE MATTER OF THE PETITION TO EXCLUDE THE CERTIFICATE[S] OF CANVASS (COC) OF THE MUNICIPALITIES OF CAPUL, ROSARIO AND BOBON--ALL IN THE PROVINCE OF NORTHERN SAMAR WHICH WERE PREPARED UNDER DURESS, THREATS AND INTIMIDATION." [4]

On 20 May 2007, Daza was proclaimed as the winning candidate having garnered a total of 101,819 votes against Abayon's 98,351 votes, winning by a margin of 3,468 votes.[5]

On 21 May 2007, Abayon filed with the COMELEC SPC NO. 07-069, entitled, "PETITION TO EXCLUDE CERTIFICATE OF CANVAS (COC) OF MUNICIPALITY OF CATUBIG, NORTHERN SAMAR WHICH WAS PREPARED UNDER DURESS, THREATS, COERCION OR INTIMIDATION." [6]

On the same day, Abayon filed with the COMELEC two other petitions, "IN THE MATTER OF PETITION TO DECLARE THE PROCLAMATION OF PRIVATE RESPONDENT [Daza] AS WINNING CANDIDATE FOR THE POSITION OF GOVERNOR OF NORTHERN SAMAR NULL AND VOID," docketed as SPC No. 07-070, and "IN THE MATTER OF THE PETITION FOR DECLARATION OF FAILURE OF ELECTIONS IN THE MUNICIPALITIES OF CAPUL, ROSARIO AND BOBON, ALL OF NORTHERN SAMAR," docketed as SPA No. 07-460.[7]

On 24 May 2007, Abayon filed with the COMELEC a fifth petition, "IN THE MATTER OF THE PETITION TO DECLARE FAILURE OF ELECTION IN THE MUNICIPALITY OF CATUBIG, NORTHERN SAMAR, AND FOR THE HOLDING OF SPECIAL ELECTIONS THEREOF," docketed as SPC No. 07-484.[8]

On 29 June 2007, Abayon filed with the COMELEC a Petition of Protest, docketed as EPC No. 2007-62, contesting the election and proclamation of Daza as Governor of Northern Samar.[9]

Of Abayon's numerous petitions, three were denied or dismissed. SPC No. 07-069, Abayon's petition to exclude

from canvass the COC of Catubig, Northern Samar, was denied by the COMELEC Second Division in a Resolution dated 2 July 2007.[10] SPC No. 07-484, Abayon's petition for the declaration of a failure of election in the Municipality of Catubig, Northern Samar, and for the holding of special elections therein, was dismissed by the COMELEC en banc in a Resolution dated 9 July 2007.[11] SPA No. 07-460, Abayon's petition for the declaration of failure of elections in the Municipalities of Capul, Rosario and Bobon, in Northern Samar, was also dismissed by the COMELEC en banc in a Resolution dated 29 January 2008. [12]

Abayon was similarly unsuccessful in EPC No. 2007-62, his Petition of Protest. On 8 October 2007, the COMELEC First Division issued its Order[13] dismissing Abayon's election protest for having been filed out of time. Under Section 250 of the Omnibus Election Code,[14] an election protest should be filed within 10 days from the date of the proclamation of the results of the election. Since Daza was proclaimed on 20 May 2007, Abayon had only until 30 May 2007 to file his election protest. However, he filed his election protest only on 29 June 2007. The COMELEC referred to the case of Villamor v. Comelec,[15] when it declared that in order for a petition for annulment of proclamation to suspend the period for filing of election protest, it should be based on a valid pre-proclamation issue. In applying this ruling, it decreed that the pendency of SPC No. 07-070, Abayon's petition for annulment of Daza's proclamation, did not toll the running of the ten-day period for filing an election protest. SPC No. 07-070 was based on SPC No. 07-037, Abayon's earlier petition for the exclusion from canvass of the COCs from the Municipalities of Capul, Rosario and Bobon, Northern Samar, since they were prepared under duress, threats, and coercion or intimidation, grounds which do not involve proper pre-proclamation issues. The COMELEC, thus, decreed in its Order dated 8 October 2007 that:

WHEREFORE, premises considered, the instant election protest is hereby DISMISSED for having been filed out of time.[16]

On 10 October 2007, Abayon filed before the COMELEC en banc a Motion for Reconsideration[17] of the Order dated 8 October 2007 of the COMELEC First Division in EPC No. 2007-62.

The COMELEC en banc denied Abayon's Motion for Reconsideration in a Resolution[18] dated 28 January 2008. It affirmed that the election protest in EPC No. 2007-62 was belatedly filed. The COMELEC en banc maintained that SPC No. 07-037 seeking the exclusion from canvass of the COCs from three municipalities of Northern Samar was based on grounds that were not proper for a pre-proclamation controversy. SPC No. 07-037 lacked merit and could not have rendered Daza's proclamation void. Consequently, SPC No. 07-070 - in which Abayon challenged Daza's proclamation on the basis that it was made counting the votes in the COCs sought to be excluded in SPC No. 07-037 - was without merit. The suspension of the ten-day period for filing an election protest was intended to ensure that the losing candidate who filed a pre-proclamation case retains the right to avail himself of an election protest. This rationale presupposes that there is a valid pre-proclamation controversy; otherwise, such rationale would be defeated if the ten-day suspension period is applied to a pre-proclamation contest so manifestly baseless that it cannot prosper. The COMELEC then ruled that:

WHEREFORE, premises considered, the Commission RESOLVES, as it hereby RESOLVED, to DENY the instant Motion for Reconsideration. The Resolution of the Commission (First Division) ordering the dismissal of the case for having been filed out of time is hereby AFFIRMED.[19]

On 5 February 2003, Abayon sought remedy from this Court via the present Petition for Certiorari and Prohibition under Rule 65 of the Revised Rules of Court, on the basis of the following arguments:

I

VILLAMOR VS. COMELEC APPLIES ONLY TO THE SPECIFIC INSTANCE WHERE THE BASIS FOR THE ANNULMENT OF PROCLAMATION IS BY ITS VERY NATURE COULD NOT BE A GROUND

FOR THE ANNULMENT OF PROCLAMATION, LIKE THE ILLEGAL COMPOSITION OF THE BOARD;

II

VILLAMOR VS. COMELEC IS AN EXCEPTION TO THE GENERAL RULE THAT (sic) UNDER SECTION 248 OF THE OMNIBUS ELECTION CODE; HENCE IT SHOULD BE CONSTRUED STRICTLY; AND

III

THE PROTEST IS SUFFICIENT IN FORM AND SUBSTANCE; HENCE, THE PUBLIC INTEREST INVOLVED IN DETERMINING THE TRUE WINNER IN THE ELECTION SHOULD BE PARAMOUNT OVER THE TECHNICAL OBJECTIONS.[20]

The Court identifies the two main issues in this case to be as follows: (1) whether the mere filing of a pre-proclamation case, regardless of the issues raised therein, suspends the ten-day period for the filing of an election protest; and (2) if the answer to the first issue is in the negative, whether the election protest which is untimely filed may still be considered by the COMELEC.

Section 250 of the Omnibus Election Code fixes the period within which to file an election contest for provincial offices at ten days after the proclamation of the election results, to wit:

Section 250. Election contests for Batasang Pambansa, regional, provincial and city offices. - A sworn petition contesting the election of any Member of the Batasang Pambansa or any regional, provincial and city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

However, this ten-day period may be suspended, as Section 248 of the Omnibus Election Law provides:

Section 248. Effect of filing petition to annul or to suspend the proclamation.-- The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

In *Dagloc v. Commission on Elections*,^[21] this Court clarified that the "petition to annul or to suspend the proclamation," which Section 248 refers to, and which suspends the running of the period within which to file the election protest or quo warranto proceedings, must be a pre-proclamation controversy. The Court, thus, decreed in the same case that a petition for the declaration of failure of election was not a pre-proclamation controversy and, therefore, did not suspend the running of the reglementary period within which to file an election protest or quo warranto proceedings.

In this case, it is worthy to reiterate that on 20 May 2007, Daza was already proclaimed the winning candidate for the Office of Governor of the Province of Northern Samar in the 14 May 2007 elections. Abayon had until 30 May 2007 to file his election protest. Yet, he filed EPC No. 2007-62, his Petition of Protest only on 29 June 2007, or almost 40 days after Daza's proclamation.

The Court scrutinized the petitions filed by Abayon in the present case to determine if any of them suspended the ten-day period for the filing of an election protest.

SPA No. 07-460 and SPA No. 07-484, which are petitions for the declaration of failure of elections in the Municipalities of Capul, Rosario, Bolon, and Catubig, Northern Samar, cannot suspend the ten-day period for filing an election protest, per the ruling of the Court in *Dagloc*. Abayon also readily admits that SPC No. 07-069, a petition for the exclusion from canvass of the COC from the Municipality of Catubig, had been previously

resolved and denied by the COMELEC.[22]

Abayon, however, maintains that SPC No. 07-037, a petition for the exclusion from canvass of the COCs from the Municipalities of Capul, Rosario, and Bobon, Northern Samar; and SPC No. 07-070, a petition to annul the proclamation of Daza, both effectively suspended the running of the period to file EPC No. 2007-62, his election protest. As regards particularly SPC No. 07-037, Abayon asserts that it is a pre-proclamation case.

Abayon's position is untenable.

Jurisprudence makes it clear that the mere filing of a petition denominated as a pre-proclamation case or one seeking the annulment of a proclamation will not suspend the ten-day period for filing an election protest. It is required that the issues raised in such a petition be restricted to those that may be properly included therein.

The Court pronounced in *Dagloc*,[23] and quoted in *Villamor v. Commission on Elections*,[24] that:

Not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for quo warranto. For it is not the relief prayed for which distinguishes actions under [Section] 248 from an election protest or quo warranto proceedings, but the grounds on which they are based. (Emphasis ours.)

The grounds that must support a pre-proclamation controversy are limited by the Omnibus Election Code to the following:

Section 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 enumeration is restrictive and exclusive. Thus, in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects; appear to have been tampered with, falsified or prepared under duress; and/or contain discrepancies in the votes credited to any candidate, which would affect the result of the election, a petition cannot be properly considered as a pre-proclamation controversy. [25]

The purpose of a pre-proclamation controversy is to ascertain the winner or winners in the election on the basis of the election returns duly authenticated by the board of inspectors and admitted by the board of canvassers. It is a well-entrenched rule that the Board of Canvassers and the COMELEC are not to look beyond or behind electoral returns. A pre-proclamation controversy is summary in nature. It is the policy of the election law that pre-proclamation controversies be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. There is no room for the presentation of evidence aliunde, the inspection of voluminous documents, and for meticulous technical examination. That is why such questions as those involving the appreciation of votes and the conduct of the campaign and balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest.[26]

The COMELEC First Division herein found, and Abayon never disputed before the COMELEC or this Court, that SPC No. 07-037, his petition for exclusion from canvass of the COCs from three municipalities in Northern Samar, was based on the grounds quoted hereunder:

[T]he petition for annulment of proclamation was based on an unresolved petition for exclusion from the canvass of three certificates of canvass on the ground that they were allegedly prepared under duress, threats, coercion or intimidation as shown by the following circumstances:

- a voter was forcibly taken by members of the Philippine Army;
 - a political leader was killed;
 - threats which prevented the holding of campaign sorties or rallies;
 - vote buying; threats and intimidation on voters;
 - alleged missing certificate of canvass; and
 - a wife of a BEI member was seen going in and out of the polling precinct under suspicious circumstances.
- [27]

None of the aforementioned circumstances fall under the enumeration of issues that may be raised in a pre-proclamation controversy. Abayon acknowledges that SPC No. 07-037 does not involve the illegal composition of the board of canvassers.[28] Not any of these circumstances involves defects or irregularities apparent from the physical examination of the election returns. The alleged abduction of a voter, the killing of a political leader, the threats which prevented the holding of the campaign sorties, and the intimidation of voters, are acts of terrorism which are properly the subject of an election protest, but not of a pre-proclamation controversy. Precisely, in *Dipatuan v. Commission on Elections*,[29] the Court held that massive vote-buying, like the allegation of bribery evidenced by the suspicious presence of the wife of a Board of Election Inspectors (BEI) member, was a proper ground for an election protest, but not for a pre-proclamation controversy.

Since SPC No. 07-037 did not qualify as a pre-proclamation controversy, it could not have suspended the ten-day statutory period for the filing of an election protest.

Bereft of any legal basis, SPC No. 07-070, Abayon's petition to annul the proclamation of Daza, likewise, could not have suspended the period for the filing of an election protest. In SPC No. 07-070, Abayon questioned the validity of "the proclamation of [Daza] despite the pendency of a pre-proclamation controversy, SPC No. 07-037, which questioned the inclusion of three municipal certificates of canvass." [30] Abayon posited that Daza's proclamation was void under Section 20(i) of Republic Act No. 7166, hereunder reproduced:

Section 20. Procedure in Disposition of Contested Election Returns.

x x x x

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the object 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.

To begin with, as this Court already ruled herein, SPC No. 07-037 was not a pre-proclamation case that should defer the proclamation of Daza during its pendency.

More importantly, the procedure under Section 20 of Republic Act No. 7166 applies only to valid pre-proclamation contests. The first part of Section 20, particularly paragraph (a), actually states that:

Section 20. Procedure in Disposition of Contested Election Returns.

a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 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. [Emphasis ours.]

It bears to point out that under Section 20(a) of Republic Act No. 7166, election returns may be contested on any of the grounds recognized under Article XX, and Sections 234, 235, and 236 of the Omnibus Election Code. Sections 234, 235, and 236 of the Omnibus Election Code are the very same grounds for a pre-proclamation controversy recognized under Section 243(b) of the Omnibus Election Code, which reads: "The canvassed election returns are incomplete, contain material defects, appear 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." On the other hand, Article XX entitled "Pre-Proclamation Controversies" is unequivocal about the kind of petition discussed therein. Section 20 (i) of Republic Act No. 7166 is part of the procedure undergone by a valid pre-proclamation contest. Hence, Abayon cannot seek the annulment of Daza's proclamation, where no valid pre-proclamation contest was filed.

SPC No. 07-070 sought the annulment of Daza's proclamation and was necessarily filed after the said proclamation. Clearly it is not a pre-proclamation case. Moreover, it is based on a legally implausible ground--the COMELEC's failure to resolve SPC No. 07-037. Under Section 16 of Republic Act No. 7166,[31] pre-proclamation cases which are unresolved at the beginning of the term of the winning candidate are automatically terminated. The COMELEC is not obligated to resolve each and every pre-proclamation case. Since SPC No. 07-070 is apparently not a pre-proclamation contest and it is based on a legal argument which contradicts the law, this Court cannot possibly accord it the effect of suspending the statutory period for the filing of an election protest.

To reiterate, the circumstances pointed out by Abayon in SPC No. 07-037 are proper grounds for an election protest, not a pre-proclamation controversy. In fact, had Abayon timely filed an election protest, bearing the same allegations and raising identical issues, it would have been given due course. Instead, Abayon repeatedly insisted on pursuing remedies which were not available to him given, the circumstances alleged in his petitions.

Abayon's assertion that *Villamor v. Commission on Elections*[32] should not be applied to his case, because of the difference in the factual backgrounds of the two cases, is unconvincing. In *Villamor*, the petition to annul the proclamation was based on the purported illegal composition of the municipal board of canvassers, a fact that could have constituted a pre-proclamation controversy. However, since the petition therein was belatedly filed, after the proclamation of the winning candidate, the Court ruled that it still could not suspend the period for filing an election protest. Even the factual background in *Dagloc* is not on all fours with the present case, for it involved a petition for the declaration of failure of elections, which was adjudged not to be a pre-proclamation case. In the case presently before this Court, Abayon argues that the period for filing his election protest was suspended by his previous filing of SPC No. 07-037, a petition to exclude from canvass the COCs from three municipalities of Northern Samar; and SPC No. 07-070, a petition to annul Daza's proclamation.

Despite the aforementioned differences between the facts of *Villamor* and *Dagloc* vis-à-vis the case at bar, the Court finds the same to be actually irrelevant, and should not detract this Court from applying the wisdom of its ruling in its two decided cases to the one at bar. It is clear from *Villamor* and *Dagloc* that, as provided under Section 248 of the Omnibus Election Code, the period within which an election protest must be filed could only be suspended upon the filing of a pre-proclamation case based on any of the grounds enumerated under Section

243 of the same Code. Petitions based upon grounds other than those so identified under Section 243, even if they seek to annul the proclamation, will not suspend the period for filing the election protest.

Section 248 of the Omnibus Election Code, allowing a pre-proclamation case to suspend the period for filing the election protest, was clearly intended to afford the protestant the opportunity to avail himself of a remedy to its fullest extent; in other words, to have his pre-proclamation case resolved, without the pressure of having to abandon it in order to avail himself of other remedies. It protects the right of the protestant to still file later on an election protest on grounds that he could not raise in, or only became apparent after his filing of, a pre-proclamation case. Section 248 is not to be used as a justification for the irresponsible filing of petitions, which on their face are contrary to the provisions of election laws and regulations, and which only serve to delay the filing of proper remedies and clog the dockets of the COMELEC and the courts.

The processes of the adjudication of election disputes should not be abused. By their very nature and given the public interest involved in the determination of the results of an election, the controversies arising from the canvass must be resolved speedily; otherwise, the will of the electorate would be frustrated. And the delay brought about by the means resorted to by petitioner is precisely the very evil sought to be prevented by election laws and the relevant jurisprudence.[33]

It bears enucleation that the rule prescribing the ten-day period for the filing of an election protest is mandatory and jurisdictional; and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest. Violation of this rule should not be taken lightly, nor should it be brushed aside as a mere procedural lapse that can be overlooked. This is not a mere technicality but an essential requirement, the non-compliance with which would oust the court of jurisdiction over the case.[34]

The cases cited by Abayon in support of his present Petition are not in point. *Saquilayan v. Commission on Elections*[35] does not involve delay in filing an election protest, but rather the wrongful manner in which the allegations were made in the protest. Respondent therein filed an election protest, which failed to specifically mention the precincts where widespread election fraud and irregularities supposedly occurred, as well as where and how these occurrences took place. The Court, nevertheless, allowed the election protest to proceed, taking into account the then recent case *Miguel v. Commission on Elections*,[36] which was also invoked by Abayon. Respondent in *Miguel* filed a timely election protest, wherein he made general allegations of fraud and irregularities in the conduct of the electoral exercise. Petitioner therein insisted that a "preliminary hearing" on the particulars of the alleged fraud and irregularities must be conducted before the ballots were opened. The Court ruled in favor of the respondent and held that the opening of the ballot boxes would ascertain, with the least amount of protracted delay, the veracity of fraud and irregularities.

While there is merit in allowing an election protest to proceed in order to ascertain the allegations of massive fraud and irregularities which tend to defeat the electorate's will, one must also keep sight of jurisdictional requirements such as the period within which to file the protest. Otherwise, election disputes would drag on, and the political stability which the election rules seek to preserve will be vulnerable to challenges even beyond a reasonable period of time. In this case, Abayon failed to give this Court a justification for the delay in filing his election protest, apart from his reliance on the argument that the manifestly invalid pre-proclamation case he filed suspended the period for the filing of his election protest.

In a special civil action for certiorari, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[37] In the present case, the COMELEC did not gravely abuse its discretion.

Rather, it decided the matter in accordance with the prevailing laws and jurisprudence. The conclusion of the COMELEC on a matter decided within its competence is entitled to utmost respect.[38]

WHEREFORE, the instant appeal is DISMISSED. The Resolution dated 28 January 2008 of the COMELEC en banc, affirming the Resolution dated 8 October 2007 of the COMELEC Second Division, is AFFIRMED.

The election protest filed by Abayon is DISMISSED for having been filed out of time. Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Velasco, Jr., Leonardo-De Castro, and Peralta, JJ., concur.

Austria-Martinez, J., on official leave.

Corona, J., join J. Nachura's dissent.

Tinga, and Brion, JJ., concur with J. Nachura's dissent.

Nachura, J., please see dissenting opinion.

[1] Per Curiam, with Acting Chairman Ressureccion Z. Borra, Commissioners Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, Nicodemo T. Ferrer and Moslemen T. Macarambon, concurring. Rollo, pp. 50-56.

[2] Penned by Presiding Commissioner Resurreccion Z. Borra with Commissioner Romeo A. Brawner concurring; rollo, pp. 30-36.

[3] Rollo, p. 30.

[4] Id. at 6 and 85-86.

[5] Id. at 5-6.

[6] Id. at 6 and 86.

[7] Id. at 6 and 86-87.

[8] Id. at 6 and 87.

[9] Id. at 6-7 and 88.

[10] Id. at 7 and 88.

[11] Id. at 87.

[12] Id.

[13] Id. at 30-36.

[14] Section 250 of the Omnibus Election Code states that:

Section 250. Election contests for Batasang Pambansa, regional, provincial and city offices. - A sworn petition contesting election of any Member of the Batasang Pambansa or any regional, provincial and city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

[15] G.R. No. 169865, 21 July 2006, 496 SCRA 334.

[16] Rollo, p. 35.

[17] Id. at 37-49.

[18] Id. at 50-60.

[19] Id. at 55.

[20] Id. at 213-214.

[21] *Dagloc v. Commission on Elections*, 378 Phil. 906, 912-917 (1999).

[22] Rollo, p. 212.

[23] *Supra* note 21.

[24] *Supra* note 15 at 340.

[25] *Sanchez v. Commission on Elections*, G.R. Nos. L-78461, L-79146 and L-79212, 12 August 1987, 153 SCRA 67, 75.

[26] *Abella v. Larrazabal*, G.R. Nos. 87721-30 and 88004, 21 December 1989, 180 SCRA 509, 516-517; *Chu v. Commission on Elections*, 377 Phil. 509, 515-518 (1999).

[27] Rollo, pp. 34-35.

[28] *Sanchez v. Commission on Elections*, *supra* note 25 at 75.

[29] *Dipatuan v. Commission on Elections*, G.R. No. 86117, 7 May 1990, 185 SCRA 86, 92-94. -

[30] Rollo, p. 215.

[31] Section 16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices. Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof. All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determined that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari. (Emphasis supplied.)

[32] *Supra* note 15.

[33] *Baltazar v. Commission on Elections*, 403 Phil. 444, 453-454 (2001).

[34] *Roquero v. Commission on Elections*, 351 Phil. 1079, 1086 (1998); *Robes v. Commission on Elections*, 208 Phil. 179, 187 (1983).

[35] 462 Phil. 383 (2003).

[36] 390 Phil. 478 (2000).

[37] *Suliguin v. Commission on Elections*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.

[38] *Ocate v. Commission on Elections*, G.R. No. 170522, 20 November 2006, 507 SCRA 426, 437; *Laodenio v. Commission on Elections*, 342 Phil. 676, 688 (1997).

DISSENTING OPINION

NACHURA, J.:

With due respect, I am constrained to register my dissent because I earnestly believe that the ponencia would validate serious statutory and procedural errors committed by the Commission on Elections (COMELEC).

Factual and Procedural Antecedents

To appreciate the full panoply of events that gave rise to this controversy, it is necessary to recall the following undisputed relevant facts and proceedings:

After the May 14, 2007 elections for Provincial Governor in Northern Samar in which Harlin Castillo Abayon (Abayon) and Raul A. Daza (Daza) were candidates, the former filed five (5) petitions, namely:

- On May 19, 2007, a petition docketed as SPC No. 07-037, denominated "In the Matter of the Petition to Exclude the Certificate of Canvass (COC) of the Municipalities of Capul, Rosario and Bobon--All in the Province of Northern Samar which Were Prepared Under Duress, Threats and Intimidation";

- On May 21, 2007, three (3) petitions, as follows:

- a) SPC No. 07-069 , entitled "Petition to Exclude Certificate of Canvass (COC) of Municipality of Catubig, Northern Samar, which was Prepared Under Duress, Threats, Coercion or Intimidation";

- b) SPC No. 07-070 , captioned "In the Matter of the Petition To Declare the Proclamation of Private Respondent as Winning Candidate for the Position of Governor of Northern Samar Null and Void" (because on May 20, 2007, without any action having been taken on SPC No. 07-037, the Provincial Board of Canvassers proclaimed Daza as the winner in the gubernatorial race);

- c) SPA No. 07-460 , designated "In the Matter of the Petition for Declaration of Failure of Elections In the Municipalities of Capul, Rosario and Bobon, all of Northern Samar";

- On May 24, 2007, the fifth petition docketed as SPC No. 07-484, entitled "In the Matter of the Petition To Declare Failure of Election in the Municipality of Catubig, Northern Samar, and for the Holding of Special Elections Thereof".

No action was taken by the COMELEC on all the petitions until June 28, 2007, when it issued Omnibus Resolution No. 8212 that dismissed all pending pre-proclamation cases, except those included in the list attached to the resolution. This was promulgated pursuant to Section 16 of Republic Act (R.A.) No. 7166 which reads:

Section 16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices. Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof. All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari. (Emphasis supplied.)

Parenthetically, it is curious that, despite the fact that the Abayon petitions were not in the list of cases that would remain active beyond June 30, 2007, the COMELEC Second Division, in an Order dated July 2, 2007, acted on, and denied SPC No. 07-069; while the COMELEC En Banc, in an Order dated July 9, 2007, denied SPC No.

07-484. Both cases were resolved by the COMELEC beyond June 28, 2007, even if SPC No. 07-069 was presumably a pre-proclamation case that was terminated by virtue of Omnibus Resolution No. 8212.

On June 29, 2007, Abayon filed his Election Protest, docketed as EPC No. 2007-62. This was dismissed by the COMELEC First Division in an Order dated October 8, 2007, on the ground that it was filed out of time -- the same having been filed beyond the prescribed ten-day period from Daza's proclamation. The COMELEC First Division ratiocinated that the filing by Abayon of his pre-proclamation petitions did not interrupt the running of the ten-day period, because the petitions did not raise valid pre-proclamation issues.

On October 10, 2007, Abayon filed a Motion for Reconsideration which the COMELEC En Banc denied in a Resolution dated January 28, 2008, premised on the very same reasons as those tendered by the First Division. Thus, the instant petition.

The Reasons for the Dissent

The majority would uphold the action of the COMELEC (First Division and En Banc) dismissing Abayon's Election Protest. To my mind, the fault of the ponencia lies in its having oversimplified the main issue in the controversy, asking only "whether this Court should allow a pre-proclamation case which is patently without merit to interrupt the period for filing an election protest." By engaging simply in a general and superficial inquiry, limited to this rhetorical issue, the majority may have been induced to close its eyes to grave lapses committed by the COMELEC, lapses which translate to transgressions of election law and jurisprudence.

Let me now enumerate and explain the particular reasons for my dissent.

1. The proclamation of Daza as elected Governor on May 20, 2007 violated Section 20 of R.A. No. 7166.

On May 20, 2007, when Daza was proclaimed as Governor by the Provincial Board of Canvassers of Northern Samar, Abayon had already filed the day before, or on May 19, 2007, his petition in SPC No. 07-037, entitled, "In the Matter of the Petition to Exclude the Certificates of Canvass (COC) of the Municipalities of Capul, Rosario and Bobon--All in the Province of Northern Samar, Which Were Prepared Under Duress, Threats and Intimidation."

On the face of the petition, even by its caption alone, Abayon had filed a pre-proclamation contest, raising an issue compliant with Section 243[1] of the Omnibus Election Code (OEC), namely that the certificates of canvass for the municipalities mentioned "were prepared under duress, threats and intimidation", clearly within the ambit of paragraph (c) of Section 243. Accordingly, Section 20, R.A. No. 7166, specifically paragraph (i) thereof, which provides:

Section 20. Procedure in Disposition of Contested Election Returns. -

x x x

(i) The board of canvassers shall not proclaim any candidate or winner unless authorized by the Commission after the latter has ruled on the objection 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. (Emphasis supplied.)

should have taken effect automatically.

The COMELEC did not grant the provincial board of canvassers of Northern Samar any authority to proclaim

Daza; the board did so on its own volition. In proclaiming Daza without COMELEC authority after a pre-proclamation petition had already been filed, the provincial board of canvassers acted in violation of the procedure prescribed in Section 20 of R.A. No. 7166. Perforce, by express provision of law, the proclamation of Daza was void ab initio.[2] As we ruled in *Utto v. Commission on Elections*,[3] Section 20(i) of R.A. No. 7166 is mandatory and requires strict observance. To repeat, before a board of canvassers could validly proclaim a candidate as winner, when election returns are contested, it must first be authorized by the COMELEC.

It may be argued--as, in fact, the entire hypothesis of the COMELEC ruling is anchored on this argument--that the pre-proclamation petition of Abayon did not raise valid pre-proclamation issues and, therefore, Section 20 of R.A. No. 7166, would not apply. The fallacy of this argument is immediately evident. The argument would, in effect, place the cart before the horse.

It should be stressed that when Daza was proclaimed, there was already a pending petition characterized as a pre-proclamation contest, alleging that certificates of canvass (COCs) from three municipalities were prepared under duress, threat and intimidation. As of that moment, and for over a month thereafter, there was no COMELEC resolution on the merits of the petition. (In fact, no independent resolution of the case was ever made by the COMELEC, as will be discussed below.) Absent a definitive ruling by the COMELEC, the pre-proclamation contest subsisted. At that point, there arose a situation falling squarely within the coverage, and calling for the immediate application, of Section 20(i) of R.A. No. 7166.

The nullity of the premature proclamation should not be made to rest on the outcome of the pre-proclamation controversy. A contrary view would subvert the underlying policy consideration for the institution of the pre-proclamation contest as an efficacious and speedy remedy. It should be remembered that the statutory provisions on pre-proclamation controversies were legislated in order to prevent the nefarious practice known as "grab-the-proclamation, prolong-the-protest". The salutary legislative objective would be negated if the precipitate proclamation is allowed to stand, made to await the resolution of the pre-proclamation contest.

Significantly, with Daza's proclamation being null and void by operation of the law, the ten-day period (for filing an election protest) did not commence to run on the date of the proclamation, as there would have been no proclamation to speak of in the first place.

2. Abayon's filing of the petition
in SPC No. 07-070 effectively
suspended the running of the
period to file an election protest.

On May 21, 2007, the day following Daza's proclamation, Abayon filed with the COMELEC a petition, docketed as SPC No. 07-070, denominated, "In the Matter of the Petition to Declare the Proclamation of Private Respondent as Winning Candidate for the Position of Governor of Northern Samar Null and Void."

When Abayon filed that petition with the COMELEC, Section 248 of the Omnibus Election Code, which provides:

Section 248. Effect of filing petition to annul or to suspend proclamation. - The filing with the Commission of a petition to annul or suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto petition. (Emphasis supplied.)

automatically came into force and effect. The period to file an election protest would only commence to run after the petition to annul the proclamation had been finally resolved by the COMELEC, or in certain instances, by this Court. This is so because the language of Section 248 is direct, positive and mandatory. It brooks no exception.

The Court emphasized this resultant operation of Section 248 on the ten-day prescriptive period for the filing of election protest in *Manahan v. Bernardo*,^[4] *Roquero v. Commission on Elections*,^[5] and, recently, in *Tan v. Commission on Elections*,^[6] in which it was further explained thus:

As may be noted, the aforequoted Section 248 contemplates two (2) points of reference, that is, pre- and post-proclamation, under which either of the petitions referred to therein is filed. Before the proclamation, what ought to be filed is a petition to "suspend" or stop an impending proclamation. After the proclamation, an adverse party should file a petition to "annul" or undo a proclamation made. Pre-proclamation controversies partake of the nature of petitions to suspend. The purpose for allowing pre-proclamation controversies, the filing of which is covered by the aforequoted Section 248 of the Omnibus Election Code, is to nip in the bud the occurrence of what, in election practice, is referred to as "grab the proclamation and prolong the protest" situation.

Correlating the petitions mentioned in Section 248 with the 10-day period set forth in the succeeding Section 250, a petition to suspend tolls the 10-day period for filing an election protest from running, while a petition to annul interrupts the running of the period. In other words, in a Section 248 petition to suspend where the 10-day period did not start to run at all, the filing of a Section 250 election contest after the tenth (10th) day from proclamation is not late. On the other hand, in a Section 248 petition to annul, the party seeking annulment must file the petition before the expiration of the 10-day period.^[7]

It should be noted here that SPC No. 07-070, the petition to annul, was not independently resolved by the COMELEC. By inference, however, it may be acknowledged that the case was deemed decided when COMELEC issued Omnibus Resolution No. 8212 on June 28, 2007, dismissing all pending pre-proclamation cases except those covered by an appropriate order of the COMELEC or this Court. As aforesaid, the said omnibus resolution was promulgated pursuant to Section 16 of R.A. No. 7166.

Given the factual setting of this case, and applying Section 248 of the Omnibus Election Code and Section 16 of R.A. No. 7166, the ineluctable conclusion is that the Election Protest, EPC No. 2007-62, filed by Abayon on June 29, 2007, was not filed out of time. For emphasis, let me reiterate the following facts that support this conclusion:

- a) On May 21, 2007, one day after Daza's proclamation, Abayon filed SPC No. 07-070, seeking to annul the Daza proclamation. By the express mandate of Section 248 of the Omnibus Election Code, the filing of that petition suspended the running of the period to file an election protest.
- b) Because it was not in the list of active cases that would survive the beginning of the term of office involved, SPC No. 07-070 was dismissed and deemed terminated by COMELEC Omnibus Resolution No. 8212, dated June 28, 2007. Since Section 16 of R.A. No. 7166, explicitly states that the dismissal or termination of such case(s) is "without prejudice to the filing of a regular election protest," it is obvious that the period within which to file an election protest would commence to run only on June 28, 2007, the date when the case was dismissed or deemed terminated.
- c) Abayon filed his Election Protest on June 29, 2007, the day following the promulgation of Omnibus Resolution No. 8212. Unmistakably, it was filed within the prescribed ten-day period which commenced to run only on June 28, 2007.

In *Peñaflorida v. Commission on Elections*,^[8] this Court explained the rationale for Section 16 of R.A. No. 7166, and warned against the indiscriminate filing of pre-proclamation cases that could unduly delay proclamation and prejudice winning candidates. Thus, the Court justified the dismissal or termination of pending pre-proclamation cases upon the beginning of the term of the contested office, even through an Omnibus Resolution that did not particularly designate the cases affected thereby.

Under the Local Government Code, the term of office of elective provincial officials begins at noon of June 30 following the election. Admittedly, by virtue of Section 16 of R.A. No. 7166, it was proper for the COMELEC, on June 28, 2007--two days before the beginning of the term of office of elective local officials--to issue Omnibus Resolution No. 8212 terminating all pending pre-proclamation cases (except those in the list of cases which remained active beyond June 30, 2007). This is precisely because the filing of the pre-proclamation cases suspended the proclamation of candidates, following Section 20(i) of R.A. No. 7166, and, unless the several pre-proclamation controversies were terminated, the result would be that many offices would have no incumbents.[9] Noteworthy is that Omnibus Resolution No. 8212 provides that "x x x all the rulings of boards of canvassers concerned are deemed affirmed. Such boards of canvassers are directed to reconvene forthwith, continue their respective canvass and proclaim the winning candidates accordingly, if the proceedings were suspended by virtue of pending pre-proclamation cases."

It, therefore, stands to reason that the Abayon petitions in SPC No. 07-037 and SPC No. 07-070 were dismissed only on July 28, 2007 when the Omnibus Resolution was promulgated, since the COMELEC did not make any independent resolution of these cases.

Inasmuch as Section 16 of R.A. No. 7166, is the statutory authority for the Omnibus Resolution which effected the dismissal en masse of pending pre-proclamation cases--and the Abayon petitions were lumped up in this mass of cases--then Section 16 should be implemented to the fullest. Accordingly, Abayon cannot be denied the benefit of the same Section 16, which provides that the termination of the cases is "without prejudice to the filing of a regular election protest." The law was worded as such precisely because the legislature was aware that the filing of a pre-proclamation case would effectively suspend the proclamation and the institution of election protest.

To rule that Abayon cannot avail of this recourse (ostensibly on the ground that his petitions did not raise valid pre-proclamation issues, when the COMELEC did not say as much in its Omnibus Resolution), would be to countenance selective law enforcement. It would deprive Abayon of his constitutional right to equal protection of the laws.

The statutory provisions cited above notwithstanding, the ponencia echoes the COMELEC's reliance in *Dagloc v. COMELEC*[10] and *Villamor v. COMELEC*,[11] in which this Court held that not all so-called pre-proclamation petitions will work to suspend the ten-day period for the filing of an election protest. These cases are cited, even as the COMELEC itself confesses that the facts in *Dagloc* and *Villamor* "are not on all fours to (sic) the instant controversy." [12]

Indeed, *Dagloc* is inapplicable, because the petition filed therein was a petition to declare failure of election, not a pre-proclamation contest. Neither can *Villamor* validly serve as precedent, because in that case, the petition to annul proclamation was premised on the illegal composition and proceedings of the board of canvassers. Unlike in the present case, there were no election returns or certificates of canvass to examine for their authenticity and due execution. And Section 20 of R.A. No. 7166, precisely governs the situations contemplated in Section 243 (b), (c) and (d) of the OEC, which relate to the preparation, transmission, receipt, custody and appreciation of election returns.[13]

3. This Court cannot rule on the validity of the Abayon petitions in SPC No. 07-037 and SPC No. 07-070.

To repeat, SPC No. 07-037 and SPC No. 07-070 were not decided by the COMELEC in an independent or separate resolution. The cases were lumped up with other pre-proclamation cases, and resolved en masse through Omnibus Resolution No. 8212. Surprisingly, in its Order dated October 8, 2007, in EPC No. 2007-62 (the

Election Protest), the COMELEC's First Division discussed the merits of SPC No. 07-037, and concluded that the allegations therein were not proper issues to be raised in a pre-proclamation contest. This conclusion was then used as the basis to dismiss EPC No. 2007-62, on the premise that since SPC No. 07-037 did not raise valid pre-proclamation issues, it did not suspend the running of the ten-day period within which to file an election protest.

I am not aware of any legal or procedural rule that would justify the COMELEC First Division's action in deciding the merits of SPC No. 07-037 in its Order in EPC No. 2007-62, considering that the two were separate and independent cases, were never consolidated, and were anchored on different causes of action.

Now, the ponencia validates this dubious legerdemain, and compounding the procedural mix-up, this Court is made to rule on the merits of SPC Nos. 07-037 and 07-070. I feel compelled to express serious reservations about this course of action.

Exclusive original jurisdiction over pre-proclamation cases is vested in the COMELEC.[14] This Court may only exercise certiorari jurisdiction over COMELEC decisions, orders or rulings in these cases.[15] Since no petition for certiorari has been filed with this Court in connection with SPC Nos. 07-037 and 07-070, we are without competence to rule on the petitions in these cases.

4. Questions regarding the election
of a provincial governor should not
be resolved by resort to technicalities.

In the instant case, it is noteworthy that Daza, in his original answer to the Election Protest, also filed a counter-protest against Abayon. Obviously, each camp charges the other of irregularities in the election.

The greater public interest, in keeping with our democratic tradition, would best be served by a no-nonsense determination of the true will of the people of Northern Samar. This can be accomplished only by remanding the case to the COMELEC so that it may appropriately hear and decide the protest and counter-protest.

On a more practical note, such a remand will not inflict any real damage to Daza who shall, for the duration of the proceedings, continue to hold office as Provincial Governor. Indeed, it will serve him in good stead, as the full resolution of the election protest would clear any cloud of doubt over the legitimacy of his election.

The case should not therefore hang in the balance of technical rules of procedure. An election contest, unlike an ordinary action, is imbued with public interest, involving as it does not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. Neither it is fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. Imperative indeed is that that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure.[16]

In light of all the foregoing, I vote to grant the petition.

[1] Section 243 of the OEC reads in full:

"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 proceeding 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."

[2] *Jamil v. Commission on Elections*, 347 Phil. 630, 649-650 (1997). While this case applied Section 245 of the OEC, which was already repealed by R.A. No. 7166, the doctrine which prohibits the Board of Canvassers from proclaiming a candidate as winner when returns are contested, unless authorized by the COMELEC, is still a good law. This is precisely because Section 20(i) of R.A. No. 7166 enunciates the same rule as Section 245 of the OEC.

[3] 426 Phil. 225, 240-241 (2002).

[4] 347 Phil. 782, 788-789 (1997).

[5] 351 Phil. 1079, 1086 (1998).

[6] G.R. Nos. 166143-47 and 166891, November 20, 2006, 507 SCRA 352, 384.

[7] Emphasis supplied.

[8] 346 Phil. 924, 930 (1997).

[9] *Peñaflorida v. Commission on Elections*, *id.*

[10] 378 Phil. 906 (1999).

[11] G.R. No. 169865, July 21, 2006, 496 SCRA 334.

[12] *Rollo*, p. 52.

[13] Section 241 of the OEC.

[14] Section 242 of the OEC.

[15] 1987 Constitution, Article IX-A, Section 7.

[16] *Barroso v. Ampig*, 385 Phil. 237, 249 (2000).

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