

THEMISTOCLES A. SAÑO, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF DULAG, LEYTE, FERDINAND A. SERRANO, IN HIS CAPACITY AS ACTING CHAIRMAN O...*G.R. No. 182221. February 03, 2010*

Ponente: DEL CASTILLO, J.

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This case, with records spanning nearly 2,000 pages, revolves around the simple question of what issues may be properly alleged in a pre-proclamation controversy. Petitioner has valiantly and passionately argued his case and invoked every available ground to suspend and annul a proclamation validly made. Unfortunately, argument is not evidence; advocacy is not legitimacy. The mere invocation of the grounds of a pre-proclamation controversy, without more, will not justify the exclusion of election returns which appear regular and authentic on their face.

This Petition for Certiorari filed pursuant to Rule 65 in relation to Rule 64 of the Rules of Court, assails the Resolution[1] dated October 3, 2007 of the Commission on Elections (COMELEC) First Division in SPC Case No. 07-191, as well as the COMELEC En Banc's Resolution[2] dated February 12, 2008.

Petitioner Themistocles A. Saño (Saño) was the official candidate of Lakas Christian Muslim Democrats (LAKAS-CMD) for Municipal Mayor of the Municipality of Dulag, Leyte during the May 14, 2007 synchronized national and local elections.[3] Private respondent Manuel Sia Que (Que) ran for the same position under the auspices of the Liberal Party.

Petitioner's Factual Allegations

Saño alleged that after the casting and counting of votes, at about midnight of May 14, 2007, a man was seen carrying a ballot box that was not locked; he then inserted certain documents in said ballot box, took the aluminum seal, sealed the box, and then turned it over to the Reception Group. The election returns (ERs) allegedly affected by this anomalous activity were ER Nos. 5301624, 5301603, 5301633, 5301602, and 5301668 (the contested ERs) for Precinct Nos. 49-A, 31-A, 58-A, 30-A, and 90-A, respectively (the questioned precincts).

During the canvassing at the Dulag Municipal Hall, Saño sought to have the contested ERs excluded on the following grounds: massive fraud, illegal proceedings, and tampered/falsified and obviously manufactured returns. He alleged that timely oral objections were made, and the written Petition for Exclusion was filed with the Municipal Board of Canvassers (MBOC)[4] on May 15, 2007 at 6:50 p.m.[5] together with affidavits prepared by his brother, Tancredo A. Saño, and a certain Peter C. Alicando.[6] Upon the filing of the Petition for Exclusion, canvass of the contested ERs was deferred.

Saño further alleged that in the morning of May 16, 2007, Lydia Camposano (Camposano), Election Officer for Dulag, and Chairperson of the MBOC, was overheard calling a certain "sir" over the telephone to ask for a ruling. The telephone conversation was video recorded by Wilfredo O. Lazar (Lazar), who executed an affidavit attesting

to said occurrence.[7] Saño, through counsel, then verbally moved for the inhibition of Camposano as MBOC Chairman on the ground of bias and for prejudgment of the election results. Camposano allegedly acknowledged that she was talking to her superior, Atty. Jose Nick Medros, Director III of Region VIII and Chairman of the Leyte Provincial Board of Canvassers, but declined to inhibit herself until she was ordered to do so by her superiors. The canvassing continued.

At around 9:00 p.m. of May 16, 2007, Saño filed his written Petition for Inhibition together with the affidavit of Lazar, reiterating his request for the inhibition of the MBOC Chair.[8] At midnight of May 16, 2007, Camposano inhibited herself and declared the canvassing temporarily adjourned.

At around 5:00 p.m. of May 17, 2007, Saño received a copy of the COMELEC Regional Office's Memorandum designating Ferdinand Serrano (Serrano) as the Acting Election Officer and MBOC Chairperson.[9] Canvassing resumed at about 6:00 p.m. of May 17, 2007, during which Serrano verbally ruled that the contested ERs would be opened. Serrano promised that this ruling would be put in writing within 24 hours. Thereafter, petitioner, through counsel, filed a Notice of Appeal at 5:00 a.m. of May 18, 2007[10] covering the contested ERs.

Finally, Saño claimed that instead of suspending the canvass as required by law and the canvassing rules, Serrano proceeded to hastily open and canvass the contested ERs. Despite the filing of petitioner's Notice of Appeal, and the fact that the exclusion of the contested ERs would materially affect the results of the election,[11] the MBOC neither made a written ruling nor elevated the appeal to the COMELEC together with the MBOC's report and records of the case. Instead, the MBOC proclaimed Que as Municipal Mayor.

Private Respondent's Factual Allegations

On the other hand, Que alleged that in the early morning of May 15, 2007, the MBOC of Dulag, Leyte, convened and started to canvass the ERs.[12] At around 3:46 a.m. of May 15, 2007, the ER from Precinct No. 30-A was temporarily set aside because of lack of data on the number of registered voters, voters who actually voted, and excess and rejected ballots. At the time that this ER was opened, no objection to its inclusion was made.[13]

At around 6:15 a.m. of May 15, 2007, the Board of Election Inspectors (BEI) from Precinct No. 30-A appeared before the MBOC to complete the data. This time counsel for Saño complained that the LAKAS-CMD copy had imprints but BEI Chairperson Ruel Congzon explained that the imprints were due to the carbonized duplicate forms, and that the copies given to the various political parties were borrowed by the watchers so they could copy the election results. Not finding the explanation satisfactory, counsel for petitioner moved for the exclusion of said ER because of material defects in the return. Camposano ruled that the ER from Precinct No. 30-A would be set aside until the submission of petitioner's written objection.[14]

Meanwhile, at around 5:20 a.m. of May 15, 2007, petitioner's counsel verbally moved for the exclusion of the ERs from Precinct Nos. 31-A, 49-A, and 58-A on the ground that the ballot boxes were opened. The ERs were set aside and the members of the BEI from said precincts were summoned to appear before the MBOC.[15]

At around 6:30 p.m. of May 15, 2007, counsel for petitioner likewise orally objected to the inclusion of the ER from Precinct No. 90-A on the ground that it had been tampered with and contained many erasures.[16]

At 6:50 p.m. of May 15, 2007, petitioner's counsel submitted a written Petition for Exclusion of the five contested ERs.[17] Canvass of the contested ERs was deferred until the submission of Que's comment. On May 16, 2007 at 10:49 a.m., Que submitted his written Opposition.[18]

At around 9:17 p.m. of May 16, 2007, petitioner filed a Petition for Inhibition of Camposano.[19] Subsequently, at 12:30 a.m. of May 17, 2007, Camposano manifested that she would inhibit herself as MBOC Chairperson.[20]

At 1:12 a.m. of May 17, 2007, canvassing was temporarily adjourned to await the appointment of a new MBOC Chairperson.[21]

Canvassing resumed at 5:55 p.m. of May 17, 2007, when the MBOC was reconvened with Serrano as Acting Chairperson[22] at which time, 25 precincts were not yet canvassed. Serrano explained that he was required by law to finish the canvass, and that the BEIs assigned to the various questioned precincts would be summoned. He also stated that "these allegations can't be determined if we won't open the election returns x x x the BOC will ascertain if the election return has been tampered [with]. We will see if statistical data of ballots are filled out and [ask] the BEI to correct the statistical data about the ballots which were not correct".[23]

While the ERs were being canvassed, counsel for petitioner did not immediately manifest her intention to appeal the ruling on the canvassing of ER in the questioned precincts. The Minutes of the Canvass provide:

Precinct

Minutes

90-A[2]

Precinct 90A of San Rafael completed the data (contested)

Envelope serial No. 015884

Envelope Seal - 0916966 (seal open)

ER seal - no seal

ER # 5301668

Valid Votes - 164

Spoil - 0

Excess - 0

Rejected - 0

Atty. Palabrica asked if the result will be tallied separately.

Chairman Serrano: If it is a pre-proclamation issue, then I will separate. I am inviting you to house rules 6 & 8.

You are alleging massive fraud and [tampering of ERs].

Atty. Palabrica: I did lump the reasons for this objection. [I] am asking if it's temporarily tallied.

Chairman Serrano: You alleged that the ER [was] obviously manufactured.

Atty. Palabrica: The ER was already prepared and that is why the ballot box was opened. The face of the ER [is] okay.

Chairman Serrano: Such ground is covered by regular protest.

Asked Lolita Ducanes, chairman and the third member. Are these your signatures? Are these the same election returns that you signed and placed on the ballot box?

Lolita Ducanes: Yes, it's my signature and they are the election returns that we signed.

Atty Palabrica: Asked why the ballot box was opened.

Lolita Ducanes: It was opened in the custody group.[25]

30-A[26]

At 2:13a.m. to 2:18 p.m. Precinct 30-A of Barangay Arado was opened and canvassed.

Data

Envelope # 015811

Envelope Seal # 0915307 (seals sticking to envelope)

ER seal # - no inner seal

ER # 5301602

of valid ballots in compartment for valid ballots - 162

of spoil[ed] ballots - 0
of excess ballots - 0
of rejected ballots - 0

Atty. Palabrica: had it noted that BEI of 30-A of Brgy.
Arado did not give a certificate of votes to the Lakas watchers.

58-A[27]

At 2:21 a.m. to 2:40 a.m., Precinct 58-A of Barangay Luan was opened and in good condition.
Data Envelope # 015854
Envelope Seal # 0916088
ER inner seal # - 0916087
ER # 5301633
of valid ballots - 162
of spoiled ballots - 0
of excess ballots - 0
of rejected ballots - 0

49-A[28]

At 2:40 a.m. to 2:48 a.m. Precinct 49A of Barangay
Camote was opened and canvassed.
Data
Envelope # 015803
Envelope Seal # 015803 - envelope partly good otherwise in good condition
ER seal # - 0915855
ER # 5301624
of valid ballots - 167
of spoil[ed] ballots - 0
of excess ballots - 0
of rejected ballots - 0

31-A[29]

At 2:55 a.m. to 3:05 a.m., Precinct 31-A of Barangay
Batug was opened and canvassed.
Envelope Serial # - 015808 (The envelope is torn a little at the side otherwise in good condition)
Envelope Seal # 0915327
ER seal # - 0915326
ER # 5301603
of valid ballots - 180
of spoil[ed] ballots - 0
of excess ballots - 0
of rejected ballots - 0

Chairman Serrano: Called the BEI members:
BEI Chairman - Fatima Ychon
Poll Clerk - Jeralyn Peque,
Third Member - Noel Lagunzad. Chairman Serrano: Asked the BEI who prepared the election return.
BEI members: Replied they were the one who prepared the election return #5301603 of Brgy. Batug.

At 3:00 a.m. of May 18, 2007, all ERs for the municipality had been canvassed and the canvassing was ordered

terminated.[30]

COMELEC Proceedings

On May 28, 2007, petitioner filed a Petition for Annulment of Proclamation and/or Proceedings of the Municipal Board of Canvassers of Dulag, Leyte, before the COMELEC, which was docketed as SPC Case No. 07-191 and raffled to the First Division.[31] This petition was amended on July 12, 2007 by impleading Que as a necessary party.[32] In the meantime, Que assumed his position on June 30, 2007.

In his petition, Saño argued that the MBOC violated Section 20, Republic Act (RA) No. 7166[33] and Section 39 of COMELEC Resolution No. 7859.[34] Petitioner also sought to exclude the contested ERs from the canvass, on the ground that these were tampered with or obviously manufactured. Finally, he also sought that he be declared and proclaimed, after the exclusion of the contested ERs, as the winning candidate for the position of Municipal Mayor of that municipality.

Que filed his Answer to the petition on July 26, 2007.[35] The MBOC, through Serrano, filed a separate Consolidated Answer dated July 25, 2007.[36]

After hearing the case on August 1 and 13, 2007, the COMELEC First Division directed the parties to submit their respective memoranda.[37] Thereafter, the COMELEC issued its Resolution dated October 3, 2007 upholding the proclamation of Que:[38]

x x x A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235, and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of election returns. On the other hand, Section 243 of the Omnibus Election Code enumerates the issues that may be raised in a pre-proclamation controversy, viz:

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

It is likewise settled that the above enumeration of the grounds that [many] be properly raised in a pre-proclamation controversy is restrictive and exclusive.

In the case at bar, as borne out by the records, petitioner anchors his petition for the exclusion of the election returns from Precinct Nos. 49A, 31A, 58A, 31A, and 90A on the following grounds: that the election returns were (1) obviously manufactured; (2) tampered or falsified; [3]that there was massive fraud; and [4] illegal proceedings. In support thereto, petitioner attached the affidavits of his two (2) supporters, who attested that they saw open ballot boxes from Precinct Nos. 49A, 31A, and 58A. A painstaking examination of the records, however, shows that petitioner miserably failed to substantiate his allegations that the election returns were obviously manufactured, tampered with, that massive fraud attended the preparation thereof, and that the proceedings of the board were illegal.

There is an avalanche of jurisprudence which states that to justify the exclusion of election returns, the

allegations that the election returns were obviously manufactured must be evident from the face of the said documents. In the case at point, however, a meticulous examination of the contested election returns copies for the Commission, as well as the copy for the dominant majority party indubitably showed that there is neither a compelling nor cogent reason to warrant their exclusion.

In the same vein, petitioner failed not only to adduce evidence but [also] to prove his allegation of massive fraud or illegality of the proceedings of the board. A contrario, the MBOC had done nothing [amiss. Rather it tolerated] maximum x x x liberal interpretation of election laws in favor of the petitioner for, despite the clear absence of an issue cognizable as a pre-proclamation controversy and non-compliance with the rule on submission on petitions or objections before it, the board both under the chairmanship of Camposano and Serrano [allowed] the petitioner x x x to submit his petition. [It also addressed] the issues/concerns raised, as shown in the Minutes of the Proceedings of the Board. The Board is correct in not giving credence to petitioner's petition for exclusion [of the questioned returns] as it has been shown that there are no valid grounds raised thereon which falls within the ambit of Section 234 of the Election Code.

Petitioner moved for reconsideration[39] but the motion was denied by the COMELEC En Banc on February 12, 2008.[40]

Hence, this petition.

The Parties' Arguments

Petitioner insists that all five contested ERs were written by only one person, and these ERs were surreptitiously presented before the MBOC. Thus, he argues that the issues raised before the MBOC, namely, that the contested ERs were tampered with and/or falsified, obviously manufactured, and subject of massive fraud, are pre-proclamation controversies as defined in Section 241 of the Omnibus Election Code and fall within the contemplation of Section 243(b) of said Code. As such, the contested ERs should have been excluded from the canvass. Consequently, the MBOC's proclamation of Que violated Section 39 of Commonwealth Act No. 7859 and Section 20 of RA 7166.

On the other hand, Que argues that the allegations raised by petitioner on the contested ERs are not proper in a pre-proclamation controversy; that petitioner failed to substantiate his claim that the contested ERs were obviously manufactured, tampered with, or falsified; and that petitioner failed to follow the strict and mandatory procedure under Section 20 of RA 7166 and COMELEC Resolution No. 8969 for manifesting an appeal.

Our Ruling

The petition is without merit.

A pre-proclamation controversy, as defined in Batas Pambansa (BP) Blg. 881, otherwise known as the Omnibus Election Code of the Philippines, is:

any question pertaining to or affecting the proceeding 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 appearance of the election returns.[41]

Procedural Matters

It is settled that a pre-proclamation controversy is summary in character;[42] indeed, it is the policy of the law that pre-proclamation controversies be promptly decided, so as not to delay canvass and proclamation.[43] The Board of Canvassers (BOC) will not look into allegations of irregularity that are not apparent on the face of ERs that appear otherwise authentic and duly accomplished.[44]

Consistent with the summary character and limited scope of a pre-proclamation controversy, Section 20 of RA 7166 lays down the procedure to be followed when ERs are contested before the BOC.[45] Compliance with this procedure is mandatory, so as to permit the BOC to resolve the objections as quickly as possible. Thus, we held in *Siquian, Jr. v. Commission on Elections* [46] that:

Compliance with the period set for objections on exclusion and inclusion of election returns is mandatory. Otherwise, to allow objections after the canvassing would be to open the floodgates to schemes designed to delay the proclamation and frustrate the electorate's will by some candidates who feel that the only way to fight for a lost cause is to delay the proclamation of the winner. It should be noted that proceedings before the Board of Canvassers is summary in nature which is why the law grants the parties a short period to submit objections and the Board a short period to rule on matters brought to them. x x x [47]

Section 20 of RA 7166 and Section 36 of COMELEC Resolution 2962 provide that any candidate may contest the inclusion of an ER by making an oral objection at the time the questioned return is submitted for canvass; the objecting party shall also submit his objections in writing simultaneously with the oral objections. The BOC shall consider the written objections and opposition, if any, and summarily rule on the petition for exclusion. Any party adversely affected by such ruling must immediately inform the BOC if he intends to appeal such ruling.

After the BOC rules on the contested returns and canvasses all the uncontested returns, it shall suspend the canvass. Any party adversely affected by the ruling has 48 hours to file a Notice of Appeal; the appeal shall be filed within five days. Upon receipt of the notice of appeal, the BOC will make its report to the COMELEC, and elevate the records and evidence.

Moreover, pursuant to Section 235 of the Omnibus Election Code, in cases where the ERs appear to have been tampered with, altered or falsified, the COMELEC shall examine the other copies of the questioned returns and, if the other copies are likewise tampered with, altered, falsified, or otherwise spurious, after having given notice to all candidates and satisfied itself that the integrity of the ballot box and of the ballots therein have been duly preserved, shall order a recount of the votes cast, prepare a new return which shall be used by the BOC as basis for the canvass, and direct the proclamation of the winner accordingly.

Based on the records of this case, we find that petitioner failed to timely make his objections to the contested ERs.

The minutes of the proceedings before the MBOC reveal that the contested ERs were presented for inclusion in the canvass, and then orally objected to by the petitioner, at the following times:

Precinct No.

Time of Presentation for Canvass/Oral Objection

Grounds for Objection

30-A[48]

May 15, 2007; 6:15 a.m.

Material defect

31-A[49]

May 15, 2007; 5:20 a.m.

Ballot boxes open

49-A[50]

May 15, 2007; 5:20 a.m.

Ballot boxes open

58-A[51]

May 15, 2007; 5:20 a.m.

Ballot boxes open

90-A[52]

May 15, 2007; 6:30 p.m.

Tampering; many erasures

However, only one written petition for exclusion was filed for the five contested ERs at 6:50 p.m. of May 15, 2007.[53] Of course the law does not intend that election lawyers submit their written objections at exactly the same second as their oral manifestation; however, a lapse of over 12 hours, long after the ERs have been presented for canvass, is simply inexplicable and unacceptable.

It is also irregular that counsel for petitioner lumped all the objections into one petition for exclusion. We recognize that this is commonplace among election practitioners, intended for the convenience of the advocate. However, in cases like these, where each ground for exclusion is separate and distinct, merging written objections leads to unnecessary chaos in proceedings before the MBOC, and - is here - as a disservice to the clients.

No evidence that the election returns were falsified or tampered with.

While we are willing to overlook the procedural lapses committed by the petitioner his manifestation and subsequent Notice of Appeal do not serve to overturn the assailed Resolutions. We find that the MBOC did not err in proclaiming the private respondent, since the unsubstantiated issues raised by the petitioner were not proper for a pre-proclamation controversy. As we explained, claims that contested ERs are obviously manufactured or falsified must be evident from the face of the said documents themselves.[54] But counsel for petitioner herself admitted that "on their face", the ERs were "okey". Contrary to petitioner's passionate remonstrations, there is absolutely no indication that the contested ERs were falsified or tampered with. As such, there was no valid ground to delay the proclamation.

Petitioner anchors his claim of falsification and tampering on the allegation that the genuine ERs were replaced with manufactured returns, as evidenced by the purported similarity in handwriting of the contested ERs. Essentially, petitioner argues that the contested ERs cannot be trusted because all five of the contested ERs were prepared by one person; thus, no copy of the return can be trusted and there must be a recount of the ballots. He claims that -

the copies of the questioned election returns for both the dominant majority party as well as submitted to COMELEC and that of the dominant minority party, are duplicate copies of the original which are equally tainted with irregularity.

Unfortunately, petitioner has failed to substantiate these allegations. On this, the COMELEC En Banc ruled:

x x x First, We cannot give due credence to the affidavits of Mr. Peter Alicando and Mr. Tancredo Saño considering the infirm nature of affidavits. Second, affiant Saño is the brother of herein petitioner and his affidavit may most likely be considered as self-serving.

In *Salafranca v. Philamlife (Pamplona) Village Homeowners Association, Inc.*, the Supreme Court held:

"It is settled that no undue importance should be given to a sworn statement of affidavit as piece of evidence because, being taken ex parte, an affidavit is almost always incomplete and inaccurate".

Nevertheless, the crux of the affidavits above-mentioned pertains to the alleged opening of a ballot box by a man who placed several documents therein. While a picture was attached to show a person purportedly placing something inside a ballot box, it is not safe to assume that some irregularity indeed took place. What is worth noting is the fact that while petitioner claims massive fraud and tampering, the pieces of evidence only show a single ballot box being opened by an unknown person that is for one (1) precinct alone and definitely not for five (5) precincts as claimed by the petitioner. This notwithstanding, it is submitted that the ground relied upon may best be addressed in a protest case.

x x x x

Finally, an examination of the contested election returns will show that the same appear to be regular and devoid of any signs of tampering or that the same were manufactured. The allegation that the same were written by one hand does not hold water. x x x[55] (citations omitted)

Absent any clear showing of grave abuse of discretion, this Court is bound to rely on the findings and conclusions of the COMELEC - the authority tasked by the Constitution to administer and enforce election laws.[56]

At any rate, even if we take a second look at the facts, petitioner has still not proven that the ERs were spurious, falsified, or manufactured. Consider the following:

First, LAKAS-CMD was the dominant majority party in 2007.[57] As such, its watchers would have been given a copy of the ERs in the questioned precincts by the BEI itself. It was never claimed that LAKAS-CMD never received its copy of the ERs. It seems rather incredulous, therefore, that ALL the ERs from the questioned precincts were allegedly surreptitiously replaced.

Second, official watchers from the camps of both LAKAS-CMD and petitioner had the opportunity to take down the tally of votes and obtain a Certificate of Votes from the BEI. Despite this, there has been no allegation that the votes recorded in favor of petitioner were not the true votes cast in the election.

Third, the members of the BEI from the questioned precincts themselves affirmed that they prepared the contested ERs.

Fourth, petitioner never deigned to present any proof on his claim of similarity in handwriting - no expert opinions, no testimony, no technical examination. Unfortunately, it is not at all evident from the returns that these were manufactured or fabricated.

Unlike a pre-proclamation controversy, the annulment proceedings before the COMELEC were not summary in character;[58] petitioner had every opportunity to ventilate his case and substantiate his allegations before the Commission below. This notwithstanding, petitioner failed to present any evidence sufficient to overcome the presumption that the contested ERs were valid.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED for lack of merit. The Resolution of the Commission on Elections First Division dated October 3, 2007 in SPC Case No. 07-191 dismissing petitioner's Petition for Annulment of Proclamation and/or Proceedings of the Municipal Board of Canvassers of Dulag, Leyte, and the Resolution of the Commission on Elections En Banc dated February 12, 2008 denying petitioner's motion for reconsideration, are AFFIRMED.

SO ORDERED.

Puno, C.J., Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Carpio, J., no part, on of my staff is daughter of a party.

[1] Rollo, pp. 63-71; penned by Commissioner Romeo A. Brawner and concurred in by Commissioner Resurrecion Z. Borra.

[2] Id. at 72-76; penned by Commissioner Rene V. Sarmiento and concurred in by Commissioners Romeo A. Brawner, Nicodemo T. Ferrer, and Moslemen T. Macarambon.

[3] Id. at 122-123.

[4] Originally composed of Election Officer Lydia S. Camposano as Chairperson, Mr. Enrique Cabaobao as Vice-Chairman, and Ms. Joquinita P. Capili as Secretary.

[5] Rollo, pp. 124-125.

[6] Id. at 126-130.

[7] Id. at 139.

[8] Id. at 136-138.

[9] Id. at 141.

[10] Id. at 143-144.

[11] The total number of votes cast for the petitioner was 8,915 votes while the total number of votes cast for the private respondent was 9,092 votes. The total number of votes covered by the contested election returns is 799 votes, of which 288 were credited to petitioner and 511 were credited to the private respondent, as follows:

Election Return

Precinct No.

Barangay

No of Contested Votes

Sano

Que

5301602

30-A

Arado

42

118

5301603

31-A

Batug

47

123

5301624

49-A

Camote

74

87

5301633

58-A

Luan

72

86

5301668

90-A

San Rafael

53

97

TOTAL

288

511

[12] Minutes on the National, Provincial, and Local May 14, 2007 Elections of Dulag, Leyte, p. 2, Petitioner's Annex "U" (hereinafter, Minutes); rollo, pp. 284.

[13] Id.

[14] Id. at 3; id. at 285.

[15] Id.

[16] Minutes, p. 4; id. at 286.

[17] Rollo, pp. 124-125.

[18] Minutes, p. 4; id. at 286.

[19] Id. at 8; id. at 290.

[20] Id. at 9; id. at 291.

[21] Id. at 10; id. at 292.

[22] Id.

[23] Id.

[24] Id. at 12; id. at 292.

[25] Id.

[26] Id. at 14; id. at 296.

[27] Handwritten Notes of MBOC Secretary Joaquinita Capili; Records, Vol. II, p. 45.

[28] Minutes, p. 14, rollo, p. 296.

[29] Id. at 14-15; id. at 310-311.

[30] Id. at 15; id. at 197.

[31] Records, Vol. I, pp. 1-45.

[32] Id. at 55-93.

[33] An Act Providing For Synchronized National And Local Elections And For Electoral Reforms, Authorizing Appropriations Therefor, And For Other Purposes (1991).

[34] General Instructions for the Municipal/City/Provincial and District Board of Canvassers in Connection with the May 14, 2007 National and Local Elections (April 17, 2007).

[35] Records, Vol. I, pp. 100-140.

[36] Id. at 152-180.

[37] Both petitioner and private respondent filed their respective Memoranda on August 28, 2007; Records, Vol. I, pp. 206-306. Acting Chairman Serrano filed his Memorandum on September 3, 2007, id. at 345-363; MBOC Members Capili and Cabaobao also filed a Memorandum on August 31, 2007, id. at 329-342.

[38] Rollo, pp. 67-69.

[39] Id. at 77-106.

[40] Id. at 72-76.

[41] See also Sections 233-236 of the Omnibus Election Code, which provide:

Sec. 233. When the election returns are delayed, lost or destroyed. - In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.

The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may

terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election.

Sec. 234. Material defects in the election returns. - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

Sec. 235. When election returns appear to be tampered with or falsified. - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

Sec. 236. Discrepancies in election returns. - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

[42] *Chu v. Commission on Elections*, 359 Phil. 509, 517 (1999).

[43] *Omnibus Election Code*, Section 246; *Abayon v. Commission on Elections*, G.R. No. 181295, April 2, 2009.

[44] *Bandala v. Commission on Elections*, 468 Phil. 411, 418 (2004).

[45] SEC. 20. Procedure in the Disposition of Contested Election Returns.

(a) Any candidate, political party or coalition of 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 any objection or opposition unless reduced to writing in the prescribed forms.

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

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

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

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

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

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

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

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

[46] 378 Phil 182 (1999). .

[47] Id. at 185-186.

[48] Id.

[49] Minutes, p. 3, rollo, p. 285.

[50] Id.

[51] Id.

[52] Id. at 4, id. at 286.

[53] Rollo, pp. 124-125.

[54] *Dipatuan v. Commission on Elections*, G.R. No. 86117, May 7, 1990, 185 SCRA 86, 93.

[55] Rollo, pp. 73-75.

[56] Constitution, Art. IX-C, Sec. 2(1).

[57] COMELEC Resolution No. 7877, In the Matter of the Accreditation of the Dominant Majority Party, the Dominant Minority Party, and the Other Six (6) Accredited Major Political Parties in the May 14, 2007 National and Local Elections (May 2, 2007).

[58] In *Loong v. Commission on Elections*, 326 Phil. 792-793 (1996), we held that:

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

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