

SALIPONGAN L. DAGLOC, PETITIONER, VS. COMMISSION ON ELECTIONS, BAI SUSAN A. SAMAD AND KENNEDY P. DILANGALEN, RESPONDENTS.

G.R. Nos. 154442-47. December 10, 2003

Ponente: AZCUNA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-154442-47/>

AZCUNA, J.:

This is a petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, under Rule 65 of the Rules of Court, seeking the nullification of the resolution[1] dated July 18, 2002 of the Commission on Elections (COMELEC) en banc. Petitioner primarily contends that the COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the exclusion from canvass of the election returns from nine precincts in the Municipality of Kabuntalan, Province of Maguindanao, in connection with the May 14, 2001 elections.

The Antecedents

During the May 14, 2001 elections, Bai Susan A. Samad ("Samad"), Salipongan I. Dagloc ("Dagloc") and Kennedy Dilangalen ("Dilangalen") were among the mayoralty candidates in the Municipality of Kabuntalan, Province of Maguindanao.[2]

During the canvassing of the election returns for the Municipality of Kabuntalan, Samad, Dagloc and Dilangalen filed their respective objections and oppositions to the inclusion or exclusion from the canvass of certain election returns from several precincts.[3]

Samad contested the inclusion of the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A and 33B, all of Brgy. Bagumbayan, on the grounds that: (a) the returns were tampered and falsified, and (b) the returns were prepared under duress, threats, coercion and intimidation.[4]

In its rulings dated May 23 and May 26, 2001, the Municipal Board of Canvassers of Kabuntalan ("the Board") dismissed Samad's petitions to exclude the said election returns because she failed to submit evidence within twenty-four (24) hours from the time of her objection. On June 1 and 5, 2001, Samad appealed from said rulings of the Board before the COMELEC, and her appeal was docketed as SPC 01-341 and SPC 01-342, respectively. [5]

On the other hand, Dagloc questioned the inclusion of the election returns from Precinct Nos. 78A/79A, 80A/81A and 82A on the ground that the returns were manufactured or spurious because the counting of the votes and the preparation of the said election returns were conducted in a privately-owned house which was under the control of a barangay chairman, who was an alleged ally and political supporter of Samad. Dagloc also opposed the exclusion of the election returns from Precinct Nos. 58A/59A, 70A, 71A, 83A and 84A[6] on the ground that said returns appeared regular on their face and the alleged irregularities were done during the voting. Dagloc further stated that the COMELEC authorized the voting in Precinct Nos. 78A/79A, 80A/81A, 82A, 58A/59A, 70A, 71A,

83A and 84A to be conducted in the gymnasium of the 6[th] Infantry Division, Philippine Army, Awang, Datu Odin Sinsuat, Maguindanao.[7]

The Board, in resolving the objections and oppositions filed by Dagloc, ruled to include in the canvassing the election returns from Precinct Nos. 78A/79A, 80A/81A and 82A, and granted Samad's petitions to exclude the returns from Precinct Nos. 58A/59A, 70A, 71A, 83A and 84A. On June 7, 2001, Dagloc appealed from the said rulings of the Board with the COMELEC, and his appeal was docketed as SPC 01-282.[8]

Dilangalen also filed several petitions to exclude from the canvassing the election returns from Precinct Nos. 1A, 1B, 2A, 2B/3B, 3A, 5A/6A, 17A, 31A, 31B, 32A/32B, 33A/33B, 34A/35A, 36A/37A, 38A, 45B/46A, 70A, 71A, 78A/79B, 80A/81A and 82A based on any of the following grounds:

(a)

The returns were prepared under duress, threats and intimidation;

(b)

The returns were manufactured and falsified and they contained erasures, mistakes, manifest errors and superimpositions in figures and in words;

(c)

The election returns lacked material data;

(d)

Terrorism and election irregularities transpired during the casting of votes; and

(e)

Statistical improbability of the results of the elections.[9]

Dilangalen alleged that the Board dismissed his petitions and included the contested returns in the canvassing. Hence, on June 12, 2001, he filed a pre-proclamation case before the COMELEC, docketed as SPC No. 01-285.[10]

On June 13, 2001, Dagloc filed a Petition to Annul Falsified Proclamation and to Suspend the Effects of Falsified Proclamation, docketed as SPC 01-291. Dagloc alleged that on June 7, 2001, while the tabulation of the election returns was still in progress, the Board, consisting of Chairman Dionisio Linaban and Member-Secretary Andaman Samud proclaimed Bai Susan A. Samad as mayor, Datu Nasser H. Ali as vice-mayor, and Monambai (sic) Diocalano, Brahim Mokamad, H. Sittie Tula, Lincoln Radzak, Zainadun Kabulan, H. Faisal Pendi, Almada Pidzakal and H. Rouf Adbulrakman as members of the Sangguniang Bayan ("Samad, et al.")[11]

Further, Dagloc maintained that the Certificate of Canvass and Proclamation of Winning Candidates for Municipal Offices (CEF No. 25) with Serial No. 8692104, used by the Board, was not valid because: (1) the signature of Samud was allegedly obtained by force by two men who blocked his way on June 6, 2001 at around 10:10 p.m.; and (2) Linaban was absent during the purported proclamation. Dagloc thus prayed for the annulment

of the proclamation of Samad, et al.[12]

On June 18, 2001, Samad, et al. filed a petition before the COMELEC, docketed as SPC 01-310, alleging that on June 8, 2001, members of the Board, namely, Vice-Chairman Usman D. Zailon and Member-Secretary Andaman K. Samud proclaimed Datu Salipongan L. Dagloc as mayor, Datu Mohidin S. Lauban as vice-mayor, and Amnambai Diocolano, H. Sittie Tula, Fhamie Dumaba, H. Brahim Mokamad and Lincoln M. Radzak as members of the Sangguniang Bayan ("Dagloc, et al."). Said proclamation was evidenced by CEF No. 25 with Serial No. 8692109. Samad, et al. contended that the second proclamation was a nullity based on the following grounds:

(a)

The second proclamation was made without notice and hearing;

(b)

The second proclamation cannot annul the first proclamation;

(c)

The signature of Andamen K. Samud in the second proclamation was obtained through intimidation by the armed men of Dagloc; and

(d)

The second proclamation is void for there were only five (5) councilors who were proclaimed.[13]

The COMELEC consolidated the aforementioned six cases filed by Dagloc, Samad, Samad, et al., and Dilangalen.

In its resolution dated May 29, 2002, the COMELEC, Second Division ("Second Division"), clarified that the contested returns refer to the election returns from Precinct Nos. 1A, 1B, 2A, 2B/3B, 3A, 5A/6A, 17A, 31A, 31B, 32A/32B, 33A/33B, 34A/35A, 36A/37A, 38A, e45A/46B, 45B/46A, 58A/59A, 70A, 71A, 72A, 78A/79B, 80A/81A, 82A, 83A and 84A.[14]

The Second Division found that some of the grounds relied upon by the petitioners, i.e, tampered, falsified, manufactured or spurious returns, returns prepared under duress, threats, coercion, etc., were proper issues for a pre-proclamation controversy under subsections (b) and (c) of Section 243[15] of the Omnibus Election Code. The Second Division, however, stated that objections to the inclusion of the election returns should not be immediately accorded weight absent any showing that on the face thereof, there are patent irregularities. It took into consideration the doctrine that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or counting of votes.[16]

The Second Division noted that based on the written rulings of the Linaban Board, the election returns from Precinct Nos. 31A, 31B, 32A/32B and 33A/33B and 45A (should have been Precinct Nos. 70A, 71A, 83A and 84A) were excluded because of alleged election irregularities perpetrated by some members of the Board of Election Inspectors ("BEI") and the disqualification of some members thereof as evidenced by purported affidavits executed by Usman.[17]

The Second Division, however, resolved to include the returns from Precinct Nos. 31A, 31B, 32A/32B and 33A/33B (should have been Precinct Nos. 70A, 71A, 83A and 84A) in the canvass on the following grounds:

a)

The contested election returns contained no sign of any tampering or alteration, affecting the standing of the candidates; they are prima facie regular on their face;

b)

The alleged irregularities occurred in the BEI level. Pre-proclamation controversies are limited to challenges directed against the Board of Canvassers and the proceedings thereof and not challenges with respect to proceedings before the Board of Election Inspectors or its composition.

c)

The grounds raised compel the COMELEC to pierce the veil of election returns, which, as adverted to, are not proper issues for pre-proclamation controversies. A party seeking to raise issues the resolution of which would necessitate the COMELEC to pierce the veil of election returns that are prima facie regular on their face has his proper remedy in an election protest case.[18]

With respect to the other grounds raised to support the exclusion of the contested returns, the Second Division made the following findings:

- Election returns from Precinct Nos. 31A, 32A/32B, 36A/37A, 45A/46B, 70A, 80A/81A and 82A – There is no entry on the space provided for Data on Voters and Ballots. Such omission, however, does not invalidate the election returns. The defect does not, in any way, affect the results of the elections.

- Election Returns from Precinct Nos. 5A/6A, 38A and 71A—There were erasures in the votes of some candidates in figures and in words. Nevertheless, the said election returns must be included applying the aforecited Section 30 of COMELEC Resolution 3848.

- Election Returns from Precinct Nos. 2B/3B, 31B, 34A/35A, 45B/46A, 78A/79A and 83A -- There are superimpositions or erasures but they were countersigned and were just obviously made to correct clerical errors.

We also resolve to include election returns from Precinct Nos. 1A/1B, 2A, 3A, 17A, 58A/59A, 72A and 84A on the ground that they are perfectly regular on their face.[19]

Moreover, the Second Division declared the first proclamation of Samad, et al. and the subsequent proclamation of Dagloc, et al. to be illegal.

The COMELEC, Second Division, pronounced judgment, thus:

WHEREFORE, in view of the foregoing, the COMMISSION RESOLVE, as it hereby RESOLVES, to INVALIDATE (1) the Certificate of Canvass and Proclamation of Winning Candidates for Local Positions (CEF No. 25) with Serial No. 8692104 certifying to the proclamation of Samad, et al. and (2) the Certificate of Canvass and Proclamation of Winning Candidates for Local Positions (CEF NO. 25) with Serial No. 8692109 certifying to the proclamation of Dagloc, et al.

ACCORDINGLY, We:

(1)

ORDER the CONSTITUTION of a SPECIAL BOARD OF CANVASSERS composed of COMELEC lawyers to be appointed by the Commission;

(2)

DIRECT THE Municipal Board of Canvassers of Kabuntalan to DELIVER to Election Records and Statistics Department (ERSD), COMELEC, Manila, all the election returns from Precinct Nos. 17A, 45B/46A, 58A/59A, 70A, 71A, 72A, 78A/79A, 80A/81A, 82A, 83A, 84A, 45A/46B, 31A, 31B, 32A/32B and 33A/33B, as well as the election records and documents pertaining to these cases; and

(3)

ORDER the Special Board of Canvassers to:

(i)

immediately RECONVENE upon receipt of said election returns and after serving proper notice to all the parties concerned;

(ii)

COMPLETE the CANVASS by including the results in Precinct Nos. 17A, 45B/46A, 58A/59A, 70A, 71A, 72A, 78A/79A, 80A/81A, 82A, 83A, 84A, 45A/46B, 31A, 31B, 32A/32B and 33A/33B; and

(iii)

Thereafter, PROCLAIM the winning candidates for the position of MAYOR, VICE-MAYOR and MEMBERS OF THE SANGGUNIAN BAYAN of the Municipality of Kabuntalan, Maguindanao.

The Provincial Election Supervisor of Maguindanao and the Election Officer of Kabuntalan are hereby DIRECTED to COORDINATE with the local police or members of the Armed forces of the Philippines to ensure that the integrity of the ballot boxes containing the contested election returns and other election records is not violated.

The Urgent Motion for Handwriting Examination filed by petitioner DAGLOC is hereby DENIED.

The Law Department is hereby directed to immediately INVESTIGATE EO DIONISIO LINABAN's questionable act of leaving the canvassing venue without notice and authority from this Commission during the canvassing on June 7-8, 2001 and to PROSECUTE him upon finding of probable cause.

Let a copy of this resolution be furnished to the Department of Interior and Local Government (DILG) for implementation and for appropriate action.

SO ORDERED.[20]

Presiding Commissioner Ralph C. Lantion dissented[21] from the resolution of the Second Division and voted to exclude from the canvass the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A.

On June 3, 2002, Samad seasonably filed a motion for reconsideration of the resolution of the COMELEC, Second Division, relying mainly on the dissenting opinion of Commissioner Lantion. It appears that Dilangalen filed, out of time,[22] his motion for reconsideration on July 2, 2002.

On July 18, 2002, the COMELEC en banc resolved Samad's motion for reconsideration. The COMELEC en banc agreed with the resolution of the Second Division that the consolidated cases were pre-proclamation controversies since some of the grounds (i.e., tampered, falsified, manufactured or spurious returns, returns prepared under duress, threats, coercion, etc.) were proper issues for a pre-proclamation controversy under subsections (b) and (c) of Section 243[23] of the Omnibus Election Code. It ruled that the Second Division correctly annulled the proclamation of Samad and Dagloc as the duly elected mayor of the Municipality of Kabuntalan, Maguindanao pursuant to Section 20 (i)[24] of Republic Act No. 7166.[25]

The COMELEC en banc held that the only issue to be resolved was the propriety of the inclusion or exclusion of the contested returns, taking into account the contradicting conclusions of the two members of the Second Division and its Presiding Commissioner. It noted that if all the election returns were canvassed, Dagloc would win by a plurality of votes. But if the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A were excluded from the canvass, as ruled in the dissenting opinion, Samad would win.[26]

The COMELEC en banc held that after a careful study of the evidence on record, it found that only the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A remain to be proper subjects for review as the grounds relied upon to exclude the other contested returns were appropriate in a regular election protest.[27]

The COMELEC en banc sustained the findings in the dissenting opinion of the Presiding Commissioner of the Second Division, and excluded from the canvass the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A (hereinafter, the "nine election returns"). The COMELEC en banc anchored the exclusion of the nine election returns on the manner of their preparation, which it found to be "sham." The COMELEC en banc held that the votes reported in the nine election returns do not reflect the true will of the electorate. It added that this conclusion was strengthened by the fact that in the supposed affidavit of the BEI members of Kabuntalan, Maguindanao, which was attached by Dagloc in his appeal in SPC 01-282 to prove the regularity of the exercise of the BEIs' assigned task, only one member of the BEI from Precinct No. 70A, Sandatu Kamson, signed said affidavit, while no member of the BEI from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 71A, 72A, 83A and 84A signed it.[28]

The COMELEC en banc pronounced judgment, thus:

WHEREFORE, the proclamation of both Datu Salipongan Dagloc and Bai Susan Samad as municipal mayor of Kabuntalan, Maguindanao is hereby ANNULLED. Furthermore, a New Municipal Board of Canvassers is hereby constituted, to be composed of Comelec lawyers, mandated to canvass the valid election returns in Kabuntalan, Maguindanao, taking into consideration the above observations in Election Returns No. 69090014, 69090021, 69090036, 69090044, 69090045, 69090046, 69090056, 69090061, 69090062, 69090067, and 69090069, from Precinct Nos. 17A, 25A/26A, 45A, 56A/57A, 58A/59A, 60A, 73A/74A, 80A/81A, 82A, 89A, and 91A, respectively, in the proper appreciation of votes of the contending mayoralty

candidates, and EXCLUDING therefrom the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A, and 84A, in accordance with the foregoing disquisition, and on the basis thereof proclaim the winning local candidates in the May 14, 2001 National and Local Elections.

Furthermore, the Law Department is hereby directed to investigate, and if necessary, prosecute upon finding of probable cause: (1) the Chairman, Vice-Chairman, and Member-Secretary of the Municipal Board of Canvassers of Kabuntalan, Maguindanao for apparently being partisan by favoring certain local candidates; and (2) the members of the BEIs in Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A, and 84A, namely:

xxx xxx xxx

SO ORDERED.[29]

On August 15, 2002, Dagloc filed this instant petition for certiorari, raising the following issues:

- The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the questioned PER CURIAM Resolution ordering the EXCLUSION of the nine (9) election returns based on objections which are not proper for pre-proclamation controversies.
- The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the questioned PER CURIAM Resolution ordering the EXCLUSION of the nine (9) election returns without clear and convincing evidence of fraud and other election irregularities.
- The respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in not dismissing SPC No. 01-342 for failure to comply with the mandatory procedure provided in Section 20 of RA 7166 and Section 38 of Comelec Resolution No. 3848.[30]

On August 26, 2002, petitioner filed a Most Urgent Motion and Plea Reiterating the Previous Prayer for the Issuance of a Temporary Restraining Order,[31] which was denied by the Court for lack of merit.[32]

On September 3, 2002, the Municipal Board of Canvassers of Kabuntalan proclaimed Bai Susan A. Samad as the duly elected mayor of the Municipality of Kabuntalan,[33] having obtained the highest number of votes. On the same date, Samad took her oath of office,[34] and thereafter assumed office.[35]

On September 16, 2002, respondent Dilangalen filed a Motion to Issue a Status Quo Order as of the Filing of the Petition and/or Motion for the Issuance of a Temporary Restraining Order Enjoining the Respondent Samad from Assuming and/or Performing the Functions of Mayor[36], which was also denied by the Court for lack of merit.[37]

On September 16, 2002, Mohidin S. Lauban, a party mate of petitioner Dagloc and a candidate for vice-mayor in the May 14, 2001 elections in the Municipality of Kabuntalan, Maguindanao, filed a motion for leave to intervene and a petition-in-intervention. Lauban alleged that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction for: (1) failing to notify him about the proceedings in the consolidated cases including SPC No. 01-310, and thereafter annulling his proclamation in violation of his right to due process; and (2) ordering the exclusion of the nine election returns grounded on objections which were improper for a pre-proclamation controversy.

On October 1, 2002, the Court resolved to grant Lauban's motion and required respondents to comment on Lauban's petition-in-intervention.[38]

Finally, in her Comment[39] to Dagloc's petition for certiorari, respondent Samad averred that on September 13, 2002, Dagloc filed an Election Protest Ad Cautelam before the Regional Trial Court of Cotabato City, which is

still pending with the said court.

The Court's Ruling

First Issue: The existence of grounds for a pre-proclamation controversy

Petitioner avers that the COMELEC en banc excluded the election returns from Precinct Nos. 70A, 71A, 83A and 84A for being spurious due to the following reasons (as quoted from the dissenting opinion of Commissioner Lantion): (1) the alleged disqualification of some members of the BEI in said precincts; and (2) the Board found that the same members of the BEI were the ones who committed illegal acts, such that the votes reported in the subject returns do not reflect the true will of the electorate.

Petitioner states that the COMELEC also excluded the election returns from Precinct Nos. 31A, 31B, 32A/32B and 33A/33B for the same reasons advanced in excluding the election returns from Precinct Nos. 70A, 71A, 72A, 83A and 84A. According to petitioner, the COMELEC made said conclusion by relying solely on the averments of respondent Samad in SPC No. 01-341 and SPC No. 01-3342, thus:

In SPC No. 01-341 and SPC No. 01-342, Bai Susan Samad questions the inclusion of the election returns in Precincts No. 31A, 31B, 32A/32B, 33A/33B. [She] avers that they are tampered or falsified and prepared under duress, threats, coercion and intimidation. An eyewitness and official watcher in Precinct No. 31A, Deduzman Lakim, stated in his affidavit dated May 19, 2001 that on May 14, 2001, Salipongan Dagloc approached him and said that he (Lakim) will be killed after the election. Consequently, Lakim and his co-watchers, namely: Amera Lakim, Asis Abdulla, and Tuansi Sandiale, who were assigned at Precincts No. 31B, 32A/32B, 33A/33B, respectively, failed to report because they were afraid they will be killed by Dagloc. Lakim narrated that the ballots in said contested precincts were openly tampered and falsified by Dagloc's supporters. So that the counting of votes were based on tampered and falsified ballots which, in turn, were the bases reflected on the election return.[40] x x x (Emphasis supplied by petitioner Dagloc.)

Petitioner contends that the aforementioned reasons advanced by the COMELEC for the exclusion of the nine election returns are not proper issues in a pre-proclamation controversy. Citing *Patoray v. Comelec*,^[41] petitioner contends that under the Omnibus Election Code, pre-proclamation controversies are limited to: (1) challenges directed against the composition or proceedings of the board of canvassers (not the board of election inspectors), or (2) challenges related to election returns to which a party must have made specific objections. (Emphasis supplied by petitioner Dagloc.)

Following the arguments of Commissioner Resurreccion Z. Borra in her Concurring and Dissenting Opinion in the Resolution of the COMELEC en banc, petitioner contends that the Second Division in its Resolution found that the contested returns contained no tampering or alteration affecting the standing of the candidates and that they were prima facie regular on their face; hence, the Second Division included said returns in the canvass. Petitioner asserts that this is in accordance with the Court's ruling in *Matalam v. COMELEC*, ^[42] that "[i]n the absence of a strong evidence establishing spuriousness of the returns, the basic rule that election returns shall be accorded prima facie status as bona fide reports of the results of the counts of votes for canvassing and proclamation purposes must perforce prevail." Petitioner also cited *Loong v. COMELEC*,^[43] where the Court held:

The policy consideration underlying the delimitation of both substantive ground and legal procedure is the policy to determine as quickly as possible the result of the election on the basis of the canvass. x x x The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic, and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting and counting of the votes.

Petitioner thus contends that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in excluding the nine election returns because of alleged disqualification of some members of the BEI and alleged irregularities perpetrated by said members, which are not proper issues in a pre-proclamation controversy.

Section 243 of the Omnibus Election Code provides:

Sec. 243. Issues that may be raised in pre-proclamation controversy.-- the following shall be proper issues that may be raised in a pre-proclamation controversy:

(a)

Illegal composition or proceedings of the board of canvassers;

(b)

The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

(c)

The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

(d)

When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The enumeration is restrictive and exclusive.[44]

Admittedly, the COMELEC en banc ordered the exclusion of the nine election returns from the canvass considering partly the reasons aforecited by petitioner. Petitioner, however, omitted to mention the fact that the COMELEC en banc also gave great weight to the affidavit of the BEI members assigned in Kabuntalan, Maguindanao, which was attached by Dagloc in his appeal in SPC 01-282 to prove the supposed regularity of the exercise of the BEIs' assigned task. The COMELEC en banc held:

We cannot just close our eyes and include in the canvass the subject returns, notwithstanding the undisputed fact that the votes reported in the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A, and 84A do not reflect the true will of the electorate. This conclusion is strengthened by the fact that in the supposed affidavit of the BEI members, who were assigned in the different precincts in Kabuntalan, Maguindanao, attached by Dagloc in his appeal in SPC 01-282 to prove the supposed regularity of the exercise of the BEIs' assigned task, there were no affiants in Precincts Nos. 83A and 84A; whereas only one member of the BEI in Precinct Nos. 71A and 72A was named, to wit: Rosalinda Kimbuan and 1Lt. Juan Gullem, respectively, but both did not sign said affidavit; and only one member of the BEI in Precinct No. 70A, Sandatu Kamson, signed said affidavit. Moreover, no member of the BEIs in Precinct Nos. 31A, 31B, 32A/32B, and 33A/33B signed said affidavit. Neither [were] their [names] even mentioned in it.[45]

All the circumstances, taken as a whole, made the COMELEC en banc conclude that the election returns from

Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A were spurious.

The case of *Patoray v. Comelec*, as cited by petitioner, is not in point. To reiterate, in said case, the Court stated that under the Omnibus Election Code, pre-proclamation controversies are limited to: (1) challenges directed against the composition or proceedings of the board of canvassers (not the board of election inspectors), or (2) challenges related to election returns to which a party must have made specific objections. The private respondent therein objected to two returns on the ground "that the election returns are manufactured, fabricated or not authentic, considering that the election returns includes votes on ballots which are spurious, marked and invalid ballots." In said case, the Court held that the municipal board of canvassers correctly ruled that private respondent's objections were not proper in a proclamation controversy since the objection, as worded, did not challenge the returns, but was directed primarily at the ballots reflected in the returns (emphasis supplied). Hence, the Court ruled, "[i]t is settled that issues relative to the appreciation of ballots cannot be raised in a proclamation controversy." "Appreciation of ballots is the task of the board of election inspectors, not the board of canvassers, and questions related thereto are proper only in election protests."

In this case, what Samad contested was the inclusion of the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A and 33B on the ground that these were tampered or falsified and were prepared under duress, threats, coercion and intimidation, which are proper issues for a pre-proclamation controversy under paragraphs (b) and (c) of Section 243 of the Omnibus Election Code. The Board dismissed Samad's petitions; hence, Samad appealed to the COMELEC. The resolution of the Second Division shows that Samad also sought the exclusion of the election returns from Precinct Nos. 70A, 71A, 83A and 84A, but the ground for her objection does not appear on record. The Board granted the petition of Samad to exclude said returns; hence, Dagloc appealed from the Board's ruling before the COMELEC. Evidently, the pre-proclamation cases filed by Samad fall under the second category adverted to in *Patoray v. Comelec*, that is, "(2) challenges related to election returns to which a party must have made specific objections."

Moreover, the COMELEC en banc's findings on the nine election returns are anchored on "the manner of their preparation," which it found to be a sham. The COMELEC correctly held that said ground is a pre-proclamation issue, citing Sections 241 and 243 of the Omnibus Election Code, in relation to Section 235 of the same Code, thus:

Sec. 241. Definition.-- A pre-proclamation controversy refers to any question pertaining to x x x any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

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:

xxx xxx xxx

(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.

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 x x x x 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 x x x x 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.

Although the COMELEC en banc noted that Deduzman Lakim, an eyewitness and official watcher in Precinct No. 31A, stated in his affidavit that the ballots in Precinct Nos. 31A, 31B, 32A/32B, 33A/33B were openly tampered and falsified by Dagloc's supporters, it must be clarified that the appreciation of ballots is not the ground raised by Samad for the exclusion of the nine election returns, and it is also not the basis of the COMELEC en banc for excluding said returns.

Further, the aforecited doctrine that "as long as the returns appear to be authentic, and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting and counting of the votes," is not applicable in this case due to the following reasons:

- (1) The COMELEC has the authority to review the rulings of the Board of Canvassers in a pre-proclamation controversy under paragraphs (e) to (f) of section 20 (Procedure in Disposition of Contested election Returns) of Republic Act No. 7166;^[46]
- (2) The COMELEC en banc found that the nine election returns are fraudulent in the manner of their preparation which is a pre-proclamation issue under Sections 241 and 243 of the Omnibus Election Code;
- (3) The allegations of irregularity is not in the casting and counting of votes, but in the preparation of the election returns (i.e., the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A and 33B were tampered or falsified and were prepared under duress, threats, coercion and intimidation).

Given the factual finding of the COMELEC en banc that the nine election returns are spurious in the manner of their preparation, doubt is cast on the authentic appearance of said returns. Hence, the subject election returns cannot be accorded prima facie status as genuine reports of the results of the counts of votes. Nevertheless, under Section 235 of the Omnibus Election Code, a recount of votes may be resorted to, if the integrity of the affected ballot boxes and their contents has been preserved. Thereafter, new returns shall be prepared which shall be used by the Board of Canvassers as basis of the canvass. This procedure protects the will of the electorate.

Second Issue: Sufficiency of evidence in finding that the nine election returns were spurious

Appellant contends that the COMELEC abused its discretion in finding the nine election returns spurious without clear and convincing evidence of fraud and other election irregularities.

The Court is not persuaded.

The COMELEC en banc, after a judicious evaluation of the documents on record, upheld the findings stated in the dissenting opinion of Presiding Commissioner Ralph C. Lantion in the Resolution of the Second Division. What exactly these documents and evidence are upon which the COMELEC en banc based its resolution, and how they have been appreciated in respect of their sufficiency, are beyond this Court's scrutiny.^[47] The rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC--created and

explicitly made independent by the Constitution itself--on a level higher than statutory administrative organs.[48] The factual finding of the COMELEC en banc is therefore binding on the Court.

Third Issue: The proper remedy in case of spurious election returns

Petitioner contends that even assuming that the subject election returns are spurious, the remedy is not exclusion, but that provided in Section 235 of the Omnibus Election Code, thus:

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.

According to petitioner, while it may be true that the board of canvassers will not be compelled to canvass election returns which are falsified or spurious, this does not, however, mean that the board should right away disregard and exclude the election returns and ultimately the votes cast in the precinct. Hence, petitioner contends that the exclusion from canvass of the nine election returns by the COMELEC is a clear exercise of grave abuse of discretion.

The contention is meritorious.

Outright exclusion of election returns on the ground that they were fraudulently prepared by some members or non-members of the BEI disenfranchises the voters. Hence, when election returns are found to be spurious or falsified, Section 235 of the Omnibus Election Code provides the procedure which enables the COMELEC to ascertain the will of the electorate.

The COMELEC, therefore, gravely abused its discretion when it excluded outright the subject election returns after finding that they were fraudulent returns. Instead, the COMELEC should have followed the procedure laid down in Section 235 of the Omnibus Election Code: "x x x 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."

Nevertheless, if the integrity of the ballots has been violated, the COMELEC need not recount the ballots but should seal the ballot box and order its safekeeping in accordance with Section 237 of the Omnibus Election Code, thus:

Sec. 237. When integrity of ballots is violated.-- If upon the opening of the ballot box as ordered by the Commission under Sections 234, 235 and 236, hereof, it should appear that there are evidence or signs of

replacement, tampering or violation of the integrity of the ballots, The Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping.

Therefore, subject to the finding of whether or not the integrity of the affected ballot boxes and of their ballots has been preserved, the new returns from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A shall be included in the canvass. Consequently, not only the votes of the mayoralty candidates, but also those of the candidates for vice-mayor and members of the Sangguniang Bayan will be recounted and reflected in the new returns as basis of the canvass. On the basis of said canvass, the winning local candidates of the Municipality of Kabuntalan in the May 14, 2001 elections shall be proclaimed.

Fourth Issue: Whether SPC No. 01-342 should have been dismissed

Petitioner contends that the COMELEC should have dismissed SPC No. 01-342 since Samad failed to comply with the mandatory procedure provided in Section 20 of Republic Act (RA) No. 7166 and Section 38 of Comelec Resolution No. 3848.

Section 20 of RA No. 7166 provides:

Sec. 20. Procedure in Disposition of Contested Election Returns. - (a) Any candidate x x x x 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.

xxx xxx xxx

(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 x x x (Emphasis supplied by petitioner Dagloc.)

Petitioner claims that Samad failed to submit her evidence in support of her objections within 24 hours from the time such objections were made, which is evidenced by the ruling of the Board issued on May 26, 2001.

Further, petitioner asserts that Paragraph 8, Section 38 of Comelec Resolution No. 3848 mandates that "[a]ny appeal brought before the Comelec on the ruling of the Board, without the accomplished forms and the evidence thereto, shall be summarily dismissed."

Petitioner thus contends that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not dismiss SPC No. 01-342 for failure to comply with the mandatory procedure under Section 20 of Republic Act No. 7166 and Section 38 of Comelec Resolution No. 3848.

The Court disagrees.

Petitioner is referring to Samad's appeal before the COMELEC of the Board's ruling to include in the canvass the election returns from Precinct Nos. 31A, 31B, 32A/32B, 33A and 33B. It appears that Samad submitted her evidence belatedly. It may be presumed that when Samad appealed from the Board's ruling before the COMELEC, the Board elevated its report and the complete records and evidence submitted in the canvass in accordance with Section 20, paragraphs (g) and (h) of Republic Act No. 7166, thus:

(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.

In the absence of evidence to the contrary, it is presumed that official duty has been regularly performed. Moreover, in their respective resolutions, the COMELEC en banc and the Second Division evidently decided on the pre-proclamation cases filed before them based on the records and evidence elevated to them by the Board.

Further, the COMELEC has broad powers to ascertain the true results of the election by means available to it.[49] It is not strictly bound by procedural rules in the attainment of this end. In fact, the COMELEC Rules of Procedure, wherein the aforecited Section 20 of RA No. 7166 is reiterated,[50] provides that said rules "shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission."

Fifth Issue: Whether intervenor was denied due process

In regard to the petition-in-intervention filed by intervenor Mohidin Lauban, a co-respondent in SPC No. 01-310, it is contended that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction for: (1) failing to notify him about the proceedings in the consolidated cases including SPC No. 01-310, and thereafter annulling his proclamation in violation of his right to due process; and (2) ordering the exclusion of the nine election returns grounded on objections which were improper for a pre-proclamation controversy.

The Court has already ruled on the incorrectness of the order of the COMELEC to exclude outright the nine election returns from the canvass; hence, the remaining issue to be resolved is whether or not the intervenor was denied due process by the COMELEC.

Lauban contends that the COMELEC deprived him of his right to notice and hearing in all the proceedings conducted in SPC No. 01-310, wherein he was a co-respondent, as he was neither notified nor furnished a copy of the petition. Thereafter, Lauban asserts that the two resolutions of the COMELEC annulled and set aside his proclamation as vice-mayor of the Municipality of Kabuntalan, Maguindanao, despite prior knowledge by both the Second Division and the Commission en banc that he was not duly notified and heard.

The contention is without merit.

The COMELEC, represented by the Solicitor General, countered that Lauban was not denied due process before the COMELEC. It observed that petitioner Dagloc and Lauban were party mates; the former was a candidate for mayor and the latter for vice-mayor during the May 14, 2001 elections. In SPC No. 01-310, Dagloc and Lauban and their candidates for Sangguniang Bayan were impleaded as respondents and their proclamations were sought to be annulled.

According to the COMELEC, Dagloc, Lauban and another private respondent in SPC-310, Fhamie Dumaba, were

all represented by Abdul & Maningas Law Offices as shown by the pleading, "Answer to Petition." [51] A notice of hearing [52] was sent to Atty. Kamid Abdul as counsel of private respondents. In the minutes of the session held at the COMELEC Session Hall on July 24, 2001 at 2:00 p.m., Atty. Kamid Abdul entered his appearance as counsel for Dagloc, et al. [53] The COMELEC, therefore, correctly stated that Lauban, who was represented by a counsel who filed an answer, was notified of the hearing and had attended the hearing, cannot claim to have been denied due process by the COMELEC.

WHEREFORE, the petition-in-intervention is denied for lack of merit, insofar as intervenor Mohidin S. Lauban claims that the COMELEC denied him due process. However, said petition-in-intervention and the petition for certiorari of Salipongan L. Dagloc are given due course insofar as they pray for the inclusion of the nine election returns in the canvass. The COMELEC is directed to determine within twenty (20) days from receipt of this Decision whether the integrity of the ballot boxes and the ballots from Precinct Nos. 31A, 31B, 32A/32B, 33A/33B, 70A, 71A, 72A, 83A and 84A has been preserved. If the integrity of the affected ballot boxes and of their ballots is found to be intact, the COMELEC is directed to order the Board of Election Inspectors to recount the votes cast in the precinct involved and to prepare a new return as basis of the canvass. The new return shall be included in the canvass, in the proper appreciation of the votes of the candidates for mayor, vice-mayor and members of the Sangguniang Bayan of the Municipality of Kabuntalan, Province of Maguindanao, and on the basis of said canvass, the winning local candidates in the May 14, 2001 elections shall be proclaimed. However, if the integrity of any ballot box or of its ballots has been violated, the COMELEC shall not recount the affected ballots, but shall seal the affected ballot box and order its safekeeping.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.

[1] In SPC Nos. 01-282, 01-285, 01-291, 01-310, 01-341, 01-342.

[2] Rollo, p. 86.

[3] Rollo, p. 89.

[4] Ibid.

[5] Ibid.

[6] It appears that Samad also sought the exclusion of the election returns from these precincts. However, Samad did not allege this fact in SPC No. 01-341 and SPC No. 01-342 which she filed before the Commission on Elections.

[7] Rollo, pp. 89-90.

[8] Rollo, p. 90.

[9] Ibid.

[10] Rollo, p. 91.

[11] Ibid.

[12] Ibid.

[13] Rollo, pp. 91-92.

[14] Rollo, p. 97.

[15] 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:

xxxx xxxx xxxx

(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 x x x.

[16] Rollo, pp. 97-98.

[17] Rollo, p. 98.

[18] Rollo, pp. 98-99.

[19] Rollo, pp. 99-100.

[20] Rollo, pp. 105-107.

[21] Dissenting Opinion, Rollo, p. 109.

[22] Comment (Samad), Rollo, p. 377.

[23] The Omnibus Election Code, 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:

xxx xxx xxx

(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;

(c)

The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic x x x.

[24] 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.

[25] An Act Providing For Synchronized National and Local Elections And For Electoral Reforms, Authorizing Appropriations Therefor, And For Other Purposes.

[26] Rollo, pp. 53-54.

[27] Rollo, p. 55.

[28] Rollo, pp. 57-60.

[29] Rollo, pp. 62-64.

[30] Rollo, p. 21.

[31] Rollo, p. 223.

[32] Rollo, p. 232.

[33] Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices, Rollo, p. 392; Confirmation of Assumption to Office, Rollo, p. 394.

[34] Panunumpa sa Katungkulan, Rollo, p. 393.

[35] Comment (Samad), Rollo, p. 381.

[36] Rollo, p. 239.

[37] Rollo, p. 282-C.

[38] Rollo, p. 342-B.

[39] Rollo, p. 375.

[40] Rollo, pp. 58-59.

[41] 274 SCRA 470 (1997).

[42] 271 SCRA 733, 749 (1997).

[43] 257 SCRA 1, 23 (1996).

[44] *Belac v. Commission on Elections*, 356 SCRA 394, 403 (2001); *Sanchez v. COMELEC*, 153 SCRA 67, 75 (1987).

[45] Rollo, p. 316.

[46] Republic Act No. 7166, Section 20. Procedure in Disposition of contested Election Returns.—

xxx xxx xxx

(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.

[47] *Sison v. Commission on Elections*, 304 SCRA 170, 179 (1999).

[48] *Mastura v. Commission on Elections (Second Division)*, 285 SCRA 493, 499 (1998).

[49] *Mastura v. Commission on Elections (Second Division)*, *supra*, note 48.

[50] See Comelec Rules of Procedure, Rule 27, Section 8.

[51] Annex A, Rollo, p. 440.

[52] Annexes B-B-1, Rollo, pp. 446-447.

[53] Annex C, Rollo, p. 448.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

Start free at <https://batas.org>

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

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

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