

**MAXIMO B. DALOG, TOMAS E. BAYOGAN, JOSE BANAKEN AND
MAXIMO M. DEGYEM, PETITIONERS, VS. THE COMMISSION ON
ELECTIONS AND ROY S. PILANDO AND LOUIS CLAVER, JR.,
RESPONDENTS.**

G.R. Nos. 90507-10. January 23, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

These petitions for certiorari assail the resolution dated October 23, 1989 of the Commission on Elections (COMELEC) sitting En Banc, which directed the Provincial Board of Canvassers of Mountain Province to complete the canvass of votes for the positions of Provincial Governor and members of the Sangguniang Panlalawigan by including therein:

- (a) four (4) election returns from Precincts Nos. 3, 6, 24 and 26 of the Municipality of Bauko; and
- (b) two (2) election returns from Precincts Nos. 9 and 22 of the Municipality of Tadian,

and to exclude therefrom:

- (a) four (4) election returns from Precincts Nos. 1-A, 2, 4, and 5 of the Municipality of Sabangan;
- (b) one (1) election return from Precinct No. 12 of the Municipality of Bauko; and
- (c) ten (10) election returns from Precincts Nos. 3, 5, 10, 11, 12, 14, 15, 19, 20 and 21 of the Municipality of Tadian.

Petitioner Maximo B. Dalog (Independent), private respondents Roy S. Pilando (Independent UNIDO) and Louis Claver, Jr. (Independent PDP-Laban) were official candidates for the office of provincial governor of Mountain Province in the January 18, 1988 local elections. The other petitioners, Tomas E. Bayogan, Jose Banaken, Maximo M. Degyem and Eduardo O. Akiate, Sr., were candidates for the six-member provincial board or Sangguniang Panlalawigan of the same province.

During the canvassing of the election returns from the various municipalities of Mountain Province by the Provincial Board of Canvassers (PBC), disputes arose regarding the inclusion and exclusion of some election returns. On March 17, 1988, the PBC issued a resolution excluding twenty-one (21) disputed election returns, namely:

- (a) Twelve (12) election returns from Precincts Nos. 3, 5, 9, 10, 11, 12, 14, 15, 19, 20, 21 and 22 of the Municipality of Tadian;
- (b) Five (5) election returns from Precincts Nos. 3, 6, 12, 24 and 26 of the Municipality of Bauko; and
- (c) Four (4) election returns from Precincts Nos. 1-A, 2, 4 and 5 of the Municipality of Sabangan.

It ordered the inclusion of thirty-seven (37) returns, namely:

- (a) fourteen election returns from Precincts Nos. 1, 1-A, 2, 4, 7, 8, 9, 15, 18, 19, 19-A, 22, 23 and 25 of the Municipality of Bauko;
- (b) two (2) election returns from Precincts Nos. 1 and 14 of the Municipality of Sabangan;
- (c) five (5) election returns from Precincts Nos. 1, 4, 5, 8 and 11 of the Municipality of Paracelis;
- (d) six (6) election returns from Precincts Nos. 16, 22, 24, 26, 27 and 30 of the Municipality of Bontoc;
- (e) seven (7) election returns from Precincts Nos. 4, 5, 7, 8, 9, 10 and 11 of the Municipality of Sadanga; and
- (f) three (3) election returns from Precincts Nos. 5, 5-A and 10 of the Municipality of Natonin.

The affected candidates appealed the PBC's resolution to the COMELEC where they filed eight (8) cases (SPC No. 88-796-Maxima Dalog; SPC No. 88-797-Louis Claver; SPC No. 88-798-Joseph Facullo and Eduardo Akiate, Sr.; SPC No. 88-799-Roy S. Pilando; SPC No. 88-800-Maximo M. Degyem; SPC No. 88-801-Tomas E. Bayogan; SPC No. 88-802-Joseph T. Delson; and SPC No. 88-810-Jose Banaken) which were consolidated and assigned to the Second Division chaired by Commissioner Haydee Yorac. Dalog prayed that the PBC's resolution excluding 21 election returns be reversed. His petition was vigorously opposed by his rivals, Claver and Pilando.

The COMELEC's Second Division required the appellants to submit evidence in support of their appeals and show compliance with Section 245 of the Omnibus Election Code and Section 16 of COMELEC Resolution No. 1695. It also directed the PBC to submit a systematized listing of the objections, for as pointed out in its decision of May 9, 1989, the proceedings of the PBC were well-nigh chaotic. Its observations are quoted below:

"The difficulties in these cases emanated from disruptions of the proceedings of the Provincial Board of Canvassers, the inability of such Board to control the proceedings, and its failure to follow and enforce the procedure laid down in Sec. 245 of the Omnibus Election Code, whether out of fear or out of ignorance of the rules on canvass or both. In addition, the Minutes are not clear in the reporting of incidents in the proceedings. The Secretary of the Board was remiss in the duty to transmit copies of the minutes. Only the Minutes of the March 14 to 17 proceedings were on file in the Commission. The minutes of the Board for the sessions between January 21 to February 1, 1988 were obtained by the Commission from the Chairman of the Board only in December 1988, and some evidence submitted by the various parties to the appeals were not annexed in their pleadings or in the systematic listing of objections and rulings submitted by the Board. But the greatest source of difficulty is the failure of the Board to follow the procedure in Sec. 245, sending in disarray the sequence in the making of oral and written objections, and thus putting in issue the periods of prescription for the making of objections and submitting the supporting evidence. In the matter of the deferment of certain election returns, for instance, the Provincial Board of Canvassers did so whether a party objected on the basis of grounds provided for in Sec. 243, or citing merely formal defects, or without citing any ground for objection. In all but very few of the instances, no rulings were made except to defer. Was it a deferment of the canvass or of the Board's rulings? The Minutes do not indicate anything. In the March proceedings of the Board, the deferred returns were again considered. It was only on March 17, 1988 that the board issued its verbal rulings. In the meantime, various written objections were filed with the board in January and February 1988. No such written objections were filed after the verbal rulings of the Board on March 17, the parties affected by the rulings opting to take the issues directly with the Commission. It would not have been easy to make an appeal. The board at the time it made its verbal rulings, did not indicate the bases for the decision to include or exclude. On March 17, the Board authorized the Chairman Atty. Felimon Asperin, to make a report of its rulings to the Commission on Elections. An undated written summary of rulings is part of the record of the case. There is no indication that this written summary was served upon the parties, and if so, when. The rulings themselves are extremely defective. They do not indicate what the objections to specific returns were,

but simply ruled on the basis of the affidavits presented by the objectors. The Board even turned out with a novel formula that the returns which are not excluded are deemed included thus leaving in limbo the matter of its bases for rejecting an objection, and therefore also the ground for appeal. In its systematized report of objections and rulings, the Provincial Board of Canvassers also made references to grounds for objections which are not borne out by the Minutes, or any other official record and made rulings which do not address objections reflected in the Minutes. It considered evidence on a selective basis without verifying the same even when it was necessary and expedient to do so. In short, the proceedings and the records are marked by absolute chaos, and the process of giving them coherence and comprehensibility entailed the tedious cross checking of the Minutes, the reports, the pleadings of the parties, as well and the evidence submitted." (pp. 44-46, Rollo of G.R. Nos. 90531-32.)

After receiving the evidence of the parties, the Second Division ordered the inclusion of the 21 election returns which the PBC had previously excluded, and affirmed the PBC's resolution to include all the other disputed election returns. The dispositive part of its decision dated May 9, 1989 reads:

"WHEREFORE, on the basis of the foregoing, the Provincial Board of Canvassers for Mountain Province is hereby ordered to reconvene and to complete the canvass on the basis of the above rulings and thereafter, to proclaim the winning candidates five days after the receipt by the parties of this decision, unless a seasonable motion for reconsideration is filed or there is a restraining order from the Supreme Court.

"No pronouncement as to costs." (pp. 46-47, Annex B, pp. 76-77, Rollo of G.R. No. 90507-10.)

Motions for reconsideration were filed by Claver and Pilando. They were certified to the COMELEC En Banc which proceeded to resolve them in the following manner:

". . . the Commission, on August 10, 1989 issued an order deferring consideration of the two motions for reconsideration until the Commission shall have examined all copies of each of the aforesaid election returns with the view to resolving all questions raised against their genuineness and authenticity. Towards that end, the Commission directed the Chairman of the Provincial Board of Canvassers to secure from their respective custodians, the different copies of each of the 21 election returns aforementioned and to deliver the same to the Commission. The different copies referred to were the copies pertaining to: (1) The Provincial Board of Canvassers; (2) The Election Registrar or Municipal Board of Canvassers; (3) the Ballot Box; (4) the Municipal Treasurer; and (5) the Municipal Trial Judge. To complete the copies for each return, the custodian of the corresponding Comelec copies of each of the 21 election returns was likewise ordered to produce the said copies before the Commission.

"As soon as the different copies of each of the returns in question were delivered to the Commission, all parties concerned were notified to appear and be present at the opening of the receptacles containing these returns before the Commission and to observe the proceedings for such opening. Subsequently, parties and their counsel were directed to conduct their own examination of each and every copy of the returns in question and to submit a formal summary of their observations. Thereafter, the Commission met in executive session where every member conducted individual examination of each of the copies of the twenty-one (21) controverted returns. After such examination, the individual members submitted their respective vote and opinion on the question of whether the return from each of the 21 precincts in controversy should be included in or excluded from the canvass of votes cast for the position of Governor and members of the Provincial Board of Mountain Province." (pp. 8-9, Annex E, pp. 136-137, Rollo, Dalog Petition.)

"A recapitulation of the results of the voting on each of the 21 election returns in controversy shows the following:

"For inclusion:

The election returns from:

- Precinct Nos. 3, 6, 24 and 26, all of the municipality of Bauko; and
- Precinct Nos. 9 and 22, both of the municipality of Tadian; and

"For exclusion:

The election returns from:

- Precinct Nos. 1-A, 2, 4 and 5, all of the municipality of Sabangan;
- Precinct No. 12 of Bauko; and
- Precinct Nos. 3, 5, 10, 11, 12, 14, 15, 19, 20 and 21, all of the municipality of Tadian."

(pp. 10-11, Annex E, pp. 138-139, Rollo of G.R. Nos. 90507-10.)

The COMELEC En Banc directed the newly constituted Provincial Board of Canvassers composed of lawyers of the Central Office of the Commission, namely: Atty. Ma. Victoria Estoesta as chairman, and Attys. Roberto Mejorada and Cristeto Limbaco as members:

"... to convene after the lapse of five (5) days from and after the promulgation hereof and, in the absence of a restraining order, proceed to complete the canvass by including therein the election returns from the following precincts:

"1. Precinct Nos. 3, 6, 24 and 26 of the municipality of Bauko;

"2. Precinct Nos. 9 and 22 of the municipality of Tadian; and

excluding therefrom the election returns from the following precincts:

"1. Precinct Nos. 1-A, 2, 4, and 5 of the municipality of Sabangan;

"2. Precinct No. 12 of the municipality of Bauko; and

"3. Precinct Nos. 3, 5, 10, 11, 12, 14, 15, 19, 20 and 21 of the municipality of Tadian; and

thereafter proclaim the winning candidate for the position of Governor of Mountain Province as well as the winning candidates for the position of Provincial Board Member who have not so far been proclaimed." (pp. 12-13, COMELEC En Banc, Oct. 23, 1989, pp. 140-141, Rollo, Dalog petition.)

In their joint petition for review on certiorari (G.R. Nos. 90507-10) Dalog, Bayogan, Banaken and Degyem have asked this Court:

1. To annul the COMELEC's en banc resolution dated October 23, 1989 for being violative of the provisions of Sections 234, 235 and 236 of the Omnibus Election Code;
2. To direct the COMELEC to include in the canvass the fifteen (15) excluded election returns using other authentic copies such as, or particularly, those copies retrieved from the ballot box or the advance copy of the respondent COMELEC; and
3. After hearing, if all the election returns are found to have been tampered, altered or falsified, to command and direct the COMELEC to faithfully adhere to the procedure outlined in said Sections 234, 235 and 236 of the Omnibus Election Code.

On the other hand, in G.R. Nos. 90531-32, petitioners Claver and Akiate pray for judgment:

"3. Reversing the October 23, 1989 Resolution of the Commission insofar as it deliberately neglected and failed to decide/rule on the fifteen (15) objected returns subject matter of SPC Case No. 88-797 as well as its

failure to resolve the Motion to Dismiss filed by Petitioners against the Appeal-Petitions of Maximo 'Max' B. Dalog, et al.;

"4. Ordering Respondent Commission en banc to undertake the same formula and procedure as it has done on the twenty-one (21) excluded returns and apply such procedure with respect to the fifteen (15) objected returns, subject matter of SPC Case No. 88-797." (pp. 33-34, Claver Rollo.)

As prayed for by the petitioners in these two cases, the Court issued a temporary restraining order on October 27, 1989 to stop the implementation of the COMELEC's en banc resolution dated October 23, 1989 (p. 212, Rollo, G.R. Nos. 90507-10).

Claver alleges that the COMELEC committed grave abuse of discretion:

- (1) in neglecting to decide the subject matter of Claver's petition, SPC Case No. 88-797; to wit, the inclusion ordered by PBC of the 15 returns from Precincts Nos. 4, 5, and 8 of Paracelis, Precincts Nos. 1, 1-a, 4, 7, 8, 10-A, 17, 18, 19, 19-A and 25 of Bauko and Precinct No. 4 of Sabangan for he expects to win if they are excluded from the canvass;
- (2) in capriciously voting to examine only the 21 election returns excluded by the PBC without examining 15 returns included by the PBC in the canvass of votes; and
- (3) in not including the election returns from Precincts Nos. 6, 24, and 26 of Bauko and from Precinct No. 22 of Tadian which were fraudulent or manufactured returns.

G.R. Nos. 90507-10 "Dalog, et al. vs. COMELEC"

The onus of Dalog's petition for certiorari is that the COMELEC gravely abused its discretion in excluding fifteen (15) election returns from the canvass of votes without observing the procedure outlined in Section 235 of the Omnibus Election Code to open the ballot boxes and recount the votes of the candidates affected if all available copies of the election returns are tampered, altered or falsified.

"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 members 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."

Since the COMELEC en banc found that none of the fifteen (15) election returns which it struck down could be reliably used as basis for the canvass of votes, Dalog argues that the COMELEC en banc should have ordered a recount of the votes in the disputed precincts. This posture of Dalog is, however, inconsistent with his earlier stance during the canvassing and in his appeal, that those returns are genuine and untampered. His plea for a recount is being made for the first time in this Court. By his failure to invoke that remedy during the proceeding in the PBC and in the COMELEC, he is deemed to have waived it. It is too late at this juncture to return the cases to

the COMELEC for that body to ascertain whether or not the integrity of the ballot boxes and the ballots had been preserved inviolate - as a preliminary basis for ordering a recount - for, if as a matter of fact, the ballot boxes and the ballots had been tampered, altered or falsified, a recount would not reveal the true and correct results of the voting.

Furthermore, a recount of the votes, which will entail a tedious and time-consuming process, will delay the proclamation of an elected governor of Mountain Province to the prejudice of its constituents. Petitioners may still avail of the remedy of an election protest where they can ask for such a recount.

G.R. Nos. 90531-32 "Claver, et al. vs. COMELEC"

There is no merit in Claver's (and Akiate's) petition for certiorari alleging that the COMELEC committed a grave abuse of discretion in passing sub silencio upon fifteen (15) contested returns from Precincts Nos. 4, 5, and 8 of the Municipality of Paracelis; Precincts Nos. 1, 1-A, 4, 7, 8, 10-A, 14, 18, 19, 19-A and 25 of the Municipality of Bauko, and Precinct No. 14 of the Municipality of Sabangan, which the PBC and the COMELEC's Second Division ordered to be included in the canvass but which Claver and Akiate opposed.

The silence of the decision implies that the COMELEC En Banc agreed with the findings and conclusions of the Second Division which ascertained the integrity of those returns after examining them and hearing the witnesses. In affirming the rulings of the PBC concerning them, the Second Division observed that the objections to their inclusion "did not go into the integrity of the election results" or "referred to mere formal defects," and, that "the returns appeared to be authentic and regular." Those findings of the Second Division, being factual, do not appear to be tainted with error, hence, are not reviewable by this Court. Furthermore, the petitioners still have recourse to an election protest where the votes cast in the questioned precincts can be recounted and verified.

WHEREFORE, the petitions for review in G.R. Nos. 90507-10 "Dalog, et al. vs COMELEC, et al." and G.R. Nos. 90531-32 "Luis Claver, et al. vs. COMELEC, ET AL." are dismissed for lack of merit. The temporary restraining order which was issued by this Court on October 27, 1989 is hereby lifted. Costs against the petitioners. This decision is immediately executory, hence, no extension of time to file a motion for reconsideration will be granted.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Medialdea, and Regalado, JJ., concur.

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