

EN BANC

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

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

DECISION

CHICO-NAZARIO, J.:

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

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

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

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

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

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

On 24 May 2007, Abayon filed with the COMELEC a fifth petition, "IN THE MATTER OF THE PETITION TO DECLARE FAILURE OF ELECTION IN THE MUNICIPALITY OF

CATUBIG, NORTHERN SAMAR, AND FOR THE HOLDING OF SPECIAL ELECTIONS THEREOF," docketed as **SPC No. 07-484**.^[8]

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

Of Abayon's numerous petitions, three were denied or dismissed. **SPC No. 07-069**, Abayon's petition to exclude from canvass the COC of Catubig, Northern Samar, was denied by the COMELEC Second Division in a Resolution dated 2 July 2007.^[10] **SPC No. 07-484**, Abayon's petition for the declaration of a failure of election in the Municipality of Catubig, Northern Samar, and for the holding of special elections therein, was dismissed by the COMELEC *en banc* in a Resolution dated 9 July 2007.^[11] **SPA No. 07-460**, Abayon's petition for the declaration of failure of elections in the Municipalities of Capul, Rosario and Bobon, in Northern Samar, was also dismissed by the COMELEC *en banc* in a Resolution dated 29 January 2008.^[12]

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

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

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

The COMELEC *en banc* denied Abayon's Motion for Reconsideration in a Resolution^[18] dated 28 January 2008. It affirmed that the election protest in EPC No. 2007-62 was belatedly filed. The COMELEC *en banc* maintained that SPC No. 07-037 seeking the exclusion from canvass of the COCs from three municipalities of Northern Samar was based on grounds that were not proper for a pre-proclamation controversy. SPC No. 07-037 lacked merit and could not have rendered Daza's proclamation void. Consequently, SPC No. 07-070 - in which Abayon challenged Daza's proclamation on the basis that it was made counting the votes in the COCs

sought to be excluded in SPC No. 07-037 - was without merit. The suspension of the ten-day period for filing an election protest was intended to ensure that the losing candidate who filed a pre-proclamation case retains the right to avail himself of an election protest. This rationale presupposes that there is a valid pre-proclamation controversy; otherwise, such rationale would be defeated if the ten-day suspension period is applied to a pre-proclamation contest so manifestly baseless that it cannot prosper. The COMELEC then ruled that:

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

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

I

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

II

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

III

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

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

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

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

office, within ten days after the proclamation of the results of the election.

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

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

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

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

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

SPA No. 07-460 and **SPA No. 07-484**, which are petitions for the declaration of failure of elections in the Municipalities of Capul, Rosario, Bolon, and Catubig, Northern Samar, cannot suspend the ten-day period for filing an election protest, per the ruling of the Court in *Dagloc*. Abayon also readily admits that **SPC No. 07-069**, a petition for the exclusion from canvass of the COC from the Municipality of Catubig, had been previously resolved and denied by the COMELEC.^[22]

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

Abayon's position is untenable.

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

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

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

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

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

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

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

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

The COMELEC First Division herein found, and Abayon never disputed before the