

## EN BANC

[ G.R. No. 123230, April 18, 1997 ]

**NORODIN M. MATALAM, PETITIONER, VS. COMMISSION ON  
ELECTIONS AND ZACARIA A. CANDAO, RESPONDENTS.  
D E C I S I O N**

**PANGANIBAN, J.:**

Law and jurisprudence mandate that pre-proclamation controversies should be resolved in summary proceedings; thus, the Comelec and the Boards of Canvassers, in resolving these disputes, need not look beyond the face of the election returns. So too, petitioner must show that the exclusion of the contested returns will materially change the standing of the aggrieved parties. In the case at bench, the Court affirms once again these well-entrenched doctrines in our legal system.

This petition for certiorari under Rule 65 of the Rules of Court assails the Resolution<sup>[1]</sup> dated August 24, 1995 of the Commission on Elections (Comelec), Second Division, in the consolidated cases of SPC No. 95-029, SPC No. 95-279, SPC No. 95-185 and SPC No. 95-291, the dispositive portion of which states:

“WHEREFORE, premises considered, that the Commission on Elections (Second Division) resolves to DISMISS the appeals and AFFIRM the rulings of the Provincial Board of Canvassers. The proclamation of respondent Candao as Governor of the Province of Maguindanao earlier set aside and declared null and void is hereby reconsidered and ordered revived.”<sup>[2]</sup>

Also assailed herein is the Comelec en banc Resolution<sup>[3]</sup> dated January 16, 1996 denying the motion for reconsideration, to wit:

“In keeping with the ruling of the Supreme Court in Alfonso vs. Commission on Elections, 232 SCRA 777, that, ‘It is a matter of public policy that pre-proclamation controversies shall be resolved in summary proceedings,’ and it appearing that the instant motion for reconsideration is without merit and does not offer much in terms of new issues or substantial matters to warrant the reversal or setting aside of the questioned Resolution of the Second Division, the Commission En Banc RESOLVES to DENY the Motion for Reconsideration. Accordingly, the resolution of the Second Division is hereby AFFIRMED.

The Motion filed subsequently on September 6, 1995 by herein petitioners-movants for technical examination of CE Forms 1 and 2 of the Municipality of Maganoy, Maguindanao is likewise hereby DENIED for having become moot and academic.”<sup>[4]</sup>

In its assailed Resolutions, Public Respondent Comelec disposed of the following four cases:<sup>[5]</sup>

1. SPC Case No. 95-029, initiated by the local candidates from the Municipality of Maganoy, Maguindanao, seeking to nullify the election results in and the consequent proclamation of the candidates in said municipality. Petitioner Norodin Matalam filed a petition for intervention, contending that the election returns in the said municipality were falsified, fabricated and manufactured.
2. SPC Case No. 95-185, filed by Petitioner Matalam to enjoin the Provincial Board of Canvassers of Maguindanao from tabulating the certificate of canvass from Maganoy, Maguindanao;
3. SPC No. 95-279, filed also by Petitioner Matalam to set aside the proceedings of the Municipal Board of Canvassers of Datu Piang, Maguindanao;
4. SPC No. 95-291, filed by Petitioner Matalam to exclude the certificates of canvass from the Municipality of Datu Piang.

#### The Facts

Petitioner Norodin M. Matalam and Private Respondent Zacaria A. Candao were both candidates for Governor of the Province of Maguindanao in the May 8, 1995 elections.

During the canvass of the election returns in the municipalities of Datu Piang and Maganoy, both in the Province of Maguindanao, Petitioner Matalam challenged before the respective Municipal Boards of Canvassers ("MBC") the authenticity of the election returns in said towns. Because the MBC merely noted his objections, petitioner reiterated the same before the Provincial Board of Canvassers ("PBC"). In those two municipalities, petitioner was credited with only 3,641 votes, while private respondent received 44,654 votes. It is the contention of petitioner that the exclusion of the results is enough to overhaul the lead of Candao.<sup>[6]</sup>

Because the Provincial Board of Canvassers rejected the pleas of petitioner and included the challenged certificates of canvass for Datu Piang and Maganoy in the provincial canvass, petitioner filed the above-mentioned petitions before the Comelec.

During the pendency of the said petitions, the Provincial Board of Canvassers on June 30, 1995 proclaimed Respondent Candao as the duly elected governor of Maguindanao.

Citing Section 20 (1) of Republic Act No. 7166 which requires that proclamations of winning candidates during the pendency of an appeal or petition should be authorized by the Comelec, the Second Division of Respondent Commission subsequently nullified on July 11, 1995 the said proclamation of Candao.

On August 24, 1995, as earlier stated, the Comelec Second Division denied, via the assailed Resolution, the petitions questioning the proceedings in the Municipal and Provincial Boards of Canvassers and, at the same time, reinstated the proclamation

of Respondent Candao. The Comelec held that "in the absence of a strong evidence establishing the spuriousness of the returns, the basic rule that the election returns shall be accorded prima facie status as bona fide reports of the results of the count of the votes for canvassing and proclamation purposes must perforce prevail."<sup>[7]</sup>

Petitioner filed a motion for reconsideration. Subsequently, he also filed a motion for technical examination of the signatures and thumbmarks of the registered voters of Maganoy appearing in the Voter's Affidavit and the List of Voters (CE Forms 1 and 2, respectively) for the purpose of proving that no election was conducted therein.

On January 16, 1996, the Comelec en banc denied the motions for reconsideration and technical examination. Hence, this petition for certiorari, praying for the following reliefs:

"a) upon filing of this petition, a restraining order be issued enjoining the execution and implementation of the resolutions of August 24, 1995 and January 16, 1996 until further orders by the Honorable Court upon such bond as may be required;<sup>[8]</sup>

b) after due hearing, the resolutions of August 24, 1995 and January 16, 1996 be reversed and set aside;

c) that the proclamation of the private respondent Candao be declared null and void;

d) that the certificates of canvass of Datu Piang and Maganoy be ordered excluded in the canvassing by the Provincial Board of Canvassers of Maguindanao;

e) that the petitioner Gov. Norodin Matalam be ordered proclaimed by the Provincial Board of Canvassers of Maguindanao as the duly elected governor in the May 8, 1995 elections;

f) in the alternative, the Comelec be ordered to conduct a technical examination of CE Forms 1 and 2 of Maganoy, Maguindanao used in the May 8, 1995 elections, and thereafter, the certificate of canvass of Maganoy be ordered excluded and petitioner be ordered proclaimed as the duly elected governor of Maguindanao."<sup>[9]</sup>

In his memorandum, petitioner added the following prayer:

"7. Or as a second alternative, after the technical examination, a Special Election be conducted in Datu Piang and Maganoy, in the event only that the Hon. Court will not order the proclamation of the winner on the basis of the remaining MBC Certificates of Canvass of the 18 towns of Maguindanao including the results of the Special Elections of May 27, 1995 in 5 precincts of Datu Piang and 6 precincts of Maganoy."

<sup>[10]</sup>

### **The Issue**

Petitioner contends that the election returns of Datu Piang were falsified and spurious, because they were prepared notwithstanding the alleged failure to count all the ballots therein. Petitioner asserts that the counting of votes for 165 precincts inside the old Municipal Building was disrupted and cut short by grenade explosions which allegedly resulted in chaos and pandemonium. In describing the aftermath of the incident, petitioner cites the report of Election Officer E.J. Klar of Datu Piang, to wit:

- “1. Only 3 precincts have complete documents including tally boards duly accomplished by the BEIs;
  2. Some boxes only contained detached stubs;
  3. Some boxes or majority of the boxes not sealed nor padlocked;
  4. Counted and uncounted ballots were mixed together inside the ballot boxes;
  5. xxx the tally boards were also scattered all around the Treasurer’s Office.
  6. Only 39 precincts received their election returns and these were also missing;
  7. There are BEIs who also brought their tally board to their house;
  8. Some BEIs cannot be found or refused to appear;
- So we can begin the transferring from the tally board to the election return after the matching.

I’ll just send you my report next time.”<sup>[11]</sup>

Relying on the dissenting opinion of Commissioner Regalado E. Maambong, petitioner points out that Section 212 of the Omnibus Election Code requires that the preparation of election returns must be simultaneous with the counting of ballots.

Petitioner further contends that the election returns and certificates of canvass for the Municipality of Maganoy were falsified and spurious, as no election was actually conducted therein. The results reflected in the Statement of Votes (SOV) by precinct were allegedly farcical, with Petitioner Matalam and his congressional candidate receiving one or no vote at all in a number of precincts, while Candao and his congressional candidate were credited with all the votes cast therein. In some precincts, the number of votes received by Candao even exceeded the number of registered voters.<sup>[12]</sup>

Petitioner also alleges that the SOV by precinct, the “Municipal Certificate of Canvass and the proclamation papers of Maganoy” were signed in blank a day before the elections, as evinced by the sworn statement of the Municipal Treasurer and concurrent Vice-Chairperson of the MBC. Also presented was a certification from the Maganoy Election Officer that only two barangays received ballot boxes and election paraphernalia. Furthermore, joint affidavits were presented by barangay captains and officials declaring that the Boards of Election Inspectors failed to report for duty in their respective polling precincts on election day.

In view of these, petitioner argues that the Comelec should have granted the motion for technical examination to determine whether the signatures and thumbmarks affixed in CE Forms 1 and 2 belong to the voters therein, as it had done motu proprio in SPA No. 95-284 involving the Municipality of Parang, Sulu.

Private Respondent Candao vigorously denies the contentions that no counting of votes was conducted in Datu Piang<sup>[13]</sup> and that no election was held at all in Maganoy. He rebuts the respective statements of the Maganoy Municipal Treasurer and the Municipal Election Officer that there were no elections in the said municipality in May 1995, pointing to their earlier joint affidavit declaring the elections in Maganoy as free, orderly and peaceful. Candao argues further that the receipt of zero vote by some candidates for public office does not necessarily make the returns statistically improbable.

The public respondent, in its comment, contends principally that the allegations in the petition are insufficient to warrant the issuance of the writ of certiorari. The resolution of the present issue of fraud is within the powers of public respondent, the findings of which deserve great credence, in the absence of compelling evidence of a clear and arbitrary abuse.<sup>[14]</sup> Public respondent suggests that the proper recourse of private respondent is an election protest.<sup>[15]</sup>

The ultimate issue posed is whether the questioned election returns for the municipalities of Maganoy and Datu Piang could be the proper subjects of a pre-proclamation controversy and, corollarily, whether said returns should be excluded from the canvass.

### **The Court's Ruling**

The petition is not meritorious.

*May the Comelec in a Pre-Proclamation Case Go Beyond the Face of the Election Returns?*

The Omnibus Election Code defines a pre-proclamation controversy as "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 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns."<sup>[16]</sup>

Section 243 of the same Code enumerates the issues that may be raised in a pre-proclamation controversy, to wit:

"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