



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

SECOND DIVISION

*IN THE MATTER OF THE PETITION
/OPPOSITION TO INCLUDE/EXCLUDE
ELECTION RETURNS IN VARIOUS
PRECINCTS IN THE PROVINCE OF
ISABELA*

BENJAMIN G. DY,
Petitioner,

SPC no: 07-130

Promulgated: JUN 06 2007

**GRACE PADACA, PROVINCIAL
BOARD OF CANVASSERS OF
THE PROVINCE OF ISABELA,
MUNICIPAL BOARDS OF
CANVASSERS OF ILAGAN,
JONES, CABAGAN AND
TUMAUNI,**

Benjamin G. Dy vs. Grace Padaca
11/14

[Signature]

x-----x
Per Curiam

RESOLUTION

Before us, is an Appeal (Pre-Proclamation Case Due to Material Defects/Illegal Proceedings with Motion to Suspend Proceedings)¹ filed by Petitioner Benjamin Dy, praying for the following:

1. ENJOINING the respondent boards from further continuing with the canvass;

¹ Referring to the Municipalities of Ilagan, Jones, Cabagan and Tumauni

2. SUSPENDING any further proceedings by the aforementioned Board of Canvassers until after the Honorable Commission shall have had the opportunity to verify the said Election Returns and to correct and/or exclude the subject 115 ERs; and
3. EXCLUDING the above-contested election returns from the canvass;
4. PROCLAIMING petitioner as the duly elected Provincial Governor of Isabela.

This is an Omnibus Appeal of the Rulings/Decisions on pre-proclamation controversies issued by the Municipal Board of Canvassers of Ilagan, Jones, Cabagan, San Isidro and Tumauni, all of the province of Isabela. The Said Rulings are alleged to be contrary to law and the evidence adduced before the respondent-boards.

There are at least 115 Election Returns which are now subject of this Omnibus Appeal. The objections made by the petitioner-appellant with respect to these ERs are the following: ERs are obviously manufactured, contains material defects, were tampered or falsified, were prepared with massive fraud, contains statistically improbable results, and shows great excess of votes. The proceedings of the respondent-boards were also assailed. (Underscoring for emphasis)

The grounds relied upon in the instant appeal are couched in such general terms, it is difficult to determine the veracity of the allegations. The Petitioner-Appellant was merely satisfied without specifying the clear foundation that supports an appeal in a pre-proclamation controversy.

An examination of the appeal also reveals that no evidence was presented to support the allegations of material defects, tampering and falsification or that the same was prepared through massive fraud. The voluminous records of this appeal merely contained the different NOTICES OF APPEAL, OFFER OF EVIDENCE AND FORMAL EXHIBITS

(without the proper attachments) and the PETITIONS/OBJECTIONS subject hereof, but the needed documents to support them are found wanting. It would have been better had these pieces of evidence been made part of the appeal, but the petitioner-appellant did not do so.

In the case of *Sebastian vs. Comelec*², the Supreme Court stated:

"This petition stemmed from a pre-proclamation controversy. In a long line of cases, we have consistently held that a pre-proclamation controversy is limited to an examination of the election returns on their face. The COMELEC as a general rule need not go beyond the face of the returns and investigate alleged election irregularities. We see no reason to depart from this rule in this petition."

It is axiomatic that the Commission need not look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues, the resolution of which would compel the Commission to pierce the veil, so to speak, of election returns prima facie regular, has his proper remedy in a regular election protest. By their very nature and given the obvious public interest in the speedy determination of the results of elections, pre-proclamation controversies are to be resolved in summary proceedings³. Most of the grounds relied upon by the Petitioner-Appellant would require a more incisive examination of evidence outside of the election returns. Massive fraud cannot be proven simply with the cursory examination of the concern ERs, but must be supported with the appropriate affidavits and witnesses to show that assertion as a factual reality.

The remedy available to the Petitioner-Appellant is the appropriate election contest where the appropriate evidence and requisite examination may be made. It is a more extensive and intensive legal proceeding where the issues raised by petitioner-appellant Benjamin Dy may be properly ventilated.

² 122 SCAD 565, 327 SCRA 406 (2000)

³ Agpalo. Comments on the Omnibus Elections Code, 2004 ed, p. 433 citing Sanchez vs. Comelec, 153 SCRA 67; Ututalum vs. Comelec, 181 SCRA 335; see also Dipatuan vs. Comelec, 185 SCRA 86

The Commission notes however that the Ruling from which this appeal emanates from may be wanting in form as it merely states that "all the issues raised/objections are hereby denied"⁴ without any explanation regarding the illegal grounds or basis for the denial. But this deficiency, if ever, hardly suffices to render the proceedings before the Board of Canvassers an "Illegal Proceedings". A mere departure from the proper form will not invalidate the canvassing until and unless the sanctity of the Election Returns has been compromised. (Underscoring supplied)

All told, this Commission feels that there is no further justification for a continued suspension of the canvassing for the election returns subject of this appeal.

WHEREFORE, the Omnibus Appeal filed by petitioner Benjamin G. Dy last May 24, 2007, involving Ilagan, Jones, Cabagan and Tumauni is hereby denied for the reasons cited above.

The concerned Board of Canvassers are hereby directed to proceed with the canvassing of the Certificates of Canvass and Election Returns of all the municipalities of said province, and to proclaim the candidate(s) who garner(s) the most number of votes.

SO ORDERED.


FLORENTINO A. TUASON, JR.
Presiding Commissioner


RENE V. SARMIENTO
Commissioner


NICODEMO T. FERRER
Commissioner

⁴ Rollo, p. 235

CERTIFICATION

I hereby certify that the conclusions in the foregoing resolution were reached in consultation with the other members of the Commission before the same was assigned to the writer of the opinion for the Commission (*Second Division*).


FLORENTINO A. TUASON, JR.
Presiding Commissioner