

**EN BANC**

**[ G.R. NO. 166229, June 29, 2005 ]**

**MS. BAIRANSALAM LAUT LUCMAN, PETITIONER, VS.  
COMMISSION ON ELECTIONS AND MOSAMA M. PANDI,  
RESPONDENTS.**

**D E C I S I O N****AUSTRIA-MARTINEZ, J.:**

Petitioner Bairansalam Laut Lucman and private respondent Mosama M. Pandi were mayoralty candidates in Poona-Bayabao, Lanao del Sur, during the May 10, 2004 elections.

During the canvassing of votes, private respondent objected to the inclusion of ten election returns, although only six of these are subjects of the present controversy, to wit:<sup>[1]</sup>

Precinct Number	Election Returns Number	Objection/s
1A	01201094	1) The election returns is obviously manufactured and/or falsified 2) It is not authentic 3) It contains alterations
1B/C	01201091	1) Obviously manufactured
3A	0120109	1) Obviously manufactured 2) Incomplete
8A	01201093	1) Obviously manufactured and/or falsified 2) Incomplete
8B/8C	01201106	1) The election returns is obviously manufactured 2) It is incomplete, it lacks statistical data
14A/14B	01201096	1) Obviously manufactured

The Municipal Board of Canvassers (Board) overruled private respondent's objections on the disputed returns,<sup>[2]</sup> and proclaimed petitioner as the winning candidate, as shown in the Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices, signed on May 19, 2004.<sup>[3]</sup> Petitioner won

over private respondent by a margin of 16 votes.

Private respondent filed with Commission on Elections (COMELEC) an appeal from the ruling of the Board, docketed as SPC 04-184, alleging massive fraud and irregularities in the conduct of the elections, e.g., force, threat and intimidation were employed on the voters, double voting, substitution of voters, snatching of ballots, padding of ballots and existence of flying voters.<sup>[4]</sup> Private respondent also contended that the contested election returns should have been excluded from the canvass, and that the Board was precipitate in proclaiming petitioner as the winning candidate, as private respondent has manifested on record that he is intending to appeal the Board's ruling.<sup>[5]</sup> Private respondent admits that the exclusion of the contested returns is a ground for election protest, but he also argues that the COMELEC may go beyond the face of the returns to determine whether the elections in the precincts involved are a sham.

Private respondent also filed a motion to annul proclamation and/or to suspend the effects of proclamation *pendente lite*.<sup>[6]</sup>

Petitioner filed his Comment and/or Answer to the appeal, arguing that the grounds relied upon by private respondent are not proper in a pre-proclamation controversy but in an election protest. Petitioner also argues that her proclamation is valid; the petition is defective for failure to include indispensable parties; and that private respondent failed to inform the Board that he is appealing its ruling, as required by Section 20 of Republic Act No. 7166, or The Electoral Reforms Law of 1991.<sup>[7]</sup>

On June 16, 2004, a hearing on the appeal was held, wherein counsel for petitioner and private respondent, and several Board of Election Inspectors of Poona-Bayabao appeared, and Ms. Monera P. Macadato, Poll Clerk of Precinct 3A was called to the witness stand.<sup>[8]</sup> Presiding Commissioner Resurreccion Z. Borra, for the First Division, then issued an order on the same date, requiring the parties to submit their simultaneous memoranda.<sup>[9]</sup>

On September 30, 2004, the COMELEC's First Division issued the assailed order, with the following dispositive portion:

In order therefore to resolve the issues raised in this Appeal the Commission (FIRST DIVISION) hereby ORDERS the document examiners of the Commission on Elections to conduct an examination of the List of Voters with Voting Record of the precincts involved in this case as well as the VRRs pertaining to the contested precincts in the Municipality of Poonabayabao to determine whether or not actual voting by the duly registered voters of said precincts were conducted during the elections of May 10, 2004;

Considering that we have annulled the proclamation of BAIRAMSALAM (sic) LAUT LUCMAN as duly elected mayor of Poonabayabao, Lanao del Sur, it is hereby ordered that the Vice-Mayor of said Municipality assumed (sic) the position pursuant to the provisions of the Local Government Code, until the final resolution of this petition.

SO ORDERED.<sup>[10]</sup>

Commissioner Virgilio O. Garcillano dissented to the majority opinion on the ground that the petition involves issues proper to an election protest and not a pre-proclamation controversy.<sup>[11]</sup>

Petitioner moved to reconsider the assailed Order, and in an Order dated October 13, 2004, Commissioner Borra ordered and certified the motion for reconsideration to the Commission en banc.<sup>[12]</sup> Thereafter, the Commission en banc, in an Order dated October 14, 2004, issued a temporary restraining order and a *status quo ante* order, directing the parties to maintain the status prevailing before the issuance of the September 30, 2004 Resolution.

On December 14, 2004, the COMELEC en banc issued the assailed Resolution denying petitioner's motion for lack of merit.<sup>[13]</sup> The dispositive portion of said Resolution reads:

WHEREFORE, in view of the foregoing, the Commission (*en banc*) RESOLVED, as it hereby RESOLVES to DENY the Motion for Reconsideration for lack of merit. The Order of the Commission (First Division) dated 30 September 2004 is hereby AFFIRMED. Accordingly, in implementation of the directive therein, the document examiners of the Commission on Elections are hereby ordered to conduct an examination of the List of Voters with Voting Record of the precincts involved in this case as well as the VRRs pertaining to the contested precincts in the Municipality of Poonabayabao to determine whether or not actual voting by the duly registered voters of said precincts were conducted during the elections of May 10, 2004, and thereafter submit a report thereon.

The Temporary Restraining Order/*Status Quo Ante* Order dated 14 October 2004 is hereby lifted.

SO ORDERED.<sup>[14]</sup>

On December 17, 2004, Commissioner Mehol Sadain issued a *Constancia* protesting his lack of participation in the *En Banc* Resolution. Commissioner Sadain stated that although he was out on official business at the time the Resolution was routed to his office, he should have been allowed to vote thereon, or at least, informed of the urgency of its promulgation so that he may cast his vote or allow its promulgation without his signature.<sup>[15]</sup>

Petitioner then filed the present special civil action for *certiorari* and prohibition with prayer for the issuance of temporary restraining order/preliminary injunction, based on the following grounds:

*PUBLIC RESPONDENT ACTED WITHOUT, IN EXCESS OR WITH GRAVE ABUSE OF DISCRETION IN ANNULING THE PROCLAMATION OF THE PETITIONER.*

*PUBLIC RESPONDENT ACTED IN EXCESS OR WITH GRAVE ABUSE OF DISCRETION IN ORDERING THE DOCUMENT EXAMINERS TO EXAMINE THE LIST OF VOTERS WITH VOTING RECORDS AND THE VRRs.*

*PUBLIC RESPONDENT ACTED WITHOUT, IN EXCESS OR WITH GRAVE OF*

*DISCRETION (sic) IN TAKING COGNIZANCE OF THE APPEAL WITHOUT THE INDISPENSABLE PARTIES IMPEADED AND WITHOUT THE MANDATORY REQUIREMENTS OF SECTION 20, RA 7166 COMPLIED.*

*PUBLIC RESPONDENT ACTED WITHOUT JURISDICTION IN TAKING COGNIZANCE OF THE MOTION TO RECONSIDER THE CHALLENGED INTERLOCUTORY ORDER OF SEPTEMBER 30, 2004.*<sup>[16]</sup>

The pivotal issue in this case is whether the appeal from the Board of Canvassers to the COMELEC (First Division) interjected by private respondent makes a case for a pre-proclamation controversy.

Section 241 of 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."

Under Section 243 of the same Code, the issues that may be raised in a pre-proclamation controversy, are as follows:

*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 foregoing enumeration is restrictive and exclusive.<sup>[17]</sup>

In the present case, the objections initially raised by private respondent before the Municipal Board of Canvassers were proper in a pre-proclamation controversy, i.e., the election returns is obviously manufactured and/or falsified, it is not authentic, it contains alterations. However, in his appeal to the COMELEC, he further alleged that the elections held in the precincts clustered in the Pooni Lomabao Central Elementary were tainted with massive election irregularities. According to private respondent, there were "massive substitution of voters, snatching of ballots from the voters by people identified with the Lucman who filled them up against the will of the voters, force or coercion, threats, intimidation, casting of votes by double registrants in the same precincts (double entry), and flying voters ..."<sup>[18]</sup> Private