

WILMAR P. LUCERO, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSE L. ONG, JR., RESPONDENTS.

G.R. No. 113107. July 20, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

After the issues had been joined in these consolidated cases, the Court resolved to give due course to the petitions therein and to decide the cases on the merits. It can no longer allow the parties to delay these cases. Their legal skirmishes, which have unduly magnified uncomplicated issues, have effectively deprived the people of the Second Legislative District of Northern Samar of representation in the House of Representatives for more than two years now.

These cases are sequels to G.R. No. 105717, entitled "Jose L. Ong, Jr. vs. Commission on Elections and Wilmar P. Lucero," which we finally resolved on 22 April 1993.[1] The petitioners were two of the five candidates[2] for the Second Legislative District of Northern Samar in the synchronized national and local elections held on 11 May 1992.

The canvass of the Provincial Board of Canvassers (PBC) of Northern Samar credited Jose L. Ong, Jr. with 24,272 votes and Wilmar P. Lucero with 24,068 votes, or a lead by Ong of 204 votes. However, this tally did not include the results of Precinct No. 7 of the municipality of Silvino Lobos, where the submitted election returns had not been canvassed because they were illegible; of Precinct No. 13 of Silvino Lobos, where the ballot boxes were snatched and no election was held; and of Precinct No. 16, also of Silvino Lobos, where all copies of the election returns were missing.

On 22 May 1992, Lucero asked the Commission on Elections (COMELEC), in SPA No. 92-282, to:

- “1. Forthwith order Respondent Provincial Board of Canvassers for Northern Samar to suspend the proclamation of Private Respondent Jose L. Ong, Jr.;
2. Direct Respondent Provincial Board of Canvassers for Northern Samar to correct the Certificate of Canvass (CEF 20) for Las Navas and, accordingly, to correct the total votes so far counted by it for Petitioner from 24,068 to 24,088, thus reducing the margin it found in favor of Private Respondent Jose L. Ong, Jr. from 204 to 184 votes only;
3. Order a special election in Precinct 13, Barangay Gusaran, Silvino Lobos, pursuant to Section 6 of the Omnibus Election Code;
4. Order a recount of the votes for Representative of the Second District of Northern Samar in Precinct 16, Barangay Tubgon, and Precinct 7, Barangay Camayaan, both of Silvino Lobos, pursuant to Section 234 of the Omnibus Election Code;
5. Order a recount of the votes for Representative in the 52 precincts herein above enumerated in order to correct ‘manifest errors’ pursuant to Section 15 of Republic Act 7166 and for this purpose order the

impounding and safekeeping of the ballot boxes of all said precincts in order to preserve the integrity of the ballots and other election paraphernalia contained therein."[3]

On 2 June 1992, the COMELEC, acting on Lucero's urgent manifestation, directed the PBC to desist from reconvening until further orders.

On 8 June 1992, Ong moved to lift the suspension of the proceedings by the PBC, which Lucero opposed on 10 June 1992 on the ground that the canvass could not be completed even if the PBC were to reconvene because no election was held in Precinct No. 13 (Barangay Gusaran) of Silvino Lobos and there was no canvassing of the votes in Precinct No. 7 (Barangay Camayaan) and Precinct No. 16 (Barangay Tubgon) both of Silvino Lobos.

On 13 June 1993, the COMELEC en banc promulgated a resolution, the dispositive portion of which reads:

"Accordingly, the Commission hereby orders the Provincial Election Supervisor of Northern Samar to bring to the Commission within three (3) days from receipt hereof the ballot boxes from Precinct 7 and 16 of Silvino Lobos, to be escorted by representatives from the petitioner and the respondents as well as other parties who have an interest to protect, and too notify said parties hereof. The Municipal Treasurer of said town is directed to turn over custody of said ballot boxes to the Provincial Election Supervisor, and the keys thereof shall likewise be turned over by the appropriate officials in custody thereof to the PES, who shall in turn give one key for each ballot box to the duly authorized representatives of the petitioner and the respondent.

The Commission likewise orders the Election Registrar of Silvino Lobos, Northern Samar, and the Chairman and members of the Boards of Election Inspectors of Precincts 7 and 16 of said municipality to appear before the Commission within three (3) days from receipt hereof."

Below the signatures of the Chairman and the six Commissioners, however, Chairman Christian S. Monsod and Commissioners Haydee B. Yorac, Dario C. Rama, and Regalado E. Maambong directed as follows:

"We vote in favor of this resolution except that portion which denied the correction of the Certificate of Canvass for Las Navas. Correction of the Certificate of Canvass for Las Navas is in order in view of the testimony of the election registrar of Las Navas to the effect that Wilmar Lucero garnered 2,537 votes for Las Navas and not 2,517. Petition for correction was duly filed by Lucero with the Provincial Board of Canvassers of Northern Samar on May 19, 1992. The Provincial Board of Canvassers of Northern Samar is therefore directed to retabulate the total number of votes for Las Navas for Lucero and enter the same in the Provincial Certificate of Canvass."[4]

On 15 June 1992, Lucero filed an urgent motion to constitute a Special Board of Election Inspectors (SBEI) to count the votes of Precincts Nos. 7 and 16 of Silvino Lobos.[5]

On 20 June 1992, Ong, in a special civil action for certiorari filed with this Court and subsequently docketed as G.R. No. 105717, questioned the order for the recount of ballots in Precincts No. 7 and 16. Despite the pendency of this petition, the COMELEC ordered the recount of the ballots in Precinct No. 16 by a SBEI which recorded 43 votes for Lucero and 2 votes for Ong.[6]

On 25 June 1992, this Court issued in G.R. No. 105717 a temporary restraining order against the implementation by the COMELEC of its Order of 2 June 1992 and its Resolution of 13 June 1992.

On 23 December 1992, this Court promulgated its decision in G.R. No. 105717,[7] the dispositive portion of which reads:

"WHEREFORE, the petition for certiorari is GRANTED and a writ of preliminary injunction is hereby ISSUED directing the COMELEC to CEASE and DESIST from implementing its order of June 2, 1992, and its resolution dated June 13, 1992, and the same are hereby declared NULLIFIED. Consequently, the election

returns based on the recounted ballots from Precinct 16 are hereby DISCARDED and in lieu thereof, authentic returns from said precinct should instead be made a basis for the canvassing. The Provincial Board of Canvassers of Northern Samar is hereby directed to PROCEED WITH DISPATCH in the canvassing of ballots until completed and to PROCLAIM the duly elected winner of the congressional seat for the Second District of Northern Samar.

This decision is immediately executory."[8]

Acting on the motions for reconsideration and clarification respectively filed by the COMELEC and Lucero, this Court, on 22 April 1993, modified[9] its aforesaid disposition in G.R. No. 105717 as follows:

"IN VIEW OF ALL THE FOREGOING, the dispositive portion of the December 23, 1992 Decision is hereby MODIFIED to read as follows:

'WHEREFORE, THE PETITION IS GRANTED. THE JUNE 2, 1992 ORDER OF RESPONDENT COMMISSION ON ELECTIONS IN SPA NO. 92-282 IS HEREBY ANNULLED AND SET ASIDE. ITS JUNE 13, 1992. RESOLUTION THEREIN IS LIKewise ANNULLED AND SET ASIDE INSOFAR AS IT AFFECTS PRECINCT NO. 7 OF SILVINO LOBOS, THE RECOUNT OF VOTES IN THE 52 OTHER PRECINCTS AND THE CORRECTION OF THE CERTIFICATE OF CANVASS OF LAS NAVAS, BUT IS AFFIRMED WITH RESPECT TO THE ISSUE OF HOLDING A SPECIAL ELECTION IN PRECINCT NO. 13 AND THE RECOUNT OF THE BALLOTS IN PRECINCT NO. 16.

THE RESPONDENT COMMISSION ON ELECTIONS IS HEREBY DIRECTED TO ASSIGN SPA NO. 92-282 TO ANY OF ITS DIVISIONS PURSUANT TO ITS RULE ON RAFFLE OF CASES FOR IT TO RESOLVE THE PRE-PROCLAMATION ISSUES THEREIN, TAKING INTO ACCOUNT THE ABOVE PRONOUNCEMENTS AND THE EXCEPTIONS PROVIDED FOR IN SECTION 15 OF R.A. NO. 7166.

WHENEVER WARRANTED BY THE CIRCUMSTANCES, THE COMMISSION MAY (A) CALL A SPECIAL ELECTION IN PRECINCT NO. 13 OF SILVINO LOBOS, NORTHERN SAMAR, AND (B) RECONVENE THE SPECIAL MUNICIPAL BOARD OF CANVASSERS AND THE SPECIAL PROVINCIAL BOARD OF CANVASSERS IT HAD EARLIER CONSTITUTED OR CREATE NEW ONES.

ALL THE FOREGOING SHOULD BE DONE WITH PURPOSEFUL DISPATCH TO THE END THAT THE WINNING CANDIDATE FOR CONGRESSMAN REPRESENTING THE SECOND CONGRESSIONAL DISTRICT OF NORTHERN SAMAR MAY BE PROCLAIMED AS SOON AS POSSIBLE."[10]

As to the certificate of canvass of the municipality of Las Navas, this Court explicitly stated:

"The correction of the certificate of canvass of Las Navas is likewise in order. Even though a pre-proclamation issue is involved, the Correction of the manifest error is allowed under Section 15 of R.A. No. 7166."[11]

Conformably with the aforesaid modified judgment in G.R. No. 105717, SPA No. 92-282 was raffled to the First Division of the COMELEC which conducted hearings thereon and received the arguments and evidence of both parties who then submitted their respective memoranda on 25 June 1994. However, during the consultations on the case by the Members of the First Division, the concurrence of at least two of them could not be obtained; accordingly, pursuant to the COMELEC Rules, the case was elevated for proper disposition to the COMELEC en banc to which the parties submitted their respective memoranda on 19 November 1993.[12]

On 7 January 1994, the COMELEC en banc promulgated a resolution[13] whose dispositive portion reads as follows:

"1. To direct the special Provincial Board of Canvassers for Northern Samar (a) to include in the municipal

certificate of canvass of Silvino Lobos the forty-three (43) votes of petitioner Lucero and the two (2) votes of private respondent Ong as reflected in the election returns of Precinct No. 16 (Barangay Tubgon) prepared by the special Board of Election Inspectors constituted by the Commission to recount the votes (ballots) in said precinct, as canvassed by the special Municipal Board of Canvassers for Silvino Lobos; (b) to include in the municipal certificate of canvass of Silvino Lobos, the sixty-one (61) votes of private respondent Ong and 29, 30, or 31 votes of petitioner Lucero as reflected in the election returns (MBC Copy submitted as 'Comelec Copy') of Precinct No. 7 (Barangay Camaya-an), as canvassed by the special Municipal Board of Canvassers for Silvino Lobos; (c) to retabulate the total number of votes of petitioner Lucero for the Municipality of Las Navas and to enter in the provincial certificate of canvass the correct total which is two thousand five hundred thirty-seven (2,537) as reflected in the Statement of Votes (C.E. Form 20-A) prepared and submitted by the Municipal Board of Canvassers for Las Navas; and (d) to submit to the Commission a computation of the votes of the contending parties including therein all the votes of petitioner Lucero (with alternative totals) and private respondent Ong, in Precinct Nos. 7 and 16 of Silvino Lobos and the total votes of petitioner Lucero in the Municipality of Las Navas as corrected. However, under no circumstances should the Board proclaim any winning candidate until instructed to do so by the Commission;

2. To issue an Order calling for a special election in the last remaining Precinct No. 13 (Barangay Gusaran) of the Municipality of Silvino Lobos if justified by the result of the canvass by the Provincial Board of Canvassers for Northern Samar, and to notify the parties of the schedule of election activities for that precinct; and

3. After including in the tabulation the results of the special election of Precinct No. 13, to decide the issue of the recount of the votes (ballots) of Precinct No. 7 of Silvino Lobos, pursuant to Section 236 of the Omnibus Election Code, to resolve the discrepancy of the votes of petitioner Lucero in the same return, if such discrepancy of votes of the candidates concerned would affect the over-all results of the election after the totality of the votes of the contending parties shall have been determined."

Both Lucero and Ong have come to this Court by way of separate special civil actions for certiorari to challenge the Resolution.

In G.R. No. 113107, Lucero maintains that (1) the count of the ballots in Precinct No. 7 of Silvino Lobos must be unconditional because the election returns therefrom are invalid; and (2) his chances in the special election in Precinct No. 13 of Silvino Lobos would be spoiled if the returns for Precinct No. 7 were to be included beforehand in the canvass.

In G.R. No. 113509, Ong questions (1) the authority of the COMELEC to order the correction of the alleged manifest error in the Municipal Certificate of Canvass of Las Navas despite the absence of any appeal; and (2) the authority of the COMELEC to call for a special election in Precinct No. 13 almost two years after the regular election.

As we see it, the core issues in these consolidated cases are:

- (1) Whether there should first be a count of the ballots of Precinct No. 7 of Silvino Lobos before determining the necessity of holding a special election in Precinct No. 13 of Silvino Lobos;
- (2) Whether the COMELEC acted with grave abuse of discretion in ordering the correction of the alleged manifest error in the Municipal Certificate of Canvass of Las Navas; and
- (3) Whether the COMELEC acted with grave abuse of discretion in calling for a special election in Precinct No. 13 after almost two (2) years, or more specifically after one (1) year and ten (10) months, following the day of the synchronized elections.

We shall take up these issues seriatim.

I.

The answer to the first issue is in the affirmative.

We find the COMELEC's disposition regarding Precinct No. 7 to be unclear. In the first paragraph of the dispositive portion of the challenged resolution, it directs the Provincial Board of Canvassers "to include in the municipal certificate of canvass of Silvino Lobos the sixty-one (61) votes of private respondent Ong and 29, 30, or 31 votes of petitioner Lucero as reflected in the election returns (MBC copy submitted as "COMELEC Copy") of Precinct No. 7 (Barangay Camaya-an), as canvassed by the special Municipal Board of Canvassers for Silvino Lobos," and "to submit to the Commission a computation of the votes of the contending parties including therein all the votes of petitioner Lucero (with alternative totals) and private respondent Ong, in Precinct Nos. 7 and 16 of Silvino Lobos...." On the other hand, in the fourth paragraph of the said dispositive portion, it orders the Provincial Board of Canvassers, after "including in the tabulation the results of the special election of Precinct No. 13," to "decide the issue of the recount of the votes (ballots) of Precinct No. 7 of Silvino Lobos, pursuant to Section 236 of the Omnibus Election Code [and] to resolve the discrepancy of the votes of petitioner Lucero in the same return, if such discrepancy of votes of the candidate concerned would affect the over-all results of the election after the totality of the votes of the contending parties shall have been determined."

Obviously, instead of ordering an outright recount of the ballots of Precinct No. 7, the COMELEC would first give full faith and credit to the questioned election returns thereof, which it describes as the "Comelec Copy," and, accordingly, direct the PBC to include in the municipal certificate of canvass of Silvino Lobos the 61 votes for Ong and the uncertain votes for Lucero -- 29, 30, or 31. The recount would only be made if after a special election in Precinct No. 13 shall have been held, it shall be determined that such a recount would be necessary.

We fail to grasp the logic of the proposition. First, it is clear to us that the COMELEC, which has in its possession the so-called "Comelec Copy" of the questioned election returns of Precinct No. 7 and heard the witnesses who testified thereon, doubts the authenticity of the so-called "Comelec Copy" of the election returns of Precinct No. 7;^[14] hence, it authorizes the PBC to decide the issue of a recount "pursuant to Section 236 of the Omnibus Election Code." Since it doubts such authenticity, it could not, without arbitrariness and abuse of discretion, order the inclusion of the "votes" of Ong and Lucero found in the doubtful "Comelec Copy" of the election returns in the municipal certificate of canvass. Second, it is an uncontroverted fact that an election was held in Precinct No. 7. None was held in Precinct No. 13 for reasons the parties fully knew. Pursuant to Section 6 of the Omnibus Election Code (B.P. Blg. 881), a special election may be held in Precinct No. 13 only if the failure of the election therein "would affect the result of the election." This "result of the election" means the net result of the election in the rest of the precincts in a given constituency, such that if the margin of a leading candidate over that of his closest rival in the latter precincts is less than the total number of votes in the precinct where there was failure of election, then such failure would certainly affect "the result of the election"; hence, a special election must be held. Consequently, the holding of a special election in Precinct No. 13 can only be determined after the votes in Precinct No. 7 shall have been included in the canvass by the Provincial Board of Canvassers.

We may further state that the so-called "Comelec Copy" of the election returns of Precinct No. 7 can by no means be validly included in the municipal canvass. The summary of the evidence in the "preparation" of the election returns of Precinct No. 7, both in the challenged Resolution and in the separate Concurring and Dissenting Opinion of Commissioners Gorospe and Claravall, leaves no room for doubt that there was actually no counting of the votes in Precinct No. 7. Quoted in the challenged Resolution is a portion of the testimony of Sabina T. Jarito, Precinct Chairman of Precinct No. 7, which clearly shows that on questions by COMELEC Chairman Christian S. Monsod and Commissioner Vicente B. de Lima, the witness candidly admitted that the election returns were prepared at the "munisipyo" or municipal building and not at the polling place of Precinct No. 7 in

barangay Camaya-an.[15] This "munisipyo" is located at the poblacion of Silvino Lobos. Under the law, the board of election inspectors shall prepare the election returns simultaneously with the counting of votes in the polling place.[16] There is no evidence whatsoever that the COMELEC had, for valid reasons, authorized the transfer of venue of the counting of the votes of Precinct No. 7 from the polling place in barangay Camaya-an to the municipal building and that the counting did in fact take place at the latter. Although in the Concurring and Dissenting Opinion of Commissioners Gorospe and Claravall there is a reference to Exhibit "E," the Joint Affidavit of Sabina Jarito and Mevilyn Surio wherein they declare that after the voting the Board of Election Inspectors unanimously approved to transfer the counting of votes to the Municipal Building in the Poblacion of Silvino Lobos, which was allegedly concurred in by all the watchers of political parties and the candidates present, the alleged "counting" at the municipal building was denied by no less than the Municipal Election Officer of Silvino Lobos, Antonio Tepace, and the Municipal Treasurer thereof, Mr. Gabriel Basarte, in their affidavits marked as Exhibit "F" and Exhibit "G," respectively.[17]

Since there was no counting of the votes of Precinct No. 7, no valid election returns could be made and any copy of election returns purporting to come therefrom is a fabrication. A recount thereof, which presupposes a prior count, would obviously be unwarranted.

Only a count then of the votes of Precinct No. 13 would heretofore be in order. Sections 234, 235, and 236 of the Omnibus Election Code are thus still inapplicable. And, in the light of what we stated before in relation to the holding of a special election, such a count of the votes of Precinct No. 7 must, perforce, precede the special election in Precinct No. 13.

II.

Ong's first grievance in G.R. No. 113509 is without merit.

The order of the COMELEC for the correction of the manifest error in the municipal certificate of canvass of Las Navas was made pursuant to the declaration made by this Court in G.R. No. 105717 (Ong vs. COMELEC)[18] that:

"The correction of the certificate of canvass of Las Navas is likewise in order. Even though a pre-proclamation issue is involved, the correction of the manifest error is allowed under Sec. 15 of R.A. No. 7166."

Since no motion for reconsideration was filed in that case, the decision therein became final and entry of judgment was made on 4 August 1993. Consequently, Ong cannot now re-litigate the issue of the correction of the certificate of canvass of Las Navas.

III.

On the authority of the COMELEC to order the holding of a special election, Section 6 of the Omnibus Election Code provides:

"SEC. 6. Failure of election. -- If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and if in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or

failure to elect."

The first paragraph of Section 4 of R.A. No. 7166 likewise provides:

"SEC. 4. Postponement, Failure of Election and Special Elections. -- The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority votes of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election."

There are, therefore, two requisites for the holding of special elections under Section 6 of the Omnibus Election Code, viz., (1) that there is a failure of election, and (2) that such failure would affect the results of the election. The parties admit that the failure of the election in Precinct No. 13 was due to ballot-box snatching and do not dispute the finding of the COMELEC as to the necessity and inevitability of the holding of a special election in said precinct, even if the result of Precinct No. 7 should be based on the questionable "Comelec Copy" of its election returns. The COMELEC held:

"Based on the adjudged correction of the votes in favor of petitioner Lucero in the Municipality of Las Navas, the results of the recount of votes (ballots) of Precinct No. 16 (Silvino Lobos), and the votes reflected in the available copy of the election returns for Precinct No. 7 (Silvino Lobos), it is safe to predict that when the special Provincial Board of Canvassers will reconvene to sum up the votes of the contending parties, the original lead of private respondent Ong of two hundred four (204) votes against petitioner Lucero -- 24,272 as against 24,068 --- will be reduced to either 175 or 173 depending on whether Lucero will be credited a low of 29 or a high of 31 votes as reflected in the election returns of Precinct No. 7.

Without preempting the exact figures which only the special Provincial Board of Canvassers can correctly determine, undoubtedly it is inevitable that a special election will have to be held in Precinct No. 13 (Barangay Gusaran) of the Municipality of Silvino Lobos.

...

Given the established lead of private respondent Ong over petitioner Lucero, We answer in the affirmative. According to Comelec records, the number of registered voters in Precinct No. 13 is two hundred thirteen (213). Since the lead of respondent Ong is less than the number of registered voters, the votes in that precinct could affect the existing result because of the possibility that petitioner Lucero might get a majority over Ong in that precinct and that majority might be more than the present lead of Ong." [19]

On the basis of the additional votes credited so far to the parties, [20] the following computation is in order: to Ong's 24,272 votes will be added 2 more from Precinct No. 16, to make a total of 24,274, while to Lucero's 24,068 votes will be added 20 more from Las Navas and 43 from Precinct No. 16, for a total of 24,131. Ong's earlier lead will thus be reduced to 143, which is admittedly less than the 213 registered voters in Precinct No. 13. [21]

The two requirements then for a special election under Section 6 of the Omnibus Election Code have indeed been met.

In fixing the date of the special election, the COMELEC should see to it that: (1) it should be not later than thirty days after the cessation of the cause of the postponement or suspension of the election or the failure to elect, and (2) it should be reasonably close to the date of the election not held, suspended, or which resulted in failure to elect. The first involves questions of fact. The second must be determined in the light of the peculiar circumstances of a case. In the instant case, the delay was not attributable to the poor voters of Precinct No. 13 or to the rest of the electorate of the Second Legislative District of Northern Samar. The delay was, as stated in the opening paragraph of this ponencia, primarily caused by the legal skirmishes or maneuvers of the petitioners

which muddled simple issues. The Court takes judicial notice of the fact that G.R. No. 113509 is the third case Ong has brought to this Court.[22] Considering then that the petitioners themselves must share the blame for the delay, and taking into account the fact that since the term of office of the contested position is only three years, the holding of a special election in Precinct No. 13 within the next few months may still be considered "reasonably close to the date of the election not held." Ong's postulation should then be rejected.

In the course of the deliberations on these cases, the Court considered the possible application, by analogy, of Section 10, Article VII of the 1987 Constitution providing that no special election in the event of a vacancy in the Offices of the President and Vice President "shall be called if the vacancy occurs within eighteen months before the date of the next presidential election," and of the second paragraph of Section 4 of R.A. No. 7166 which provides:

"In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election."

A view was expressed that we should not hold the special election because the underlying philosophy for the prohibition to hold the special election if the vacancy occurred within a certain period before the next presidential election or the next regular election, as the case may be, is obviously the avoidance of the expense to be incurred in the holding of a special election when a regular election is, after all, less than a year away. The Court ultimately resolved that the aforesaid constitutional and statutory proscriptions are inapplicable to special elections which may be called under Section 6 of the Omnibus Election Code. First, the special election in the former is to fill permanent vacancies in the Office of the President, Vice President, and Members of Congress occurring after the election, while the special election under the latter is due to or by reason of a failure of election. Second, a special election under Section 6 would entail minimal costs because it is limited to only the precincts involved and to the candidates who, by the result of the election in a particular constituency, would be affected by the failure of election. On the other hand, the special election for the Offices of the President, Vice President, and Senators would be nation-wide, and that of a Representative, district-wide. Third, Section 6, when specifically applied to the instant case, presupposes that no candidate had been proclaimed and therefore the people of the Second Legislative District of Northern Samar would be unrepresented in the House of Representatives until the special election shall ultimately determine the winning candidate, such that if none is held, they would have no representation until the end of the term. Under the aforesaid constitutional and statutory provisions, the elected officials have already served their constituencies for more than one-half of their terms of office. Fourth, if the law had found it fit to provide a specific and determinate time-frame for the holding of a special election under Section 6, then it could have easily done so in Section 4 of R.A. No. 7166.

Another serious obstacle to Ong's proposition is that, considering the COMELEC's disposition of Precinct No. 7 in the challenged Resolution, he would then be declared and proclaimed the duly elected Representative of the Second Legislative District of Northern Samar despite the fact that as earlier observed, there was no counting of the votes of Precinct No. 7, and the results of the district elections for Representative would be affected by the failure of the election in Precinct No. 13. To accept the proposition is to allow a proclamation based on an incomplete canvass where the final result would have been affected by the uncanvassed result of Precinct No. 7 and by the failure of the election in Precinct No. 13 and to impose upon the people of the Second Legislative District of Northern Samar a Representative whose mandate is, at the very least, uncertain, and at the most, inexistent.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

I. DISMISSING, for lack of merit, the petition in G.R. No. 113509; and

II. In G.R. No. 113107, DIRECTING the respondent Commission on Elections to:

(1) Reconvene, in its main office in Manila, within five (5) days from notice hereof, the Special Board of Canvassers of the municipality of Silvino Lobos, Northern Samar, which shall then, as a special Board of Election Inspectors of Precinct No. 7 of said municipality, within forty-eight (48) hours from its reconvening, count the ballots of said Precinct No. 7, and deliver to the special Provincial Board of Canvassers of the said Province a copy of the election returns;

(2) Reconvene, in its main office in Manila, within the same period as aforesated, the special Provincial Board of Canvassers of Northern Samar which shall then, within seventy-two (72) hours from its reconvening:

(a) Include in the Municipal Certificate of Canvass of Silvino Lobos (1) the total number of votes for petitioner Wilmar P. Lucero and for petitioner Jose L. Ong, Jr., respectively, in Precinct No. 7 of Silvino Lobos as recorded in the election returns submitted by the aforementioned special Municipal Board of Canvassers, and (2) the forty-three (43) votes for petitioner Wilmar P. Lucero and the two (2) votes for petitioner Jose L. Ong, Jr. as reflected in the election returns of Precinct No. 16 (Barangay Tubgon) prepared, after a recount of the ballots, by the special Board of Canvassers; and after such inclusions to enter the new totals of the votes for the petitioners in the Certificate of Provincial Canvass;

(b) Retabulate the total number of votes for Wilmar P. Lucero for the Municipality of Las Navas, Northern Samar, which shall be two thousand and five hundred thirty-seven (2,537) as reflected in the Statement of Votes (C.E. Form 20-A) prepared and submitted by the Municipal Board of Canvassers of Las Navas, and to enter the same in the Certificate of Provincial Canvass;

(c) After the accomplishment of all the foregoing, to sum up anew in the Certificate of Provincial Canvass the canvassed municipal certificates of canvass of all the municipalities of the Second Legislative District of Northern Samar and if the same would establish that the difference in votes between petitioner Wilmar P. Lucero and petitioner Jose L. Ong, Jr. is less than two hundred and thirteen (213), hence the failure of the election in Precinct No. 13 would unavoidably and inevitably affect then the result of the election, to report to the Commission on Elections such fact and to furnish the latter with a certified photocopy of the Certificate of Provincial Canvass;

(3) Within three (3) days after receipt of the aforesaid report from the special Provincial Board of Canvassers, to CALL a special election in Precinct No. 13 of Silvino Lobos, which shall be held not later than thirty (30) days from such call; a copy of the election returns of said special election shall forthwith be transmitted to the Special Provincial Board of Canvassers of Northern Samar, which shall then enter the results thereof in its canvass and make a final summation of the results in the Certificate of Provincial Canvass, and thereafter, pursuant to the Omnibus Election Code, pertinent election laws and rules and resolutions of the Commission, proclaim the winning candidate for Representative of the Second Legislative District of Northern Samar.

If for any reason whatsoever it would not be possible to immediately reconvene the Special Municipal Board of Canvassers of Silvino Lobos and the Special Provincial Board of Canvassers of Northern Samar, the COMELEC may create new ones.

No pronouncements as to costs.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Romero, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.
Bellosillo, J., on leave.

[1] 221 SCRA 475 [1993].

[2] Footnote no. 1, challenged COMELEC Resolution of 7 January 1994; Rollo, G.R. No. 113107, 30.

[3] Rollo, G.R. No. 113107, 31.

[4] Rollo, G.R. No. 13107, 32-33.

[5] Id., 33.

[6] Rollo, G.R. No. 113107, 33.

[7] 216 SCRA 806 [1992].

[8] Id. at 817.

[9] 221 SCRA 475 [1993].

[10] Id. at 483-484.

[11] Id. at 483.

[12] Rollo, G.R. No. 113107, 35-36.

[13] Annex "A" of Petition, G.R. No. 113107; Annex "A" of Petition, G.R. No. 113509. Per Commissioner Regalado E. Maambong, with full concurrence of Chairman Christian S. Monsod, Commissioner Vicente B. de Lima, and Commissioner Remedios A.S. Fernando. Commissioners Graduacion A.R. Claravall and Manolo B. Gorospe concurred, except as to the disposition on Precinct No. 7, which point they elaborated upon in a Concurring and Dissenting Opinion (Rollo, G.R. No. 113107, 57-75). Commissioner Magdara B. Dimaampao put above his signature the words "See Concurring/Dissenting Opinion."

[14] It even explicitly stated that "[t]he authenticity of the votes indicated in the election return, however, is placed in serious doubt because respondent Ong presented before the Commission a certificate of votes dated May 12, 1992, supposedly signed by Precinct Chairman Sabina T. Jarito and Precinct Third Member Mevilyn A. Surio, wherein the votes for respondent Ong is only forty-five (45) not 61, and the vote of petitioner Lucero is 30." (Rollo, G.R. No. 113107, 40-41).

[15] Pages 12-13 of challenged Resolution; Rollo, G.R. No. 113107, 42-43.

[16] Section 212, Omnibus Election Code.

[17] Rollo, G.R. No. 113107, 73-74.

[18] 221 SCRA 475 [1993].

[19] Rollo, G.R. No. 113107, 47-48 (footnotes omitted).

[20] Pending the count to be made in Precinct No. 7.

[21] Unavailing is Ong's assertion that the registered voters in Precinct No. 13 have been reduced from 213 to 185 as a result of the transfer and death of some of the voters. The original and exclusive jurisdiction over all matters of inclusion and exclusion of voters from the voter's list lies with the municipal and metropolitan trials court under Section 138 of the Omnibus Election Code (as amended). Their decisions are appealable to the proper regional trial court, whose decisions are immediately final and executory.

[22] The other two are G.R. No. 105717 as earlier noted, and G.R. No. 108700 which this Court dismissed on 9 November 1993.

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