

## JOSE C. RAMIREZ, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF GIPORLOS, EASTERN SAMAR AND ALFREDO I. GO, RESPONDENTS.

*G.R. No. 122013. March 26, 1997*

Ponente: MENDOZA, J.

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### **MENDOZA, J.:**

Petitioner Jose C. Ramirez and private respondent Alfredo I. Go were candidates for vice mayor of Giporlos, Eastern Samar in the election of May 8, 1995. Petitioner was proclaimed winner by the Municipal Board of Canvassers (MBC) on the basis of results showing that he obtained 1,367 votes against private respondent's 1,235 votes.[1]

On May 16, 1995, private respondent filed in the COMELEC a petition for the correction of what he claimed was manifest error in the Statement of Votes (SPC No. 95-198). He alleged that, based on the entries in the Statement of Votes, he obtained 1,515 votes as against petitioner's 1,367 votes but that because of error in addition, he was credited with 1,235 votes as shown in the following recomputation:[2]

Precinct No. Go, Alfredo I. Ramirez, Jose C.

8-A 23 43

9 23 10

8 37 49

2-A 31 48

12 50 42

12-A 65 29

7-A 36 73

20 7 19

3 88 56

1-A 54 67

13-A 43 47

18 39 12

14 19 65

4 27 37

5-A 43 67

13 37 42

2 73 79

15 49 49

11 58 18

11-A 66 32

6 115 98

1 130 52

17 54 15

7 86 67

10 60 13

5 50 55

19 41 61

21 59 46

16 52 76

Total 29 Precincts 1,235 1,367

(Should be 1,515)

his Answer with Counter-Protest,[3] petitioner Jose C. Ramirez disputed private respondent's claim. He said that instead of the total of the votes for private respondent Alfredo Go, it was actually the entries relating to the number of votes credited to him in Precinct Nos. 11, 11-A, 6, 1, 17, 7, and 10 which were erroneously reflected in the Statement of Votes. According to petitioner, the entries in the Statement of Votes actually referred to the number of votes obtained by Rodito Fabillar, a mayoralty candidate, and not to the votes obtained by private respondent. Petitioner alleged that, as shown in the Certificate of Votes prepared by the Board of Election Inspectors, the votes cast for Go in the precincts in question were as follows:

Precinct Nos. Per Statement Per Certificate

of Votes of Votes

11 58 32

11-A 66 18

6 115 65

1 130 61

17 54 48

7 86 37

10 60 28

The addition of the number of votes (reflected in the Certificate of Votes) to the number of votes from other precincts confirms the MBC's certificate that the total number of votes cast was actually 1,367 for petitioner and 1,235 for private respondent.

On August 1, 1995, the COMELEC en banc issued its first questioned resolution, directing the MBC to reconvene and recompute the votes in the Statement of Votes and proclaim the winning candidate for vice mayor of Giporlos, Eastern Samar accordingly.[4]

Petitioner Jose C. Ramirez and public respondent Municipal Board of Canvassers filed separate "motions for clarification." On September 26, 1995, the COMELEC en banc issued its second questioned resolution, reiterating its earlier ruling. It rejected the MBC's recommendation to resort to election returns:[5]

The Municipal Board of Canvassers is reminded that pursuant to Section 231 of the Omnibus Election Code, it is the Statement of Votes, duly prepared, accomplished during the canvass proceedings, and certified true and correct by said Board which supports and form (sic) the basis of the Certificate of Canvass and Proclamation of winning candidates. In fact and in deed, the Municipal Board of Canvassers/Movant had submitted to the Commission, attached to and forming part of the Certificate of Canvass and Proclamation a Statement of Votes without any notice of any discrepancy or infirmity therein. To claim now that the proclamation was not based on said Statement of Votes but on the Certificate of Votes because the entries in the Statement of Votes are erroneous is too late a move, considering that by the Board's act of submitting said Statement of Votes as attachment to the Certificate of Proclamation and Canvass, it had rendered regularity and authenticity thereto.

Hence this petition for certiorari and mandamus seeking the annulment of the two resolutions, dated August 1, 1995 and September 26, 1995, of the Commission on Elections, and the reinstatement instead of the May 10, 1995 proclamation of petitioner Jose C. Ramirez as the duly elected vice mayor of Giporlos, Eastern Samar. Petitioner contends that (1) the COMELEC acted without jurisdiction over SPC No. 95-198 because the case was resolved by it without having been first acted upon by any of its divisions, and (2) the MBC had already made *motu proprio* a correction of manifest errors in the Statement of Votes in its certification dated May 22, 1995, showing the actual number of votes garnered by the candidates and it was a grave abuse of its discretion for the COMELEC to order a recomputation of votes based on the allegedly uncorrected Statement of Votes.

With respect to the first ground of the petition, Art. IX, §3 of the Constitution provides:

§3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Comelec en banc. (Emphasis added)

Although in *Ong, Jr. v. COMELEC*[6] it was said that "By now it is settled that election cases which include pre-proclamation controversies must first be heard and decided by a division of the Commission"[7]  $\frac{3}{4}$  and a petition for correction of manifest error in the Statement of Votes, like SPC No. 95-198 is a pre-proclamation controversy  $\frac{3}{4}$  in none of the cases[8] cited to support this proposition was the issue the correction of a manifest error in the Statement of Votes under §231 of the Omnibus Election Code (B.P. Blg. 881) or §15 of R.A. No. 7166. On the other hand, Rule 27, §5 of the 1993 Rules of the COMELEC expressly provides that pre-proclamation controversies involving, *inter alia*, manifest errors in the tabulation or tallying of the results may be filed directly with the COMELEC en banc, thus

§5. Pre-proclamation Controversies Which May Be Filed Directly With the Commission.  $\frac{3}{4}$  (a) The following pre-proclamation controversies may be filed directly with the Commission:

....

2) When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, (3) there had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass, or (4) so-called returns from non-existent precincts were included in the canvass, and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.

....

(e) The petition shall be heard and decided by the Commission en banc.

....

Accordingly in *Castromayor v. Commission on Elections*,<sup>[9]</sup> and *Mentang v. Commission on Elections*,<sup>[10]</sup> this Court approved the assumption of jurisdiction by the COMELEC en banc over petitions for correction of manifest error directly filed with it. Our decision today in *Torres v. COMELEC*<sup>[11]</sup> again gives imprimatur to the exercise by the COMELEC en banc of the power to decide petition for correction of manifest error.

In any event, petitioner is estopped from raising the issue of jurisdiction of the COMELEC en banc. Not only did he participate in the proceedings below but he also sought affirmative relief from the COMELEC en banc by filing a Counter-Protest in which he asked that “entr[ies] in the statement of votes for Precinct Nos. 11, 11-A, 6, 1, 17, 7 and 10, be properly corrected for the petitioner, to reflect the correct mandate of the electorate of Giporlos, Eastern Samar.”<sup>[12]</sup> It is certainly not right for a party taking part in proceedings and submitting his case for decision to attack the decision later for lack of jurisdiction of the tribunal because the decision turns out to be adverse to him.<sup>[13]</sup>

Petitioner next contends that motu proprio the MBC already made a correction of the errors in the Statement of Votes in its certification dated May 22, 1995, which reads:<sup>[14]</sup>

### CERTIFICATION

To whom It May Concern:

This is to certify that the hereunder candidates for Municipal Vice Mayor of Giporlos, Eastern Samar during the May 8, 1995 National and Local Elections got the number of Votes on the precincts listed hereunder in tabulation form based in our Canvassing of Votes per Precincts.

Name of PRECINCT NUMBERS

candidate : 11 : 11-A : 6 : 1 : 17 : 7 : 10

GO, Alfredo I. : 32 : 18 : 65 : 61 : 48 : 37 : 28

RAMIREZ, Jose C. : 18 : 32 : 98 : 52 : 15 : 67 : 13

This certification is issued upon request of the interested party for whatever legal purpose this may serve him.

Giporlos, Eastern Samar.

May 22, 1995

To begin with, the corrections should be made either by inserting corrections in the Statement of Votes which was originally prepared and submitted by the MBC, or by preparing an entirely new Statement of Votes incorporating

therein the corrections.[15] The certification issued by the MBC is thus not the proper way to correct manifest errors in the Statement of Votes. More importantly, the corrections should be based on the election returns but here the corrections appear to have been made by the MBC on the bases of the Certificates of Votes issued. Thus, in its motion for clarification, the MBC said:

- a. The proclamation of Jose C. Ramirez was based on the results of the certificate of canvass and tally of votes garnered by both petitioner and private respondent which showed Jose C. Ramirez garnering 1,367 as against 1,235 by Alfredo I. Go, or a winning margin of 132 in favor of Jose C. Ramirez;
- b. Based on the certificate of votes in Precinct Nos. 11, 11-A, 6, 1, 17, 7, and 10,, Alfredo I. Go garnered only 32,18, 65,61,48,37 and 28, respectively, and the votes ascribed to the latter shown in the statement of votes are clear typographical errors and were erroneously copied from the votes garnered by mayoral candidate Rodito P. Fabillar from the same seven (7) precincts in Giporlos;
- c. Because of typographical errors in the statement of votes, Alfredo I. Go ballooned (sic) by 280 votes, such that instead of losing by 132 votes to Jose C. Ramirez, Alfredo I. Go acquired an unwarranted margin of 148 votes;
- d. The recomputation based on the statement of votes alone without including the correct votes on the Election Returns on the Seven (7) precincts aforesaid will frustrate the will of the people who unquestionably voted for Jose C. Ramirez by a clear majority of 132 votes;
- e. In the preparation of the certificate of canvass and proclamation, only the certificate of votes of each candidate were considered by reason of the fact it was prepared and signed only on May 11,1995 or one after (sic) the proclamation of the winning municipal candidates on May 10, 1995.

Certificates of Votes are issued by Boards of Election Inspectors (BEI) to watchers, pursuant to §215 of the Omnibus Election Code (OEC). While such certificates are useful for showing tampering, alteration, falsification or any other irregularity in the preparation of election returns,[16] there is no reason for their use in this case since the integrity of the election returns is not in question. On the other hand, in the canvass of votes, the MBC is directed to use the election returns.[17] Accordingly, in revising the Statement of Votes supporting the Certificate of Canvass, the MBC should have used the election returns from the precincts in question although in fairness to MBC, it proposed the use of election returns but the COMELEC en banc rejected the proposal. The Statement of Votes is a tabulation per precinct of votes garnered by the candidates as reflected in the election returns.

The Statement of Votes is a vital component of the electoral process. It supports the Certificate of Canvass and is the basis for proclamation.[18] But in this case the Statement of Votes was not even prepared until after the proclamation of the winning candidate. This is contrary to the Omnibus Election Code, §231 of which provides in part:

The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay.

Indeed, it appears from the Comment of the MBC that the MBC prepared its Certificate of Canvass simply on the basis of improvised tally sheets and that it was only after the termination of the canvass, the proclamation of petitioner Jose C. Ramirez, and the accomplishment of the Certificate of Canvass of Votes and Proclamation, that its clerk, Rosalia Abenojar, prepared the Statement of Votes (C.E. Form No. 20-A). In a sworn report, Ms. Abenojar herself stated that she was tired and drowsy at the time she prepared the Statement of Votes for the mayoralty and vice mayoralty positions. Although this circumstance may support petitioner's claim that the

number of votes credited to private respondent Alfredo I. Go are actually those cast in Precinct Nos. 11, 11-A, 6, 1, 17, 7, and 10 for mayoralty candidate Rodito Fabillar, it is equally possible that Go and Fabillar obtained the same number of votes in those precincts. That the clerk who prepared the Statement of Votes was tired and drowsy does not necessarily mean the entries she made were erroneous. But what is clear is that the Statement of Votes was not prepared with the care required by its importance. Accordingly, as the Solicitor General states, what the COMELEC should have ordered the MBC to do was not merely to recompute the number of votes for the parties, but to revise the Statement of Votes, using the election returns for this purpose.[19] As this Court ruled in *Villaroya v. Commission on Elections*: [20]

[T]he COMELEC has ample power to see to it that the elections are held in clean and orderly manner and it may decide all questions affecting the elections and has original jurisdiction on all matters relating to election returns, including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to insure that the true will of the people is known. Such a clerical error in the statement of votes can be ordered corrected by the COMELEC. (Emphasis added)

Petitioner's final contention that in any event SPC No. 95-198 must be considered rendered moot and academic by reason of his proclamation and assumption of office is untenable. The short answer to this is that petitioner's proclamation was null and void and therefore the COMELEC was not barred from inquiring into its nullity.[21]

WHEREFORE, the petition is partially GRANTED by annulling the resolutions dated August 1, 1995 and September 26, 1995 of the Commission on Elections. The COMELEC is instead DIRECTED to reconvene the Municipal Board of Canvassers or, if this is not feasible, to constitute a new Municipal Board of Canvassers in Giporlos, Eastern Samar and to order it to revise with deliberate speed the Statement of Votes on the basis of the election returns from all precincts of the Municipality of Giporlos and thereafter proclaim the winning candidate on the basis thereof.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Belosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

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[1] Rollo, p. 20.

[2] Id., pp. 46-47.

[3] Id., pp. 50-54.

[4] Id., p. 59.

[5] Id., p. 73.

**[6] 216 SCRA 806 (1992).**

[7] Id., at 812.

[8] *Pascua v. COMELEC*, G.R. No. 105913, November 16, 1992, En Banc Resolution; *Sarmiento v. COMELEC*, G.R. No. 105628, August 6, 1992, *Typoco v. COMELEC*, G.R. No. 105730, August 6, 1992; *Genova Jr. v. COMELEC*, G.R. No. 105771, August 6, 1992; *Manliclic v. COMELEC*, G.R. No. 105797, August 6, 1992; *Sinsuat v. COMELEC*, G.R. No. 105919, August 6, 1992.

**[9] 250 SCRA 298 (1995).**

**[10] 229 SCRA 666 (1993).**

[11] G.R. No. 121031, March 26, 1997.

[12] Rollo, p. 52.

[13] See *Pangarungan v. COMELEC*, 216 SCRA 522 (1992); *Tijam v. Sibonghanoy*, 23 SCRA 29 (1968); *Ilocos Sur Electric Cooperative, Inc. v. NLRC*, 241 SCRA 36 (1995).

[14] Rollo, p. 76.

[15] *Bince, Jr. v. COMELEC*, 218 SCRA 782,795 (1993).

[16] R.A. No. 6646, §17.

[17] OEC, §12(1); COMELEC Resolution No. 2756, §38.

[18] OEC, §231; *Duremdes v. Commission on Elections*, 178 SCRA 746, 754 (1989)

[19] Rollo, p. 162.

**[20] 155 SCRA 633, 643-644 (1987).**

[21] *Duremdes v. Commission on Elections*, 178 SCRA at 757 (1989), citing *Aguam v. COMELEC*, 23 SCRA 833 (1968).

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