

**MUNICIPAL BOARD OF CANVASSERS OF GLAN, ENRIQUE B. YAP, JR.,
VENANCIO S. WATA, JR., GILDO VILLORENTE, SR., JING MUSA,
BENEDICTO L. RUIZ, ANANIAS S. EMNACE, VANNEVAR B. ALEGADO,
A...**

G.R. No. 150946. October 23, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

The present petition for certiorari, under Rule 65 of the Rules of Court, originated from SPC No. 01-032, a pre-proclamation controversy instituted by respondent Flora L. Benzonan with the Commission on Election (COMELEC) en banc. Benzonan, who was a mayoralty candidate in the Municipality of Glan, Sarangani during the May 14, 2001 elections, sought to declare null and void the canvass conducted by the Municipal Board of Canvassers (MBC) of Glan, Sarangani and to recall the proclamation of petitioners Enrique B. Yap, Jr., Venancio S. Wata, Jr., Gildo Villorente, Sr., Ting Musa, Benedicto L. Ruiz, Ananias S. Emnace, Vannevar B. Alegado, Alito Arnold Carino, Saturnino Bag, Jr. and Federico J. Tangan, as duly elected Mayor, Vice-Mayor and members of the Sangguniang Bayan of Glan, Sarangani, respectively.

Benzonan argued her pre-proclamation case on the grounds that: a) after the original and second MBC had resigned, the third MBC was illegally constituted as its Chairman, Vice-Chairman and Secretary are not qualified under the Omnibus Election Code;^[1] b) the canvassing proceedings, which were initially held in the Session Hall of the Sangguniang Bayan of Glan, were later transferred to the Provincial Capitol of Danao Province, contrary to COMELEC Resolution No. 3848;^[2] c) the Secretary of the MBC failed to record the minutes of the canvassing proceedings since the start of the canvass; d) neither Benzonan nor her representatives were notified of the last three days of the canvassing proceedings and, consequently, they were not able to participate therein; e) a substantial number of the election returns had been tampered with or falsified; and f) the MBC had falsified the certificate of canvass votes.^[3]

On December 4, 2001, the COMELEC en banc issued a resolution^[4] finding that, based on the evidence presented, the canvass of votes had been conducted in a place other than the previous venue at the inception of the proceedings to which all were notified. Thus, the proclamations of the winning candidates were declared null and void and a re-canvass of the election returns was ordered.

To reverse the COMELEC en banc's resolution, petitioners filed the present petition with a prayer for a temporary restraining order and preliminary prohibitory injunction.^[5] On December 21, 2001, the Court issued a temporary restraining order directing the COMELEC to cease and desist from implementing its December 4, 2001 resolution.

Although not raised as an issue, the Court is compelled to resolve whether the COMELEC has jurisdiction over this case.

Section 3 (c) of Article IX-C of the Constitution reads:

The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite the 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 Commission en banc.

Beginning with *Sarmiento v. COMELEC*[6] and reiterated in subsequent cases,[7] the most recent being *Balindong v. COMELEC*,[8] the Court has upheld this constitutional mandate and consistently ruled that the COMELEC sitting en banc does not have the requisite authority to hear and decide election cases in the first instance. This power pertains to the divisions of the Commission and any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void for lack of jurisdiction.

It is important to clarify, however, that not all cases relating to election laws filed before the COMELEC are required to be first heard by a division. Under the Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC en banc can act directly on matters falling within its administrative powers. It is only when the exercise of quasi-judicial powers are involved that the COMELEC is mandated to decide cases first in division, and then, upon motion for reconsideration, en banc.[9]

It is clear that SPC No. 01-032 is one that involves a pre-proclamation controversy that requires the exercise of the COMELEC's quasi-judicial powers, as the illegality of the composition and proceedings of the MBC, including the falsification of election returns and certificate of canvass, were alleged to be in issue.[10] Furthermore, in her comment to the petition dated January 9, 2000,[11] Benzonan categorically stated that it is not disputed that what is involved here is a pre-proclamation controversy.

Also undisputed is the fact that Benzonan filed her pre-proclamation case directly with the COMELEC en banc and that the case was subsequently decided by the COMELEC, sitting en banc. As aforesaid, the COMELEC en banc is without jurisdiction to decide cases involving these types of controversies in the first instance. Thus, the procedure taken by Benzonan resulted in a resolution in her favor that the Court must declare null and void and set aside.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The resolution of the COMELEC en banc dated December 4, 2001 in SPC No. 01-032 is hereby declared null and void and set aside, and the COMELEC is directed to assign SPC No. 01-032 to a division.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.
Ynares-Santiago, J., on official leave.

[1] B.P. 881, as amended.

[2] COMELEC Resolution No. 3848 states that, unless otherwise ordered, the canvassing proceedings of the MBC should be held in the Session Hall of the Sanguniang Bayan.

[3] SPC No. 01-032 Amended Petition dated May 20, 2001, Rollo, p. 85.

[4] Annex "A" to Petition, Rollo, pp. 30-40.

[5] Rollo, pp. 3-27.

[6] 212 SCRA307 (1992).

[7] Zarate v. COMELEC, 318 SCRA608 (1999); Abad v. COMELEC, 320 SCRA 507 (1999); Soller v. COMELEC, 339 SCRA 685 (2000); Milla v. Balmores-Laxa, G.R. No. 151216, July 18, 2003.

[8] G.R. No. 153991-92, October 14, 2003.

[9] Canicosa v. COMELEC, 282 SCRA 512 (1977); Baytan, et al. v. COMELEC, G.R. No. 153945, February 4, 2003.

[10] Sections 241 and 242 of B.P. 881, as amended.

[11] Rollo, pp. 185-268.

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