

LORETTA P. DELA LLANA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RIZALINO F. PABLO, JR., RESPONDENTS.*G.R. No. 152080. November 28, 2003*

Ponente: SANDOVAL-GUTIERREZ, J.

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At bar is a petition for certiorari[1] with prayer for a temporary restraining order seeking to set aside the Resolution[2] dated February 19, 2002 of the Commission on Elections (COMELEC) En Banc in EPC Case No. 2001-6. The assailed Resolution affirmed the September 5, 2001 Resolution[3] of the COMELEC First Division (1) granting the petition of respondent Rizalino F. Pablo, Jr. for correction of manifest errors in the Statement of Votes cast in Precinct No. 92-A-1 at Castillejos, Zambales; and (2) annulling the proclamation of herein petitioner Loretta P. Dela Llana as third member of the Provincial Board, First District of same province, due to the erroneous and/or incomplete canvass of election returns.

The antecedent facts are:

In the May 14, 2001 elections, petitioner Loretta Dela Llana and respondent Rizalino Pablo, Jr. were among the candidates for Provincial Board Member, First District of Zambales. The First District, which comprised the municipalities of Subic, Castillejos and San Marcelino, is allotted three (3) seats in the Provincial Board.

On May 18, 2001, the Provincial Board of Canvassers proclaimed the three (3) winning candidates. Included was herein petitioner, being the third duly elected member of the Provincial Board. They obtained the following votes:

- Jose de Jesus Gutierrez, Sr. 22,926
- Wilfredo Vilorio Felarca 14,458
- Loreta Panlilio Dela Llana 14,117[4]

Respondent ranked fourth, having garnered a total of 14,093 votes,[5] or 24 votes less than that obtained by petitioner.

Contesting the election and proclamation of petitioner, respondent, on May 25, 2001, initially filed with the Electoral Contest Adjudication Department, COMELEC, an election protest[6] docketed as EPC Case No. 2001-6. Respondent alleged that when the Municipal Board of Canvassers for the Municipality of Castillejos (MBC-Castillejos) canvassed the election returns from various precincts, the 42 votes he obtained in Precinct No. 29-A-1 was altered and reduced to only 4. Thus, he lost 38 votes. This 4 votes appeared in the Statement of Votes by Precinct (Statement No. 2114713 [7]). When the Zambales Provincial Board of Canvassers canvassed the Certificates of Canvass of Votes from the three municipalities in the First District, respondent's total votes were recorded only as 14,093, instead of 14,131 (14,093 + 38) votes. The missing 38 votes, if counted in his favor, would have been sufficient to have him proclaimed the third member of the Provincial Board of the First District of Zambales.

Petitioner, in her answer with counter-protest,[8] denied respondent's allegations. By way of special and affirmative defenses, petitioner alleged inter alia that respondent, "who was then an incumbent member of the Provincial Board of Zambales, has exercised his influence in all the precincts in San Marcelino, Zambales, thereby crediting him with more votes than he actually received." Petitioner thus prayed that "the results in all the precincts numbering 77 in San Marcelino must likewise be put under protest."

In reply,[9] respondent maintained that petitioner's allegations and counter-protest are based on mere speculation, devoid of any proof.

The case, which was assigned to the First Division, was set for hearing on July 16, 2001 to determine "the issue of accuracy of the entries in the Statement of Votes in the questioned Precinct No. 29-A-1." [10]

At the start of the hearing on July 16, 2001,[11] the COMELEC First Division, through Commissioner Resurreccion Z. Borra, declared that it is treating the case as one for correction of manifest errors committed in the Statement of Votes of Castillejos, Zambales; and that petitioner's counter-protest is still "premature considering that it is not yet clear as to who between the parties really won in the elections in view of the pending petitions filed before the COMELEC, to wit: 1) the subject petition for correction of manifest errors; and 2) the petition for the canvass of 5 uncanvassed precincts in Subic, Zambales pending before the Second Division, docketed as SPC No. 01-264." [12]

The presentation of evidence then followed. Zosimo Remo, COMELEC Document Examiner, presented a copy of the Election Returns (ER) for Precinct No. 29-A-1 with Serial No. 58040069. The counsel of both parties examined the ER showing that the actual number of votes garnered by respondent is 41. Then, Vilma Villegas, COMELEC Records Officer, presented the Statement of Votes (SOV) with Serial No. 2114713 where Precinct No. 29-A-1 was entered. Again, the parties' counsel examined the SOV which revealed that the votes credited to respondent in that precinct is only 4, instead of 41, or 37 votes less than what was actually garnered by him. Also presented during the hearing was the Certificate of Canvass of Votes and Proclamation (COCVP) of the winning candidates which disclosed that respondent garnered a total of 14,117 votes in the First District of Zambales.

After the marking of exhibits presented during the July 16, 2001 hearing, the First Division allowed the parties "to make their final manifestations," and for "counsel for both parties to submit the case for resolution." [13]

In its Resolution[14] dated September 5, 2001, the COMELEC First Division, a) granted respondent's petition for the correction of manifest errors; b) directed the Municipal Board of Canvassers of Subic, Zambales to reconvene and effect the necessary corrections in the Statement of Votes by Precinct to reflect therein the actual number of votes obtained by respondent in Precinct No. 29-A-1; c) annulled petitioner's proclamation, being based on an erroneous and/or incomplete canvass of election returns; and d) ordered petitioner to immediately vacate her post as the third member of the Provincial Board, First District of Zambales, and to cease and desist from discharging the duties and functions of that office.

In the same Resolution, the First Division denied, for being premature, respondent's prayer that he be proclaimed the winning candidate for the questioned position. This is because of the fact that a petition for the canvass of the 5 uncanvassed precincts in Subic, Zambales, docketed as SPC No. 01-264, is still pending resolution before the Second Division, and it is not yet clear who between the parties really won in the May 14, 2001 elections.

Surprisingly, despite the fact that petitioner actively participated in the July 16, 2001 hearing, she filed a motion for reconsideration[15] of the September 5, 2001 Resolution, contending that the First Division has no authority/jurisdiction to convert motu proprio respondent's petition into one for correction of manifest errors. She claimed that the First Division acted with grave abuse of discretion.

In an Order[16] dated September 19, 2001, the First Division certified and elevated the entire records of the case to the COMELEC En Banc.

On February 19, 2002, the COMELEC En Banc issued the assailed Resolution[17] denying petitioner's motion for reconsideration for lack of merit and affirming the September 5, 2001 Resolution of the First Division. The En Banc Resolution partly reads:

X X X

"A comparison of the Election Return for Precinct No. 29-A-1 and of the Statement of Votes by Precinct for the Municipality of Castillejos shows that there was indeed a manifest error in the copying of the figures from the Election Return to the Statement of Votes by Precinct. The forty-one (41) votes garnered by petitioner in Precinct No. 29-A-1, as canvassed by the MBC of Castillejos, was reduced to four (4) in the Statement of Votes by Precinct. Thus, it is but right for this Commission to order the necessary correction in order to reflect the true will of the people of the Municipality of Castillejos.

"WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to AFFIRM the Resolution dated 5 September 2001 rendered by the First Division of this Commission insofar as it:

- GRANTED the instant petition of Rizalino F. Pablo, Jr. (now private respondent) seeking for the correction of manifest errors in the Statement of Votes of Castillejos, Zambales;

- ANNULED the proclamation of herein respondent Loretta P. Dela Llana (now petitioner) finding the same to have been based on an erroneous and/or incomplete canvass of election returns;

- ORDERED respondent Loretta P. Dela Llana to immediately vacate her post as the third winning Board Member of the First District of Zambales and to cease, desist and refrain from discharging and performing its duties and functions; and

- DENIED the prayer of petitioner Rizalino F. Pablo, Jr. that he be proclaimed as the real winning candidate, for being premature. This is in view of the fact that the canvassing of the five (5) uncanvassed precincts in Subic, Zambales pursuant to the Resolution rendered by the Second Division of this Commission in SPC No. 01-264 is still pending before the Municipal Board of Canvassers of Subic; thus, it is not clear yet as to who between the parties really won in the May 14, 2001 elections.

"ACCORDINGLY, this Commission En Banc DIRECTS, as it hereby DIRECTS,

- the Municipal Board of Canvassers of Castillejos, Zambales to (i) RECONVENE and effect the necessary corrections in the Statement of Votes to reflect therein the actual number of votes garnered by petitioner in Precinct No. 29-A-1; and (ii) to SUBMIT the corrected Statement of Votes and Certificate of Canvass for Provincial Officials to the Provincial Board of Canvassers of Zambales; and

- the Provincial Board of Canvassers of Zambales to (i) RECONVENE and CANVASS ANEW the corrected Certificates of Canvass to be submitted by the Municipal Board of Canvassers of Castillejos, Zambales and by the Municipal Board of Canvassers of Subic, Zambales after the latter has finished canvassing the aforesaid five (5) uncanvassed precincts in Subic, pursuant to the Resolution rendered by the Second Division of this Commission in SPC No. 01-264; and (ii) PROCLAIM the TRUE WINNING CANDIDATE for the disputed position of THIRD BOARD MEMBER OF THE FIRST DISTRICT OF ZAMBALES.

"SO ORDERED. " (Underscoring supplied)

Hence, the present recourse.

Petitioner contends that the COMELEC EN BANC, in issuing its February 19, 2002 Resolution, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it -

I

TREATED THE PETITION FOR ELECTION PROTEST FILED BY HEREIN RESPONDENT AS A CASE FOR CORRECTION OF MANIFEST ERRORS;

II

JUSTIFIED SUCH CONVERSION BY SUSPENDING ITS OWN RULES; and

III

DIRECTED THE PROVINCIAL BOARD OF CANVASSERS OF ZAMBALES TO (1) RECONVENE, (2) CANVASS ANEW THE CORRECTED CERTIFICATES OF CANVASS TO BE SUBMITTED BY THE MUNICIPAL BOARD OF CANVASSERS OF CASTILLEJOS, ZAMBALES, AND (3) PROCLAIM THE WINNING CANDIDATE FOR THE POSITION OF THIRD MEMBER OF THE PROVINCIAL BOARD, FIRST DISTRICT, ZAMBALES. [18]

Petitioner maintains that the COMELEC is without authority/jurisdiction to treat respondent's petition for election protest as a case for correction of manifest errors and justify such act by suspending its own Rules of Procedure. Even assuming it has authority to do so, still such conversion is no longer possible because respondent's questioned petition was filed beyond the reglementary period. Under Section 1, Rule 20 of the COMELEC Rules of Procedure, a petition for an election protest must be filed "within 10 ten days after the proclamation of the results of the election," and under Section 5, Rule 27 of the same Rules, a petition for correction of manifest errors "must be filed not later than five (5) days following the date of proclamation." Since petitioner was proclaimed on May 18, 2001, respondent should have filed his petition for correction of manifest errors within 5 days from said date, or on or before May 23, 2001. It was only on May 25, 2001, or 2 days late, that he filed his petition with the COMELEC.

In his comment[19] on the petition, Solicitor General Alfredo L. Benipayo disputed petitioner's theory and prayed that the instant petition be denied for lack of merit.

The petition must fail.

The Constitution has vested to the COMELEC broad powers, involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections, but also the resolution and determination of election controversies.[20] It also granted the COMELEC the power and authority to promulgate its rules of procedure, with the primary objective of ensuring the expeditious disposition of election cases.[21]

Concomitant to such powers is the authority of the COMELEC to determine the true nature of the cases filed before it. Thus, it examines the allegations of every pleading filed, obviously aware that in determining the nature of the complaint or petition, its averments, rather than its title/caption, are the proper gauges.[22]

This was what the COMELEC did when it treated respondent's questioned petition in EPC No. 2001-06 (captioned as an election protest) as a case for correction of manifest errors. The COMELEC found that the averments therein actually call for the rectification of apparent errors in the Statement of Votes in Precinct No. 29-A-1 of Castillejos, Zambales. The pertinent portions of respondent's petition read:

x x x

"9. Unknown to the petitioner (Rizalino F. Pablo, Jr., now respondent), when the election returns from the precincts of Castillejos were canvassed by the Municipal Board of Canvassers, the 42 votes obtained by the petitioner in Precinct No. 29-A-1 was altered and reduced to only 4 in the Statement of Votes by Precinct of the Municipal Board of Canvassers for the Municipality of Castillejos. A copy thereof is attached hereto as Annexes `F`, `F-1`, `F-2` and `F-3`.

"10. Pertinently, in Statement No. 2114713 (Annex `G-2') under the column of Precinct No. 29-A-1, appears the altered figure `4' instead of the true and correct figure `42' recorded in the election return (Annex `D') for the said precinct. It is the only single digit number of votes for petitioner appearing in the Statement of Votes by Precinct, in contrast to the double- digit numbers of votes in all the other precincts.

"11. Due to the aforementioned reduction and the loss of 38 votes thereby, petitioner was erroneously recorded by the Municipal Board of Canvassers to have obtained only 4,111 votes instead of the correct 4,149 votes in the municipality of Castillejos. A copy of the Certificate of Canvass of Votes (No. 1581410) is attached hereto as Annex 'G'.

"12. Subsequently, the Provincial Board of Canvassers of Zambales canvassed the Certificates of Canvass of Votes from the three (3) municipalities of Subic, Castillejos and San Marcelino, and proclaimed the following results of the election for Board Members in the First District as shown in the Statement of Votes (No. 4010026) attached hereto as Annex `H', to wit:

Jose D. Gutierrez 22,926

Wilfredo V. Felarca 14,458 Loreta P. de la Llana 14,117 Rizalino F. Pablo, Jr. 14,093 Pedro B. Delgado 7,232 Enrique E. Vega 4,502 Dyna P. de la Llana 3,846 Christopher V. Legaspi 2,038

x x x"

Jose D. Gutierrez

22,926

Wilfredo V. Felarca

14,458

Loreta P. de la Llana

14,117

Rizalino F. Pablo, Jr.

14,093

Pedro B. Delgado

7,232

Enrique E. Vega

4,502

Dyna P. de la Llana

3,846

Christopher V. Legaspi

2,038

x x x"

Indeed, a reading of respondent's petition reveals that what is being sought is the correction of the manifest errors committed in the Statement of Votes. In *Trinidad vs. COMELEC*,^[23] we held that "correction of manifest errors has reference to errors in the election returns, in the entries of the statement of votes by precinct per municipality,

or in the certificate of canvass." Some of the definitions given for the word "manifest" are that "it is evident to the eye and understanding; visible to the eye; that which is open, palpable, and incontrovertible; needing no evidence to make it more clear; not obscure or hidden." [24]

The fact that petitioner prayed for annulment of respondent's proclamation in his petition is immaterial and does not change the nature of the instant petition. "The prayer in a pleading does not constitute an essential part of the allegations determinative of the jurisdiction of a court. The question of jurisdiction depends largely upon the determination of the true nature of the action filed by a party which, in turn, involves the consideration of the ultimate facts alleged as constitutive of the cause of action therein (Bautista vs. Fernandez, L-24062, April 30, 1971). The prayer for relief, although part of the complaint, cannot create a cause of action, hence it cannot be considered a part of the allegations on the nature of the cause of action (Rosales vs. Reyes, 25 Phil. 495; Cabigao vs. Lim , 50 Phil. 844)." [25]

In any event, petitioner is estopped from questioning the issue of jurisdiction of the COMELEC. Not only did she actively participate in the proceedings before the First Division, but she also sought affirmative relief by filing her Answer with Counter-Protest wherein she asked that "all the precincts in the 3 municipalities in the First District be placed under protest." [26] It is certainly not right for a party taking part in the proceedings and submitting his case for decision to attack the decision later for lack of jurisdiction of the tribunal because the decision turned out to be adverse to him. [27]

We likewise find unmeritorious petitioner's contention that the COMELEC can no longer entertain respondent's petition because it was filed 2 days late.

It bears stressing that in an election case, it is the primary duty of the COMELEC and the courts to ascertain by all means the will of the electorate. Thus, when the COMELEC treated respondent's petition as one for correction of manifest errors, it was merely complying with its duty. Petitioner has put premium on technicalities over and above such noble duty. In *Duremdes vs. COMELEC*, [28] we held that the determination of the true will of the electorate should be paramount, thus:

"Election contests involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials... Laws (and rules) governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case, the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate." (Underscoring supplied)

Instead of dismissing the petition for purely technical reasons, the COMELEC correctly considered the merits thereof. In *Tatlonghari vs. Commission on Elections*, [29] where a similar petition was filed 97 days from the date of proclamation, we held:

"The argument is devoid of merit. For one thing, records indicate that respondent's assumption of office was effected by a clerical error or simple mathematical mistake in the addition of votes and not through the legitimate will of the electorate. Thus, respondent's proclamation was flawed right from the very beginning. Having been based on a faulty tabulation, there can be no valid proclamation to speak of insofar as respondent Castillo is concerned. As this Court once said:

'x x x. Time and again, this Court has given its imprimatur on the principle that COMELEC is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed office, we have said, is no bar to the exercise of such power. It of course may not be availed of where there has been a valid proclamation. Since private respondent's petition before the COMELEC is precisely directed at the annulment of the canvass and proclamation, we perceive that inquiry into this issue is within the

area allocated by the Constitution and law to COMELEC.

x x x

`We have but to reiterate the oft-cited rule that the validity of a proclamation may be challenged even after the irregularly proclaimed candidate has assumed office.

x x x

`It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election protest. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues' (Agum vs. Commission on Elections, 23 SCRA 883 [1968]; cited in Agbayani vs. Commission on Elections, 186 SCRA 484 [1990]).'

"In view of the foregoing, the Court deems it unnecessary to pass upon the timeliness of petitioner's motion for reconsideration before the respondent Commission. While petitioner might have been tardy in filing the same, this Court cannot declare that petitioner lost his right to a public office to which he was duly elected by a mere lapse of time, the length of which was not even the product of his won wrong doing."

In the same vein, we ruled in *Bince, Jr. vs. Commission on Elections*[30] that:

"Assuming for the sake of argument that the petition was filed out of time, this incident alone will not thwart the proper determination and resolution of the instant case on substantial grounds. Adherence to a technicality that would put a stamp of validity on a palpably void proclamation, with the inevitable result of frustrating the people's will, cannot be countenanced."

Thus, the COMELEC did not act with grave abuse of discretion when it entertained respondent's petition by suspending its own Rules of Procedure. This is clearly allowed under Section 4, Rule 1 of the COMELEC Rules of Procedure, which provides:

"Section 4. Suspension of the Rules. - In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission." (Underscoring supplied)

Certainly, such rule of suspension is in accordance with the spirit of Section 6, Article IX-A of the Constitution which bestows upon the COMELEC the power to "promulgate its own rules concerning pleadings and practice before it or before any of its offices" to attain justice and the noble purpose of determining the true will of the electorate.[31]

It is significant to note that petitioner does not assail the factual findings of the COMELEC that "there was indeed manifest error in the copying of the figures from the election returns to the Statement of Votes by Precinct. The 41 votes garnered by petitioner in Precinct No. 29-A-1, as canvassed by the MBC of Castillejos, was reduced to four (4) in the Statement of Votes by Precinct." [32] Clearly, the assailed Resolution of the COMELEC ordering the necessary correction of the Statement of Votes of Castillejos, Zambales, to reflect the true will of the people of that municipality, is in order.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

- [1] Filed under Rule 65 of the Revised Rules of Civil Procedure, as amended.
- [2] Annex "A", Petition, Rollo at 26-36.
- [3] Annex "B", id. at 37-43.
- [4] Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Provincial Offices, Rollo at 52-53.
- [5] Statement of Votes by City/Municipality, Rollo at 62.
- [6] Annex "C", Petition, Rollo at 44-49.
- [7] Rollo at 58.
- [8] Annex "D", id. at 64-68.
- [9] Annex "E", id. at 69-72.
- [10] Annex "F", id. at 73-74.
- [11] See Annex "G" (Order dated July 16, 2001), id. at 75-76.
- [12] See Annex "B" (Resolution dated September 5, 2001 of the COMELEC-First Division), id., Rollo at 41.
- [13] Annex "G", Petition, Rollo at 76.
- [14] Id. at 37-43.
- [15] Annex "J", id. at 93-116.
- [16] Annex "L", id. at 119.
- [17] Annex "A", id. at 26-36.
- [18] Petition, Rollo at 4.
- [19] Rollo at 221-236.
- [20] See Article IX (C), Section 2.
- [21] See Article IX (C), Section 3.
- [22] *Enojas vs. COMELEC*, G.R. No. 129938, December 12, 1997, 283 SCRA 229.
- [23] G.R. No. 134657, December 15, 1999, 320 SCRA 836, citing *Mentang vs. COMELEC*, G.R. No. 110347, February 4, 1994, 229 SCRA 666.
- [24] *Trinidad vs. COMELEC*, supra, citing 55 CJS at 662; *Saura Import & Export Co., Inc. vs. David*, 52 OG 3145, 3151.
- [25] Regalado, Florenz D., *Remedial Law Compendium*, Volume I (6th ed.) at 140-141.
- [26] Annex "D", Rollo at 64- 68.
- [27] *Pangarungan vs. COMELEC*, G.R. Nos. 107435-36, December 11, 1992, 216 SCRA 522; *Tijam vs. Sibonhanoy*, G.R. No. L-21450, April 15, 1968, 23 SCRA 29; *Ilocos Sur Electric Cooperative, Inc. vs. NLRC*, G.R. No. 106161, February 1, 1995, 241 SCRA 36.

[28] G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746, citing *Juliano vs. Court of Appeals and Sinsuat*, 20 SCRA 808, 818-819 (1967).

[29] G.R. No. 86645, July 31, 1991, 199 SCRA 849.

[30] 242 SCRA 273 (1995).

[31] *Trinidad vs. Commission on Election*, *supra*.

[32] *Rollo* at 34.

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