

MANUEL A. ALEJANDRO, PETITIONER, VS. COMMISSION ON ELECTIONS, DAMIAN L. CO, AND THE MUNICIPAL BOARD OF CANVASSERS OF ALICIA, ISABELA, RESPONDENTS.

G.R. NO. 167101. January 31, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the petition for certiorari, prohibition and mandamus with prayer for temporary restraining order filed by Manuel A. Alejandro seeking to set aside the Resolution [1] dated February 22, 2005 of the Commission on Elections (COMELEC) en banc in SPC No. 04-195. The assailed resolution affirmed the Resolution [2] dated November 23, 2004 of the COMELEC Second Division directing the Election Officer of Alicia, Isabela to reconvene the Municipal Board of Canvassers for the purpose of correcting the errors committed in tallying the votes for the Vice-Mayorality race in the said municipality and to proclaim the rightful winner therein.

The factual antecedents are as follows:

Petitioner Manuel A. Alejandro and private respondent Damian L. Co were rival candidates for Vice-Mayor of the Municipality of Alicia, Isabela during the May 10, 2004 national and local elections. After the canvass of votes, the petitioner was proclaimed as the duly elected vice-mayor by the Municipal Board of Canvassers (MBC) on May 13, 2004.

On May 24, 2004, private respondent Co filed a Petition [3] to annul the proclamation of petitioner Alejandro on the ground that it was the result of manifest errors committed by the MBC in the canvassing of the election returns from the 156 precincts comprising the said municipality.

Private respondent Co alleged that the MBC erroneously proclaimed petitioner Alejandro as the vice-mayor-elect. The Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices prepared by the MBC showed that the petitioner obtained a total of 11,866 votes. However, based on the taras, words and figures stated in all the election returns, petitioner Alejandro only obtained a total of 11,152 votes while private respondent Co received a total of 11,401 votes, thereby making him the rightful winner of the disputed office with the winning margin of 249 votes. The total, showing the victory of private respondent Co, allegedly resulted from the correct addition of the votes received by each of said candidates based on the election returns from all the 156 precincts of the said municipality.

Private respondent Co asserted that he was the victim of "vote-padding and vote-shaving," more commonly known as "dagdag-bawas," committed by the MBC or its tabulators, as clearly shown by a comparison of the election returns from the precincts concerned vis-à-vis the statement of votes per precinct and certificate of canvass.

In her Answer, Election Officer Teresita B. Angangan, Chairperson of the MBC, admitted that manifest errors

were committed in the preparation of the statement of votes but denied for lack of sufficient knowledge the allegation of "dagdag-bawas." She submitted a table comparing the figures in the election returns and in the statement of votes in all 156 clustered precincts and pointed out that based on the election returns, private respondent Co should have won the elections after garnering 11,401 votes as against the 11,152 votes for petitioner Alejandro. She prayed that the COMELEC issue an order to reconvene the MBC to correct the errors made in the Certificate of Canvass and Statement of Votes by Precincts.

For his part, petitioner Alejandro prayed in his Comment that the petition to annul his proclamation be denied for being filed out of time. He alleged that the petition was actually one for correction of manifest errors and, therefore, should have been filed as a pre-proclamation controversy. And that even if the errors were discovered after proclamation, it should have been filed within five days after proclamation [4] or, in this case, not later than May 18, 2004.

Petitioner Alejandro further argued that even assuming that the petition was one for declaration of nullity of proclamation, the petition should have been filed not later than 10 days from proclamation following several decisions of the Court. [5] Since he was proclaimed on May 13, 2004, the petition to annul his proclamation should have been filed by private respondent Co on May 23, 2004. Even if the said date was a Sunday, petitioner Alejandro insisted that the same was a working day; hence, there was no reason why private respondent Co could not have complied with the 10-day reglementary period.

Petitioner Alejandro stressed that 11 days had passed between his proclamation on May 13, 2004 and the filing of private respondent Co's petition. No matter how the petition was treated – whether as a pre-proclamation controversy or a petition for annulment of proclamation – the period for filing thereof had lapsed.

On the merits, petitioner Alejandro contended that he was the duly-elected vice-mayor as based on his own computation, he garnered a total of 11,412 votes as against private respondent Co's 11,347 or a difference of 65 votes in favor of the former.

After consideration of the pleadings filed by the parties, the COMELEC Second Division promulgated the Resolution dated November 23, 2004, the fallo of which reads:

WHEREFORE, premises considered, the petition to declare the nullity of the proclamation of Manuel Alejandro is granted in part. The Election Officer of Alicia, Isabela is hereby ordered to reconvene the Municipal Board of Canvassers with the purpose of correcting the errors committed in tallying the votes for the Vice Mayoralty race in Alicia, Isabela.

SO ORDERED. [6]

Petitioner Alejandro sought reconsideration of the said resolution and prayed for the deferment of the reconvening of the MBC. The said motion likewise prayed for the dismissal of the petition for having been filed out of time and for utter lack of merit.

Pursuant to the November 23, 2004 COMELEC Second Division Resolution, Election Officer Angangan ordered the MBC to reconvene on December 8, 2004. In compliance therewith, the MBC reconvened on the said date and after re-canvassing the election returns, proclaimed private respondent Co as the duly-elected vice-mayor.

Meanwhile, the COMELEC Second Division issued the Order [7] dated December 8, 2004, elevating to the COMELEC en banc petitioner Alejandro's motion for reconsideration. The pertinent portion of the Order reads:

It appears that the foregoing motion for reconsideration is not accompanied by a filing fee in the amount of Five Hundred Pesos (P500.00).

In view of the foregoing, the motion is hereby elevated to the Commission en banc for proper disposition.

The "Opposition to Respondent's Supposed Motion for Reconsideration and Urgent Prayer for Deferment" is hereby noted.

SO ORDERED. [8]

Private respondent Co filed an Opposition/Comment stating that the COMELEC en banc had not acquired jurisdiction to hear and decide petitioner Alejandro's motion for reconsideration due to his failure to pay the required docket fee on time.

On February 22, 2005, the COMELEC en banc issued a Resolution [9] dismissing for lack of merit petitioner Alejandro's motion for reconsideration. The dispositive part of the resolution reads:

WHEREFORE, in the light of the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to DENY the instant Motion for Reconsideration for lack of merit.

ACCORDINGLY, the Resolution of the Commission (Second Division) dated November 23, 2004 directing EO Teresita Angangan to 1) reconvene the Municipal Board of Canvassers of Alicia, Isabela for the purpose of correcting the errors committed in the tallying of votes for the Vice-Mayoralty race in Alicia, Isabela; and 2) determine and proclaim the rightful winner, is hereby AFFIRMED.

SO ORDERED. [10]

Hence, the recourse to this Court by petitioner Alejandro alleging that:

THE COMELEC ACTED WITH GRAVE ABUSE OF ITS DISCRETION AND DENIED PETITIONER HIS RIGHT TO DUE PROCESS WHEN IT:

- DETERMINED THAT THE PETITION OF DAMIAN CO WAS TIMELY FILED.
- FAILED TO ORDER THE CONDUCT OF HEARINGS FOR THE EXAMINATION OF THE DISPUTED ELECTION DOCUMENTS.
- DID NOT IDENTIFY WHERE THE ERRORS THAT MUST BE CORRECTED LIE.
- ASSUMED THAT THERE WERE MANIFEST ERRORS TO CORRECT DESPITE THE LACK OF ANY COMPETENT PROOF OF EXISTENCE OF MANIFEST ERRORS, THE BEST EVIDENCE BEING THE ELECTION RETURNS AND STATEMENT OF VOTES THEMSELVES.

D.1 THE BASIS FOR THE CORRECTION WAS THE ANSWER OF THE FORMER ELECTION OFFICER, NOT THE ELECTION RETURNS.

D.2 THE FORMER ELECTION OFFICER WAS NOT EVEN AUTHORIZED TO REPRESENT THE MUNICIPAL BOARD OF CANVASSERS.

D.3 THE FORMER ELECTION OFFICER WAS NOT EVEN PRESENTED AS WITNESS.

D.4 THE EVIDENCE OFFERED BY THE FORMER ELECTION OFFICER WAS ILLEGALLY PROCURED.

- DID NOT NULLIFY THE PROCEEDINGS OF THE BOARD OF CANVASSERS ASSUMING THAT THERE WERE MANIFEST ERRORS.

E.1 THE BOARD OF CANVASSERS PROCEEDED WITH THE CANVASSING DESPITE THE TIMELY FILING OF A MOTION FOR RECONSIDERATION AND IT DID NOT ACT, CONSIDER OR RULE ON THE MOTIONS TO NULLIFY THE EXECUTION OF THE RESOLUTION OF THE SECOND DIVISION.

- AFFIRMED A NON-EXISTENT RESOLUTION.[11]

On March 29, 2005, the petitioner filed a Manifestation with Urgent Motion for Issuance of Temporary Restraining Order or Status Quo Ante Order. Without waiting for the action of this Court, the COMELEC en banc [12] issued a Writ of Execution [13] on March 30, 2005, ordering the petitioner to vacate the position of the Vice-Mayor of Alicia, Isabela, and to cease and desist from performing the functions thereof.

On April 5, 2005, the Court issued a Resolution [14] requiring the parties to observe the status quo prevailing before the issuance of the assailed COMELEC resolutions.

The issues to be resolved are whether respondent COMELEC committed grave abuse of discretion in: (1) ruling that private respondent Co's petition to annul petitioner Alejandro's proclamation was timely filed; (2) admitting and considering the answer filed by Election Officer Angangan, the Chairperson of the MBC; (3) not conducting a hearing for the examination of the disputed election documents thereby depriving the petitioner of due process; and (4) ordering the MBC to reconvene to rectify its errors and to proclaim the winner in the Vice-Mayoralty race in Alicia, Isabela.

The Court rules in the negative.

First Issue: Whether the COMELEC committed grave abuse of discretion in holding that private respondent Co's petition to annul the proclamation was timely filed

Petitioner Alejandro characterizes private respondent Co's petition filed with COMELEC as a "dual-purpose" petition because it expressly prayed for both the correction of manifest errors and the declaration of nullity of the petitioner's proclamation. This tack was allegedly adopted by private respondent Co to circumvent the mandatory five-day period to file a petition to correct manifest errors. Even if the petition was one for the annulment of his proclamation, it was still allegedly filed out of time since it was filed more than 10 days following the date of proclamation.

The petitioner points out that he was proclaimed as the winning vice-mayoralty candidate on May 13, 2004; hence, private respondent Co only had until May 23, 2004 to file the petition to nullify the proclamation. Since private respondent Co's petition was filed on May 24, 2004, or 11 days after the proclamation, then the same was filed out of time. Even if May 23, 2004 fell on a Sunday, the petitioner asserts that COMELEC Resolution No. 6624 specifically declared all Saturdays, Sundays, and holidays from October 2003 until June 30, 2004 as working days in the COMELEC.

The COMELEC Second Division treated the petition as one for the annulment of petitioner Alejandro's proclamation as it held that:

The petition to declare the nullity of a proclamation should be within a reasonable period. Again, private respondent [herein petitioner] is correct when he said that the Supreme Court has declared that ten days is a reasonable period.

Considering however, that the tenth day after Alejandro's proclamation fell on a Sunday, the rule is that the petition may be filed on the next working day. Although it is again true that the Commission allowed its employees to render overtime work on May 23, 2004, it would not automatically mean that those intending to file their petitions should do so on a Sunday. The rule moving a deadline to the next working day if it falls on a Sunday is an acknowledgment that majority of our people consider Sunday a day of rest. [15]

The COMELEC en banc affirmed the foregoing ruling.

We hold that the COMELEC correctly ruled that the petition for annulment was filed well within the reglementary period to file the same. Resolution No. 6624, which declared all Saturdays, Sundays, and holidays from October 2003 until June 30, 2004 as working days in the COMELEC, was an internal resolution intended merely for COMELEC employees. The resolution was for the guidance of the employees to report for work during weekends and holidays because of the approaching elections, and for the general public to give them more time to register as voters. It was never conceived to limit the period for filing election controversies, contests and offenses. Hence, since the last day for private respondent Co to file the petition to annul petitioner Alejandro's proclamation fell on May 23, 2004, a Sunday, he seasonably filed the same on the next working day or on May 24, 2004.

In a catena of cases, we have held that one cannot put premium on technicalities over and above the noble and paramount duty of determining the will of the electorate. In *Dela Llana v. COMELEC*, [16] it was ruled that:

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. (Italics supplied)

Instead of dismissing the petition for purely technical reasons, the COMELEC correctly considered the merits thereof. xxx

The COMELEC likewise did not commit grave abuse of discretion when it treated private respondent Co's petition as one for annulment of proclamation although it was denominated as also for correction of manifest errors. In fact, it finds support in several cases decided by the Court. For example, in *Mentang v. COMELEC*, [17] we held that where the relief sought is the correction of mathematical errors which are not attributable to incorrect entries in any of the election returns, statement of votes and certificate of canvass but in the mere computation of the votes reflected in those election documents, it is a petition for annulment/declaration of nullity of proclamation, not a petition to correct manifest errors.

In *Bince, Jr. v. COMELEC*, [18] we upheld the COMELEC resolution which set aside the proclamation of the petitioner therein as a member of the Sangguniang Panlalawigan on the basis of a petition for correction of votes in the statement of votes filed by the respondent therein:

Undoubtedly, therefore, the only issue that remains unresolved is the allowance of the correction of what are purely mathematical and/or mechanical errors in the addition of the votes received by both candidates. It does not involve the opening of ballot boxes; neither does it involve the examination and/or appreciation of ballots. The correction sought by private respondent and respondent MBCs of Tayug and San Manuel is correction of manifest mistakes in mathematical addition. Certainly, this only calls for a mere clerical act of reflecting the true and correct votes received by the candidates by the MBCs involved. In this case, the manifest errors sought to be corrected involve the proper and diligent addition of the votes in the municipalities of Tayug and San Manuel, Pangasinan.

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Consequently, by margin of 72 votes, private respondent indisputably won the challenged seat in the Sangguniang Panlalawigan of the sixth district of Pangasinan. Petitioner's proclamation and assumption into public office was therefore flawed from the beginning, the same having been based on a faulty tabulation. Hence, respondent COMELEC did not commit grave abuse of discretion in setting aside the illegal

proclamation. [19]

In *Milla v. Balmores-Laxa*, [20] we sustained the power of the COMELEC to annul the proclamation, due to an alleged error in the tabulation of the statement of votes, of a winning candidate for municipal councilor who had taken his oath and assumed office as such. We ruled therein that:

The Statement of Votes forms the basis of the Certificate of Canvass and of the proclamation. Any error in the statement ultimately affects the validity of the proclamation.

If a candidate's proclamation is based on a Statement of Votes which contains erroneous entries, it is null and void. It is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to annul the proclamation. [21]

Significantly, in *Milla*, the petition for correction of entries in the statement of votes was filed one month after the proclamation.

Hence, respondent COMELEC did not commit grave abuse of discretion in treating private respondent Co's petition as one for the annulment of petitioner Alejandro's proclamation and holding that the same was timely filed.

Second Issue: Whether the COMELEC committed grave abuse of discretion in admitting the Answer filed by Angangan and ruling that manifest errors were committed

Petitioner Alejandro wonders how the COMELEC arrived at such a conclusion that errors were committed in the copying of results from the election returns to the statement of votes when not a single election return or a single statement of votes was presented by any party. To recall, however, in the Answer she filed with the COMELEC, Angangan, then Chairperson of the MBC of Alicia, Isabela, admitted that there was manifest error in the Certificate of Canvass and Proclamation. She likewise admitted that there was incorrect tallying, tabulation and addition of votes and prayed that "an order be issued to reconvene the Municipal Board of Canvassers, Alicia, Isabela to correct the entries made in the Certificate of Canvass and Statement of Votes by Precincts." [22]

Petitioner Alejandro, however, assails the said answer contending that it was filed solely by Angangan and did not have the conformity of the other members of the MBC; nor did it show the participation of the other members in its preparation and the filing thereof considering that the MBC is a collegial body. The petitioner adds that Angangan's answer included tabulation of votes which was not verified and that Angangan filed her answer when she was no longer a member of the MBC.

The public and private respondents assert that as then Chairperson of the MBC, Angangan had no alternative but to file an answer because she received the summons sent by the COMELEC. Hence, even on the assumption that her answer was not that of the MBC, the respondents believe that it still constitutes evidence of the highest order. For the respondents, Angangan's allegations therein are admissions made by a party in the pleadings, and a responsible officer of the COMELEC.

The respondents' contentions are correct. It should be added that the COMELEC possesses the power of supervision and control over Angangan, as Chairperson of the MBC, and the MBC. As such, the COMELEC thus aptly ratiocinated:

xxx [T]he statutory power of supervision and control by the COMELEC over the boards of canvassers includes the power to revise, reverse or set aside the action of the boards, as well as to do what the boards should have

done, even if questions relative thereto have not been elevated by an aggrieved party to the COMELEC, for such power includes the power to initiate *motu proprio* or by itself such steps or actions as may be required pursuant to law. The COMELEC's power of direct supervision and control includes such authority as reviewing the actions of the board, extending an inquiry of questions affecting the genuineness of election returns beyond the election records of the polling places involved, annulling canvass or proclamation based on incomplete returns or on incorrect or tampered returns, invalidating a canvass or proclamation made in an unauthorized meeting of the Board of Canvassers either because it lacked a quorum or because the board did not meet at all, or requiring the board to convene by deputizing and instructing the City Treasurer to convene the Boards of Canvassers for the respective localities involved. [23]

The petitioner avers in his memorandum that "not a single election return or a single statement of votes was presented by any party." [24] In his petition filed with the Court, however, he attached a copy of the private respondent's petition before the COMELEC which had a copy of the certificate of canvass of votes [25] and the disputed election returns as annexes thereto. [26]

The 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. [27] Section 5(2), Rule 27 of the COMELEC Rules of Procedure likewise provides:

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 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. [28]

The following pronouncement of the COMELEC Second Division in its resolution is particularly instructive:

There is no question that errors were committed regarding the copying of the results of the elections from the Election Returns to the Statement of Votes. Both the public and private respondent admitted that errors were indeed made. They just differ as to who will be the real winner if these errors are corrected. According to public respondent, petitioner [herein private respondent] won; private respondent [herein petitioner] maintains he would still have won even if the errors were corrected.

What is involved is a simple problem of arithmetic. The Statement of Votes involved in this case does not match the entries made in the election returns.

It is thus imperative that a Municipal Board of Canvasser be immediately convened to correct with dispatch the errors committed in the tallying of votes. [29]

Likewise, the COMELEC en banc found that:

In terms of the third issue, the contention of the private respondent [herein petitioner], that the Commission (Second Division) gravely erred in finding that he had admitted that there were manifest errors, cannot be given credence. Going over the records of the case, errors were indeed committed regarding the copying of results of the elections from the election returns to the SOV. It is already beside the point whether or not private respondent admitted such error. [30]

The foregoing factual findings of the COMELEC, which are supported by substantial evidence, are binding on the Court. Hence, petitioner Alejandro's allegation that the manifest errors were based on lack of competent proof must fail.

Third Issue: whether the COMELEC committed grave abuse of discretion in not conducting a hearing for the examination of the disputed election documents

The petitioner contends that he and the private respondent have different versions of the correct computation. He insists that the COMELEC should have conducted hearings to determine where the alleged tabulation errors lie. By failing to conduct hearings, the petitioner asserts that he was denied due process and was not given the opportunity to prove that the manifest errors in the election documents in fact do not exist.

The petitioner's claim of denial of due process does not persuade. We quote hereunder the pertinent portion of the November 23, 2004 Resolution of the COMELEC Second Division:

Despite the admission of private respondent [petitioner Alejandro herein] that there were indeed errors in the tallying of votes, pursuant to the ruling by the Supreme Court in *Bince, Jr. v. Comelec*, We cannot annul the proclamation of private respondent without notice and hearing. This requirement will be satisfied when the Municipal Board of Canvassers convenes and corrects the errors committed in the original tallying of votes. [31]

In his motion for reconsideration filed with the COMELEC en banc, the petitioner averred that he was notified, through the undated Notice signed by Angangan, that "the Municipal Board of Canvassers of Alicia, Isabela, will reconvene on December 8, 2004, at nine o'clock in the morning at the Session Hall, Sangguniang Bayan, Alicia, Isabela. xxx" [32]

In administrative proceedings, the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side or opportunity to seek a reconsideration of the action or ruling complained of. [33] A formal trial-type hearing is not at all times and in all situations essential to due process. Verily, "to be heard" does not only mean presentation of testimonial evidence. One may also be heard through pleadings and where opportunity to be heard through pleadings is accorded, there is no denial of due process. [34]

This opportunity was made completely available to the petitioner who not only participated in the proceedings before the MBC but also sought reconsideration of the resolution of the COMELEC Second Division. In fact, the issues raised by the petitioner in his motion for reconsideration were extensively passed upon by the COMELEC en banc in the assailed resolution.

Fourth Issue: Whether the COMELEC committed grave abuse of discretion when it ordered the MBC to reconvene to rectify its errors and to proclaim the winner in the vice-mayoralty race in Alicia, Isabela

The petitioner avers that when he filed the motion for reconsideration of the November 23, 2004 Resolution of the COMELEC Second Division, the order to reconvene the MBC was, in effect, suspended by virtue of Section 2, Rule 19 of the COMELEC Rules of Procedure which reads:

Sec. 2. Period for Filing Motions for Reconsideration.—A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution or implementation of the decision, resolution, order or ruling.

The petitioner maintains that his motion for reconsideration was timely filed on December 1, 2004, or within the five-day reglementary period, since he received a copy of the November 23, 2004 Resolution of the COMELEC Second Division on November 26, 2004. This contention is not quite correct. The petitioner cannot count the five-day reglementary period from November 26, 2004, the date he received a copy of the November 23, 2004 Resolution of the COMELEC Second Division. Section 2, Rule 19 of the COMELEC Rules of Procedure clearly provides that the motion for reconsideration should be "xxx filed within five (5) days from the promulgation thereof." [35] The rationale for reckoning the period from the date of promulgation was explained, thus: "A party cannot feign ignorance of the date of promulgation of a decision or resolution because it is previously fixed and notice is served upon him in advance." [36] Section 5, Rule 18 of the COMELEC Rules of Procedure provides:

Sec. 5. Promulgation. – The promulgation of a decision or resolution of the Commission or a Division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram.

The petitioner's motion for reconsideration was thus filed late on December 1, 2004 as more than five days had lapsed from the promulgation of the November 23, 2004 Resolution of the COMELEC Second Division. Worse, the filing fee therefor was paid only on December 13, 2004. Given these defects, the petitioner's motion for reconsideration could not have the effect of suspending the execution of the November 23, 2004 Resolution of the COMELEC Second Division.

In any case, the COMELEC Second Division justified the reconvening of the MBC in this wise:

On June 21, 2004, public respondent Election Officer Teresita B. Angangan, Chairman of the Board, submitted her answer. She admitted that there were indeed manifest errors committed by the Board in the preparation of the Statement of Votes but denied that "dagdag-bawas was done, practiced, perpetrated and repeated several times over by the Municipal Board of Canvassers." She maintained that there was no dagdag-bawas but a mere error in tabulation or tallying.

EO Angangan also submitted a table comparing the figures in the Election Returns and in the Statement of Votes in all 156 clustered precincts. In this table (Annex 1 of public respondent's Answer), she pointed out that based on the Election Returns, petitioner [private respondent herein] should have won the elections after garnering 11,401 votes as against the 11,152 votes for private respondent.

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There is no question that errors were committed regarding the copying of the results of the elections from the Election Returns to the Statement of Votes. Both the public and private respondent admitted that errors were indeed made. They just differ as to who will be the real winner if these errors are corrected. According to public respondent, petitioner won; private respondent maintains he would still have won even if the errors were corrected.

What is involved here is a simple problem of arithmetic. The Statement of Votes involved in this case does not match the entries made in the election returns.

It is thus imperative that a Municipal Board of Canvasser be immediately convened to correct with dispatch the errors committed in the tallying of votes. [37]

The COMELEC en banc upheld the reconvening of the MBC, thus:

xxx "The teaching of past experience is that every effort should be strained, every means should be explored, to ascertain the true returns with the end in view that upon the basis thereof, proclamation untainted by force, fraud, forgery, mistake and the like, may be made. It is true indeed that after proclamation, the losing candidate may yet have the remedy of an election protest. But that may not prove effective. A number of factors, such as

the almost illimitable resources of lawyers and the delay that may be occasioned may well frustrate the ends of the protest. Victory may just be in sound, and not in substance." While it is true that as a general rule, the Board of Canvassers becomes *functus officio* after it has performed its last task, which is to proclaim the winning candidates, the Highest Tribunal had the opportunity to cite an exception to such general rule in *Javier vs. COMELEC*, where it stated that "it may be conceded as a general proposition that when a Board of Canvassers has fully performed its duty and proclaimed the result of the election according to law and adjourned *sine die*, it may be deemed *functus officio* in the sense that the members of the board have no power voluntarily to reassemble and re-canvass the returns. But the foregoing pronouncement finds no application in this case where as already ruled, the canvass and proclamation were made in violation of the lawful order of the COMELEC.

Furthermore, where an election return has been amended by court order or the election return from a certain precinct has been wrongfully or erroneously excluded by the Board of Canvassers, We held that the COMELEC has the power to order a new canvass of the election returns even after a proclamation had already been made. The underlying theory therefore, it was said, is the ministerial duty of the Board of Canvassers to base the proclamation on the election returns of all the precincts of the municipality. Where the Board of Canvassers, as in this instance with knowledge that the return from one precinct is undoubtedly vitiated by clerical mistake, continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation cannot be said to have been in faithful discharge of its ministerial duty under the law. [38]

We find no grave abuse of discretion in the foregoing COMELEC pronouncements. There is no controversy that discrepancies exist in the statement of votes and that reflected in the questioned election returns. Considering that any error in the statement of votes would affect the proclamation made on the basis thereof, the resolution of the COMELEC directing the MBOC to reconvene to rectify the errors it committed in tallying the votes for the vice-mayoralty race in Alicia, Isabela should be upheld. Indeed, "above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred." [39]

WHEREFORE, premises considered, the petition is hereby **DISMISSED** and the Resolutions of the COMELEC Second Division and en banc dated November 23, 2004 and February 22, 2005, respectively, are **AFFIRMED**. The status quo order heretofore issued is hereby ordered **LIFTED**.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Composed of Chairman Benjamin S. Abalos, Sr., with Commissioners Rufino S.B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., Virgilio O. Garcillano, Manuel A. Barcelona, Jr.; rollo, pp. 72-88.

[2] Composed of Mehol K. Sadain as the Presiding Commissioner, with Commissioners Florentino A. Tuason, Jr. and Manuel A. Barcelona, Jr.; *id.* at 212-217.

[3] *Id.* at 94-104.

[4] Citing Section 5 of Rule 27 of the COMELEC Rules of Procedure.

[5] See, for example, *Mentang v. COMELEC*, G.R. No. 110347, February 4, 1994, 229 SCRA 666.

[6] Rollo, p. 216.

[7] Rollo, pp. 386-387; Penned by Presiding Commissioner Mehol K. Sadain.

- [8] Id.
- [9] Id. at 72-88.
- [10] Id. at 87.
- [11] Id. at 14-15.
- [12] The writ was signed solely by Chairman Benjamin S. Abalos, Sr.
- [13] Rollo, pp. 317-319.
- [14] Id. at 321.
- [15] Rollo, p. 215.
- [16] G.R. No. 152080, November 28, 2003, 416 SCRA 638, 648, citing *Duremdes v. COMELEC*, G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746, 759, *Juliano v. Court of Appeals and Sinsuat*, G.R. No. L-27477, July 28, 1967, 20 SCRA 808, 818-819.
- [17] *Supra*, at note 5.
- [18] 312 Phil. 316 (1995).
- [19] Id. at 336.
- [20] G.R. No. 151216, July 18, 2003, 401 SCRA 679.
- [21] Id. at 684-685.
- [22] Rollo, p. 257.
- [23] Rollo, p. 84, citing *Aratuc v. COMELEC*, G.R. No. L-49705-09, February 8, 1979, 88 SCRA 251, 273.
- [24] Memorandum for Petitioner, p. 41.
- [25] Annex "A," Rollo, p. 105
- [26] Annex "B" to "B-81," id. at 106-187.
- [27] *Trinidad v. Commission on Elections*, 378 Phil. 603 (1999), citing *Mentang v. Commission on Elections*, *supra*, at note 5.
- [28] Emphasis supplied.
- [29] Rollo, p. 216 (*Italics supplied*).
- [30] Rollo, p. 85 (*Italics supplied*).
- [31] Rollo, p. 216. (*Emphasis supplied*)
- [32] Id. at 243.
- [33] *Utto v. COMELEC*, 426 Phil. 225 (2002).
- [34] *Batul v. Bayroni*, G.R. No. 157687, February 26, 2004, 424 SCRA 26, 36.
- [35] *Velayo v. COMELEC*, 384 Phil. 454, 470 (2000).
- [36] Id. at 471.
- [37] Rollo, pp. 213-216.

[38] Rollo, pp. 85-87

[39] Mentang v. COMELEC, supra, at note 5.

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