

GABRIEL GARDUCE BASARTE, PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC), BOARD OF CANVASSERS OF SILVINO LOBOS, NORTHERN SAMAR, ND NOEL JARITO, RESPONDENTS.

G.R. No. 169413. May 09, 2007

Ponente: PUNO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-169413/>

PUNO, C.J.:

Before us is a petition for Certiorari under Rules 64 and 65 of the Rules of Court with prayer for the issuance of a Writ of Preliminary Injunction and/or Status Quo Ante Order, assailing the resolution of the COMELEC en banc[1] which affirmed the resolution of the COMELEC First Division[2] dismissing petitioner Gabriel Garduce Basarte's Petition to Exclude Election Return No. 04101444 of Precinct No. 17A, Barangay Cagda-o, Silvino Lobos, Northern Samar.

Petitioner Basarte and private respondent Noel Jarito were candidates for Municipal Mayor of Silvino Lobos, Northern Samar in the May 10, 2004 Synchronized National and Local Elections. Petitioner was the Lakas-CMD Party mayoralty candidate while private respondent was the candidate of the Liberal Party (Raul Daza Wing).

On May 29, 2004, the members of the Municipal Board of Canvassers (MBC) canvassed the election returns from the various precincts of Silvino Lobos, Northern Samar. At around 5:30 p.m. of the same day, petitioner Basarte, through his authorized representative Atty. Anselmo S. Alvañiz IV, registered his objection to the inclusion of Election Return No. 04101444 of Precinct No. 17A, Barangay Cagda-o on the grounds that "[t]he [e]lection [r]eturn is obviously tampered and the taras, words and figures contained therein for all local positions (Prov'l. and Municipal) have been altered" and "the second page for the local positions is missing." [3]

Petitioner submitted a formal offer of evidence. It was not opposed within the period provided under the COMELEC Rules of Procedure (COMELEC Rules).

On June 1, 2004, the MBC of Silvino Lobos, Northern Samar denied petitioner's petition to exclude the assailed election return. Its ruling reads:

Inclusion of ER for mayoralty position as there were no erasures/alterations in the said position. The Chairman of the BEI had testified before the [B]oard that there was no page 2 of ER and by his testimony it was taken by the Board as BEI regular function.[4]

Petitioner timely filed a Notice of Appeal[5] with the MBC and a Petition[6] with the COMELEC. Petitioner submitted in evidence: 1) his Petition to Exclude Election Return No. 04101444 of Precinct No. 17A of Barangay Cagda-o with the MBC; 2) the Ruling of the MBC; and 3) the Notice of Appeal of the MBC's Ruling. He submitted the affidavit of Boyet Lukban, the Official Watcher of Lakas-CMD in the subject precinct, who attested that: a) the total number of votes cast in the precinct was only 126 -- 74 votes for petitioner and 52 votes for private respondent Jarito; b) no page was missing in the election returns during the tallying and counting of votes in the precinct; c) the names of petitioner, private respondent Jarito and some candidates for Provincial Board

Member were written on page 2 of the election returns; d) as watcher, he affixed his signature on every page of the election returns, including page 2 thereof; e) there were no erasures on the election returns when he signed each and every page thereof; f) at about 9:00 p.m. of May 10, 2004, he accompanied the members of the Board of Election Inspectors (BEI) on board a motorized banca owned by Danilo Jarito, first cousin of private respondent, in order to bring the election paraphernalia to the Poblacion; g) upon arrival at the Poblacion, Silvino Lobos at around midnight of the same day, he was chased by three (3) armed men, hence, he was not able to accompany the election paraphernalia; h) he was not furnished a copy of the Certificate of Votes cast for the candidates despite his request or demand; and i) the ballot box of the subject precinct was only delivered by a certain Robert Ortenero to the Office of the Municipal Treasurer in the morning of May 12, 2004. Lukban's affidavit was corroborated by a copy of Police Blotter Entry No. 77, page 17, stating that only the chairman of the BEI of Precinct No. 17A of Barangay Cagda-o delivered the ballot box of the said precinct to the Municipal Building Office of the treasurer. The affidavit of Louie Bantilo, the official watcher of party-list Anakpawis in the subject precinct also attested to the same circumstances related by Lukban in his affidavit. Petitioner submitted the Joint Affidavit of Arturo Castillo, Nilda Castillo, Corita Bantilo, Gemma Castillo, Elpedio Castillo, Caridad Morales Castillo, Cristina Morales and Samuel Diaz to prove that it was statistically improbable for Precinct No. 17A to have a 100% voter turnout. These affiants attested that they were registered voters of the subject precinct and that they were not able to cast their votes as they were in another town. They likewise attested that in the May 10, 2004 election, one registered voter of the subject precinct was in Manila and 14 others were already deceased. Petitioner submitted a copy of the Computerized Voter's List for Barangay Cagda-o issued by the COMELEC to show that Barangay Cagda-o had 157 registered voters and among them, some were already deceased, transferred registration, in Manila or a double registrant at the time of the election. In his Supplemental Pleading, petitioner also attached the affidavit of Romeo Y. Idjao, a candidate for councilor under the Liberal Party who attested that the ballot box of the subject precinct was delivered to the house of private respondent Jarito on May 10, 2004.

On December 14, 2004, the COMELEC First Division[7] issued a resolution penned by Commissioner Resurreccion Borra, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED and the assailed ruling of the Municipal Board of Canvassers of Silvino, Lubos, Northern Samar is AFFIRMED. Accordingly, the Board is hereby directed to immediately RECONVENE, COMPLETE the canvass and forthwith PROCLAIM the winning candidate for the contested mayoralty position.

SO ORDERED.[8]

In so ruling, the COMELEC First Division held:

Contrary to the allegation of the petitioner, the Chairman of the Board of Election Inspectors of Precinct No. 17A has testified before the respondent MBC that they cannot be faulted on the alleged missing page because there was no such second page existing in the copies of the election returns when they received the same. With this explanation, and in the absence of any competent evidence to the contrary, [We] are inclined to believe and hold that what the BEIs of Precinct No. 17A did, in the light of said circumstance, should be accorded the presumption of regularity in the performance of its official duties.

Likewise, after examining the contested election return, [We] agree that the same is regular and authentic on its face and does not suffer from any serious infirmities affecting its integrity that warrants its exclusion.[9]

Petitioner filed a Motion for Reconsideration,[10] attaching additional documentary evidence, viz: 1) the Certification of Jocelyn C. Diaz, the incumbent barangay Chairperson of Barangay Cagda-o stating that the 21 persons who failed to vote were included in the list of voters in the subject precinct; 2) the Affidavit of Orlando Bantilo stating that his father, who was included in the list of voters in the subject precinct, died on June 5, 2003;

3) the Affidavit of Arturo Castillo that he was still in the list of voters in the subject precinct despite the fact that he was already residing and had transferred his registration to Pambujan, Northern Samar; 4) the Joint Affidavit of Zoilo D. Loyogoy and Segunda Arandia-Diaz stating that they were still in the list of voters in the subject precinct even if they have transferred their registration to Barangay Bangkerohan, Catarman, Northern Samar; 5) the Affidavit of Jocelyn C. Diaz attesting that her father-in-law, Porferio B. Diaz, who died on February 20, 2002, was still included in the voters' list of the subject precinct; and 6) the death certificate of Porferio Diaz. In his Supplemental Motion for Reconsideration,[11] petitioner submitted copies of Arturo Castillo's Application for Transfer of Registration, Application for Registration and the Computerized Voter's List of Barangay Poblacion District 4 where he was listed as a registered voter; and copies of Alpidio Castillo's Application for Transfer of Registration and Application for Registration from Silvino Lobos to Pambujan.

On September 2, 2005, public respondent COMELEC en banc, in a resolution also penned by Commissioner Borra, denied petitioner's motion for reconsideration.[12] Commissioner Mehol K. Sadain registered the lone dissent.

On September 11, 2005, the MBC of Silvino Lobos, Northern Samar proclaimed Noel L. Jarito as municipal mayor after canvassing the votes cast in thirty-nine (39) precincts in the municipality and finding that Jarito obtained 2,691 votes, the highest cast for said office.[13]

On September 12, 2005, petitioner filed with this Court a Most Urgent Motion for Special Raffle asking for an immediate action of the prayer for a Status Quo Ante Order and/or Writ of Preliminary Injunction. He likewise filed the instant Petition for Certiorari (With Application for a Writ of Preliminary Injunction and/or Status Quo Ante Order) raising the following issues:

I

Respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it proceeded to issue its September 2, 2005 En Banc Resolution in open defiance of the restriction imposed by Section 1, Rule 4 of the COMELEC Rules of Procedure, hence, its proceedings are null and void.

II

Respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in its findings of facts when it injudiciously disregarded all evidence laid before it that competently cast doubt on the regularity and reliability of the questioned ER of Precinct 17A.

III

Respondent COMELEC's (sic) commit[ted] grave abuse of discretion amounting to lack or excess of jurisdiction when it concluded that the questioned ER is genuine and authentic for canvass purposes because established facts and the law does not support such baseless conclusion.

Petitioner prays that judgment be rendered: 1) declaring the assailed en banc resolution void for having been issued in gross defiance of Section 1, Rule 4 of the COMELEC Rules and thereafter nullifying the MBC ruling and the proclamation of private respondent Jarito; and 2) excluding Election Return No. 04101444 of Precinct No. 17A, Barangay Cagda-o, Silvino Lobos, Northern Samar from the MBC canvass for being falsified, tampered and/or manufactured or, in the alternative, directing COMELEC to hold a special election for Precinct No. 17A, Barangay Cagda-o, Silvino Lobos, Northern Samar.[14]

Petitioner correctly points out that the assailed COMELEC en banc Resolution violates Section 1, Rule 4 of the COMELEC Rules which states that "no Member shall be the ponente of an en banc decision/resolution on a motion to reconsider a decision/resolution written by him in a Division." In *Agbayani v. COMELEC*,[15] we held

that a violation of this rule is a reason for the reversal of the acts of the COMELEC as COMELEC "should be the first to respect and obey its own rules, if only to provide the proper example to those appearing before it and to avoid all suspicion of bias or arbitrariness in its proceedings."

Factual findings of administrative bodies like the COMELEC are not infallible and will be set aside when they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law. Thus, when they grossly misappreciate evidence of such nature as to compel a contrary conclusion, their factual findings have been reversed. In the case at bar, we agree with petitioner that respondent COMELEC disregarded some glaring facts which give rise to a prima facie showing of irregularity in the assailed election return.

The following facts are undisputed: a) the subject election return lacked one page; b) the lacking page was supposed to contain spaces for the continuation of the seven (7) other candidates for Provincial Board Member and the first 13 spaces for the candidates for mayor; c) in the assailed election return, the names of the two candidates for mayor (petitioner and private respondent Jarito) and their corresponding votes were found on page 3; and d) the names of the seven (7) candidates for Provincial Board Member and their corresponding votes were missing.

It is noteworthy that petitioner, in his petition[16] before the COMELEC, raised the issue of the missing names and corresponding votes of the seven (7) candidates for Provincial Board Member. This issue, however, was never addressed by public respondent COMELEC in any of its resolutions. The only explanation for the missing page is found in the ruling of the MBC that "[t]he Chairman of the BEI had testified before the [B]oard that there was no page 2 of ER." Thereafter, the COMELEC First Division and en banc stated in their resolutions that "the Chairman of the Board of Election Inspectors of Precinct No. 17A has testified before the MBC to the effect that they cannot be faulted on the alleged missing page because there was no such second page existing in the copies of the election returns when they received the same." As opined by Commissioner Sadain, however, there is much to be desired from this explanation. We quote with approval the relevant portions of Commissioner Sadain's dissent, viz:

The majority opinion holds that the instant petition for exclusion of election return should be dismissed because the election return under scrutiny is genuine and authentic. It proposes that the subject election return is not palpably irregular on its face even if an entire page that should have contained seven names of candidates for Provincial Board and two names for candidates for mayor, together with their corresponding votes, is missing. The whereabouts of said missing page was explained away with the acceptance, hook, line and sinker, of the tale recited by the Chairman of the BEI before the Board of Canvassers that of all the precincts in the entire country, this particular precinct in Northern Samar received an election return without its page number two for Local Positions.

The explanation of the Chairman of the BEI is problematic in a lot of aspects. In the first place, said explanation is a mere whisper in the records of the instance case. In short, nowhere can it be found. It was taken as a fact by the Commission even if said explanation - or, more precisely, a shadow of said explanation - can only be found in the ruling of the Board of Canvassers rejecting the instant petition for exclusion, x x x

Nothing in the records further reflects an official account of the proceedings held before the Board of Canvassers, not even a transcript of the said explanation rendered by the BEI Chairman or, at the least, a copy of the minutes of the BOC proceedings.

x x x x

It goes without saying that for this appended story to be credible, it should also appear that the other votes for the other candidates for Provincial Board Member not accommodated in page 1 (as said page ends with the No. 6 candidate for Board Member, the 7[th] and other slots being continued to page 2 which is the missing page

herein) were also accommodated in the other pages of the election return or in another sheet of paper. As it stands, they were not, and the votes for the following candidates for Provincial Board Member cannot be accounted for in any page of the questioned election return:

- LEGASPI, Voltair Policarpio (PMP);
- LUCBAN, Miguel Cerda, Lakas CMD;
- LUCERO, Albert Alpez, Lakas CMD;
- MERCADO, Rodolfo Pajac, Lakas CMD;
- ONGCHUAN, Harris Christopher Mendoza, Lakas CMD;
- SARMIENTO, Miguel Lipata, Liberal Party;
- TIMAN, Gil Tuballas, Liberal Party.

The uncorroborated explanation of the BEI Chairman of Precinct No. 17A of Brgy. Cagda-o, which was readily accepted by the Board of Canvassers and by this Commission, of course, does not reveal where the votes of said seven candidates for Board Member went to as they remain, up to the present, simply and patently unaccounted for.[17]

In *Lee v. COMELEC*[18] which similarly involves an election return with omitted entries, we held:

Votes for an important position such as congressman do not simply vanish into thin air. Those who are mandated by law to account for such votes, if mistakenly omitted, are at least expected to give a fairly reasonable account of why and how then they have been omitted. Absent such explanation, doubt arises as to the authenticity of the returns and the manner of their preparation, specially in this case where a party watcher was allowed to take part in the preparation of the election return.[19]

Public respondent COMELEC, through the Office of the Solicitor General, contends that a pre-proclamation controversy is limited to an examination of the election returns on their face and it is beyond its jurisdiction to go beyond the face of the returns or investigate election irregularities.

But precisely, the unexplained omission appears on the face of the election return. In the instant case, as observed by Commissioner Sadain in his dissent:

This irregularity in the election return appears on its face. And when there is such an irregularity, the presumption of regularity in the accomplishment of said return vanishes. Thus, the principle that election returns are accorded prima facie status as bona fide reports of the results of the elections and should therefore be included in the canvass in the absence of any irregularity on their face finds no application in this case

Precisely, the subject election return is irregular, or at least, incomplete on its face.[20]

Moreover, the prevailing rule that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes presupposes that the returns "appear to be authentic and duly accomplished on their face." This principle does not apply in cases like the one at bar where there is a prima facie showing that the return is not genuine, several entries having been omitted in the assailed return.[21]

COMELEC's contention that its conclusion was based on its examination of the original second copy (the COMELEC copy) of the election return is unavailing as what is being assailed is the copy of the election return that was used in the canvass - the original first copy (the MBC copy). Under Section 235 of the Omnibus Election Code, the other original copies of the assailed election return may be resorted to when the assailed election return

appears to be tampered with, altered, or falsified. In the instant case, the COMELEC resorted to the original second copy despite its ruling that the questioned election return (the MBC copy) was genuine and authentic on its face. Stranger still, it does not appear that the COMELEC en banc compared the original second copy with the assailed MBC copy of the election return.

The merit of petitioner's arguments notwithstanding, Section 243 (d) of the Omnibus Election Code requires that for a pre-proclamation controversy to prosper, it must be shown that the election return sought to be annulled would materially affect the results of the election.

In the instant case, it is not clear whether the election return of Precinct No. 17A of Barangay Cagda-o, Silvino Lobos, Northern Samar will materially affect the results of the mayoral contest. The assailed resolutions of the COMELEC en banc[22] and First Division[23] are silent on this issue. Even petitioner did not make this allegation in his petition for exclusion of the subject election return before the MBC. It was only in his Supplemental Pleading before the COMELEC en banc that petitioner first prayed that he be "proclaimed as the duly elected mayor of Silvino Lobos based on the overall result after the special election recently held as per order of [the COMELEC], or in the alternative, the true and correct result of Precinct No. 17-A namely, 74 votes for petitioner and 52 votes for respondent Noel Jarito, be the basis in the computation of the total number of votes for both candidates." [24] In his Supplemental Motion for Reconsideration with the COMELEC en banc, petitioner alleged that it was "[made] to appear that [he] received only 2 votes from the [subject] precinct while his opponent (Jarito) received 155 votes where in truth and in fact, [he] actually received 74 votes, as against 52 votes of his opponent, making [him] the clear winner in the election for the mayoralty position." [25] Be that as it may, petitioner failed to submit convincing evidence to show that he would indeed win the election if the contested election return was excluded from the computation. Indeed, even in his assignment of errors before this Court, petitioner did not raise as an issue the materiality of the election return. Petitioner belatedly submitted proof of its materiality by attaching in his Petition a "certified true copy" of the Statement of Votes Per Precinct of the Municipality of Silvino Lobos[26] and explaining in his Memorandum[27] the figures found in said Statement of Votes. This is procedurally untenable as vital question of fact cannot be determined by this Court for the first time on appeal.

IN VIEW WHEREOF, the petition is DENIED.

SO ORDERED.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

Austria-Martinez, and Corona, JJ., on leave.

Nachura, J., no part.

[1] Promulgated on September 2, 2005; rollo, pp. 56-62.

[2] Promulgated on December 14, 2004; id. at 52-55.

[3] Id. at 70.

[4] Id. at 71.

[5] Id. at 72.

[6] Id. at 66-69.

[7] Composed of Presiding Commissioner Rufino B. Javier, Commissioner Resurreccion Z. Borra and Commissioner Virgilio O. Garcillano.

[8] Rollo, p. 55.

[9] Id. at 54.

[10] Id. at 97-99.

[11] Id. at 110-122.

[12] Id. at 62.

[13] Id. at 136.

[14] Id. at 262.

[15] G.R. Nos. 87440-42, June 13, 1990, 186 SCRA 484.

[16] Rollo, p. 67.

[17] Id. at 63-64.

[18] G.R. No. 157004, July 4, 2003, 405 SCRA 363.

[19] Id. at 371.

[20] Rollo, p. 64.

[21] See *Lee v. COMELEC*, supra note 18, p. 368.

[22] Supra note 1.

[23] Supra note 2.

[24] Rollo, p. 93.

[25] Id. at 121.

[26] Id. at 130-131.

[27] Id. at 252-254.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.