

**EN BANC LIWAYWAY VINZONS-CHATO, PETITIONER, VS.
COMMISSION ON ELECTIONS AND RENATO J. UNICO, RESPONDENTS.***G.R. NO. 172131. April 02, 2007*

Ponente: CALLEJO, SR., J.

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Before the Court is a petition for certiorari[1] filed by Liwayway Vinzons-Chato seeking to nullify the Resolution[2] dated March 17, 2006 of the Commission on Elections (COMELEC) en banc in SPC No. 04-096. The assailed resolution affirmed the Resolution[3] dated April 13, 2005 of the COMELEC (First Division) dismissing petitioner Chato's "petition to correct/nullify the election returns in the municipality of Labo, Camarines Norte, due to illegality of the proceedings before respondent Municipal Board of Canvassers of Labo and for manifest errors in the election returns; to declare null and void and without legal effect the proclamation of respondent candidate; and to declare and proclaim petitioner as the candidate with the highest number of votes received for the lone congressional district of the Province of Camarines Norte."

The factual and procedural antecedents are as follows:

Petitioner Chato and respondent Renato J. Unico were among the candidates for the lone congressional district of Camarines Norte during the May 10, 2004 synchronized national and local elections.

In her petition filed with the COMELEC, petitioner Chato alleged that during the canvassing of the election returns before the Municipal Board of Canvassers of Labo (MBC Labo) from May 10 to 12, 2004, her counsel raised several objections and pointed to manifest errors or obvious discrepancies in the election returns from various precincts of the municipality of Labo. Prior to the suspension of proceedings on May 12, 2004, the MBC Labo gave her twenty-four (24) hours, or until 6:00 p.m. of May 13, 2004, to prove her allegations.

Allegedly in violation of the procedure prescribed in Section 20[4] of Republic Act No. 7166 (An Act Providing for Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and For Other Purposes), before the expiration of the period granted and without notice to petitioner Chato or her counsel, the MBC Labo concluded the canvassing of votes and hastily forwarded the results of its canvass to the Provincial Board of Canvassers (PBC) of Camarines Norte. At that time, which was around 4:00 p.m. of May 13, 2004, petitioner Chato's counsel was supposed to deliver to the MBC Labo her letter enumerating the election returns allegedly containing manifest errors and discrepancies.

Petitioner Chato's counsel was thus constrained to appear before the PBC and moved for the suspension of its proceedings on the ground that there were still pending incidents before the MBC Labo. The PBC, however, denied the said motion. Upon instruction of the PBC, petitioner Chato filed therewith a letter-petition for reconsideration of the denial of her request to remand the matter to the MBC. However, on May 14, 2004, at around 10:00 a.m., petitioner Chato's counsel received a Resolution, of even date, of the PBC denying with finality her letter-petition for reconsideration. In so ruling, the PBC stated that pre-proclamation controversy was not allowed for the election of Members of the House of Representatives. It noted that the matters raised by

petitioner Chato, which formed part of the proceedings of the PBC, were proper for an election protest before the competent tribunal. Further, according to the PBC, it had no authority to direct the MBC Labo to reconvene for the purpose of receiving petitioner Chato's written objections and supporting documents and re-canvassing the election returns.

Likewise on May 14, 2004, at 11:30 a.m., the PBC proclaimed respondent Unico as representative-elect of the lone congressional district of Camarines Norte.

Petitioner Chato forthwith filed with the COMELEC a Petition alleging manifest errors in that —

- 1) Total number of ballots found in the compartment for valid ballots is more than the number of voters who actually voted in Barangays Anamea[m], Bagong Silang III, Bakiad, Malangcao Basud and Submakin;
- 2) Total number of votes counted is less than the number of voters who actually voted in Barangays Gumamela, Pinya, Dalas, Anameam, Baay, Bagacay, Bagong Silang I, II & III, Bakiad, Bautista, Bayan-Bayan, Bulhao, Cabusay, Calabasa, Cabatuhan, Canapwan, Daguit I, Dumagmang, Exciban, Fundado, Gumacutan, Guisican, Iberica, Lugui, Mabilo I & II, Macogon, Mahan-hawan, Malanggan Masalong, Napaod, Pag-asa, Pangpang, San Antonio, Sta. Cruz, Submakin, Talobalib and Tulay na Lupa;
- 3) The entries in some election returns coming from different precincts in Barangays Tulay na Lupa, Baay and Lugui, all of Labo, Camarines Norte, appear to have been written by one person;
- 4) No data on number of voters who actually voted and of ballots found in compartment for valid ballots from Barangays Bulhao, San Antonio, Tulay na Lupa, Daguit, Pinya, Cabusay, Napaod, Pag-asa and Dalas; and
- 5) One election return is supposedly an election return from Barangay Del Carmen, Labo, but there is apparently no Barangay Del Carmen and does not appear to be part of the series of election returns assigned to Labo.[5]

Petitioner Chato insisted that correction of manifest errors in the certificates of canvass or election returns, questions affecting the composition or proceedings of the boards of canvassers, or noting of objections on election returns or certificates of canvass were allowed before the MBC. She further claimed that with all the manifest errors and obvious discrepancies appearing on the face of the election returns, it could not be said that the canvassing of votes in Labo reflected the true and correct number of votes that she received in the said municipality.

On July 2, 2004, the COMELEC (First Division) ordered the suspension of the effects of the proclamation of respondent Unico. On July 23, 2004, it lifted the said order on the ground that respondent Unico's proclamation and taking of oath of office had not only divested the Commission of any jurisdiction to pass upon his election, returns, and qualifications, but also automatically conferred jurisdiction to another electoral tribunal.

Subsequently, the COMELEC (First Division) issued the Resolution dated April 13, 2005, dismissing the petition for lack of merit. It stated preliminarily that the MBC is precluded from entertaining pre-proclamation controversies on matters relating to the preparation, transmission, receipt, custody, and appreciation of the election returns or certificates of canvass involving the positions of President, Vice-President, Senators, and Members of the House of Representatives and Party-List.

The COMELEC (First Division) found that the relief sought by petitioner Chato was actually for the re-counting of votes, not merely correction of manifest errors in the election returns. Further, in seeking to nullify respondent Unico's proclamation, petitioner Chato alleged manifest errors in the election returns and that they were tampered with and prepared under duress.

Addressing these contentions, the COMELEC (First Division) explained that a re-count of votes is not within the province of a pre-proclamation controversy, which is generally limited to an examination of the election returns on their face. It observed that under Section 31[6] of COMELEC Resolution No. 6669 (General Instructions for Municipal/City/Provincial and District Board of Canvassers in connection with the May 10, 2004 Elections), objections to the election returns or certificates of canvass were to be specifically noted in the minutes of the board. With respect to the manifest errors alleged by petitioner Chato, the COMELEC (First Division) stated that her objections were general in character as they failed to specify the election return(s) containing these alleged manifest errors as well as the precinct(s) from which they came. Under the circumstances, the MBC Labo could not immediately rule on petitioner Chato's bare allegations for to do so would have resulted in a fishing expedition.

The COMELEC (First Division) mentioned that even her petition for reconsideration filed with the PBC was bereft of evidence to support her claim of manifest errors. It was only in her petition filed with the COMELEC that petitioner Chato specifically enumerated the election returns that allegedly contained infirmities or manifest errors. However, according to the COMELEC (First Division), the resolution of the matters raised by petitioner Chato, e.g., correction of the votes garnered by the candidates and reflected in the election returns, would require the opening of the ballots. This could only be done in an election protest considering that petitioner Chato likewise alleged fraud, substitution, and vote padding.

The COMELEC (First Division) also held that the MBC or PBC had no discretion on matters pertaining to the proclamation of the winning candidates because they were simply performing a ministerial function. Absent a lawful order from the COMELEC to suspend or annul a proclamation, the PBC of Camarines Norte, in particular, was mandated to comply with its duties and functions including the proclamation of respondent Unico as the winning candidate for the lone congressional district of Camarines Norte. The decretal portion of the Resolution dated April 13, 2005 of the COMELEC (First Division) stated:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for utter LACK OF MERIT.

SO ORDERED.[7]

Aggrieved, petitioner Chato filed a motion for reconsideration thereof which was elevated to the COMELEC en banc for resolution.

In the assailed Resolution dated March 17, 2006, the COMELEC en banc denied petitioner Chato's motion for reconsideration ruling that the Commission already lost jurisdiction over the case in view of the fact that respondent Unico had already taken his oath as a Member of the Thirteenth (13th) Congress. It reasoned, thus:

In *Pangilinan vs. Commission on Elections* (G.R. No. 105278, November 18, 1993), the Supreme Court made a categorical pronouncement that:

The Senate and the House of Representatives now have their respective Electoral Tribunals which are the "sole judge of all contests relating to the election, returns, and qualifications of their respective Members, thereby divesting the Commission on Elections of its jurisdiction under the 1973 Constitution over election cases pertaining to the election of the Members of the Batasang Pambansa (Congress). It follows that the COMELEC is now bereft of jurisdiction to hear and decide the pre-proclamation controversies against members of the House of Representatives as well as of the Senate.

The Honorable Court reiterated the aforequoted ruling in the recent case of *Aggabao vs. COMELEC, et al.* (G.R. No. 163756, January 26, 2005), where it held that:

The HRET has sole and exclusive jurisdiction over all contests relative to the election, returns, and

qualifications of members of the House of Representatives. Thus, once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.

Considering that private respondent Renato Unico had already taken his oath and assumed office as member of the 13th Congress, the Commission had already lost jurisdiction over the case.

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION is hereby DENIED for lack of merit. The Resolution of this Commission (First Division) promulgated last April 13, 2005 is affirmed.

SO ORDERED.[8]

Petitioner Chato now seeks recourse to the Court alleging that:

THE SOLE ISSUE FOR CONSIDERATION BY THIS HONORABLE COURT IS WHETHER OR NOT THE PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN PROMULGATING THE QUESTIONED RESOLUTION ON MARCH 17, 2006.[9]

Petitioner Chato essentially contends that the COMELEC committed grave abuse of discretion when it ruled that it had already been divested of jurisdiction upon respondent Unico's assumption of office as a Member of the House of Representatives. Petitioner Chato vigorously asserts that respondent Unico's proclamation was void because it was based on doctored election documents and not through the legitimate will of the electorate. As such, it can allegedly be challenged even after respondent Unico had assumed office.

Petitioner Chato further submits that the COMELEC possesses the authority to pass upon issues involving manifest errors in the certificates of canvass and the composition of the board or its proceedings. It also has the authority to pass upon the nullity of what otherwise is a null and void proclamation.

With respect to petitioner Chato's case, the MBC allegedly violated Section 20 of RA 7166 by failing to rule on her objections during the canvassing of votes. The PBC allegedly confounded this error by refusing to correct the alleged manifest errors in the election returns or certificate of canvass before it. The COMELEC, for its part, allegedly committed grave abuse of discretion when it did not annul the proclamation of respondent Unico even as it allegedly possessed such authority as well as to correct manifest errors in the election returns and certificates of canvass, and order the re-counting of the ballots. Petitioner Chato emphasized that the COMELEC has the power of supervision and control over boards of canvassers, including the power to review, revise and/or set aside their rulings. Although the COMELEC, through the First Division in its earlier order suspending the effects of respondent Unico's proclamation, ordered the examination of the evidence and documents submitted by the parties, petitioner Chato avers that the COMELEC never disclosed the outcome of this supposed examination.

She thus urges the Court to order the COMELEC to direct the examination of the election returns of the municipality of Labo, Camarines Norte, or release the results thereof if one had already been undertaken; constitute and convene a new MBC, and direct the same to prepare a new election return, accomplish a new certificate of canvass and submit it to the PBC; direct the PBC to reconvene and canvass the new certificate of canvass, and subsequently proclaim the winning candidate for the lone congressional district of Camarines Norte.

The petition is bereft of merit.

Section 17, Article VI of the Constitution reads:

SEC. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the

sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

Construing this provision in *Pangilinan v. Commission on Elections*,^[10] the Court held that:

x x x The Senate and the House of Representatives now have their respective Electoral Tribunals which are the "sole judge of all contests relating to the election, returns, and qualifications of their respective Members," thereby divesting the Commission on Elections of its jurisdiction under the 1973 Constitution over election cases pertaining to the election of the Members of the Batasang Pambansa (Congress). x x x

With respect to the House of Representatives, it is the House of Representatives Electoral Tribunal (HRET) that has the sole and exclusive jurisdiction over contests relative to the election, returns and qualifications of its members. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the Omnibus Election Code underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.^[11]

Further, the phrase "election, returns, and qualifications" has been interpreted in this wise:

The phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. But if it is necessary to specify, we can say that "election" referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes; "returns" to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" to matters that could be raised in a quo warranto proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.^[12] (Emphasis supplied).

The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.^[13] Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET.^[14]

In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:

x x x [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as Congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.^[15]

Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.^[16] Petitioner Chato's remedy would have been to file an election protest before the said tribunal, not this petition for certiorari. The special civil action of certiorari

is available only if there is concurrence of the essential requisites, to wit: (1) the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction, and (b) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law to annul or modify the proceeding. There must be capricious, arbitrary and whimsical exercise of power for certiorari to prosper.[17]

All told, the COMELEC en banc clearly did not commit grave abuse of discretion when it issued the assailed Resolution dated March 17, 2006 holding that it had lost jurisdiction upon respondent Unico's proclamation and oath-taking as a Member of the House of Representatives. On the contrary, it demonstrated fealty to the constitutional fiat that the HRET shall be the sole judge of all contests relating to the election, returns, and qualifications of its members.

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

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Gacia, and Velasco, Jr., JJ., concur.

Carpio-Morales, J., no part due to close relation to one of the parties.

Nachura, J., no part.

[1] Rollo, pp. 3-31.

[2] Id. at 32-35.

[3] Id. at 51-69.

[4] The provision reads:

SEC. 20. Procedure in Disposition of Contested Election Returns. — (a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235, and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

The evidence attached to the objection or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each and every page thereof.

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections

thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election.

[5] Id. at 53.

[6] The provision reads:

SEC. 31. Pre-proclamation Cases Not Allowed in Elections for President, Vice-President, Senator, Member of the House of Representatives and Party-List. — For purposes of the elections for President, Vice-President, Senator, Member of the House of Representatives and Party-List, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body motu proprio or upon written complaint of an interested person to correct manifest errors in the election returns or certificates of canvass.

Any objection to the election returns/certificates of canvass shall be specifically noted in the minutes of the board. (See also Section 15 of RA 7166)

[7] Rollo, p. 68.

[8] Id. at 33-34.

[9] Id. at 13.

[10] G.R. No. 105278, November 18, 1993, 228 SCRA 36, 43.

[11] Rasul v. Commission on Elections, 371 Phil. 760, 766 (1999).

[12] *Barbers v. Commission on Elections*, G.R. No. 165691, June 22, 2005, 460 SCRA 569, 582 citing *Javier v. Commission on Elections*, 228 Phil. 193 (1986).

[13] *Aggabao v. Commission on Elections*, G.R. No. 163756, January 26, 2005, 449 SCRA 400, 404-405; *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

[14] *Barbers v. Commission on Elections*, supra note 9, at 583; *Magno v. Commission on Elections*, 439 Phil. 339, 348 (2000); *Caruncho III v. Commission on Elections*, 374 Phil. 308, 322 (1999); *Lazatin v. Commission on Elections*, No. L-80007, January 25, 1988, 157 SCRA 337, 338.

[15] *Guerrero v. Commission on Elections*, supra note 10, at 354.

[16] *Lazatin v. Commission on Elections*, supra note 11, at 338.

[17] *Barbers v. Commission on Elections*, supra note 9, at 580-581; *Aggabao v. Commission on Elections*, supra note 10, at 403-404.

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