EN BANC ADELINA TAMAYO-REYES, M.D., PETITIONER, VS. COMMISSION ON ELECTIONS AND FERNANDO R. CABITAC, RESPONDENTS.

G.R. No. 175121. June 08, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Certiorari and Prohibition with prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order. The petition seeks to annul the Resolution of the Commission on Elections (COMELEC) En Banc dated 16 October 2006,[1] allegedly with grave abuse of discretion, affirming the Resolution[2] of the COMELEC First Division dated June 30, 2006 dismissing the petition for correction of manifest errors and nullification of proclamation filed by petitioner Adelina Tamayo-Reyes, M.D.

Petitioner and private respondent Fernando Cabitac were candidates for Vice-Mayor of Taytay, Rizal during the May 10, 2004 elections. After the counting of votes and the canvassing of election returns, the Municipal Board of Canvassers (MBOC) proclaimed, on May 15, 2004, private respondent as the duly elected Vice-Mayor of Taytay, Rizal, with a total of 34,715 votes as against the 33,147 votes garnered by petitioner, or a margin of 1,568 votes.

Dissatisfied, petitioner caused the compilation of all copies of the election returns and the statement of votes by precinct and discovered discrepancies thereon. Then, almost four (4) months after the proclamation of private respondent, or on September 6, 2004, petitioner filed her petition for correction of manifest errors in the election returns and the statement of votes and for nullification of the proclamation of private respondent as Vice-Mayor of Taytay, Rizal. The petition was docketed as SPC No. 04-300[3] and was raffled to the COMELEC First Division. According to petitioner, if the discrepancies were corrected, she would have won over private respondent by a plurality of 172 votes. The summary[4] of alleged discrepancies for correction is as follows:

CABITAC REYES

Double Entry 1057 751

Fabricated SOV 1495 1263

Non-Existing/Non-Registered Precincts
164 76

Single Precinct No. Clustered with Other Precinct No.
269 221

Clustered Precincts Split into 2 221 159

Questionable Envelope No. and Seal No. 126 78

Precincts Missing in Minutes Tabulated in SOV 587 434

Regular Precinct in POP Listed with Different M/C Precinct 996 555

TOTAL 4915 3537

Total Votes to be Excluded
34715 33147
- 4915 3537

TOTAL 29800 29610

Add: Missing Precincts in SOV w/ ER and COV to be Included + 570 917

TOTAL
30370 30527

Add: Appreciated in Minutes/Missing in SOV
+ 91 106

TOTAL 30,461 30,633

Public respondent below, the MBOC of Taytay, Rizal, in its Answer, invoked the legal presumption that official duty has been performed since no objection was ever made during the canvassing on the alleged errors in computation.

Private respondent filed before the COMELEC First Division a Motion to Dismiss on the ground of lack of cause of action and for want of jurisdiction since the provisions of Section 35 of COMELEC Resolution 6669[5] were not observed.

The COMELEC First Division, in its Resolution dated June 30, 2006,[6] or 21 months after the filing of the petition, dismissed said petition on the ground that the correction in the tabulation would be futile as it would not affect the results of the election. It found that, of the ten irregularities cited by petitioner as grounds for correction, only five were proper for action pursuant to Section 7, Rule 27 of the 1993 COMELEC Rules of Procedure,[7] to wit:

- Double entry precincts in SOV that were tabulated twice (election returns were tabulated twice);

- Non-existing/Non-registered precincts in Project of Precincts indicated in SOV and were tabulated. (Tabulation of results from non-existent precincts);

- Clustered precincts split into two and tabulated separately in the SOV;

- Missing precincts in SOV and Minutes registered in Project of Precincts and with Election Returns and Certificate of Votes (Results from existing precincts were not tabulated); and

- Precincts appreciated in Minutes and registered in Project of Precincts with election return missing and not tabulated in SOV (Results from existing precincts were not tabulated).[8]

It said, even if correction was made on these matters and using the data proffered by petitioner, private respondent would, at the very least, still enjoy a majority of 750 votes over petitioner as can be shown below:

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TOTAL NUMBER OF VOTES PER
PROCLAMATION CABITAC REYES

34,715 33,147

LESS:

INVALID
RESULTS
PER DATA
OF
PETITIONER DOUBLE ENTRY/TABULATED TWICE IN SOV 1,057 751

NON-EXISTING PRECINCTS TABULATED IN SOV 164 76

CLUSTERED PRECINCTS SPLIT INTO TWO AND TABULATED IN SOV 221 159

SUB-TOTAL 33,273 32,161

ADD:

VALID RESULTS
PER DATA
OF
PETITIONER MISSING PRECINCTS IN SOV WITH ER & COV 570 917

PRECINCTS REGISTERED IN POP WITH MISSING ER AND NOT TABULATED IN SOV 91 106

GRAND TOTAL 33, 934 33,184

Petitioner filed a Motion for Reconsideration on July 10, 2006[9] arguing that the COMELEC First Division, with the admission that there were indeed manifest errors to be corrected, did not undertake to make the necessary corrections nor cause the said corrections to be made. Petitioner further ascribed error to the COMELEC First Division when it ruled that the other irregularities she raised could only be verified by examining evidence aliunde and yet refused to verify the same. Finally, petitioner found fault in the position taken by the MBOC of Taytay, Rizal, that it regularly performed its official duties as such.

The COMELEC En Banc, in its Resolution dated October 16, 2006,[10] affirmed the ruling of the COMELEC First Division and denied the motion for want of merit; hence, this petition raising essentially the same issues as in the motion for reconsideration.

In the Resolution dated November 21, 2006,[11] this Court required respondents, both public and private, to file their respective comments on the petition.

In a Manifestation and Motion dated December 19, 2006,[12] the Office of the Solicitor General prayed that it be excused from filing a comment in view of Section 5, Rule 65 of the 1997 Rules on Civil Procedure that it shall be the duty of the private respondent to appear and defend, both on his behalf and on behalf of the public respondent affected by the proceedings. The Court granted the motion in its Resolution dated January 23, 2007.[13]

On the other hand, private respondent failed to file his comment. Thus, this Court, in its Resolution[14] dated March 6, 2007 directed the counsel for private respondent, Atty. Bernardo Pablo C. Masilang, to explain why he

should not be disciplinarily dealt with or held in contempt for such failure, and to comply by filing the required comment within ten (10) days from notice.

On April 20, 2007, Atty. Masilang filed his Compliance (Apologia and Explanation)[15] dated April 11, 2007 apologizing profusely for his failure to file the comment for private respondent allegedly on account of illness, political harassment, and failure of his staff to file said comment. Except for the affidavit of the person taking on the blame for the non-filing of the comment, there was no other evidence submitted by Atty. Masilang to support his explanation. Moreover, the required comment was still not filed. Finding the explanation unsatisfactory, this Court ruled that the filing of the comment for private respondent be dispensed with and the case deemed submitted for decision.

The petition should be dismissed.

It should be noted that what petitioner filed was a petition for correction of manifest errors and nullification of proclamation, which is a pre-proclamation controversy. A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition or political parties before the board or directly with the COMELEC, or any matter raised under Sections 233, 234, 235, and 236 of the Omnibus Election Code, in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns.[16] It is limited to an examination of the election returns on their face and the COMELEC, as a general rule, need not go beyond the face of the returns and is without jurisdiction to go beyond or behind them and investigate the alleged election irregularities.[17]

Albeit it is regrettable that the COMELEC First Division took 21 months from the filing of the petition to resolve the case, it nonetheless acted correctly when it ordered the dismissal of the petition. Indeed, it did not gravely abuse its discretion when it considered only five out of the ten irregularities pointed out by petitioner as matters proper for correction of manifest errors. Applying the data proffered by petitioner herself, it turned out that private respondent would still emerge as the duly elected Vice- Mayor of Taytay, Rizal.

The correction of manifest errors has reference to errors in the election returns, in the entries in the Statement of Votes (SOV) by precinct per municipality or in the certificate of canvass.[18] For errors to be manifest, they must appear on the face of the certificates of canvass or election returns sought to be corrected, and objections thereto must have been made before the Board of Canvassers and specifically noted in the minutes of their respective proceedings.[19] This Court defined "manifest" as 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.[20]

In light of the above pronouncements, the following circumstances pointed out by petitioner could not be said to be clerical errors evident on the face of the election returns, viz:

- Manufactured/Fabricated SOVs were included in the tabulation;

- Single precinct recorded in the Project of Precincts clustered with other precincts in the Minutes;

- Questionable envelope number and seal number found in the Minutes;

- Registered precincts in the Project of Precincts are missing in the Minutes although tabulated in the SOV; [and]

- Precincts registered in the Project of Precincts but listed with different merged and clustered precincts in the Minutes.[21]

As aptly said by the COMELEC First Division,

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> Indeed, these are not clerical or mathematical errors, which are evident on the face of the said documents. The question of whether a tabulated SOV is manufactured or not could not be resolved by merely looking at the said document but by examining other documents or evidence aliunde. The fact that the envelopes containing the election returns have questionable envelope and seal numbers as seen in the minutes does not make the tabulation erroneous.
>
> With respect to the precincts included in the tabulation, it is the statement of votes per precinct, and not the minutes of the proceedings of the board of canvassers, which is controlling. Consequently, if there are discrepancies between the number of precincts found in the statement of votes by precinct and in the minutes of the proceedings of the board, the data in the former shall prevail. Moreover, errors in the entry of precinct number in the minutes could not be considered as manifest clerical mistakes correctible through the instant action.[22]

Petitioner urges this Court to direct the COMELEC to undertake the correction of the ostensibly manifest errors in accordance with Section 4, Rule 27 of the 1993 COMELEC Rules of Procedure[23] in relation to Section 243 of the Omnibus Election Code.[24] However, both cited provisions refer to the issues that may be raised in pre-proclamation controversies. Moreover, in citing these provisions, petitioner was unmindful of the other provisions of the same Rules of Procedure.

It should be remembered that petitioner filed her petition for correction of manifest errors and nullification of proclamation directly with the COMELEC. According to Section 5, Rule 27 of the 1993 COMELEC Rules of Procedure, there are only two (2) instances where a pre-proclamation controversy may be filed directly with the COMELEC, namely, (1) illegal composition or proceedings of the board of canvassers; and (2) correction of manifest errors. Thus, it was proper for the COMELEC to take cognizance of the petition, and in their respective resolutions, both the COMELEC First Division and En Banc were correct in not considering the five alleged irregularities since they were beyond the ambit of "manifest errors." Accordingly, the COMELEC did not commit grave abuse of discretion.

Also noteworthy is that relative to the five other irregularities raised in her petition before the COMELEC which were deemed improper for correction of manifest errors, petitioner claimed that the election returns and the statements of votes had been tampered with and falsified. This claim would be appropriate in a pre-proclamation contest proper, not in a petition for mere correction of manifest errors. And as previously mentioned, petitioner failed to record her objection to these alleged irregularities in the minutes of the MBOC. Section 2, Rule 27 of the 1993 COMELEC Rules of Procedure provides that matters raised under Sections 233 (when the election returns are delayed, lost, or destroyed), 234 (when there are omissions on the election returns), 235 (when the election returns appear to be tampered with or falsified), and 236 (when there are discrepancies in the election returns) of the Omnibus Election Code shall be brought in the first instance before the Board of Canvassers only. This provision is mandatory. Thus, petitioner's failure to raise these matters before the MBOC of Taytay, Rizal barred her from questioning the same before the COMELEC.

While this Court does not contest the rulings cited by petitioner in Tatlonghari v. COMELEC,[25] Bince, Jr. v. COMELEC,[26] and Ramirez v. COMELEC[27] that a petition for correction of manifest errors may be filed even beyond the reglementary period of five (5) days following the date of proclamation pursuant to Section 5(b), Rule 27 of the 1993 COMELEC Rules of Procedure, and that the COMELEC has the power to annul the proclamation made on the basis of an erroneous tabulation of votes in the election returns or in the statement of votes, we agree with the COMELEC First Division and En Banc that the case of petitioner does not fall within the scope of the above-mentioned rulings. Indeed, even if the truly manifest errors were corrected using the data presented by petitioner herself, the proclamation of private respondent as the winning Vice-Mayoral candidate of Taytay, Rizal will still stand.

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WHEREFORE, the instant petition for certiorari and prohibition is DISMISSED for lack of merit, and the Resolutions dated June 30, 2006 and October 16, 2006 of the COMELEC First Division and En Banc, respectively, are AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, C.J., on official leave.
Quisumbing, (Acting Chief Justice), Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Carpio-Morales, J., on leave.
[1] Rollo, pp. 47-51.

[2] Id. at 37-46.

[3] Reproduced in this petition; id. at 6-15.

[4] Adapted from the presentation of petitioner; id. at 11.

[5] Sec. 35. Pre-proclamation controversies; How commenced. – Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sec. 233, 234, 235, and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

[6] Supra.

[7] There is manifest error when: (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 the certificate of canvass were tabulated separately; (3) there had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass; or (4) the so-called returns from non-existent precincts were included in the canvass, but such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidate had already been made; These can also be found in Section 5 of the same rule, except the last clause.

[8] Id. at 43.

[9] Reproduced in this petition; rollo, pp. 16-28.

[10] Supra.

[11] Rollo, p. 52.

[12] Id. at 53-56.

[13] Id. at 57.

[14] Id. at 59.

[15] Id. at 61-69.

[16] Sec. 241 of the Omnibus Election Code; Bandala v. COMELEC, G.R. No. 159369, March 3, 2004, 424 SCRA 267, 272-273.

[17] Bandala v. COMELEC, supra, citing Matalam v. COMELEC, 271 SCRA 733 (1997); Salic v. COMELEC,

G.R. No. 157007, March 17, 2004, 425 SCRA 735.

[18] Trinidad v. COMELEC, G.R. No. 134657, December 15, 1999, 320 SCRA 836, 842, citing Mentang v. COMELEC, 229 SCRA 666 (1994).

[19] O'Hara v. COMELEC, G.R. Nos. 148941-42, March 12, 2002, 379 SCRA 247, 259, citing Chavez v. COMELEC, 211 SCRA 315 (1992).

[20] O'Hara v. COMELEC, supra., citing Trinidad v. COMELEC, supra.

[21] Resolution dated June 30, 2006, pp. 7-8; rollo, pp. 43-44.

[22] Resolution dated June 30, 2006, supra, at 8; rollo, p. 44.

[23] SECTION 4. Issues that May Be Raised in the Pre-Proclamation Controversies. – The following are the proper issues that may be raised in a pre-proclamation controversy:

(a) Illegal composition or proceedings of the board of canvassers; (b) The canvassed election returns, or the certificate of canvass in appropriate cases, are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof; (c) The election returns or certificate of canvass were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and (d) When substitute or fraudulent returns or certificates of canvass in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates; (e) Correction of manifest errors.

[24] SEC. 243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

(a) Illegal composition or proceedings of the board of canvassers; (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code; (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

[25] G.R. No. 86645, July 31, 1991, 199 SCRA 849, 855.

[26] G.R. Nos. 111624-25, March 9, 1995, 242 SCRA 273, 286.

[27] G.R. No. 122013, March 26, 1997, 270 SCRA 590, 597.

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