

IMELDA Q. DIMAPORO, Petitioner, vs. COMMISSION ON ELECTIONS and VICENTE BELMONTE, Respondents.

G.R. No. 179285. February 11, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

UNDER consideration is a petition for certiorari via Rule 65 of the 1997 Rules of Civil Procedure assailing the (1) Resolution[1] of the Commission on Elections (COMELEC) Second Division dated July 10, 2007 and (2) Resolution[2] of the COMELEC En Banc promulgated on September 5, 2007.

The antecedent facts:

Petitioner Imelda Dimaporo and private respondent Vicente Belmonte were both candidates for Representative of the 1st Congressional District of Lanao del Norte during the May 14, 2007 elections.

The said legislative district is composed of seven (7) towns and one (1) city, namely: the Municipalities of Linamon, Kauswagan, Bacolod, Maigo, Kolambugan, Tubod, Baroy and the City of Iligan.

On May 22, 2007, the Provincial Board of Canvassers[3] (PBOC) completed the canvass of the Certificates of Canvass (COCs) for the City of Iligan and four (4) of the municipalities, namely, Linamon, Kolambugan, Tubod and Baroy. Upon adjournment on May 22, 2007, the said PBOC issued a Certification showing respondent Belmonte in the lead, with 52,783 votes, followed by candidate Badelles with 39,315 votes, and petitioner Dimaporo in third place with only 35,150 votes, viz.:

OFFICIAL PARTIAL TOTAL VOTES
FOR MEMBER, HOUSE OF REPRESENTATIVES
BASED ON THE CANVASS BY THE PBOC
OF THE COCs OF FOUR (4) MUNICIPALITIES OF 1st
DISTRICT AND OF THE COC OF ILIGAN CITY
(Votes for Candidates Leo M. Zaragoza and Uriel G. Borja omitted)

MUNICIPALITY

BELMONTE BADELLES DIMAPORO

Linamon

2,395

1,737

1,835

Kolambugan

1,530

4,287

3,731

Tubod

2,084

2,607

9,904

Baroy

1,849

3,275

4,195

Iligan City

44,925

27,409

15,485

PARTIAL SUB-TOTAL

52,783

39,315

35,150

Sometime in the evening of May 19, 2007, the ballot boxes containing the COCs of Kauswagan, Bacolod and Maigo were allegedly forcibly opened, their padlocks destroyed and the envelopes containing the COCs and the Statement of Votes (SOV) opened and violated. When the PBOC was about to resume the canvassing at around 9:00 a.m. the succeeding day, the forced opening of the ballot boxes was discovered prompting the PBOC to suspend the canvass.

On May 22, 2007, the Commissioner-in-Charge of CARAGA Region, Nicodemo Ferrer, issued a Resolution ordering that the canvassing of the ballots contained in the tampered ballot boxes of Kauswagan, Maigo and Bacolod be suspended until after the National Bureau of Investigation (NBI) submits its findings to the Commission.

On May 24, 2007, the NBI submitted its report. It found as follows:

In our assessment and observation, the culprit(s) managed to enter the room of the Vice-Governor [Irma Umpa Ali] which he/she used as a staging and hiding place while persons are still allowed to enter the building during the canvassing. On the night of May 19, 2007 the culprit(s) hide (sic) in the said room and waited until there were no persons allowed inside the building except the provincial guard on duty who was manning the ground floor at the area near the entrance door. The culprit(s) then entered the Session Hall by using some hard ID Card or any similar object which was inserted in between the door and door-lock, and once inside specifically

destroyed the padlocks of the ballot boxes for the Municipalities of Bacolod, Maigo and Kauswagan. x x x.

On May 24, 2007, Atty. Dennis L. Ausan, Regional Director, Region X, issued a Very Urgent Memorandum addressed to the COMELEC En Banc, enclosing the NBI report, with the following recommendation:

[T]hat the Commission En Banc comes out with an order directing the Provincial Board of Canvassers of Lanao del Norte to immediately reconvene solely for the purpose of retrieving the three envelopes supposedly containing the COCs from the said three (3) municipalities, to open the same in the presence of all watchers, counsels and representatives of all contending parties and the accredited Citizens' Arm of the Commission and right there and then to turn over the same to the representative of the NBI for technical examination by their questioned documents expert.

Further, it is requested that it must also be incorporated in the En Banc's order the directive for the PBOC to turnover to the NBI the copies of the COC of the three (3) municipalities intended for the Commission and the Election Officer for purposes of comparison with that retrieved from the questioned ballot box.

Thereafter, on May 25, 2007, COMELEC issued Resolution No. 8073 adopting in part the recommendation of Atty. Ausan directing the PBOC of Lanao del Norte to "immediately reconvene solely for the purpose of retrieving the three envelopes supposedly containing the COCs from the municipalities of Kauswagan, Bacolod and Maigo" and to "open the same in the presence of all watchers, counsels, and representatives of all contending parties and the accredited Citizens' Arm of the Commission and right there and then to direct the representatives of the dominant majority and minority parties to present their respective copies of the COCs for comparison with the COCs intended for the COMELEC and with the COCs inside the envelope just opened."

The COMELEC further resolved that when discrepancies show signs of tampering and falsifying, the PBOC is to "immediately turnover to the NBI the copies of the COCs of said three (3) municipalities intended for the Commission and the Election Officer for purposes of comparison with those retrieved from the questioned ballot boxes."

On May 30, 2007, Commissioner Nicodemo Ferrer issued his Memorandum relieving the PBOC of its functions and constituting a special provincial board of canvassers (SPBOC).[4] He further ordered as follows:

The previous En Banc Resolution No. 8073 promulgated on May 25, 2007 is hereby amended to state that upon the opening of the envelopes containing the COCs found inside the tampered ballot boxes for the towns of Kauswagan, Maigo and Bacolod, the same shall at once be canvassed in the presence of the candidates and/or their representatives, taking note of whatever objections that they may interpose on any of the entries in said COCs.

However, no canvassing took place on May 30, 2007 in view of the human barricade of some 100 persons who effectively blocked the entrance to the Sangguniang Panlalawigan building.

On May 31, 2007, Commissioner Nicodemo Ferrer issued another Memorandum constituting another SPBOC for Lanao del Norte composed of Atty. Lordino Salvana, as chairman, with Atty. Anna Ma. Dulce Cuevas-Banzon and Atty. Gina Luna Zayas, as members. In said Memorandum, Ferrer gave the following instructions:

Considering the heightened controversies occasioned by the admitted tampering of the three (3) ballot boxes containing the COCs of said towns to be canvassed, you are directed to refrain from proclaiming any candidate until ordered by the Commission through the undersigned Commissioner-in-Charge of Region X. Appeal, if any, should be immediately elevated to the Commission for evaluation.

This amends the urgent memorandum addressed to Atty. Joseph Hamilton Cuevas dated May 30, 2007.

The chairman and members of the new SPBOC arrived at the venue of the canvassing at Tubod, Lanao del Norte

at 10:15 p.m. on May 31, 2007. However, the human barricade which blocked the entrance to the Sangguniang Panlalawigan building had now swelled into a horde of some 300 persons. As a consequence, the canvassing still did not take place.

On June 1, 2007, the new SPBOC convened and opened the ballot boxes for the towns of Kauswagan, Maigo and Bacolod. As the SPBOC proceeded with the canvass, private respondent Belmonte objected to the inclusion of the COCs of the concerned municipalities on the following grounds:

- 1.) There were manifest errors in the COCs;
- 2.) The numbers of votes in words and in figures opposite the names of appellant and appellees Badelles and Dimaporo contain intercalations done through the application of a white correction fluid (“SnoPake”), which intercalations are visible to the naked eye;
- 3.) The COCs were obviously manufactured;
- 4.) The COCs were tampered or falsified;
- 5.) The intercalations in the COCs were not made or prepared by the Municipal Board of Canvassers (MBOC) concerned; and
- 6.) The SOVs likewise contain intercalations done through “SnoPake” resulting in an altered number of votes for appellant and respondents.

The SPBOC denied Belmonte’s objections due to lack of jurisdiction.

On that same day, June 1, 2007, Belmonte filed his verified notice of appeal before the SPBOC. On June 5, 2007, Belmonte filed his appeal with appeal memorandum. On June 7, 2007, Belmonte filed with the COMELEC his alternative petition to correct manifest errors.

In the assailed Resolution of July 10, 2007, the Second Division of the COMELEC granted Belmonte’s petition. While conceding that it has no jurisdiction to hear and decide pre-proclamation cases against members of the house, it took cognizance of the petition as one for the correction of manifest errors, hence, within its jurisdiction as per the last sentence of Section 15 of Republic Act (R.A.) No. 7166. The law provides:

Sec. 15. Pre-proclamation Cases in Elections for President, Vice-President, Senator, and Member of the House of Representatives. – For purpose of the elections for president, vice-president, senator, and member of the house of representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be, except as provided for in Sec. 30 hereof. 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 certificate of canvass or election returns before it. (Underscoring supplied)

The dispositive portion of the challenged Resolution reads:

WHEREFORE, premises considered, the Commission (Second Division) resolves to GRANT the Petition and the questioned Rulings of the respondent MBC is hereby REVERSED AND SET ASIDE. The questioned COCs are hereby ordered excluded and should not be canvassed.

The Board of Canvassers is hereby directed to RECONVENE here in Manila (for security purposes) and issue a new certificate of canvass of votes excluding the election returns subject of this appeal and substituting the proper entries as are evident in the authentic copies of the election returns related to the subject COCs. The winning candidate who garners the most number of votes in accordance with our observation shall after proper canvass be proclaimed by the Board of Canvassers.

SO ORDERED.

On July 13, 2007, Dimaporo moved for a reconsideration. This was denied in the COMELEC's equally assailed En Banc Resolution of September 5, 2007. The second Resolution prompted Dimaporo to file, on September 7, 2007, the present petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction questioning the jurisdiction of the COMELEC over the case.

In her petition, Dimaporo claims that the subject matter involved does not pertain to manifest errors but to the "preparation, transmission, receipt, custody and appreciation" of certificates of canvass, a matter outside the realm of the COMELEC's jurisdiction when a congressional seat is involved. She cites Section 15 of R.A. No. 7166.

Dimaporo prays as follows:

- upon filing of this petition, a temporary restraining order be issued by the Honorable Court enjoining the implementation of the questioned Resolution of July 10, 2007 of the COMELEC (Second Division) and the COMELEC En Banc Resolution promulgated on September 5, 2007 affirming the Second Division upon such bond as may be required by the Honorable Court;
- after due hearing, the questioned Resolution of July 10, 2007 of the COMELEC (Second Resolution) and the COMELEC En Banc Resolution promulgated on September 5, 2007 be both reversed and set aside;
- petitioner be ordered proclaimed as the duly elected Representative of the First Congressional District of the Province of Lanao del Norte in the May 14, 2007 elections;
- for such other relief as may be deemed just and equitable under the premises.[5]

On September 13, 2007, Dimaporo filed an urgent motion reiterating the prayer for the issuance of a temporary restraining order. This was followed by the filing of a manifestation and motion for the issuance of a status quo ante order and/or temporary restraining order on September 25, 2007. On October 1, 2007, Dimaporo, again, filed a motion to maintain the status quo at the time of the filing of the petition.

On October 2, 2007, the Court En Banc, acting upon Dimaporo's motion for the issuance of a status quo ante order and/or temporary restraining order, issued the following Resolution:

Acting on the Manifestation and Motion for the Issuance of a Status Quo Ante Order and/or Temporary Restraining Order dated September 12, 2007 filed by counsel for petitioner, the Court Resolved to require public respondent Commission on Elections to observe the STATUS QUO prevailing at the time of the filing of the petition and refrain from implementing the resolutions of July 10, 2007 and September 5, 2007 of the COMELEC Second Division and En Banc, respectively.

The Court further Resolved to NOTE the Motion to Maintain the Status Quo at the Time of the Filing of the Petition, dated October 1, 2007, filed by counsel for petitioner.

The succeeding day, October 3, 2007, a status quo ante order was issued to the COMELEC stating:

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, Respondent COMELEC, your agents, representatives, or persons acting in your place and stead, are hereby required to observe the STATUS QUO that is prevailing at the time of the filing of the petition.

On October 8, 2007, private respondent Belmonte filed his comment in which he brought to Our attention that on September 26, 2007, even before the issuance of the status quo ante order of the Court, he had already been proclaimed by the PBOC as the duly elected Member of the House of Representatives of the First Congressional District of Lanao del Norte. On that very same day, he had taken his oath before Speaker of the House Jose de

Venecia, Jr. and assumed his duties accordingly.

In light of this development, jurisdiction over this case has already been transferred to the House of Representatives Electoral Tribunal (HRET). When there has been a proclamation and a defeated candidate claims to be the winner, it is the Electoral Tribunal already that has jurisdiction over the case.[6]

In *Lazatin v. Commission on Elections*,[7] the Court had this to say:

The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. For this Court to take cognizance of the electoral protest against him would be to usurp the function of the House Electoral Tribunal. The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal. (Emphasis supplied)

This was reiterated in *Aggabao v. Commission on Elections*: [8]

The HRET has sole and exclusive jurisdiction overall 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.

The COMELEC was not amiss in quickly deciding Belmonte's petition to correct manifest errors then proclaiming him the winner. Election cases are imbued with public interest.[9] They involve not only the adjudication of the private interest of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift.[10] It has always been the policy of the election law that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.[11]

Considering that at the time of proclamation, there had yet been no status quo ante order or temporary restraining order from the court, such proclamation is valid and, as such, it has vested the HRET with jurisdiction over the case as Belmonte has, with the taking of his oath, already become one of their own.

Hence, should Dimaporo wish to pursue further her claim to the congressional seat, the filing of an election protest before the HRET would be the appropriate course of action.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

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

[1] Rollo, pp. 31-49.

[2] *Id.* at 64-71.

[3] Composed of the Provincial Election Supervisor, Atty. Joseph Hamilton M. Cuevas, chairman; Chief Provincial Prosecutor Atty. Macadatar D. Marsangca, vice-chairman; and Maria Luisa B. Mutia, Ph.D., member.

[4] Composed of Atty. Carlito L. Ravelo, as the new chairman, with Atty. Anna Ma. Dulce Cuevas-Banzon and Atty. Aleli Dayo-Ramirez, as members.

[5] Rollo, p. 25.

[6] CONSTITUTION (1987), Art. VI, Sec. 17.

[7] G.R. No. L-80007, January 25, 1988, 157 SCRA 337, 338.

[8] G.R. No. 163756, January 26, 2005, 449 SCRA 400, 404-405.

[9] Garcia v. Court of Appeals, G.R. No. 31775, December 28, 1970, 36 SCRA 582.

[10] Vda. De Mesa v. Mencias, G.R. No. L-24583, October 29, 1966, 18 SCRA 533, 538.

[11] Sanchez v. Commission on Elections, G.R. No. L-78461, August 12, 1987, 153 SCRA 67, 75.

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