

TEODORO O. O'HARA, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF BINANGONAN, RIZAL, PROVINCIAL BOARD OF CANVASSERS OF RIZAL AND JOVITA RODRIGUEZ, RES...

G.R. Nos. 148941-42. March 12, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In this petition for certiorari, prohibition and mandamus, petitioner seeks to set aside the Resolution[1] of the Commission on Elections (COMELEC) En Banc that annulled the proclamation of petitioner Teodoro O. O'Hara as elected Vice-Governor, province of Rizal and to proclaim respondent Jovita Rodriguez as the duly elected Vice-Governor of Rizal.

Petitioner and respondent Jovita Rodriguez were candidates for the position of vice-governor, province of Rizal during the May 14, 2001 elections.

On May 19, 2001, upon conclusion of the canvassing of the certificate of canvass coming from the thirteen municipalities and one component city of Rizal, the Provincial Board of Canvassers (PBC) proclaimed petitioner as the duly elected vice-governor with 216,798 votes over respondent Rodriguez's 215,443 votes.

On May 23, 2001, the Municipal Board of Canvassers (MBC) of Binangonan, Rizal filed with the COMELEC en banc, a petition to correct entries in the certificate of canvass of votes, entitled "In the Matter of Correction of Entries In the Certificate of Canvass for the Position of Vice-Governor in the Province of Rizal in the Municipality of Binangonan." [2] It was alleged that there were typographical errors in the number of votes garnered by petitioner and respondent resulting in the addition of 7,000 votes to petitioner. More specifically, the MBC of Binangonan claimed:

"7. That after the submission of the final copy to the Provincial Board of Canvassers and furnishing copies to all concerned we were surprised when we heard over the radio about the complaint of Mr. Jose Concepcion of NAMFREL, about the dagdag-bawas on the votes obtained by the two (2) candidates for Vice-Governor and we tried to review and check all the entries in the Statement of Votes (SOV) and we did not notice any error; it was only in Certificate of Canvass wherein the number of votes of the two (2) candidates for Vice-Governor were erroneously typed, indicating 35,754 votes for Teodoro O'Hara instead of the actual total of 28,754 and 18, 871 for Jovita Rodriguez instead of the actual 18,870 votes;

"8. That the error was due to the fact that the votes of 7,000 which is the sub-total of one hundred precincts was brought forwarded thereby including the same in the total which is indicated in the last page of the tabulation which is 28,754; hence the grand total, instead of 28,754 became 35,754." [3]

The MBC of Binangonan submitted the affidavit of Evelyn Ramirez, the Municipal Accountant of Binangonan, Rizal, admitting that she committed the mathematical error. [4]

On May 25, 2001, respondent Rodriguez filed with the COMELEC a petition to annul the proclamation of the winning candidate for vice-governor of the province of Rizal, and to correct an alleged manifest mathematical error.[5] Respondent Rodriguez asserted that after the mathematical error would have been corrected, she would obtain a plurality of 215,422 votes as against petitioner's 209,798.

Petitioner filed his answer to the petition, arguing that there was no manifest error apparent in the certificate of canvass which respondent Rodriguez and the MBC of Binangonan sought to correct, and that respondent Rodriguez's petition was filed out of time.

On July 25, 2001, the COMELEC en banc issued a resolution in the cases, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Petitions are GRANTED. Accordingly, the proclamation of Respondent Teodoro O. O'Hara as elected Vice-Governor of Rizal is hereby annulled. The Provincial Board of Canvassers of Rizal is hereby ordered as follows:

(a)

To reconvene and correct the manifest mathematical error in the votes obtained by respondent O'Hara from 216,798 to 209,798 and as well as the votes for Petitioner Rodriguez from 215,423 to 215,422 as appearing in the Statement of Votes by Municipality.

b)

To proclaim Jovita Rodriguez as the duly elected Vice-Governor of Rizal.

SO ORDERED.

Accordingly, on July 27, 2001, the PBC of Rizal reconvened. However, petitioner was not notified of the proceedings of the PBC of Rizal.

On the same day, the PBC of Rizal issued another certificate of canvass of votes and proclamation of the winning candidates for provincial officers, and on the basis thereof proclaimed private respondent as the duly elected Vice-Governor of Rizal. Immediately, respondent Rodriguez took her oath of office before Judge Leila Suarez Acebo, Regional Trial Court, Pasig City.

Hence, this petition.[6]

On July 31, 2001, the Court issued a temporary restraining order directing respondents “to CEASE and DESIST from implementing COMELEC Resolution dated 25 July 2001 issued in SPC Case Nos. 01-165 and SPC Case No. 01-129.”[7]

On August 2, 2001, respondent Rodriguez filed a manifestation alleging that the temporary restraining order issued by this Court has been rendered moot and academic since she had assumed the office of Vice-Governor of Rizal.[8]

Thus, on August 14, 2001, the Court issued a resolution to the effect that “the temporary restraining order remains effective and is extended to restrain respondent from assuming the office of the vice-governor.”[9]

Petitioner raises the following issues before the Court:

(1) Whether or not the Comelec gravely abused its discretion when it annulled the proclamation of petitioner as vice-governor of Rizal.

(2) Whether or not the Comelec gravely abused its discretion when it ordered the provincial board of canvassers of Rizal to reconvene and correct the alleged manifest mathematical error supposedly committed by

the municipal board of canvassers of Binangonan, Rizal.

(3) Whether or not the Comelec gravely abused its discretion when it allowed the provincial board of canvassers of Rizal to proclaim respondent Rodriguez as the duly elected vice-governor of Rizal, despite the fact that the resolution dated 25 July 2001 had not yet attained finality.

We find the petition impressed with merit.

In any election contest, the ultimate issue is to determine the electoral will. In other words, who among the candidates was the voters' choice.

In this jurisdiction, an election means "the choice or selection of candidates to public office by popular vote," through the use of the ballot, and the elected officials of which are determined through the will of the electorate."^[10] An election is the embodiment of the popular will, the expression of the sovereign power of the people. Specifically, the term election, in the context of the Constitution, may refer to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes.^[11]

Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.^[12]

The petition of the MBC of Binangonan, Rizal, before the COMELEC alleges in pertinent part:

- That after finalizing the Certificate of Canvass, same was reviewed by all of us and being confident that it was prepared by an accountant whom the community regards as an honest person, we, Chairman and Members of the Municipal Board of Canvassers signed the same without noticing any mistake;
- That after the submission of the final copy to the Provincial Board of Canvassers and furnishing copies to all concerned we were surprised when we heard over the radio about the complaint of Mr. Jose Concepcion of NAMFREL, about the dagdag-bawas on the votes obtained by the two (2) candidates for Vice Governor and we tried to review and check all the entries in the Statement of Votes (SOV) and we did not notice any error; it was only in the Certificate of Canvass wherein the number of votes of the two (2) candidates for vice-governor were erroneously typed, indicating 35,754 votes for Teodoro O'Hara instead of the actual total 28,754 and 18,871 for Jovita Rodriguez instead of the actual 18,870 votes;
- That the error was due to the fact that the votes of 7,000 which was the sub-total of one hundred precincts was brought forwarded thereby including the same in the total which is indicated in the last page of the tabulation which is 28,754; hence the grand total instead of 28,754 became 35,754.

It is apparent that the errors do not appear on the face of the certificate of canvass that respondent Rodriguez sought to be corrected. There is nothing on the certificate of canvass that shows the addition of 7,000 votes in favor of petitioner. Likewise, the MBC of Binangonan failed to specify the one hundred precincts whence the 7,000 votes came. Clearly then, the petition filed by the municipal board of canvassers of Binangonan does not merely seek the correction of a manifest error but calls for the examination of the election returns from the 100 precincts and the recount of the votes therefrom.

As previously stated, the MBC of Binangonan, Rizal explains the discrepancy or error as follows:

- That the error was due to the fact that the votes of 7,000 which is the sub-total of one hundred precincts was brought forwarded (sic) thereby including the same in the total which is indicated in the last page of the tabulation which is 28,754; hence the grand tabulation which is 28,754 became 35,754; x x x^[13]

This was affirmed by Evelyn Ramirez, the Municipal Accountant of Binangonan, Rizal and tabulator who stated:

- That due to fatigue, sleepless nights and physical exhaustion, I did not notice that the sub-total of 7,000 from the preceding page was carried forward in the addition of the votes of the last remaining precincts and reflected in the grand total 35,754 instead of 28,754 which is the actual count.[14]

Clearly, the MBC of Binangonan and Evelyn Ramirez tried to explain the alleged error by referring to a “preceding page” of a certain document which, however, was neither identified nor presented in evidence. They also mentioned “100 remaining precincts” but neither the COMELEC nor the MBC of Binangonan or PBC of Rizal either the respondents were able to identify the said precincts. In fine, there is nothing on record to show where the “sub-total of 7,000 from the preceding page was carried forward in the addition of the votes of the last remaining precincts” (according to Evelyn Ramirez who attempted to rationalize her “mistake”) can be located. These circumstances render their statement suspect.

Despite the confusing explanation of the MBC of Binangonan, the COMELEC relied heavily thereon when it issued the assailed resolution. The correction of the certificate of canvass necessitates the examination of several documents which the MBC of Binangonan and Evelyn Ramirez mentioned in their petition and affidavit, respectively. Specifically, the correction of the MBC of Binangonan's mistake, if any, requires the examination of the election returns of the alleged “100 precincts” and the supposed “preceding page.” The COMELEC cannot simply rely on the Statement of Votes per precinct submitted by respondents to determine the true mandate of the electorate of Rizal considering that these Statements of Votes were prepared by the very same members of the MBC of Binangonan, Rizal who claimed to have made a mistake due to “fatigue, sleepless nights and physical exhaustion.” Reliance on the Statement of Votes per precinct would have been proper had the COMELEC determined if these individuals did not commit any other mistake in the tabulation or preparation of the Statements of Votes.

Indeed, the alleged error which the COMELEC perceived to be manifest from the certificate of canvass does not fall under the definition of “manifest error” which we laid down in the case of *Trinidad vs. Commission on Elections*:[15]

Some of the definitions given for the word “manifest” are that it is evident to the eye and understanding; visible to the eye; that which is open, palpable, uncontrovertible; needing no evidence to make it more clear; not obscure or hidden. xxx.

“A manifest clerical error is –

“ one that is visible to the eye or obvious to the understanding, and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have committed xxx.”

In the case of *Chavez vs. Comelec*,[16] this Court explained that:

x x x To be manifest, the errors must appear on the face of the certificates of canvass or election returns sought to be corrected and/or objections thereto must have been made before the board of canvassers and specifically noted in the minutes of their respective proceedings.

The alleged error which the MBC of Binangonan committed and which it attributes to physical exhaustion and sleepless nights, is obviously not a plain error apparent from the Certificate of Canvass. It would have been more prudent to order at least the examination of the election returns to verify the existence of the alleged error instead of concluding outright that the Statements of Votes submitted by respondents were accurate and correctly prepared. A more thorough study of the matter would have been more appropriate under the circumstances

specially considering that what is at stake is the sanctity of the right of suffrage which we are bound to uphold.

Equally important to note is the fact that the COMELEC relied heavily on the self-serving affidavits of the members of the MBC of Binangonan, Rizal, in order to justify its ruling, completely forgetting that reliance thereon has long been frowned upon because:

It should be emphasized that in arriving at the conclusion that there was a serious common irregularity in the preparation of 87 election returns, respondent Comelec relied mainly on the joint affidavit of seven (7) members of Pimentel's so-called "Vigilantes '84'" and on the affidavits of some KBL inspectors/watchers and registered voters. Respondent Comelec, based solely on the aforesaid affidavits presented before it, made the sweeping conclusion that the 87 election returns have lost their authenticity and genuineness and must be considered as falsified returns which would necessitate their exclusion from the canvass. This conclusion reached by the respondent Comelec runs counter to the settled doctrine that the Comelec must exercise "extreme caution" in rejecting or excluding election returns and may do so only upon conclusive proof that the returns are obviously manufactured. (*Anni vs. Isquierdo, et al.*, L-35918, June 28, 1974, reaffirmed and reiterated in *Aratuc vs. Comelec*, 88 SCRA 251, 282-283). The respondent Comelec should have compared its own copies of the election returns with the copies of the election returns of both parties pertaining to the 225 voting centers, which copies were furnished them separately from the copies submitted to the Board of Canvassers. (Sec. 42, Batas Pambansa No. 637.[17])

The aforequoted case was later on cited in *Casimiro vs. Comelec*:[18]

Petitioners likewise submitted the Affidavit of Atty. Paterno Lubaton, one of petitioners' lawyers, which they claim showed in detail all the fraud, irregularities and anomalies concerning the election returns before and during the canvassing of the election returns first in Las Piñas and later at the COMELEC main office. Petitioners claim that the latter part of the Affidavit also detailed the "patently partial and biased actuations of the Board of Canvassers, especially its Chairman." Petitioners further decry the fact that no hearing was conducted by the Second Division of the COMELEC where petitioners could have presented the affiants as their witnesses.

Obviously, the evidence relied upon mainly by petitioners to support their charges of fraud and irregularities in the election returns and in the canvassing consisted of Affidavits prepared by their own representatives. The self-serving nature of the said Affidavits cannot be discounted. As this Court has pronounced, reliance should not be placed on mere affidavits. (Underscoring ours.)

As correctly pointed out by the petitioner, the affidavits and supposed admissions of the members of the MBC of Binangonan have no probative value and cannot, therefore, be the basis of the nullification of his proclamation.

In this connection, it must be noted that in its petition, the MBC of Binangonan stated that Evelyn Ramirez had her tabulation typed "by her typist purposely to finalize the subject Certificate of Canvass for signatures of the chairman and members of the municipal board of canvassers before submitting the same to the provincial board of canvassers for canvassing and proclamation of the winners.[19] Otherwise stated, the MBC of Binangonan alleged that the Certificate of Canvass which the COMELEC ordered corrected was prepared by another person who neither testified nor executed a sworn statement. On this score, it is more justifiable to disregard the claims of the MBC and the affidavit of Evelyn Ramirez.

Significantly, the "careful process" observed by the COMELEC in resolving the instant case consisted of only two (2) hearings:

June 15, 2001. Considering that petitioner received Summons and copies of the Petition and Notice of Hearing in SPC No. 01-129 only that morning, petitioner's counsel prayed for five (5) days to file his Answer thereto. COMELEC reset the hearing, including the hearing for SPC No. 01-165, to 25 June 2001

June 25, 2001. Parties were directed to file their Memoranda. Thereafter, case was submitted for resolution.

Considering the factual issues involved, the COMELEC should have conducted further investigation or at least a technical inspection or examination of election returns to verify the existence of the alleged error before it gave credence to the statements of the MBC of Binangonan and concluding outright that the Statement of Votes submitted by respondents were accurate. The COMELEC cannot simply rely on these Statement of Votes because they were prepared by the same members of the MBC who claimed to have made a mistake due to “fatigue, sleepless nights and physical exhaustion.” It would have been more prudent to make a determination whether these same individuals committed any other mistake in the tabulation or statement of votes.

Even based on the statements/affidavits of the MBC of Binangonan, it is apparent that the errors sought to be corrected do not appear on the face of the certificate of canvass. As above-stated, the alleged error which the COMELEC perceived to be manifest does not fall under the definition of “manifest error” which was laid down in *Trinidad vs. COMELEC* and *Chavez vs. COMELEC*.

Section 7, Rule 27 of the Revised Rules of Procedure of the COMELEC does not apply to the case at bar because it refers to correction of errors by the board of canvassers before a candidate can be proclaimed. Thus, had the alleged error really been manifest, respondent surely would have sought the correction before the Board of Canvassers even before petitioner was proclaimed as the winning candidate.

Considering, however, that petitioner had already been proclaimed as the Vice-Governor of Rizal, respondents filed their petitions with the COMELEC. The applicable provision, therefore, is Section 5 of Rule 27 which states:

Sec. 5. Pre-Proclamation Controversies Which May be Filed Directly with the Commission. - (a) The following pre-proclamation controversies may be filed directly with the Commission:

xxx

(2) When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where xxx (3) there had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass, or xxx and 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.

(b) xxx

If the Petition is for correction, it must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby.

The above-quoted provision requires that the correction be one involving a manifest error such as “a mistake in the copying of the figures into the Statement of Votes or into the Certificate of Canvass.” The provision, however, also requires that “such errors could not have been discovered during the canvassing despite the exercise of due diligence.”

The rationale for the provision is obvious. If the error sought to be corrected is truly a manifest error, then the matter should have already been raised before the board of canvassers. The exception is if the error is one that “could not have been discovered during the canvassing despite the exercise of due diligence.” In the case at bar, the error allegedly committed by the MBC of Binangonan, which it attempted to describe and rationalize in their affidavits, is one that should have been discovered even with ordinary diligence. The truth of the matter, however, is that the error, even assuming it to be true, is not manifest and was not apparent from the Certificate of Canvass and, therefore, cannot be corrected simply by correction of alleged tabulation error.

Certainly, the present controversy does not merely involve a mistake in the addition of the votes appearing on the Statement of Votes per precinct or an erroneous copying of figures in the Certificate of Canvass. We are called upon to protect the sovereign will of the people of Rizal and not to stifle or frustrate it. Thus, we must employ all means bestowed upon us to safeguard the rule of the majority.

In *Aguam vs. Commission on Elections*,^[20] we ruled that:

“The great breadth of the constitutional and statutory powers granted Comelec has brought to the fore judicial pronouncements which have long become guidelines. Time and again, this Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. x x x”

The Court once more reiterates that the Constitution gives the Commission on Elections the broad power “to enforce and administer all laws and regulations to the conduct of an election, plebiscite, initiative, referendum and recall.”^[21] The Commission indisputably exercises the power of supervision and control over boards of election inspectors and boards of canvassers. The Commission must do everything in its power to secure a fair and honest canvass of the votes cast in the elections.^[22] The Constitution upgraded to a constitutional status the statutory authority under Batas Pambansa Blg. 881 to grant the Commission broad and more flexible powers to effectively perform its duties and to ensure free, orderly, honest, peaceful and credible elections, and to serve as the guardian of the people’s sacred right of suffrage.^[23]

In the absence of any manifest error in the certificate of canvass sought to be corrected, the Commission should have ordered the re-canvass of the election returns or the re-counting of the ballots in the municipality of Binangonan in order to validate the claim of the MBC.

If after the re-canvass of the election returns or the re-counting of the official ballots, the clerical error or mathematical mistake in the addition of the votes had been established, the Commission should have annulled the canvass and proclamation based on the erroneous certificate of canvass. If the records had borne out that petitioner’s proclamation was the result of a clerical error or simple mathematical mistake in the addition of votes and did not reflect the true and legitimate will of the electorate, there could have been no valid proclamation to speak of. The issue would involve a pre-proclamation controversy not proper at this time.^[24]

The wisdom of the order to examine the election returns is in consonance with the Court’s holding that:

x x x. Between another copy of the COC and the election returns, the latter could provide a more accurate basis for the determination of the true and genuine results of the votes cast. This is obvious because the former constitutes a mere summary of the latter and errors, deliberate or otherwise, may be committed in entering therein the figures obtained from the election returns. Besides, among the copies of the election returns readily available to the Commission, those intended specifically for it are the least likely to be tampered with after leaving the hands of the board of election inspectors. Thus, the wisdom of using such copies is beyond question. xxx^[25]

Should, however, the Commission find discrepancies in the election returns, Section 236 of the Omnibus Election Code provides the remedy, to wit:

Sec. 236. Discrepancies in election returns. – In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount.

WHEREFORE, we SET ASIDE the Resolution dated July 25, 2001 of the Commission on Elections, en banc.[26]

The Commission on Elections is hereby ordered:

- Within five (5) days from notice hereof, to reconvene the Municipal Board of Canvassers of Binangonan, Rizal, to recanvass the election returns pertaining to the votes of petitioner and respondent Rodriguez or position of vice-governor, which shall within forty-eight (48) hours from reconvening, deliver to the provincial board of canvassers the result of the recanvass;

- Within five (5) days after receipt of the certificate of canvass of the municipal board of canvassers, reconvene the provincial board of canvassers which shall within seventy-two (72) hours therefrom:

(a)

Re-tabulate the total number of votes for the petitioner and respondent Rodriguez as prepared and submitted by the municipal board of canvassers of Binangonan, and to enter the same in the certificate of provincial canvass;

(b)

After retabulation, to sum up anew the certificate of provincial canvass the canvassed certificate of canvass of all the municipalities pertaining to the position of vice-governor;

(c)

Thereafter, pursuant to the Omnibus Election Code, pertinent election laws, rules and regulations of the Commission, proclaim the winning candidate for vice-governor, province of Rizal.

In the meantime, the temporary restraining order we issued on July 31, 2001, as clarified in the resolution of August 14, 2001, shall remain in effect until the provincial board of canvassers of Rizal shall have made its final proclamation of the winning candidate for the position of Vice-Governor, province of Rizal.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Quisumbing, Buena, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Puno, J., see Dissent.

Vitug, Mendoza, Panganiban, and Carpio, JJ., join the dissenting opinion of J. Puno.

Ynares-Santiago, J., no part.

[1] Dated July 25, 2001 in SPC Case No. 01-165 and SPC Case No. 01-129.

[2] Docketed as SPC Case No. 01-129, Rollo, pp. 45-48.

[3] Petition, Annex "D," Rollo, pp. 45-48.

[4] Petition, Annex "O," Rollo, pp. 95-97.

[5] Docketed as SPC Case No. 01-165, Rollo, pp. 38-44.

- [6] Filed on July 30, 2001, Rollo, pp. 3-30.
- [7] Id., at 106-107.
- [8] Id., at 115-119.
- [9] Id., at 122.
- [10] Taule v. Santos, 200 SCRA 512, 519 (1991).
- [11] Carlos v. Angeles, 345 SCRA 123 (2000).
- [12] Benito v. Commission on Elections, 235 SCRA 436, 442 (1994).
- [13] Petition to Correct Entries in the Certificate of Canvass of Votes, p. 2 (SPC Case No. 01-129).
- [14] Affidavit of Evelyn Ramirez, p. 1.

[15] 320 SCRA 836, 843 (1999).

[16] 211 SCRA 315 (1992).

- [17] Pimentel, Jr. vs. Comelec, 126, 140 SCRA 148 (1985).

[18] 171 SCRA 468, 477 (1989).

- [19] Petition in SPC Ca No. 01-129, p. 2.

[20] 23 SCRA 883 (1968).

- [21] Loong v. Comelec, 365 Phil. 386, 420 (1999).
- [22] Olano v. Ronquillo, 8 SCRA 204 (1963).
- [23] Gallardo v. Tabamo, Jr., 218 SCRA 253 (1993).
- [24] Tatlonghari v. Commission on Elections, 199 SCRA 849 (1991).
- [25] Pangarungan v. Comelec, 216 SCRA 522-539 (1992).
- [26] In SPC Case No. 01-165 and SPC Case No. 01-129.

DISSENTING OPINION

PUNO, J.:

With due respect, I dissent from the majority decision for the following reasons:

I.

There is no doubt that 7,000 votes were erroneously counted in favor of petitioner O'Hara in the Municipality of Binangonan. The Municipal Board of Canvassers of Binangonan discovered the tabulation error. The Provincial Board of Canvassers confirmed the erroneous tabulation. The COMELEC, en banc, after hearing the parties, unanimously made the finding of fact that truly 7,000 votes were wrongly credited to petitioner O'Hara. The impartiality of these bodies cannot be doubted. The Municipal Board of Canvassers is composed of "the election

registrar or a representative of the Commission, as chairman, the municipal treasurer, and the district supervisor or in his absence any public school principal in the municipality and one representative from each of the ruling party and the dominant opposition political party entitled to be represented, as members.”[1] The Provincial Board of Canvassers is composed of “the provincial election supervisor or a senior lawyer in the regional office of the Commission, as chairman, the provincial fiscal, as vice-chairman, and the provincial superintendent of schools, and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned entitled to be represented, as members.”[2] The COMELEC is the ultimate arbiter of election disputes whose independence is guaranteed in the Constitution. Hence, only petitioner O’Hara is defending the erroneous tabulation of 7,000 erroneous votes in his favor. He wants to govern the Province of Rizal as Vice Governor despite his clear rejection by its electorate. This is a plain mockery of the sovereign will of the electorate of Rizal province.

II.

The issue is whether the COMELEC en banc gravely abused its discretion when it corrected the erroneous tabulation of the 7,000 votes in favor of petitioner O’Hara. We are familiar with the meaning and nuances of what constitute grave abuse of discretion. The abuse of discretion must be whimsical, despotic and despicable.

With due respect, I cannot see how the majority can denounce the corrective action of the COMELEC as despotic and despicable.

First. The issue of whether 7,000 votes in Binangonan were erroneously tabulated in favor of O’Hara was the subject of a careful process in the COMELEC. Two petitions to correct the error were filed – the first by the Municipal Board of Canvassers of Binangonan and the second by respondent Rodriguez. Both petitions were answered by O’Hara. The parties were called to a hearing and were required to file their memoranda. They submitted extensive memoranda on the questions of fact and law involved in the case. None of the parties, especially O’Hara, can claim denial of due process.

Second. The finding of the COMELEC that 7,000 votes in Binangonan were erroneously credited in favor of O’Hara is supported by clear and convincing evidence.

Respondent Rodriguez submitted to the COMELEC certified copies of the Statement of Votes by precinct of the Municipality of Binangonan. They show the following:

“SERIAL No.
of SOV

No. of Precinct

Votes of
O’HARA

Votes of
RODRIGUEZ

2108043

12

692

595

2108042

15

1,164

750

2108025

20

1,154

861

2108028

20

1,398

890

2108029

20

1,213

772

2108040

20

1,259

933

2108036

20

1,293

976

2108032

20

1,312

895

2108027

20

1,490

810

2108038

20

1,353

773

2108030

20

1,417

976

2108031

20

1,382

1,099

2108020

20

1,212

820

2108021

20

1,565

839

2108026

20

1,526

918

2108034

20

1,523

740

2108033

20

1,154

844

2108037

20

1,181

819

2108035

20

1,396

875

2108039

20

1,492

873

2108024

20

1,306

877

2108023

20

1,272

935

427 Precincts

28,754

18,870”

The correctness of these figures is beyond doubt. The Municipal Board of Canvassers confirmed it. The Provincial Board of Canvassers validated it. Petitioner O’Hara himself did not dispute the accuracy of the figures.

The problem arose when these votes were transferred to the Certificate of Canvass. In the process, 7,000 votes were erroneously credited in favor of O’Hara. The erroneous transfer was the subject of an affidavit of Evelyn M. Martinez, tabulator of the Municipal Board of Canvassers, to wit:

“Republic of the Philippines) S.S.
Manila)

A F F I D A V I T

EVELYN M. RAMIREZ, of legal age, Filipino, and with residence and postal address at Antiporda St., Pilapila, Binangonan, Rizal, after having been duly sworn to in accordance with law, hereby depose and state:

- That I am one of the staff of the Board of Canvassers during the National and Local Elections held on May 14, 2001;
- That I was assigned as a tabulator for the local candidates or from the provincial governor down to the last member of the Sangguniang Bayan;
- That the Binangonan Board of Canvassers convened at 6:00 o’clock in the evening on May 14, 2001 but no election returns has yet been received thus the Chairman of the Board of Canvassers which consists of five (5) canvassing units declared a recess until the coming of the election returns from the precinct level;
- That the Board of Canvassers started the actual canvassing at about 1:00 o’clock in the morning of the following day or May 15, 2001 and continued to canvass the election returns save for a few short recess until May 18, 2001;
- That after all the results were entered in the Statement of Votes by precincts they were turned over to me for tabulation;
- That due to fatigue, sleepless nights and physical exhaustion, I did not notice that the sub-total of 7,000 from the preceding page was carried forward in the addition of the votes of the last remaining precincts and reflected in the grand total, thereby making the grand total 35,754 instead of 28,754 which is the actual count;
- That after adding the entries in the Certificate of Votes, I gave the copies of the said Certificate of Votes to the members of the Board of Canvassers for their signatures;
- That relying that the Certificate of Canvass were all in order and because we were all tired and exhausted

after continuously canvassing for five (5) days, the members of the board signed the same based on the computation done;

- After the Certificate of Canvass was canvassed by the Provincial Board of Canvassers, I was informed that there was a discrepancy in the result of the total number of votes in the position of the Vice-Governor;

- The total number of votes entered in the Certificate of Canvass are as follows:

VICE-GOVERNOR

Names

No. of Votes

1. O'Hara, Teodoro O. - - - - -

35,754

2. Rodriguez, Jovita C. - - - - -

18,871

- By reason of the information that there is a discrepancy in the total number of votes for candidate Teodoro O'Hara, I consulted our records and found out that the correct number of votes for the said candidate is 28,754 instead of 35,754 as appearing in the Certificate of Votes;

- I believe that the discrepancy in the entry insofar as the votes received by candidate Teodoro O'Hara was a result of an honest mistake considering that I was very tired and exhausted and without sufficient rest as a result of the non-stop canvassing;

- I have no malicious or illegal intention whatsoever to change or alter the result of the number of votes received by candidate Teodoro O'Hara;

- That I am executing this affidavit to attest the truth of the foregoing facts and circumstance and for whatever purpose it may serve;

IN TESTIMONY HEREOF, I have hereunto affixed by signature this May 23, 2001 at Manila.

(Sgd.)

EVELYN M. RAMIREZ

Affiant

Comm. Tax Cert. No. 02483551

Issued On Jan. 5, 2001

Issued at Binangonan, Rizal

SUBSCRIBED AND SWORN to before me this 23rd day of May, 2001 at Manila.

Doc. No. 326; ANTONIO G. MALONZO

Page No. 34; Notary Public

Book No. III; PTR NO. 0063298 MLA.

Series of 2001. ON JAN. 3, 2001

TIN 106-187-030

UNTIL DEC. 31, 2002”

Again, the truth of the allegations of Miss Ramirez is uncontested. Petitioner O’Hara did not challenge the affidavit as hearsay. He did not ask that Miss Ramirez be cross-examined. He did not submit any evidence to erode her credibility. Since the affidavit of Miss Ramirez was uncontested, the COMELEC correctly gave it proper weight.

Given the procedure followed by the COMELEC, the evidence presented by the Board of Canvassers and the respondent Rodriguez, and the complete failure of petitioner O’Hara to submit countervailing evidence, I fail to see how the majority can hold that the COMELEC was whimsical and despotic in ordering that the 7,000 votes erroneously credited to petitioner O’Hara should be corrected.

III.

The majority holds that “the errors do not appear on the face of the certificate of canvass. There is nothing on the certificate of canvass that shows the addition of 7,000 votes in favor of petitioner. Likewise, the municipal board of canvassers of Binangonan failed to specify the one hundred precincts whence the 7,000 votes came. x x x”

With due respect, the majority has missed the issue by confining its focus on the certificate of canvass. The manifest error in the cases at bar refers to the typing of votes appearing in the statement of votes by precinct to the certificate of canvass. There were 427 precincts in the Municipality of Binangonan. As it appears from the statement of votes, petitioner O’Hara garnered 28,754 votes from all the precincts while respondent Rodriguez got 18,870 votes. To stress again, there is absolutely no question raised before the Municipal and the Provincial Boards of Canvassers and the COMELEC that this precinct by precinct count is not a true and accurate count of the votes in Binangonan. Unfortunately, when these votes were reflected in the certificate of canvass for the Municipality of Binangonan, the votes credited to petitioner O’Hara became 35,754 or 7,000 votes more than he actually received. The majority cannot be blind to this manifest error for it is uncontested. It should not look for the error in the certificate of canvass for it is not really there. Neither should it look for the source of the 7,000 votes any further for the simple fact is that these votes were erroneously carried over to the certificate of canvass by the tabulator, Evelyn Martinez. Ms. Martinez explained that the tabulation error was “due to fatigue, sleepless nights and physical exhaustion” in the discharge of her election duties. The reason of Ms. Martinez has not been impugned by any party to this case, including petitioner O’Hara. Ms. Martinez is the Municipal Accountant of Binangonan. She is entitled to the presumption of regularity in the performance of her duties. Indeed, her good faith and impartiality can not be successfully challenged.

IV.

The majority assails the COMELEC for relying “x x x on the self-serving affidavits of the Board of Canvassers of Binangonan, Rizal” obviously referring to the affidavit of Ms. Ramirez. It cites the cases of *Pimentel v. Comelec*[3] and *Casimiro v. Comelec*[4] to buttress its ruling. Even a perfunctory examination of these rulings will yield the conclusion that they are inapplicable to the cases at bar. *Pimentel* concerns serious irregularities in the preparation of election returns. *Casimiro* involves fraud, irregularities and anomalies also in the preparation of election returns. These issues certainly cannot be resolved on the basis of self-serving affidavits. The cases at bar, however, do not involve irregularities and anomalies in the preparation of election returns. The election returns

are not in dispute in the cases at bar. Neither is the truthfulness of the statement of votes per precinct in Binangonan under question. The only issue is whether an error was committed in the typing of the statement of votes per precinct in the Municipality of Binangonan to the certificate of canvass. As evidence of the error, the said statement of votes was submitted to the COMELEC. It was supported by the affidavit of Ms. Martinez. Petitioner O'Hara could have asked for the cross-examination of Ms. Martinez to test her truthfulness. He never did, hence, the affidavit of Ms. Martinez cannot be dismissed as self-serving as it was properly submitted in evidence and no party challenged its content. Self-serving evidence refers to extra-record evidence which has been given probative value despite lack of examination and cross-examination by the adverse party. Moreover, Ms. Martinez, as emphasized above, is the Municipal Accountant of Binangonan. She has no private interest to vindicate in the cases at bar. Her affidavit serves the public interest alone - - - the need to protect the voice of the people expressed thru the ballot.

Our case law abounds with rulings where we allowed the correction of statement of votes where the error is merely in tabulation.

Thus, in the 1991 case of *Tatlonghari vs. Comelec, et al.*,^[5] it was made to appear in the Statement of Votes by Precinct that the private respondent received a total of 2,047 votes, when the actual total number of votes obtained by him is only 1,137 or a difference of 910 votes. It appears that in the computation of total votes received by private respondent in the Statement of Votes by Precinct, the Municipal Board of Canvassers erroneously carried over and added to the votes received by private respondent the 910 total votes cast for another candidate whose name appears immediately above that of private respondent. The error was reflected in the Certificate of Canvass and Proclamation of Winning Candidates and resulted in the erroneous proclamation of the private respondent as a winning candidate for councilor. Petitioner filed a petition for declaration of nullity of proclamation which was dismissed by the COMELEC for having been filed out of time, and petitioner was advised to file an election protest instead. At the time the petition for declaration of nullity was filed, Section 4 (e), Rule 27 of the COMELEC Rules of Procedure was not yet in existence. Nevertheless, we ruled that an erroneous tabulation in the statement of votes involves merely a correction of the mistake committed and does not require the opening of the ballot box nor the examination and appreciation of ballots and/or election returns, to wit:

“More, what is involved in the case at bar is purely mathematical and/or mechanical error in the operation of the adding machine committed by the board of canvassers which is admitted by all the parties. It does not involve any opening of the ballot boxes, examination and appreciation of ballots and/or election returns. As said error was discovered sometime after proclamation, all that is required is to convene the board of canvassers to rectify the error it inadvertently committed in order that the true will of the voters will be effected. The correction of the manifest mistake in mathematical addition calls for a mere clerical task of the board of canvassers. The remedy invoked was purely administrative for which no prescriptive period has been provided at the time of the filing of the petition.” (emphasis ours)

In the 1995 case of *Bince, Jr. vs. Comelec, et al.*,^[6] this Court upheld the COMELEC resolution, which set aside the proclamation of petitioner 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. We held:

“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.”

In the same year 1995, this Court, in *Castromayor vs. Comelec, et al.*,^[7] considered the request filed with the COMELEC by the Municipal Board of Canvassers for authority to reconvene in order to correct an error in the Statement of Votes because the returns from one precinct had been overlooked in the computation of the totals, and annul the proclamation of petitioner therein, as a petition for correction of errors in the Statement of Votes per Precinct/Municipality. In defining the proceedings for the correction of errors in the statement of votes before the Municipal Board of Canvassers, this Court applied Rule 27, Section 7 of the COMELEC Rules of Procedure on the “Correction of Errors in Tabulation or Tallying of Results by the Board of Canvassers.” We held that:

“It should be pinpointed out, in this connection, that what is involved here is a simple problem of arithmetic. The Statement of Votes is merely a tabulation per precinct of the votes obtained by the candidates as reflected in the election returns. In making the correction in computation, the MBC will be acting in an administrative capacity, under the control and supervision of the COMELEC. Hence any question pertaining to the proceedings of the MBC may be raised directly to the COMELEC en banc in the exercise of its constitutional function to decide questions affecting elections.”

Finally, in *Torres vs. Comelec, et al.*,^[8] the MBOC requested the COMELEC for correction of the number of votes garnered by petitioner when it was discovered that the votes intended for another candidate in the sub-total as reflected in the Statement of Votes by precinct was erroneously added to petitioner. The Court, applying Section 7, Rule 27 of the COMELEC Rules of Procedure, upheld the position of the COMELEC that when what is involved is purely mathematical or mechanical error in the operation of the adding machine committed by the board of canvassers but does not involve any opening of ballot boxes, examination and appreciation of ballots or election returns, all that is required is to reconvene the board of canvassers to rectify the error it inadvertently committed.

From the foregoing, it is crystal clear that in the correction of a purely mathematical error in the addition of votes, the procedure laid down under Section 7, Rule 27 of the COMELEC Rules may apply. It is a procedure that best recommends itself in situations similar to the cases at bar, specially considering that the Statement of Votes is a vital component in the electoral process. It supports the Certificate of Canvass and is the basis for proclamation. [9] Over and above all these, this Court has sustained in the past the power of the COMELEC en banc to order a correction of the Statement of Votes to make it conform to the election returns in accordance with a procedure similar to the procedure now embodied in Section 7, Rule 27 of the Rules.^[10] This complements the constitutional authority of the COMELEC to decide, except those involving the right to vote, all questions affecting elections,^[11] without concerning itself about procedural niceties that do not square with the need to do justice without further loss of time, for as long as the right of the parties to due process is not substantially impaired.^[12] Besides, this Court has made it clear that it frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the result. The same principle still holds true today.^[13]

In addition, Section 7, Rule 27 of the Comelec Rules of Procedure provides that where an error in the addition of figures in the Statement of Votes by Precinct is involved, the remedy is simply to correct the errors committed, viz:

“Sec. 7. Correction of Errors in Tabulation or Tallying of Results by the Board of Canvassers. – (a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or tallying of election returns, or certificates of canvass, during the canvassing as where (1) a copy of the election returns of one precinct or two or more copies of a certificate of canvass were tabulated more than once, (2) two copies of the election returns or certificate of canvass were tabulated separately, (3) there was a mistake in the adding or

copying of the figures into the certificate of canvass or into the statement of votes by precinct, or (4) so-called election returns from non-existent precincts were included in the canvass, the board may motu-proprio, or upon verified petition by any candidate, political party, organization or coalition of political parties, after due notice and hearing, correct the errors committed.

(b) The order for correction must be made in writing and must be promulgated.”

V.

Finally, the dispositive portion of the ponencia is unprecedented in our jurisprudence. It held:

“WHEREFORE, we SET ASIDE the Resolution dated July 25, 2001 of the Commission on Elections, en banc.

The Commission on Elections is hereby ordered:

- Within five (5) days from notice hereof, to reconvene the municipal board of canvassers of Binangonan, Rizal, to recanvass the election returns pertaining to the votes of petitioner and respondent for position of vice-governor, which shall within forty-eight (48) hours from reconvening, deliver to the provincial board of canvassers the result of the recanvass;

- Within five (5) days after receipt of the certificate of canvass of the municipal board of canvassers, reconvene the provincial board of canvassers which shall within seventy-two (72) hours therefrom:

(a)

Re-tabulate the total number of votes for the petitioner and respondent as prepared and submitted by the municipal board of canvassers of Binangonan, and to enter the same in the certificate of provincial canvass;

(b)

After retabulation, to sum up anew the certificate of provincial canvass the canvassed certificate of canvass of all the municipalities pertaining to the position of vice-governor;

(c)

Thereafter, pursuant to the Omnibus Election Code, pertinent election laws, rules and regulations of the Commission, proclaim the winning candidate of vice-governor, province of Rizal.

If for any reason whatsoever, it would not be possible to immediately reconvene the municipal board of canvassers of Binangonan and the provincial board of canvassers of Rizal, the Commission on Elections, en banc, may constitute new board of canvassers.

Further, if the veracity of the election returns remains to be in question, the Commission, after determining that the integrity of the ballot boxes had been preserved, shall order the reconvening of the board of election inspectors of the precincts involved for the re-opening of the ballot boxes and re-counting of the ballots specifically the votes for the position of vice-governor, which shall, within twenty-four (24) hours from notice, submit the result of the recounting to the municipal board of canvassers of Binangonan.

In the meantime, the temporary restraining order we issued on July 31, 2001, as clarified in the resolution of August 14, 2001, shall remain in effect until the provincial board of canvassers of Rizal makes its final proclamation of the winning candidate for the position of vice-governor, province of Rizal.

No pronouncement as to costs.

SO ORDERED.”

To iterate and reiterate, the cases at bar involve a mere error in transferring the total in the statement of votes per precinct in the Municipality of Binangonan to its corresponding certificate of canvass. The accuracy of the statement of votes per precinct in the Municipality of Binangonan is undoubted. Yet, the majority is now ordering a recanvass of election returns purportedly to determine the correction of the said statement of votes which to stress once more were never in dispute before the Municipal and Provincial Boards of Canvassers and the COMELEC. In other words, the majority wants proof of what need not be proved. Only the naive will fail to see that this ruling will unnecessarily delay all proceedings and will guarantee that petitioner O’Hara will sit as Vice-Governor of the Province of Rizal on the basis of the 7,000 votes erroneously credited in his favor. Well to note, petitioner O’Hara did not even pray for the remedies now being granted by the majority for the simple reason that the cases at bar involves a mere correction of tabulation error. To say the least, the majority has marred the landscape of our election law by allowing a clerical error to reign instead of the sovereign will of the people to govern.

I vote to dismiss the petition.

[1] Sec. 221 (d), Omnibus Election Code.

[2] Sec. 221 (a), Omnibus Election Code.

[3] 140 SCRA 148 (1985).

[4] 171 SCRA 468 (1989).

[5] 199 SCRA 849 (1991). See also *Mentang vs. Comelec, et al.*, 229 SCRA 666 (1994), where this Court 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.

[6] 242 SCRA 273 (1995).

[7] 250 SCRA 298 (1995).

[8] 270 SCRA 583 (1997).

[9] *Duremdes vs. Comelec, et al.*, 178 SCRA 746 (1989).

[10] *Ibid.*

[11] Section 2(3), Article IX-C, 1987 Constitution.

[12] *Mentang vs. Comelec, et al.*, *supra* note 5.

[13] *Bince, Jr. vs. Comelec, et al.*, *supra* note 6.

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