

RODERICO VILLAROYA, PETITIONER, VS. COMMISSION ON ELECTIONS, BENEDICTA B. ROA AND CITY BOARD OF CANVASSERS OF CAGAYAN DE ORO, RESPONDENTS.

G.R. Nos. 79646-47. November 13, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue in this petition is whether or not the COMELEC can order the examination of the election return of a precinct by retrieving the same from the ballot box and comparing the same with the statement of votes issued by the city board of canvassers in order to verify herein private respondent's claim that by clerical error her votes therein were under-tabulated by 57 votes thus giving an erroneous victory margin of 26 votes to petitioner as a pre-proclamation controversy even if the protestant failed to raise the issue before the Board of Canvassers during the canvassing.

Petitioner Villaroya and private respondent Roa were among the congressional candidates in Cagayan de Oro City in the May 11, 1987 elections. The city board of canvassers canvassed and tabulated the statement of votes coming from 598 precincts. The tabulation was terminated on May 16, 1987 and reported that Villaroya garnered 38,222 votes, while respondent Roa got a total of 38,196 votes, with a plurality of 26 votes, in favor of petitioner Villaroya. Due to the protest of the lawyers of Roa, Villaroya was not proclaimed by the Board of Canvassers.

On May 17, 1987, Roa filed a petition in the COMELEC contesting the election returns of 7 precincts namely Nos. 100-A (Agusan), 196-B (Carmen), 201 (Carmen), 213 (Cugman), 262 (Patag), 234 (Nazareth) and 311-A (Macasandig) due to fraud, duress, falsification and other grounds. Acting on the petition, the COMELEC on May 19, 1987 sent a telex to the City Board of Canvassers to suspend the proclamation of any winning candidate for the city until further orders of the Commission.

Upon a formal request made by Roa on May 19, 1987, the Board of Canvassers furnished her on May 21, 1987 a copy of the Statement of Votes (CE Form 27). On May 22, 1987, Roa filed with the Board of Canvassers a protest for the error or mistake in the tabulation of the election returns in voting center No. 302-A. On May 23, 1987 Roa filed with the Board an amended protest that while the election returns of the voting center No. 302-A at Barangay Macalalad shows a total of 111 votes for Roa and 35 votes for Villaroya, the statement of votes shows that only 54 votes were credited to Roa and 35 votes for Villaroya, thus depriving Roa of 57 votes; that the mistake was committed by the adoption of the sub-total of Roa of 54 votes in the election return without considering the first sub-total of 57 votes or a grand total of 111 votes in the same election return; that because the Board failed to convene and act on the protest and amended protest Roa filed with the Commission on Elections the supplemental petition praying for the correction of the statement of votes (CE Form 27-A) in voting center No. 302-A which should be 111 and not 54 only and for her proclamation as the duly elected congresswoman of Cagayan de Oro City. After Villaroya filed an answer to the supplemental petition, Roa filed her reply thereto. The case was heard by the 2nd division of the Commission. On July 8, 1987, an Order was issued which reads as follows:

“ ‘Considering the allegations in the Supplemental Petition, as well as in the answers, and the arguments adduced during hearing held on June 17, 1987, the Commission (SECOND DIVISION) hereby specifically directs the Respondent Board of Canvassers of Cagayan de Oro City:

- a) To reconvene in Cagayan de Oro City not later than Forty Eight (48) hours from receipt of this Order;
- b) To verify from the election returns of Precinct No. 302-A (Macabalan), Cagayan de Oro City, the actual votes cast for Petitioner and for private respondent as shown therein; and
- c) The Respondent City Board is further directed to proclaim the winner after the above-mentioned verification.[1]

On July 10, 1987, Villaroya filed with the Commission en banc a motion for reconsideration or appeal from said Order. Roa filed an Opposition to said Motion, while Villaroya filed his rejoinder. On August 18, 1987, the Commission en banc issued its decision denying Villaroya's motion for reconsideration, the dispositive part of which reads as follows:

" 'WHEREFORE, in view of the foregoing, the Commission en banc, rules that:

1. The Motion for Reconsideration filed by Respondent Roderico Villaroya is DENIED. The Commission has jurisdiction upon this pre-proclamation protest.
2. The election returns of Precinct No. 302-A Macabalan Cagayan de Oro City be verified to determine the actual votes cast for Petitioner Benedicta B. Roa and Roderico Villaroya in the election of May 11, 1987.
3. There shall be constituted a new City Board of Canvassers for Cagayan de Oro City composed of the Provincial Election Supervisor of Misamis Oriental, Region X as Chairman and the Assistant City Fiscal of Cagayan de Oro City as Vice-Chairman, and a lawyer of the Law Department of the Commission on Elections, Manila as Member. This Board of Canvassers shall convene immediately for the purpose of verifying the election return of Precinct No. 302-A (Macabalan) and, thereafter, completing the canvass of the election returns from the various election precincts of the lone Congressional District of Cagayan de Oro City, and, thereafter, proclaim a winning candidate.' "[2]

Because only three commissioners (Haydee Yorac, Andres Flores and Tomas V. de la Cruz) voted affirmatively while two (Chairman Ramon H. Felipe, Jr. and Leopoldo L. Africa) dissented and Commissioner Anacleto D. Badoy, Jr., qualified his vote, on August 19, 1987 Roa filed a motion for clarification and motion for reconsideration of the qualified vote of Com. Badoy. After Villaroya filed his comment on said motion, on Sept. 3, 1987 Com. Badoy issued his clarification in effect joining the three commissioners who voted for the verification of the election return in Precinct No. 302-A (Macabalan) only.

Upon instruction of Chairman Felipe, Jr. the new Board convened at Cagayan de Oro City on Sept. 5 and 6, 1987 and after verification of the election return in Precinct No. 302-A (Macabalan) showing that Roa obtained 111 votes and not 54 votes only, Roa was proclaimed the duly elected congresswoman of Cagayan de Oro City with a margin of 31 votes over Villaroya.

In the meanwhile on Sept. 7, 1987, Villaroya filed in this Court the herein petition for certiorari, prohibition and mandamus with prayer for the issuance of a temporary restraining order or writ of preliminary injunction alleging that Roa not having filed an objection with the Board of Canvassers during the canvassing, deprived the COMELEC of appellate jurisdiction to entertain Roa's petition of Roa for the verification of the election return in question 302-A (Macabalan) for comparison with the statement of votes and that the question was not proper for a pre-proclamation controversy but in an election contest that should be brought before the house electoral tribunal. Villaroya further alleged that the direct filing of the protest with the COMELEC did not make it a

pre-proclamation controversy; that the decision of the COMELEC of August 18, 1987 authorizing such verification by the Board of Canvassers was illegal, arbitrary and was issued without jurisdiction or with grave abuse of discretion and prayed for the issuance of a writ of preliminary injunction and/or restraining order.

Acting on the petition, the Court on September 8, 1987 required respondents to comment thereon and in order to maintain the status quo issued a temporary restraining order enjoining the COMELEC from enforcing and implementing the questioned decision.

On September 14, 1987, petitioner Villaroya filed a supplement to the petition alleging that on September 6, 1987 the new Board convened at Cagayan de Oro City without waiting for the lapse of the five (5) day-period required by the Omnibus Election Code over the objection of petitioner's counsel to defer the canvassing until September 9, 1987 and the motion to disqualify Alejandra Barbac and Casiano Gamotin, Jr. as chairman and vice-chairman respectively; that copy of a telegram of the COMELEC on September 6, 1987 to said Board not to proceed with the implementation of the COMELEC decision until after September 8, 1987, was delivered to the son of canvassing board chairman Atty. Barbac who refused to receive the same; that a long distance call of Atty. Horacio Apostol, manager of the law department of the COMELEC to Atty. Barbac was not entertained by Barbac who hanged up the receiver of the telephone; that said board proceeded by breaking the padlock of the door of the storeroom containing the ballot boxes and removing the ballot box containing the election return for Precinct No. 302-A (Macabalan), then they broke its padlocks and retrieved the election return therefrom after which Roa was proclaimed; that Speaker Ramon Mitra, having learned of the COMELEC telegram turned down the request of Roa to assume the post. Petitioner prayed for the issuance of another restraining order sought against Roa's assumption of office, and prayed of the Court to declare the proclamation of Roa as null and void and to order the Board to recount the votes in 24 precincts counter protested by the petitioner, or to order a recount of the votes in all the 598 precincts of Cagayan de Oro City.

On September 17, 1987 the Court issued its resolution requiring respondents to comment thereon and Atty. Barbac, Fiscal Gamotin and Atty. Urbano C. Orlando as members of the City Board of Canvassers to show cause why they should not be held in contempt of court for disregarding the order issued by this Court on September 8, 1987. A restraining order was issued enjoining Roa from assuming the seat in the House of Representatives representing Cagayan de Oro City and from discharging the duties and function thereof.

Respondent Roa submitted a motion to dissolve the restraining order and her comment on the supplemental petition. Petitioner filed a reply thereto. Public respondents submitted their comment. Petitioner then filed the Opposition to the motion to dissolve the restraining order and reply to Roa's comment. Asst. Fiscal Gamotin, Jr. submitted his comment, while petitioner submitted a reply to the public respondents' comment. Fiscal Gamotin, thereafter submitted a supplemental comment while Orlando, election attorney, filed his manifestation. The case was submitted for resolution after the court heard the parties on November 10th.

The crux of the case is whether the COMELEC committed a grave abuse of discretion in ordering the City Board of Canvassers to verify the election returns of Precinct 302-a (Macabalan) as to the number of votes received by petitioner Roa as compared with the statement of votes for the same precinct.

Resolving this issue in the questioned decision, the COMELEC found and held as follows:

"The crucial question is: 'WERE THESE PROTESTS FILED SEASONABLY ON MAY 22 AND 23, 1987?'

During the canvassing held by the City Board of Canvassers of Cagayan de Oro City from May 11 to 16, 1987 (when the City Board of Canvassers claimed they completed the canvass) the said City Board of Canvassers (created) 'canvassing units' which tabulated the election returns of Precinct No. 302-A (Refer to page 3, Supplement to the Motion to Dismiss filed by Respondent Villaroya on June 20, 1987). Thereafter, the

tabulated returns were recorded in the Statement of Votes prepared by the City Board of Canvassers, Cagayan de Oro City which reflected votes for Roa and Villaroya of 54 and 35 respectively.

Because there were several 'canvassing units' created by the City Board of Canvassers, (it was probable) that when Precinct No. 302-A (Macabalan) was, being canvassed, since there were other canvassings going on simultaneously, the watchers of Petitioner Roa did not become aware of the discrepancy between the election return and certificate of votes coming from the Board of Election Inspectors of Precinct 302-A and the recording of the votes in the Statement of Votes of the City Board of Canvassers.

The discrepancy was discovered 'only upon receipt of the official copy of the Statement of Votes on May 21, 1987 which official copy was obtained only after a formal request therefore dated May 19, 1987 x x x' (Refer to page 2, III; Opposition To Ex-Parte Motion To Lift Order of Suspension of Proclamation filed by Petitioner on June 27, 1987).

Petitioner Roa, thru counsel, reacted expeditiously by filing the 'Protest' and 'Amended Protest' (previously quoted herein) on May 22 and 23, 1987 respectively. (annexes 'S' and 'S-1').

It is obvious that Petitioner Roa did not file a protest with the Board of Election Inspectors of Precinct No. 302-A (Macabalan) because the election returns and other records of Precinct No. 302-A reflected one hundred eleven (111) votes.

Since Petitioner Roa and/or her watchers knew she garnered one hundred eleven (111) votes in Precinct No. 302-A (Macabalan) it would stretch the credulity of this Commission to believe that the watchers/lawyers of Petitioner Roa will just keep quiet and allow the recording of only fifty four (54) votes for their candidate when the Election Return of said precinct No. 302-A was canvassed. It is against any form of reasonable expectation or belief that these watchers/lawyers of Petitioner Roa who had filed objections and protests time after time with the City Board of Canvassers of Cagayan de Oro City would now knowingly acquiesce to the wrong entry of votes for Petitioner Roa.

But their reaction was quick and spontaneous when they received the copy of the Statement of Votes prepared by the City Board of Canvassers on May 21, 1987. In succession a 'Protest' and 'Amended Protest' were filed with the City Board of Canvassers of Cagayan de Oro City on May 22 and 23, 1987 respectively and eventually this matter became the subject of the 'Supplemental Petition' of May 24, 1987.

It cannot be expected that a person who is unaware of a defect/discrepancy would just object for no reason at all. It would be another matter if becoming aware of the discrepancy, he slept on his rights. This did not happen here.

The City Board of Canvassers of Cagayan de Oro City has consistently claimed that they have already completed the canvass on May 16, 1987 and that no objections have been received by the said Board of Canvassers, Cagayan de Oro City, 'Minutes of the City Board of Canvassers, Cagayan de Oro City' prepared by Nena S. Yanez, Stenographer and attested by Sol Matugas, Ed. D., Schools Division Superintendent, Secretary, City Board of Canvassers, we find the following entry;

'Before adjournment (May 16, 1987 - our supply of data) the Chairman of the City Board of Canvassers announced to the public that on the following day, May 17, 1987 she will transmit the Certificate of Canvass for Senatorial Candidates to Manila.

The City Board of Canvassers of Cagayan de Oro City hereby adjourned the canvassing until 2:00 P.M., Monday, May 18, 1987.' (underscoring ours) (See Minutes, Annex 'DD', Petition).

Since that time, May 16, 1987, the City Board of Canvassers of Cagayan de Oro City, had not convened because the Chairman Atty. Bernardita Cabacungan, had absented herself and was reported to be in Manila. This led to a telegram report of the Vice-Chairman to the Commission.

Where can Petitioner Roa then file her case except directly with the Commission? The cognizance granted to the Supplemental petition is supported by a long line of decisions by the Supreme Court beginning with the often quoted 'Olfato' case.

'It must be observed further, that there is no plausible reason to prohibit an aggrieved candidate from filing an objection regarding the election returns directly before the Comelec itself if the election irregularities that vitiate the integrity of the election returns are not apparent upon their faces. What is therefore involved is the original jurisdiction of the Comelec rather than its appellate jurisdiction for precisely the objection is filed not before the Board of Canvassers because the irregularities are not apparent upon the face of the election returns.'

Olfato vs. COMELEC

L-52749, 103 SCRA 741

March 31, 1981

The Commission en banc rules, therefore, that the protest or objection filed by Petitioner Bernardita Roa on May 22 and 23, 1987, after discovery of the discrepancy in the Statement of Votes for Precinct no. 302-A, Macabalan, was filed seasonably.

In the landmark decision of the Supreme Court in the case of Cauton vs. COMELEC (19 SCRA 914) it was enunciated thus:

'This Court in a line of decisions has ruled that the Commission on Elections has the power to investigate and act on the propriety or legality of the canvass of election returns made by the board of canvassers. x x x'

Citing the case of Albano vs. Arranz, L-19260, January 31, 1962, the Supreme Court thru Justice J.B.L. Reyes, said:

'The Commission certainly had the right to inquire whether or not discrepancies existed between the various copies of election returns x x x'

Continuing, the Supreme Court said:

'When the Commission on Elections exercises this power, the purpose is not for the Commission to help a candidate win the election but to bring about the canvass of the true results of the elections as certified by the Board of Election Inspectors in every precinct. (Underscoring ours) x x x

Once the Commission on Elections is convinced that the election returns in the hands of the board of canvassers do not constitute the proper basis in ascertaining the true result of the elections, it should be its concern, nay its duty, to order that the proper basis for the canvass is obtained or made available.

The Commission en banc finds that the case at bar falls within the ambit of the above-cited decisions of the Supreme Court. The Commission, therefore, rules that it has jurisdiction to give due course to the Petition filed on May 17, 1987 and the Supplemental Petition filed on May 24, 1987 by the Petitioner Bernardita B. Roa.

The clear and express mandate upon the Commission on Elections to 'enforce and administer all laws and regulations relative to the conduct of an election x x x' (Art. IX, C, 2(1) Constitution of the Philippines, 1986) is designed to elicit the true and genuine will and choice of the electorate as expressed through the ballot. To this end we have, as a Commission, dedicated ourselves unequivocally, without fear or favor."[3]

We uphold the questioned COMELEC decision.

The circumstances of this case are peculiar as the question raised is not as to the correctness of the election returns

but that of the statement of votes taken from the election returns by the City Board of Canvassers during the canvassing. Said error in the statement of votes was not discovered by the watchers of Roa during the canvassing and Roa learned of the said discrepancy of the number of votes she received in the statement of votes for Precinct No. 302-A (Macabalan) for the first time only on May 21, 1987 when she received its copy upon her request to the board showing precisely such discrepancy. She wasted no time in filing a protest and amended protest with the City of Board of Canvassers, who never met to consider the same. Since the old board was not available Roa thus went direct to the COMELEC for the purpose. Under the Constitution, the COMELEC has the following powers and functions:

"x x x x

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the election returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters."[4]

From the foregoing, it is clear that the COMELEC has ample power to see to it that the elections are held in a clean and orderly manner and it may decide all questions affecting the elections and has original jurisdiction on all matters relating to election returns,[5] including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to insure that the true will of the people is known. Such a clerical error in the statement of votes can be ordered corrected by the COMELEC.

It is no fault of Roa if she or her representatives failed to file the timely protest during the canvassing as the error in the statement of votes was not apparent on its face and/or was not noticed by her watchers. It was actually discovered only on May 21, 1987 when Roa received a copy of the statement of votes she requested from the Board. No less than the election inspectors who were assigned to Precinct No. 302-A (Macabalan) attested under oath to the fact that the actual number of votes received by Roa in said precinct was 111 and not 54.[6] This is corroborated by the improvised certificate of votes issued by the election inspectors to the watchers of Roa after the canvass.[7] Since there is clear evidence of such discrepancy between the number of votes tabulated for Roa in the statement of vote for Precinct No. 302-A (Macabalan) as compared to the number of votes she actually received during the counting at the precinct, as hereinabove explained, it was the duty of the COMELEC to see to it that this matter should be verified from the election return as a pre-proclamation controversy. It cannot wash its hands by asking Roa to bring the matter to the electoral tribunal as an election protest.

Petitioner makes much capital of the fact that the proclamation of respondent Roa appears to have been done within the 5-day period after the rendition of the judgment against the order of the COMELEC to suspend the same. There is no positive evidence that the members of the Board of Canvassers defied the order of the COMELEC to suspend the canvassing and/or that they received such order before they made the canvass and proclaimed Roa. What appears is that it was only after they completed their task that the telegram of the COMELEC to suspend the canvass was received for transmission by the RCPI in Cagayan de Oro City at 5:20

P.M. of September 6, 1987.[8] The verification of the contents of the election return in Precinct No. 302-A was made from 11:00 A.M. to 12:50 Noon. Roa was proclaimed winner at 4:00 P.M. and she took her oath before MTCC Judge Roque V. Edmilao at 4:40 P.M.[9]

As to the alleged refusal of Atty. Barbac to entertain the phone call of Atty. Apostol, Roa has shown that there was no telephone in the session hall where the canvassing was undertaken. Moreover, all that Atty. Apostol said in his affidavit is that "everytime contact is made at the other end, the telephone thereat is invariably hung up.[10]

The true will of the electorate of Cagayan de Oro City must be upheld. Roa won by 31 votes and thus she is entitled to sit as their representative.

The protestation of petitioner that the election returns in 24 other election precincts should be examined cannot be given due course as correctly ruled by the COMELEC. Petitioner failed to demonstrate that there was a similar discrepancy or error between the statement of votes and the corresponding election returns in said precincts. Much less can the Court consider the plea of petitioner for a recounting of the votes in all the 598 precincts? If at all, petitioner has the remedy of an election protest in the house electoral tribunal.

WHEREFORE, the petition is DISMISSED for lack of merit. The restraining orders of September 8, 1987 and September 17, 1987 are hereby DISSOLVED effective immediately. This dismissal is immediately executory.

SO ORDERED.

Tehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Pages 470-471, Rollo.

[2] Page 472, Rollo.

[3] Pages 33-36, Rollo.

[4] Section 2(1), (2) and (3), Article IX, Constitution; underscoring supplied.

[5] Section 2, Article IX and (3), Supra.

[6] Annex 10 to private respondents' comment.

[7] Annex 10 to private respondents' comment.

[8] Annex 29 to Roa's Motion to Dissolve with comments which is the Certification of the RCPI Manager of Sept. 21, 1987.

[9] See Atty. Barbac's comments.

[10] Annex Y, Supplement to the Petition, Affidavit of Atty. Apostol.

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