

## EN BANC

[ G.R. NO. 163756, January 26, 2005 ]

**GEORGIDI B. AGGABAO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE PROVINCIAL BOARD OF CANVASSERS OF ISABELA, AND ANTHONY MIRANDA, RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This Petition for Certiorari<sup>[1]</sup> seeks to annul and set aside as having been issued with grave abuse of discretion Resolution No. 7233 of the COMELEC *En Banc* and the proclamation of private respondent Anthony Miranda as Congressman for the 4th District of Isabela.<sup>[2]</sup>

Petitioner Georgidi B. Aggabao and private respondent Anthony Miranda were rival congressional candidates for the 4<sup>th</sup> District of Isabela during the May 10, 2004 elections. During the canvassing of the certificates of canvass of votes (COCV) for the municipalities of Cordon and San Agustin, Miranda moved for the exclusion of the 1st copy of the COCV on grounds that it was tampered with; prepared under duress; differed from other authentic copies and contained manifest errors.<sup>[3]</sup>

Aggabao objected arguing that the grounds raised by Miranda are proper only for a pre-proclamation controversy which is not allowed in elections for Members of the House of Representatives.<sup>[4]</sup>

On May 22, 2004, the reconstituted Provincial Board of Canvassers (PBC) excluded from canvass the contested COCVs and used instead the 4<sup>th</sup> and 7<sup>th</sup> copies of the COCVs.<sup>[5]</sup> Based on the results, Miranda garnered the highest number of votes for the position of Congressman.

On appeal with the COMELEC,<sup>[6]</sup> petitioner asserted that the PBC acted without jurisdiction<sup>[7]</sup> when it heard Miranda's Petition for Exclusion. Even assuming that the PBC had jurisdiction over the petition, it still erred in excluding the contested COCVs as they appeared regular and properly authenticated.<sup>[8]</sup>

On June 6, 2004, private respondent filed a *Very Urgent Motion for Proclamation*<sup>[9]</sup> which was opposed<sup>[10]</sup> by petitioner who contended that the pendency of his appeal with the COMELEC Second Division is a bar to Miranda's proclamation.

In a Memorandum dated June 8, 2004, Commissioner Mehol K. Sadain, commissioner in-charge for Regions II and III, approved the proclamation of the remaining winning candidates for the province of Isabela.<sup>[11]</sup>

On June 9, 2004, the COMELEC *En Banc* issued Resolution No. 7233 likewise directing the proclamation of the remaining winning candidates in Isabela.<sup>[12]</sup> On the same day, petitioner filed with the COMELEC an *Urgent Motion to Set Aside the Notice of Proclamation with Prayer for the Issuance of a Temporary Restraining Order*.<sup>[13]</sup>

On June 14, 2004, Miranda was proclaimed as the duly elected Congressman for the 4<sup>th</sup> District of Isabela.<sup>[14]</sup>

Two days after the proclamation, Aggabao filed this petition assailing Resolution No. 7233. He claimed that the COMELEC *En Banc* acted without jurisdiction when it ordered Miranda's proclamation considering that the Second Division has not yet resolved the appeal.

In his Comment,<sup>[15]</sup> Miranda moved for the dismissal of the petition considering that the issue raised by Aggabao is best addressed to the House of Representatives Electoral Tribunal (*HRET*).<sup>[16]</sup>

On August 27, 2004, the petitioner filed a *Consolidated Motion for Early Resolution; Manifestation that the COMELEC Second Division Issued a Resolution Sustaining the Appeal of the Petitioner; and Reply to the Comment*.<sup>[17]</sup> He manifested that on August 16, 2004, the COMELEC Second Division gave due course to his pending appeal.<sup>[18]</sup> At the same time, he bewailed the failure of the COMELEC Second Division to annul the proclamation.<sup>[19]</sup>

The basic issue for resolution is whether we can take cognizance of this petition.

Certiorari as a special civil action can be availed of only if there is concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction, and (b) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding. There must be capricious, arbitrary and whimsical exercise of power for it to prosper.<sup>[20]</sup>

Article VI, Section 17 of the 1987 Constitution provides:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organization registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

In *Pangilinan v. Commission on Elections*<sup>[21]</sup> we ruled that: