

## EN BANC

**[ G.R. No. 197466, November 13, 2012 ]**

**JOEL P. QUIÑO, MARY ANTONETTE C. DANGOY, JOSEPHINE T. ABING, JOY ANN P. CABATINGAN, TESSA P. CANG, WILFREDO T. CALO, HOMER C. CANEN, JOSE L. CAGANG, ALBERTO CABATINGAN AND FRANCISCO T. OLIVERIO, PETITIONERS, VS. COMMISSION ON ELECTIONS AND RITCHIE R. WAGAS, RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

This is a petition for certiorari filed under Rule 65 in conjunction with Section 2, Rule 64 of the 1997 Rules of Civil Procedure, as amended, seeking to annul the Resolution<sup>[1]</sup> dated January 12, 2011 of the Commission on Elections (COMELEC) Second Division and Resolution<sup>[2]</sup> dated June 13, 2011 of the COMELEC *En Banc*, and to sustain the proclamation by the Municipal Board of Canvassers (MBOC) of petitioners as the duly elected municipal officials of Compostela, Cebu in the May 10, 2010 elections.

The factual antecedents:

Petitioner Joel P. Quiño and private respondent Ritchie R. Wagas both ran for the position of Mayor of Compostela, while petitioner Mary Antonette C. Dangoy was a candidate for vice-mayor, during the May 10, 2010 elections. Petitioners Josephine T. Abing, Joy Ann P. Cabatingan, Tessa P. Cang, Wilfredo T. Calo, Homer C. Canen, Jose L. Cagang, Alberto Cabatingan and Francisco T. Oliverio were candidates for municipal councilors.

Results of the canvassing showed that Quiño obtained 11,719 votes as against 9,338 votes garnered by Wagas.<sup>[3]</sup> Quiño, along with the rest of the petitioners who were the winning candidates for members of the *Sangguniang Bayan*, were proclaimed by the MBOC on May 11, 2010.

On May 14, 2010, Wagas filed an Election Protest<sup>[4]</sup> against Quiño before the Regional Trial Court (RTC) of Mandaue City.

On May 21, 2010, Wagas also filed a petition<sup>[5]</sup> for annulment of proclamation in the COMELEC, docketed as SPC No. 10-041. He claimed that after the proclamation, it was discovered that the Audit/Print Logs of the Consolidating Machine of the MBOC did not reflect at least fourteen (14) clustered precincts, and that despite such absence the Consolidating Machine generated, among others, the Certificate of Canvass and Statement of Votes (SOV). As it appears that the electronic election returns (EERs) of 14 precincts were already stored in the Consolidating Machine, the

same are therefore falsified ERs. Notably, the EER for Clustered Precinct No. 19 showed that more than 700 votes were cast but the Statement of Votes reflected only 10 votes. Contending that the Certificates of Canvass and Proclamation are without authentic basis, Wagas prayed that the proclamation of the winning candidates be declared null and void.

In his Answer,<sup>[6]</sup> Quiño denied the allegations of irregularities in the canvassing of votes. He asserted that he had no hand in, or access to the preparation, installation and operation of the Precinct Count Optical Scan (PCOS) machines before and during the elections, nor is he familiar with their intricacies and configurations including security codes, with the result that he was dependent upon the members of the Board of Election Inspectors (BEI) who presided over the elections. Assuming that the PCOS did not have print/audit logs with respect to the 14 Clustered Precincts, Quiño argued that this does not mean that the PCOS machines were tampered or pre-programmed to cheat; such is pure speculation. He insisted that the few problems or deficiencies encountered, such as the audit/print logs, did not affect the integrity of the elections, and hence the proceedings of the MBOC and the proclamation of the winning candidates were proper and lawful. He moved for the dismissal of the petition on the following grounds: (1) the issues are governed by an election protest, which should have been filed with the RTC; (2) there is no payment of the filing fee and cash deposit; (3) the members of the MBOC are indispensable parties who were not impleaded; (4) he was not served with copy of the petition before its filing; and (5) the petition is barred by prescription, estoppel and laches, and its filing amounts to forum-shopping.

On June 18, 2010, Wagas filed an Extremely Urgent Motion to Suspend the Effect of Proclamation,<sup>[7]</sup> attaching thereto separate Affidavits<sup>[8]</sup> executed by Lorenzo D. Almodiel and Alberto Y. Melendres, Vice-Chairman and Member, respectively, of the MBOC stating that:

2. x x x most of the [EERs] x x x, were not remotely transmitted but locally or manually transmitted to the consolidating machine;
3. x x x these locally or manually transmitted [EERs], that were stored in the individual Flash Memory per precinct x x x were merely inserted to the flash reader of the consolidating machine and canvass or consolidated without digital authentication[.] [Thus,] it cannot be ascertained whether the EERs in the flash memory were genuine and the same electronic documents produced by the PCOS on election day x x x;
4. x x x the Audit Log of the consolidating machine failed to log/record fourteen (14) [EERs] or Flash Memories, as such [it] cannot be determined where these 14 EERs came from, x x x what [was] the mode of [their] transmission x x x to the consolidating machine; and how these EERs were canvassed or consolidated by the Consolidating Machine;
5. x x x the election result generated from the x x x fourteen (14) EERs from the Precinct to MBOC were directly consolidated and the Statement of Votes per Precinct included the election result of the

fourteen (14) EERs, despite the fact that the Audit Log of the consolidating machine failed to log/record [said] fourteen (14) EERs;

x x x x

7. x x x the responsibility of the MBOC was merely to give the pin and thereafter [was] converted to technically a mere bystander or watcher and to proclaim the winners after the consolidating machine produced the printed results without verification or comparison to the printed ERs; and except for physical verification or analog authentication of flash memories; [and]

x x x x

9. x x x after the election, the used and valid ballots in the clustered precincts in Barangay Mulao, Compostela were not placed inside the official ballot boxes and instead were placed in two separate cartons/boxes, and were alleged to have been at the Comelec Office in Compostela and the same were found/discovered more than days or weeks after the election; [a]nd the ballot boxes that were left at the Treasurer's Office were empty[.]

A similar report was submitted by Election Officer Desierto N. Hortelano, Jr. to the Provincial Election Officer, Atty. Lionel Marco R. Castellano.<sup>[9]</sup>

On June 28, 2010, petitioners took their oath of office and immediately assumed office.

On the same day, however, the COMELEC Second Division issued an Order<sup>[10]</sup> as follows:

WHEREFORE, premises considered, the Commission ORDERS to, as it does hereby, GRANT the "Extremely Urgent Motion to Suspend the Effect of Proclamation" filed by petitioner Ritch[i]e Wagas, hereby immediately suspending the effect of the proclamation of the candidates for mayor, vice-mayor and eight councilors of Compostela, Cebu. In the meantime, said petitioner is hereby give[n] three (3) days from receipt of this Order to amend the instant Petition in order to implead said indispensable parties.

SO ORDERED.<sup>[11]</sup>

Wagas filed an Amended Petition for Proclamation to which petitioners filed their Answer.

On January 12, 2011, the Second Division citing COMELEC Resolution No. 8989<sup>[12]</sup> (also cited in the June 28, 2010 Order) issued a Resolution<sup>[13]</sup> granting the

amended petition, thus:

WHEREFORE, premises considered the Commission RESOLVES to, as it hereby:

1. GRANTS the instant Petition to Annul Proclamation;
2. ANNULS the proclamation of the presumptive winning candidates in the Municipality of Compostela, Cebu, in connection with the 10 May 2010 Automated National and Local Elections, namely, the herein respondents, Joel Quiño as the mayor-elect, Mary Antonette Dangoy as the vice-mayor-elect and the eight (8) municipal-councilors-elect Josephine T. Abing, Joy Ann P. Cabatingan, Tessa P. Cang Wilfredo T. Calo, Homer C. Canen, Jose L. Cagang, Alberto Cabatingan and Francisco Oliverio.
3. ORDERS the MBOC to CONVENE, CANVASS and thereafter PROCLAIM the rightful winners after it has verified and corrected the EERs and other pertinent documents.

SO ORDERED.<sup>[14]</sup>

Petitioners filed a motion for reconsideration with the Commission.

In the assailed Resolution<sup>[15]</sup> dated June 13, 2011, the Commission, by majority vote of four (4) Commissioners, denied the motion for reconsideration, reasoning as follows:

The Commission has the authority to annul the proclamation of a candidate if it discovers that the proclamation thereof proceeds from invalid and insufficient ground. A proclamation based on invalid canvass is no proclamation at all. Since the results of 14 clustered precincts were not transmitted and therefore were not included in the final canvass of votes, this Commission finds the proclamations of the presumptive winners as invalid. An irregularity also is reflected in the results for clustered precinct no. 19 where only ten votes were reflected in the Statement of Votes while seven hundred (700) votes were said to have cast their votes per election return. The factual circumstances of the case at bar are in all fours with Resolution No. 8989, contrary to the view of the respondents.

To settle the unrest resulting from this controversy and to truly determine the will of the electorate of Compostela Cebu, the Commission deems it necessary to canvass the votes in the clustered precincts subject of this controversy.<sup>[16]</sup>

Commissioners Augusto C. Lagman and Armando C. Velasco concurred with the dissenting opinion<sup>[17]</sup> of Commissioner Rene V. Sarmiento who voted to reverse the