

## EN BANC

[ G.R. No. 178456, January 30, 2008 ]

**RANDY C. CAMBE, PETITIONER, VS. THE COMMISSION ON ELECTIONS; THE MUNICIPAL BOARD OF CANVASSERS OF LASAM, CAGAYAN; AND DOMINADOR M. GO, RESPONDENTS.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

The instant petition for certiorari under Rule 65 of the Rules of Court assails Resolution No. 8212<sup>[1]</sup> of the Commission on Elections (COMELEC) sitting *en banc*, dated June 28, 2007, insofar as SPC Case No. 07-212 is concerned. Petitioner Randy C. Cambe contends that the COMELEC *en banc* gravely abused its discretion in dismissing petitioner's appeal from the May 22, 2007 Ruling<sup>[2]</sup> of public respondent Municipal Board of Canvassers (MBC) of Lasam, Cagayan, which granted herein private respondent Dominador M. Go's petition to exclude from the canvass Election Return No. 9601666 (for clustered precinct numbers 66A and 68, Barangay Nabannagan East), resulting in the proclamation on even date of Go as the duly elected eighth (8<sup>th</sup>) Member of the Sangguniang Bayan of Lasam, Cagayan.

Petitioner and Go were candidates during the May 14, 2007 elections for Sangguniang Bayan members of the municipality of Lasam, Cagayan, where eight seats were at stake. On May 15, 2007, when Election Return No. 9601666 for clustered precinct numbers of 66A and 68 was presented for canvassing, Go orally moved for its exclusion on the ground that said return was allegedly manufactured. He alleged that the integrity of said return is questionable as the total number of votes cast for the vice-mayorality candidates exceeded the number of registered voters.<sup>[3]</sup> This was followed by the written petition/opposition<sup>[4]</sup> filed by Go on May 17, 2007, stating that the canvass of the contested return will affect the 8<sup>th</sup> position in the Municipal Councilor race.

Should the alleged manufactured election return be included in the canvassing, petitioner would land on the 8<sup>th</sup> seat in the Sangguniang Bayan leading by 21 votes over Go who would occupy the 9<sup>th</sup> slot. On the other hand, if the said return will be excluded, Go would advance to the 8<sup>th</sup> place with a six-vote lead over petitioner.<sup>[5]</sup>

In the meantime, the MBC proclaimed the winners for the position of mayor, vice-mayor, and 7 Sangguniang Bayan Members, leaving the canvassing of the questioned return for the 8<sup>th</sup> slot, pending.<sup>[6]</sup>

On May 21, 2007, the MBC issued a notice directing petitioner to file his comment/opposition to the petition within 24 hours from receipt of said notice.<sup>[7]</sup>

At 9:00 in the morning of May 22, 2007, the MBC issued a ruling excluding Election Return No. 9601666 on the ground of "fraud, material defect, tamper[ing], and statistical improbability."<sup>[8]</sup> On the same day, the MBC proclaimed Go as the 8<sup>th</sup> duly elected member of the Sangguniang Bayan of the Municipality of Lasam, Cagayan.<sup>[9]</sup>

At 1:35 in the afternoon of May 22, 2007, petitioner filed his written opposition to the petition for exclusion.<sup>[10]</sup> At 4:30 p.m. of May 25, 2007, a Friday, petitioner received a copy of the ruling of the MBC.<sup>[11]</sup> On May 28, 2007, a Monday, he filed a notice of appeal with the MBC,<sup>[12]</sup> and thereafter an appeal memorandum<sup>[13]</sup> with the COMELEC on May 30, 2007.

On June 28, 2007, the COMELEC *en banc* issued the assailed Resolution with an annex of the list of cases that shall continue to be heard by the Commission. SPC Case No. 07-212 was not included in the list hence, it was deemed dismissed and terminated. The full text of the Resolution, reads:

WHEREAS, in connection with the May 14, 2007 National and Local Election various petitions docketed as Special Action, Special Cases and Special Proceeding Cases and other contentious cases were filed with the Office of the Clerk of the Commission;

WHEREAS, the second paragraph of Sec. 16, Republic Act No. 7166 provides:

*"All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceeding may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issue an order for the proceeding to continue or when appropriate order has been issued by the Supreme Court in a petition for certiorari."*

WHEREAS, the Commission has disposed of the pre-proclamation and other cases brought before it for adjudication, except those whose disposition requires proceeding extending beyond 30 June 2007;

NOW, THEREFORE, by virtue of its powers under the Constitution, the Omnibus Election Code, Batas Pambansa Blg. 881, Republic Act. Nos. 6646 and 7166, and other election laws, the Commission RESOLVES:

1. All cases which were filed by private parties without timely payment of the proper filing fee are hereby dismissed;
2. All cases which were filed beyond the reglementary period or not in the form prescribed under appropriate provisions of the Omnibus Election Code, Republic Act Nos. 6646 and 7166 are hereby likewise dismissed;

3. All other pre-proclamation cases which do not fall within the class of cases specified under paragraphs (1) and (2) immediately preceding shall be deemed terminated pursuant to Section 16, R.A. 7166 except those mentioned in paragraph (4). Hence, all the ruling of the boards of canvassers concerned are deemed affirmed. Such boards of canvassers are directed to reconvene forthwith, continue their respective canvass and proclaim the winning candidates accordingly, if the proceedings were suspended by virtue of pending pre-proclamation case;
4. All remaining pre-proclamation cases, which on the basis of the evidence thus far presented, appear meritorious and/or are subject of orders by the Supreme Court or this Commission in petitions for certiorari brought respectively to them shall likewise remain active cases, thereby requiring the proceedings therein to continue beyond 30 June 2007, until they are finally resolved; and
5. All petitions for disqualification, failure of elections or analogous cases, not being pre-proclamation controversies and, therefore, not governed by Section 17, 18, 19, 20, 21, and particularly, by the second paragraph of Sec. 6, Republic Act No. 7166, shall remain active cases, the proceedings to continue beyond June 30, 2007, until the issues therein are finally resolved by the Commission;

ACCORDINGLY, it is hereby ordered that the proceedings in this cases appearing on the list annexed and made an integral part thereof, be continued to be heard and disposed of by the Commission.

This resolution shall take effect immediately.

Let the Clerk of the Commission implement this resolution by appropriate notices to the parties concerned and the Department of Interior and Local Government. The Education and Information Department shall cause the immediate publication of this resolution in two (2) newspapers of general circulation.

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

Hence, the instant petition.

Petitioner contends that the COMELEC gravely abused its discretion in excluding Election Return No. 9601666 in the canvas of votes which led to the proclamation of Go as the 8<sup>th</sup> elected member of the Sangguniang Bayan. He prays for the annulment of Go's proclamation as well as Resolution No. 8212 of the COMELEC insofar as it upheld the ruling of the MBC. On the other hand, the Office of the Solicitor General argues that the MBC correctly excluded the subject election return because the same was tampered and statistically improbable. It further claims that the Court, not being a trier of facts, is without jurisdiction to review the factual findings of the MBC as affirmed by the COMELEC.

The issues for resolution are the following:

- 1) Whether the COMELEC *en banc* had jurisdiction over pre-proclamation controversies in the first instance;
- 2) Whether the proclamation of Go is valid.
- 3) Whether the COMELEC acted properly in sustaining the ruling of the MBC which outrightly excluded the questioned election return.

Although not raised as an issue, the Court is empowered to address the first issue which is both constitutional and jurisdictional.<sup>[15]</sup> The consistent ruling of the Court is that, the Commission *en banc* does not have jurisdiction in the first instance, whether original or appellate, over election cases, pre-proclamation controversies, and incidents thereof. When such disputes are filed before or elevated to the Commission, they should be heard and adjudicated first at the division level.<sup>[16]</sup> This doctrine is anchored on Section 3, Article IX-C of the Constitution which established the two-tiered organizational and functional structure of the COMELEC. The provision requires that election cases, including pre-proclamation controversies, should be heard and decided first at the division level. It reads, thus:

SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

It is important to clarify, however, that not all cases relating to election laws filed before the COMELEC are required to be first heard by a division. Under the Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC *en banc* can act directly on matters falling within its administrative powers. It is only when the exercise of quasi-judicial powers is involved that the COMELEC is mandated to decide cases first in division, and then, upon motion for reconsideration, *en banc*.<sup>[17]</sup>

In the instant controversy, the case filed by petitioner involving Election Return No. 9601666 which the MBC found to be fraudulent, tampered, and statistically improbable, is a pre-proclamation case<sup>[18]</sup> requiring the COMELEC's exercise of quasi-judicial powers.<sup>[19]</sup> The same should have been decided at the first instance by a division of the COMELEC, especially so that petitioner filed his appeal not with the *en banc* but with a division of the COMELEC.<sup>[20]</sup> Failing to comply with the constitutional and jurisprudential requirements, Resolution No. 8212 must therefore be declared void insofar as the instant case is concerned.

Anent the second issue, we rule that Go's proclamation is invalid for non-compliance with the mandatory requirements of Section 20 of R.A. No. 7166,<sup>[21]</sup> which provides:

(f) After all the uncontested returns have been canvassed and **the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.**

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of the said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

**(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.** (Emphasis supplied)

It is clear from the foregoing that after the board has ruled on the petition for exclusion, it is duty bound to suspend the proclamation to give the other party an opportunity to question the ruling by filing a notice of appeal with the board within 48 hours from the suspension of the proceedings, and of an appeal with the COMELEC, within five days from the same suspension. Failure to comply with these requirements renders the proclamation void *ab initio*.

In *Jainal v. Commission on Elections*,<sup>[22]</sup> a pre-proclamation case filed by mayoralty candidate Julhatab Talib, the Court affirmed the order of the COMELEC annulling the proclamation of his rival, Salip Aloy Jainal, for having been made immediately after the board ruled on the objection of Talib. Thus:

[I]t was the MBC who did not comply with its duties under Sec. 20 of R.A. No. 7166. When Talib made his objections to the inclusion of the contested election returns, there was no other recourse for the MBC except to rule on the objections, suspend the canvass of the contested election returns, **and suspend the proclamation** of petitioner, in that sequence. **Instead of doing so, the MBC, after ruling on the objections, included the contested returns in the canvass and immediately proclaimed petitioner.** (Emphasis supplied)

These actions of the MBC rendered it impossible for Talib to comply with Sec. 20 of R.A. No. 7166 any further. It should be noted that the forty-eight (48)-hour period for filing a verified notice of appeal with the MBC is reckoned from suspension of the canvass. The appeal to the COMELEC is also reckoned five (5) days from suspension of the canvass. Understandably, Talib had no other recourse but to go directly to the COMELEC.

It is worthy of note that what was filed with and resolved by the poll