

[**G.R. No. 181644, December 08, 2008**]

**HERMILINA N. ABAINZA, PETITIONER, VS. ERNESTO ARELLANO
AND COMMISSION ON ELECTIONS, RESPONDENTS.**

R E S O L U T I O N

NACHURA, J.:

Before the Court is a petition for *certiorari*^[1] assailing the Resolutions of the Commission on Elections (COMELEC) dated September 3, 2007 and January 30, 2008, respectively.

The Facts

Private respondent Ernesto C. Arellano and petitioner Hermilina N. Abainza were among the candidates for the position of member of the *Sangguniang Bayan* of Jovellar, Albay, in the May 14, 2007 synchronized national and local elections.

On May 15, 2007, the Municipal Board of Canvassers proclaimed the following as the duly elected members of the *Sangguniang Bayan*:

Winning Candidates	Votes Obtained
1. Mirabete, Moises	4,111
2. Vibar, Eddie Ll.	3,604
3. Quirona, Felipe M.	3,589
4. Nobleza, Jose Jr. A.	3,414
5. Romualdo, Victor M.	3,119
6. Millano, Precioso O.	3,107
7. Lovendino, Wiros A.	3,018
8. Abainza, Hermelina N.	3,014

Private respondent received 2,983 votes and held the 9th spot.

On May 21, 2007, private respondent filed a petition for correction of the number of votes in Clustered Precinct Nos. 46-A/47-A due to erroneous tally. Meanwhile, on June 29, 2007, petitioner took her oath of office.

On September 3, 2007, the COMELEC 1st Division rendered a Resolution^[2] annulling the proclamation of petitioner as councilor of the Municipality of Jovellar, Albay, due to erroneous tally of votes. Election Return No. 2900930 from Clustered Precinct Nos. 46-A/47-A showed a tally of one hundred fourteen (114) votes in favor of private respondent but indicated a corresponding total in words and figures of only fourteen (14) votes. The said election return was counterchecked with the copy of the Election Records and Statistical Division, and the members of the Board of Election Inspectors executed an affidavit admitting the clerical error in the canvass of votes.

Petitioner filed a motion for reconsideration. However, the COMELEC *en banc* denied the same in a Resolution^[3] dated January 30, 2008.

Hence, this petition.

The Issues

Petitioner raised the following issues for resolution, *viz.*:

(1) Whether the COMELEC has original jurisdiction over the petition for correction of manifest error;^[4] and

(2) Whether the COMELEC erred in granting the petition for correction of manifest error which was in the nature of a pre-proclamation controversy despite the proclamation and oath by petitioner as elected councilor.^[5]

The Ruling of the Court

We resolve to dismiss the petition on the following grounds:

First, the COMELEC is empowered by the Constitution to enforce and administer all laws and regulations relative to the conduct of an election.^[6] It exercises exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials.^[7] In relation thereto, it is empowered to promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies.^[8]

Section 5, Rule 27 of the COMELEC Rules of Procedure provides:

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:

x x x x

2) **When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where** (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, **(3) there has been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass**, or (4) so-called returns from non-existent precincts were included in the canvass, **and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.**^[9]

Under this rule, correction of manifest errors in the tabulation or tallying of results during the canvassing may be filed directly with the Commission, even after a proclamation of the winning candidates. In the instant case, the proclamation of petitioner as councilor of the Municipality of Jovellar, Albay, was due to a manifest error when what was entered in the election return was 14 instead of 114 as the number of votes obtained by private respondent.

A "manifest error" is one that is visible to the eye or obvious to the understanding; that which is open, palpable, incontrovertible, needing no evidence to make it more clear.^[10] As stated in the assailed Resolution of the COMELEC, the error in the entry in the election return is very evident to the eye, needing no evidence to make it clear. Petitioner's proclamation, and eventual assumption of office, was predicated on a clerical and "manifest" error, not on the legitimate will of the electorate.

Despite the proclamation of the winning candidates, the COMELEC still has jurisdiction to correct manifest errors in the election returns for the *Sangguniang Bayan* candidates. Section 7 of the COMELEC Rules of Procedure provides for the correction of errors in tabulation or tallying of results by the Board of Canvassers, 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 or political parties, after due notice and hearing, correct the errors committed.^[11]

It is true that this provision deals with pre-proclamation controversies. However, it has also been held applicable to cases when a proclamation had already been made, where the validity of the candidate's proclamation was precisely in question.^[12] After all, the election returns that are later on reflected in the statement of votes form the basis of the certificate of canvass and of the proclamation. Any error in the election returns ultimately affects the validity of the proclamation.

With the finding by the COMELEC of a manifest error in Election Return No. 2900930 from Clustered Precinct Nos. 46-A/47-A, petitioner's proclamation was, therefore, flawed from the very beginning. It was not a valid proclamation. And when a proclamation is null and void, the proclamation is no proclamation at all; thus, the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation.^[13]

In *Duremdes v. Commission on Elections*,^[14] it was Duremdes' submission that his proclamation could not be declared null and void because a pre-proclamation