

EN BANC

[G.R. No. 165691, June 22, 2005]

ROBERT Z. BARBERS, PETITIONER, VS. COMMISSION ON ELECTIONS, NATIONAL BOARD OF CANVASSERS FOR SENATORS AND PARTY-LIST REPRESENTATIVES, AND RODOLFO G. BIAZON, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for certiorari^[1] and prohibition with prayer for temporary restraining order and preliminary injunction to nullify the Resolution dated 6 July 2004 of the Special Division of the Commission on Elections ("COMELEC"),^[2] as well as the Resolution dated 25 October 2004 of the COMELEC *en banc*.^[3] The Resolutions affirmed the proclamation of the COMELEC sitting *en banc* as the National Board of Canvassers ("NBC") declaring Rodolfo G. Biazon ("Biazon") as the duly elected 12th Senator in the 10 May 2004 National and Local Elections.

The Facts

Robert Z. Barbers ("Barbers") and Biazon were candidates for re-election to the Senate of the Philippines in the 10 May 2004 Synchronized National and Local Elections ("elections").

On 24 May 2004, the COMELEC sitting *en banc* as the NBC for the election of Senators promulgated Resolution No. NBC 04-002 proclaiming the first 11 duly elected Senators in the elections. The COMELEC as the NBC promulgated the Resolution based on the Certificates of Canvass ("COCs") submitted by the following: (a) 78 Provincial Boards of Canvassers; (b) 7 City Boards of Canvassers of cities comprising one or more legislative districts; (c) 13 City Board of Canvassers from the National Capital Region; (d) 2 District Boards of Canvassers from Metro Manila; (e) 74 Special Boards of Canvassers for Overseas Absentee Voting; and (f) 1 Board of Canvassers for Local Absentee Voting. The COMELEC declared that it would proclaim the remaining 12th winning candidate for Senator after canvassing the remaining unsubmitted COCs.^[4]

On 2 June 2004, the COMELEC promulgated Resolution No. NBC 04-005 proclaiming Biazon as "the 12th ranking duly elected 12th Senator of the Republic of the Philippines in the May 10, 2004 national and local elections, to serve for a term of 6 years, beginning on June 30, 2004 in accordance with Article VI, Section IV of the Constitution of the Philippines." The COMELEC stated that after the canvass of the supplemental Provincial COCs from Maguindanao (Cotabato City), Lanao del Sur and

one barangay in Nueva Vizcaya, Biazon obtained 10,635,270 votes nationwide. On the other hand, Barbers obtained 10,624,585 votes. Thus, Biazon obtained 10,685 more votes than Barbers. The COMELEC stated that this "difference will not materially be affected by the votes in certain precincts where there was failure of elections."^[5]

Claiming that Biazon's proclamation was void, Barbers filed a petition to annul the proclamation of Biazon as Senator of the Republic of the Philippines with the COMELEC on 7 June 2004. The petition, docketed as SPC Case No. 04-258, was assigned to a Special Division of the COMELEC.^[6]

In his petition, Barbers asserted that the proclamation of Biazon was "illegal and premature being based on an incomplete canvass." Barbers asserted that the remaining uncanvassed COCs and votes and the results of the special elections, which were still to be conducted, would undoubtedly affect the results of the elections.^[7]

In his Comment/Answer, Biazon asserted that: (1) the First Division of the COMELEC has no jurisdiction to review, modify, or set aside what the COMELEC sitting en banc as the NBC for Senators has officially performed, which is the promulgation of Resolution No. NBC 04-005; (2) since the COMELEC has proclaimed Biazon on 2 June 2004 in Resolution No. NBC 04-005 as the duly elected 12th Senator and Biazon has taken his oath of office on 30 June 2004, the Senate Electoral Tribunal, not the COMELEC, has jurisdiction to entertain the present petition; (3) with Biazon's admitted and established margin of 10,685 votes, the votes from the alleged uncanvassed COCs and the votes still to be cast in the special elections which were still to be conducted would not substantially affect the results of the election for the 12th and last slot for Senator; and (4) the NBC committed a manifest error in crediting to Barbers a total of 34,711 votes from the province of Lanao del Sur while crediting to Biazon only 1,428 votes from the supplemental Provincial COCs for Lanao del Sur despite the existence and availability of the Municipal COCs for Balabagan and Tagoloan, Lanao del Sur.^[8]

On 9 June 2004, Barbers filed an Omnibus Motion for Immediate Service of Summons, for Suspension of the Effects of Proclamation, and to Set Case for Hearing. Barbers asserted that an immediate resolution of the present case was necessary because the term of office of Senators would commence on 30 June 2004. Barbers further claimed that there were Municipal COCs still to be included in the senatorial canvass and special elections still to be held in certain municipalities involving a total of 29,219 votes. Thus, Barbers insisted that "suspension of the effects of the proclamation" of Biazon was necessary. Barbers stressed that there could be no valid proclamation based on an incomplete canvass.^[9]

On 6 July 2004, the COMELEC issued the first assailed Resolution, disposing as follows:

WHEREFORE, premises considered, the Commission (Special Division) hereby DENIES the petition to annul the proclamation of respondent RODOLFO G. BIAZON for LACK OF MERIT.

ACCORDINGLY, the Special Division RESTATES the proclamation of the

Commission on Elections sitting *en banc* as the National Board of Canvassers declaring RODOLFO G. BIAZON as the duly elected 12th Senator of the Republic of Philippines in the May 10, 2004 National and Local Elections.

SO ORDERED.^[10]

Barbers filed a motion for reconsideration^[11] which the COMELEC en banc denied in the second assailed 25 October 2004 Resolution.

The COMELEC's Ruling

In its 6 July 2004 Resolution, the COMELEC (Special Division) denied Barbers' petition, thus:

The instant petition is not a pre-proclamation case as the issues raised herein clearly are not among those enumerated under Section 34 of COMELEC Resolution No. 6669. Neither is it a protest case because the ground cited in the petition is not proper for protest although a proclamation has already been made. It is a petition, as entitled, to annul proclamation based on alleged incomplete canvass.

The power to annul proclamation is an exclusive power of the Commission vested upon it by the Constitution, which states that the Commission shall exercise the power to "*Decide except those involving the right to vote, all questions affecting elections xxx*" (Article IX-C, Section 2 (3)).

As held in the Case of Aguam vs. COMELEC, the COMELEC shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. The Constitution enjoins the COMELEC to decide, saving those involving the right to vote, all administrative questions, affecting elections. Corollary thereto, the court has given its imprimatur on the principle that COMELEC is with authority to annul any canvass and proclamation illegally made.

Records reveal that on June 2, 2004, the National Board of Canvassers (NBC), on the basis of the Certificates of Canvass submitted by seventy-eight (78) Provincial Board of Canvassers; seven (7) City Boards of Canvassers of cities comprising one or more legislative districts; thirteen (13) from the National Capital Region (NCR); two (2) from the District Boards of Canvassers of Metro Manila; seventy-four (74) from the Special Board of Canvassers for Overseas Absentee Voting; and one (1) from the Board of Canvassers for Local Absentee Voting, including the supplemental Provincial Certificates of Canvass from Maguindanao (Cotabato City), Lanao del Sur and Nueva Vizcaya (one barangay), declared that private respondent obtained ten million six hundred thirty-five thousand two hundred seventy (10,635,270) votes as against the ten million six hundred twenty-four thousand five hundred eighty-five (10,624,585) votes garnered by petitioner.

On the basis of the number of votes garnered by private respondent, he was proclaimed on June 2, 2004 as the duly elected Senator in the recently concluded May 10, 2004 National and Local Elections.

However, after his proclamation, the Commission received Certificates of Canvass from the aforementioned provinces. The results of the votes for petitioner and private respondent, showed the following figures, to wit:

PROVINCE	NO. OF PRECINCTS	VOTES OBTAINED BARBERS BIAZON	
1. Maguindanao			
a. South Upi	35	4,068	997
b. Talitay	32	116	138
2. Sultan Kudarat			
a. Columbio	21	831	656
3. Northern Samar			
a. Silvino Lobos	31	62	372
4. Albay			
a. Ligao City	12	<u>1,259</u>	<u>100</u>
Total		6,736	2,263

Although special elections in Tinglayan, Kalinga were conducted on June 7, 2004, no voters voted, thus, there was no COC to canvass.

On the other hand, special elections for the remaining places are yet to be conducted, namely:

1. Lanao del Sur		
a. Bayang	259 votes	(3 precincts)
b. Balabagan	375 votes	(2 precincts)
c. Madalum	537 votes	(4 precincts)
d. Kapai	197 votes	(1 precinct)
2. Maguindanao		
a. Kabuntalan	263 votes	(1 precinct)
3. Northern Samar		
a. Silvino Lobos	1,300 votes	(8 precincts)
Total	<u>2,931 votes</u>	

From the foregoing data, petitioner and private respondent should be credited with the following number of votes, to wit:

As canvassed by the NBC	Not	Total
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included in
the PCOC
where
special
elections
were
conducted

BIAZON	10,635,270	2,263	10,637,533
BARBERS	10,624,585	6,736	10,631,321

From the above summation, the lead of private respondent over petitioner undoubtedly was reduced to six thousand two hundred twelve (6,212). Assuming that the remaining uncanvassed votes of two thousand nine hundred thirty-one (2,931) in places where special elections are yet to be held were all votes in favor of petitioner Barbers, nevertheless, this will not materially affect the results of the election. To say the least, even if private respondent's lead was decreased to three thousand two hundred ninety-nine (3,299) votes, he remains to be the winner and therefore the lawful occupant of the 12th slot for the senatorial position.^[12]

In its 25 October 2004 Resolution, the COMELEC en banc denied Barbers' motion for reconsideration, thus:

We maintain Our declaration and findings as established by the Special Division. After a judicious and thorough scrutiny of the records, We are more than convinced that respondent's proclamation was indeed, valid and operative. In the questioned resolution issued by the Special Division, We based our ruling on the official Comelec records, revealing that respondent's lead over petitioner was insurmountable regardless of the results from the delayed certificates of canvass and from the uncanvassed votes for the special elections. This ratiocination was very well explained in the assailed resolution and need not be reiterated herein. Unfortunately for petitioner, he failed in this motion to adduce evidence sufficient to overturn Our ruling and justify the prayer for reliefs.

It must be noted that, in a pleading, petitioner has raised the Report/Recommendation of the Supervisory Committee to buttress his claim that, indeed, there was incomplete canvass. Petitioner is invited to examine the said report closer, for the same shows the extent of irregularities that transpired in the subject towns and provinces such as Columbio, Sultan Kudarat, and Talitay, Maguindanao, rendering the supplemental provincial certificates of canvass dubious at the very least.

For the town of Columbio, the Committee reported that:

... Records with the ERSD show that the MCOC and corresponding SOV dated June 18 and 17, 2004, respectively, for the twenty-one (21) precincts used as basis for the supplemental PCOC are unsigned by the chairman of the municipal board of canvassers, but signed by the two other