

## EN BANC

[ G.R. No. 149147, June 18, 2003 ]

**FELIX BAROT, PETITIONER, VS. COMMISSION ON ELECTIONS  
CITY BOARD OF CANVASSERS OF TANJAY CITY AND ROLANDO  
TABALOC, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Before this Court is a petition for certiorari and prohibition with prayer for temporary restraining order under Rule 64 of the 1997 Rules of Civil Procedure seeking to set aside the August 3, 2001 *En Banc* Resolution of the Commission on Elections (COMELEC) in SPC No. 01-195.

Felix Barot (petitioner) and Rolando Tabaloc (private respondent) were candidates for councilor of Tanjay City, Negros Oriental in the May 14, 2001 elections.<sup>[1]</sup>

On May 17, 2001, the Board of Canvassers (BOC) of Tanjay City proclaimed the winning candidates for mayor, vice-mayor, and ten councilors including petitioner who was proclaimed the 10<sup>th</sup>.<sup>[2]</sup>

On May 29, 2001, BOC Chair Erlinda H. Nochefranca sent a Memorandum<sup>[3]</sup> to the COMELEC *En Banc* requesting for authority to correct the erroneous entries in the Certificate of Canvass of Votes and Proclamation of the Winning Candidates,<sup>[4]</sup> and to proclaim private respondent in place of petitioner. In said Memorandum, Nochefranca alleged that the erroneous entries were made due to oversight as a result of which votes for some candidates for mayor down to the city councilors were increased and petitioner was inadvertently proclaimed as the 10<sup>th</sup> winning member of the Sangguniang Panlungsod when it should have been private respondent who actually received more votes than petitioner.

Attached to the Memorandum was a Sworn Statement<sup>[5]</sup> executed by Assistant City Treasurer Virginia C. Reyes who was the tabulator of the BOC wherein she alleged that in the course of transferring the entries from the Statement of Votes to the Summary of Votes, she erred "by copying the grand totals instead of the subtotals per page," thus overstating several entries appearing in the Summary of Votes.

The COMELEC, which docketed the Memorandum of Nochefranca as SPC No. 01-195 (the petition), set it for hearing on June 13, 25 and 27, 2001 during which the members of the BOC presented evidence. No appearance was made by or for petitioner. The COMELEC thereafter required the candidates to file their respective comments to the petition.<sup>[6]</sup>

Petitioner subsequently filed an opposition<sup>[7]</sup> to the petition on the following grounds:

1. This Honorable Commission has no jurisdiction to rule on this Petition because it was filed outside the mandatory periods for filing petitions of this nature and that there is no proof that proper filing and docketing fees have been paid.
2. The petitioner is not a proper party in filing this petition. The filing of this petition does not speak well of what the COMELEC stands for which is an impartial body and does not side any candidate or party.
3. The correction of manifest errors is proper only before proclamation of a winning candidate[;] after proclamation[,], the proper action is an election protest.<sup>[8]</sup>

By the assailed Resolution of August 3, 2001,<sup>[9]</sup> the COMELEC *En Banc* granted the petition and disposed as follows:

WHEREFORE, the premises considered, this Commission RESOLVED, as it hereby RESOLVES, to GRANT the instant petition requesting for authority to correct erroneous entries in the certificate of canvass of votes and proclamation of winning candidates for city offices in the City of Tanjay, Negros Oriental. The proclamation of herein respondent FELIX BAROT as the tenth (10<sup>th</sup>) winning candidate for the position of Member of Sangguniang Panlungsod of Tanjay City is hereby ordered SUSPENDED and/or if one has already been made, the same is hereby ordered ANNULLED.

ACCORDINGLY, the City Board of Canvassers of Tanjay City is hereby directed to RECONVENE and effect the necessary corrections in the Certificates of Canvass and Proclamation of Winning Candidates in the City of Tanjay and on the basis thereof PROCLAIM the winning candidates according to their ranks. (Underscoring supplied)

Hence, the present petition upon the following grounds:

1. The respondent COMELEC denied the petitioner his day in Court when it railroaded the hearing of the case in the Commission *a quo*. While it gave the petitioner the opportunity to be heard, the observance of due process was but a farce and diluted exercise.
2. This COMELEC had no jurisdiction to rule on the Petition filed by the City Board of Canvassers of Tanjay City because it was filed outside the mandatory periods for filing petitions of this nature and that there is no proof that proper filing and docketing fees have been paid.
3. The respondent City Board of Canvassers of Tanjay City is not a proper party in filing the original petition before the COMELEC. The filing of the petition [SPC-01-195] does not speak well of what

the COMELEC stands for, which is an impartial body and does not side with any candidate or party.

4. The correction of manifest errors is proper only before proclamation of a winning candidate[;] after proclamation[,], the proper action is an election contest.

5. The private respondent Rolando Tabaloc has filed an Election Protest now docketed as EPC NO. 2001-51, this change of position of respondent Tabaloc should be construed as a tacit recognition of the due election of your petitioner Felix Barot.<sup>[10]</sup>

By Resolution of August 21, 2001, this Court granted a Temporary Restraining Order<sup>[11]</sup> enjoining the COMELEC and the BOC to cease and desist from implementing the assailed COMELEC Resolution of August 3, 2001.

In the present petition, petitioner posits that as the dates of hearing of the petition scheduled by the COMELEC were "too successive in nature without taking into account that petitioner comes from the province," he was denied due process, and had he been given his day, he would have proven his detractors wrong.<sup>[12]</sup>

And petitioner maintains that the COMELEC has no jurisdiction over the petition as it was filed beyond the reglementary period. For, so petitioner contends, since the proclamation was made on May 17, 2001, the petition to correct manifest error should have been filed within 5 days thereafter or a petition to annul proclamation should have been filed within 10 days also thereafter, citing the case of *Mentang v. Commission on Elections*.<sup>[13]</sup>

In another vein, petitioner posits that even if there were manifest errors in the Certificate of Canvass of Votes, correction should have been done **before proclamation**,<sup>[14]</sup> he citing Section 34 of COMELEC Resolution No. 3848 which provides:

**SECTION 34. Manifest Error. — (a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or the tallying of election returns, or certificates of canvass, during the canvassing, the Board may *motu proprio*, or upon verified petition by any candidate, political party, organization or coalition of political parties, after due notice and hearing, correct the errors committed.**

There is manifest error in the tabulation or tallying of the results during canvassing where:

1. A copy of the Election Returns/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 of one city or municipality were tabulated;
3. There was a mistake in the copying of the figures from the