

**EN BANC**

**[ G.R. No. 151216, July 18, 2003 ]**

**MANUEL MILLA, PETITIONER, VS. REGINA BALMORES-LAXA,  
RESPONDENT.**

**D E C I S I O N**

**CARPIO MORALES, J.:**

The petition at bar involves the power of the Commission on Elections (COMELEC) to annul the proclamation, due to an alleged error in the tabulation of the Statement of Votes, of a winning candidate for municipal councilor who had taken his oath and assumed office as such.

Petitioner Manuel Milla and respondent Regina Balmores-Laxa were candidates for councilor of Gerona, Tarlac in the May 14, 2001 elections.<sup>[1]</sup>

On May 18, 2001, petitioner was proclaimed as the eighth winning candidate by the Municipal Board of Canvassers (BOC) based on the Statement of Votes and the Certificate of Canvass<sup>[2]</sup> showing the votes obtained by each candidate as follows:

Daisy Mamba	14,558
Edwin Yamoyam	12,424
Antonio Perez, Jr.	11,607
Orlando Ines	9,764
Raul Cruz	9,724
Francisco de Leon	9,390
Ricardo Parazo	8,781
<b>Manuel Milla</b>	<b>8,052</b>
<b>Regina Balmores-Laxa</b>	<b>8,006</b>
Pastora M. Cucuin	7,669 <sup>[3]</sup>

**One month after petitioner's proclamation** or on June 18, 2001, respondent filed a petition<sup>[4]</sup> with the COMELEC against petitioner and the BOC for "correction of entries in [the] Statement of Votes . . . based on fraud and irregularities in [the] canvassing of votes."<sup>[5]</sup> The petition, which was docketed as SPC No. 01-311, alleged that the entries for four precincts in the Statement of Votes did not correspond to the election returns for the respective precincts, *to wit*:

[Manuel Milla and the Municipal Board of Canvassers], by confederating, aiding and helping one another violating Sections 223, 230 and 231 of the Omnibus Election Code of the Philippines (B.P. 881) and Section 27(b) of R.A. 6646 (Electoral Reforms Law of 1987[]), padded respondent Manuel Milla's votes by THREE HUNDRED FIFTY (350) VOTES by inserting the number "1" figure before the actual votes in three

precincts and converting "1" into "6" in one precinct illustrated as follows:

Precinct No.	Actual votes (ER) <sup>[6]</sup>	Padded votes (SOV) <sup>[7]</sup>
71A	32	132
30[A]	29	129
21A2	14	64
41A	31	131. <sup>[8]</sup>

Attached to respondent's petition were **photocopies** of the election returns from precincts 71A,<sup>[9]</sup> 30A<sup>[10]</sup> and 21A2<sup>[11]</sup> and **photocopies** of certified true copies of the Statement of Votes.<sup>[12]</sup>

Respondent likewise alleged that the said entries for the four precincts were statistically improbable because petitioner "garnered so much higher votes than the other candidates."<sup>[13]</sup>

As, by the Certificate of Canvass, petitioner led respondent by 46 votes whereas the "discrepancy" between the Statement of Votes and the election returns was 350, respondent prayed before the COMELEC for the correction of errors in the Statement of Votes and Certificate of Canvass, the declaration as null and void of the proclamation of petitioner, and her proclamation as one of the duly elected municipal councilors.<sup>[14]</sup>

Petitioner, who in the meantime took his oath of office on June 29, 2001 and thereafter assumed the position of municipal councilor,<sup>[15]</sup> prayed in his Answer to respondent's petition before the COMELEC for the dismissal of the petition on the following grounds: (1) the petition was filed beyond the reglementary period of five (5) days from date of proclamation,<sup>[16]</sup> (2) pre-proclamation cases should be terminated after proclamation and assumption of office,<sup>[17]</sup> and (3) padding of statement of votes is not a proper subject of a pre-proclamation case.<sup>[18]</sup>

The BOC, on the other hand, in its Answer<sup>[19]</sup> with motion for the reconvening of the BOC to effect the correction of entries in the Statement of Votes, proffered unawareness of, and disclaimed any hand in, any irregularity in the copying of the number of votes from the election returns to the Statement of Votes, as its role during the canvassing was limited to appreciating election returns, the canvassing having been done by two sub-canvassing committees.<sup>[20]</sup>

In its Resolution<sup>[21]</sup> of December 18, 2001, the COMELEC *En Banc*, found as follows:

. . . Milla, on the other hand, does not deny...the padding of his votes by three hundred fifty (350) votes; but instead moved for the dismissal of the petition on the **petty ground of a technicality that the petition was filed beyond the five (5) day reglementary period** for filing petitions of its sort.

Given the attendant evidence at hand, specifically the unexplained mismatched inscriptions in the entries for the questioned precincts in the Statement of Votes, we conclude that **the padding of three hundred fifty (350) votes committed by respondent Board in order to favor respondent Milla is beyond the realm of an honest mistake**. As to the correct number of votes, it is without question that what appears in the election returns is the actual number of votes garnered by private respondent.

x x x

In addition, not a single item in the material averments of the Petition was specifically denied by either respondent, thus lending credence to the complete truthfulness of petitioner's account of the "dagdag-bawas" scheme which she has already proven by clear and convincing evidence.

As such, **we cannot leave the "correction" of the "error" in canvassing to the same body [which] perpetrated such "error,"** as they so pray for in their answer.<sup>[22]</sup> (Emphasis and underscoring supplied),

and denied the BOC's motion to reconvene, declared herein petitioner's proclamation null and void, and proclaimed respondent as the eighth winning candidate.

Hence, the present recourse anchored on the following grounds:

## I

The Commission on Election[s] has no jurisdiction to proclaim respondent as the eight[h] winning candidate for councilor and to declare petitioner's proclamation null and void.<sup>[23]</sup>

## II

The resolution in question is not supported by the evidence.<sup>[24]</sup>

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 18, 2001, the petition to correct the Statement of Votes should have been filed within 5 days thereafter conformably with Section 5, Rule 27 of the COMELEC Rules of Procedure<sup>[25]</sup> which reads:

*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:

1) 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.

b) x x x

If the petition is for correction, it must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby.

x x x (Underscoring supplied)

In holding that it validly assumed jurisdiction over the petition, the COMELEC asserts that "[a] proclamation that is based on a clerical or mathematical mistake (or a blatant padding of votes) is not a valid proclamation [h]ence, the same can be challenged even after the proclaimed candidate has assumed office." [26]

The Statement of Votes forms the basis of the Certificate of Canvass and of the proclamation. Any error in the statement ultimately affects the validity of the proclamation. [27]

If a candidate's proclamation is based on a Statement of Votes which contains erroneous entries, it is null and void. It is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to annul the proclamation. [28]

In the case at bar, as the Statement of Votes contained erroneous entries, the COMELEC rightfully assumed jurisdiction over respondent's petition for the correction thereof and declaration of nullity of petitioner's proclamation. While our election laws are silent when such and similar petitions may be filed directly with the COMELEC, [29] the above-quoted Section 5, Rule 27 of the Rules of Procedure sets a prescriptive period of five (5) days following the date of proclamation. The COMELEC, however, could suspend its own Rules of Procedure so as not to defeat the will of the electorate. [30] For adherence to technicality that would put a stamp on a palpably void proclamation, with the inevitable result of frustrating the people's will, cannot be countenanced. [31]

Petitioner nevertheless posits that even assuming that the COMELEC may suspend the application of Section 5, Rule 27 of its Rules of Procedure, it can no longer exercise jurisdiction after his proclamation, oath and assumption of office [32] in view of Section 16 of Republic Act 7166 [33] which states: