

## EN BANC

[ G.R. No. 152080, November 28, 2003 ]

### LORETTA P. DELA LLANA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RIZALINO F. PABLO, JR., RESPONDENTS.

#### DECISION

##### SANDOVAL-GUTIERREZ, J.:

At bar is a petition for *certiorari*<sup>[1]</sup> with prayer for a temporary restraining order seeking to set aside the Resolution<sup>[2]</sup> dated February 19, 2002 of the Commission on Elections (COMELEC) *En Banc* in EPC Case No. 2001-6. The assailed Resolution affirmed the September 5, 2001 Resolution<sup>[3]</sup> of the COMELEC First Division (1) granting the petition of respondent Rizalino F. Pablo, Jr. for correction of manifest errors in the Statement of Votes cast in Precinct No. 92-A-1 at Castillejos, Zambales; and (2) annulling the proclamation of herein petitioner Loretta P. Dela Llana as third member of the Provincial Board, First District of same province, due to the erroneous and/or incomplete canvass of election returns.

The antecedent facts are:

In the May 14, 2001 elections, petitioner Loretta Dela Llana and respondent Rizalino Pablo, Jr. were among the candidates for Provincial Board Member, First District of Zambales. The First District, which comprised the municipalities of Subic, Castillejos and San Marcelino, is allotted three (3) seats in the Provincial Board.

On May 18, 2001, the Provincial Board of Canvassers proclaimed the three (3) winning candidates. Included was herein petitioner, being the third duly elected member of the Provincial Board. They obtained the following votes:

1. Jose de Jesus Gutierrez, Sr. 22,926
2. Wilfredo Viloria Felarca 14,458
3. Loreta Panlilio Dela Llana 14,117<sup>[4]</sup>

Respondent ranked fourth, having garnered a total of 14,093 votes,<sup>[5]</sup> or 24 votes less than that obtained by petitioner.

Contesting the election and proclamation of petitioner, respondent, on May 25, 2001, initially filed with the Electoral Contest Adjudication Department, COMELEC, an election protest<sup>[6]</sup> docketed as EPC Case No. 2001-6. Respondent alleged that when the Municipal Board of Canvassers for the Municipality of Castillejos (MBC-Castillejos) canvassed the election returns from various precincts, the 42 votes he obtained in Precinct No. 29-A-1 was altered and reduced to only 4. Thus, he lost 38 votes. This 4 votes appeared in the Statement of Votes by Precinct (Statement No. 2114713 <sup>[7]</sup>). When the Zambales Provincial Board of Canvassers canvassed the

Certificates of Canvass of Votes from the three municipalities in the First District, respondent's total votes were recorded only as 14,093, instead of 14,131 (14,093 + 38) votes. The missing 38 votes, if counted in his favor, would have been sufficient to have him proclaimed the third member of the Provincial Board of the First District of Zambales.

Petitioner, in her answer with counter-protest,<sup>[8]</sup> denied respondent's allegations. By way of special and affirmative defenses, petitioner alleged *inter alia* that respondent, "who was then an incumbent member of the Provincial Board of Zambales, has exercised his influence in all the precincts in San Marcelino, Zambales, thereby crediting him with more votes than he actually received." Petitioner thus prayed that "the results in all the precincts numbering 77 in San Marcelino must likewise be put under protest."

In reply,<sup>[9]</sup> respondent maintained that petitioner's allegations and counter-protest are based on mere speculation, devoid of any proof.

The case, which was assigned to the First Division, was set for hearing on July 16, 2001 to determine "the issue of accuracy of the entries in the Statement of Votes in the questioned Precinct No. 29-A-1."<sup>[10]</sup>

At the start of the hearing on July 16, 2001,<sup>[11]</sup> the COMELEC First Division, through Commissioner Resurreccion Z. Borra, declared that it is treating the case as one for correction of manifest errors committed in the Statement of Votes of Castillejos, Zambales; and that petitioner's counter-protest is still "premature considering that it is not yet clear as to who between the parties really won in the elections in view of the pending petitions filed before the COMELEC, to wit: 1) the subject petition for correction of manifest errors; and 2) the petition for the canvass of 5 uncanvassed precincts in Subic, Zambales pending before the Second Division, docketed as SPC No. 01-264."<sup>[12]</sup>

The presentation of evidence then followed. Zosimo Remo, COMELEC Document Examiner, presented a copy of the Election Returns (ER) for Precinct No. 29-A-1 with Serial No. 58040069. The counsel of both parties examined the ER showing that the actual number of votes garnered by respondent is 41. Then, Vilma Villegas, COMELEC Records Officer, presented the Statement of Votes (SOV) with Serial No. 2114713 where Precinct No. 29-A-1 was entered. Again, the parties' counsel examined the SOV which revealed that the votes credited to respondent in that precinct is only 4, instead of 41, or 37 votes less than what was actually garnered by him. Also presented during the hearing was the Certificate of Canvass of Votes and Proclamation (COCVP) of the winning candidates which disclosed that respondent garnered a total of 14,117 votes in the First District of Zambales.

After the marking of exhibits presented during the July 16, 2001 hearing, the First Division allowed the parties "to make their final manifestations," and for "counsel for both parties to submit the case for resolution."<sup>[13]</sup>

In its Resolution<sup>[14]</sup> dated September 5, 2001, the COMELEC First Division, **a)** granted respondent's petition for the correction of manifest errors; **b)** directed the Municipal Board of Canvassers of Subic, Zambales to reconvene and effect the

necessary corrections in the Statement of Votes by Precinct to reflect therein the actual number of votes obtained by respondent in Precinct No. 29-A-1; **c)** annulled petitioner's proclamation, being based on an erroneous and/or incomplete canvass of election returns; and **d)** ordered petitioner to immediately vacate her post as the third member of the Provincial Board, First District of Zambales, and to cease and desist from discharging the duties and functions of that office.

In the same Resolution, the First Division denied, for being premature, respondent's prayer that he be proclaimed the winning candidate for the questioned position. This is because of the fact that a petition for the canvass of the 5 uncanvassed precincts in Subic, Zambales, docketed as SPC No. 01-264, is still pending resolution before the Second Division, and it is not yet clear who between the parties really won in the May 14, 2001 elections.

Surprisingly, despite the fact that petitioner actively participated in the July 16, 2001 hearing, she filed a motion for reconsideration<sup>[15]</sup> of the September 5, 2001 Resolution, contending that the First Division has no authority/jurisdiction to convert *motu proprio* respondent's petition into one for correction of manifest errors. She claimed that the First Division acted with grave abuse of discretion.

In an Order<sup>[16]</sup> dated September 19, 2001, the First Division certified and elevated the entire records of the case to the COMELEC *En Banc*.

On February 19, 2002, the COMELEC *En Banc* issued the assailed Resolution<sup>[17]</sup> denying petitioner's motion for reconsideration for lack of merit and affirming the September 5, 2001 Resolution of the First Division. The *En Banc* Resolution partly reads:

x x x

**"A comparison of the Election Return for Precinct No. 29-A-1 and of the Statement of Votes by Precinct for the Municipality of Castillejos shows that there was indeed a manifest error in the copying of the figures from the Election Return to the Statement of Votes by Precinct. The forty-one (41) votes garnered by petitioner in Precinct No. 29-A-1, as canvassed by the MBC of Castillejos, was reduced to four (4) in the Statement of Votes by Precinct. Thus, it is but right for this Commission to order the necessary correction in order to reflect the true will of the people of the Municipality of Castillejos.**

**"WHEREFORE**, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to **AFFIRM** the **Resolution dated 5 September 2001** rendered by the First Division of this Commission **insofar as it:**

1. **GRANTED** the instant petition of Rizalino F. Pablo, Jr. (now private respondent) seeking for the correction of manifest errors in the Statement of Votes of Castillejos, Zambales;
2. **ANNULLED** the proclamation of herein respondent Loretta P. Dela Llana (now petitioner) finding the same to have been based on an

erroneous and/or incomplete canvass of election returns;

3. **ORDERED** respondent Loretta P. Dela Llana to immediately vacate her post as the third winning Board Member of the First District of Zambales and to cease, desist and refrain from discharging and performing its duties and functions; and
4. **DENIED** the **prayer of petitioner Rizalino F. Pablo, Jr. that he be proclaimed as the real winning candidate, for being premature** . This is in view of the fact that the canvassing of the five (5) uncanvassed precincts in Subic, Zambales pursuant to the Resolution rendered by the Second Division of this Commission in SPC No. 01-264 is still pending before the Municipal Board of Canvassers of Subic; thus, it is not clear yet as to who between the parties really won in the May 14, 2001 elections.

**"ACCORDINGLY**, this Commission *En Banc* **DIRECTS**, as it hereby **DIRECTS**,

1. the Municipal Board of Canvassers of Castillejos, Zambales to (i) **RECONVENE** and **effect the necessary corrections in the Statement of Votes to reflect therein the actual number of votes garnered by petitioner in Precinct No. 29-A-1**; and (ii) to **SUBMIT the corrected Statement of Votes and Certificate of Canvass for Provincial Officials to the Provincial Board of Canvassers of Zambales**; and
2. the Provincial Board of Canvassers of Zambales to (i) **RECONVENE** and **CANVASS ANEW the corrected Certificates of Canvass to be submitted by the Municipal Board of Canvassers of Castillejos, Zambales and by the Municipal Board of Canvassers of Subic, Zambales** after the latter has finished canvassing the aforesaid five (5) uncanvassed precincts in Subic, pursuant to the Resolution rendered by the Second Division of this Commission in SPC No. 01-264; and (ii) **PROCLAIM the TRUE WINNING CANDIDATE** for the disputed position of **THIRD BOARD MEMBER OF THE FIRST DISTRICT OF ZAMBALES**.

"SO ORDERED. " (Underscoring supplied)

Hence, the present recourse.

Petitioner contends that the COMELEC *EN BANC*, in issuing its February 19, 2002 Resolution, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it -

I

TREATED THE PETITION FOR ELECTION PROTEST FILED BY HEREIN RESPONDENT AS A CASE FOR CORRECTION OF MANIFEST ERRORS;

II

JUSTIFIED SUCH CONVERSION BY SUSPENDING ITS OWN RULES; and

### III

DIRECTED THE PROVINCIAL BOARD OF CANVASSERS OF ZAMBALES TO (1) RECONVENE, (2) CANVASS ANEW THE CORRECTED CERTIFICATES OF CANVASS TO BE SUBMITTED BY THE MUNICIPAL BOARD OF CANVASSERS OF CASTILLEJOS, ZAMBALES, AND (3) PROCLAIM THE WINNING CANDIDATE FOR THE POSITION OF THIRD MEMBER OF THE PROVINCIAL BOARD, FIRST DISTRICT, ZAMBALES. [18]

Petitioner maintains that the COMELEC is without authority/jurisdiction to treat respondent's petition for election protest as a case for correction of manifest errors and justify such act by suspending its own Rules of Procedure. Even assuming it has authority to do so, still such conversion is no longer possible because respondent's questioned petition was filed beyond the reglementary period. Under Section 1, Rule 20 of the COMELEC Rules of Procedure, a petition for an election protest must be filed "within 10 ten days after the proclamation of the results of the election," and under Section 5, Rule 27 of the same Rules, a petition for correction of manifest errors "must be filed not later than five (5) days following the date of proclamation." Since petitioner was proclaimed on May 18, 2001, respondent should have filed his petition for correction of manifest errors within 5 days from said date, or on or before May 23, 2001. It was only on May 25, 2001, or 2 days late, that he filed his petition with the COMELEC.

In his comment<sup>[19]</sup> on the petition, Solicitor General Alfredo L. Benipayo disputed petitioner's theory and prayed that the instant petition be denied for lack of merit.

The petition must fail.

The Constitution has vested to the COMELEC broad powers, involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections, but also the resolution and determination of election controversies.<sup>[20]</sup> It also granted the COMELEC the power and authority to promulgate its rules of procedure, with the primary objective of ensuring the expeditious disposition of election cases.<sup>[21]</sup>

Concomitant to such powers is the authority of the COMELEC to determine the true nature of the cases filed before it. Thus, it examines the allegations of every pleading filed, obviously aware that in determining the nature of the complaint or petition, its averments, rather than its title/caption, are the proper gauges.<sup>[22]</sup>

This was what the COMELEC did when it treated respondent's questioned petition in EPC No. 2001-06 (captioned as an election protest) as a case for correction of manifest errors. The COMELEC found that the averments therein actually call for the rectification of apparent errors in the Statement of Votes in Precinct No. 29-A-1 of Castillejos, Zambales. The pertinent portions of respondent's petition read:

x x x