

EN BANC

[G.R. Nos. 148941-42, March 12, 2002]

TEODORO O. O'HARA, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF BINANGONAN, RIZAL, PROVINCIAL BOARD OF CANVASSERS OF RIZAL AND JOVITA RODRIGUEZ, RESPONDENTS.

DECISION

KAPUNAN, J.:

In this petition for *certiorari*, prohibition and mandamus, petitioner seeks to set aside the Resolution^[1] of the Commission on Elections (COMELEC) *En Banc* that annulled the proclamation of petitioner Teodoro O. O'Hara as elected Vice-Governor, province of Rizal and to proclaim respondent Jovita Rodriguez as the duly elected Vice-Governor of Rizal.

Petitioner and respondent Jovita Rodriguez were candidates for the position of vice-governor, province of Rizal during the May 14, 2001 elections.

On May 19, 2001, upon conclusion of the canvassing of the certificate of canvass coming from the thirteen municipalities and one component city of Rizal, the Provincial Board of Canvassers (PBC) proclaimed petitioner as the duly elected vice-governor with 216,798 votes over respondent Rodriguez's 215,443 votes.

On May 23, 2001, the Municipal Board of Canvassers (MBC) of Binangonan, Rizal filed with the COMELEC en banc, a petition to correct entries in the certificate of canvass of votes, entitled "In the Matter of Correction of Entries In the Certificate of Canvass for the Position of Vice-Governor in the Province of Rizal in the Municipality of Binangonan."^[2] It was alleged that there were typographical errors in the number of votes garnered by petitioner and respondent resulting in the addition of 7,000 votes to petitioner. More specifically, the MBC of Binangonan claimed:

"7. That after the submission of the final copy to the Provincial Board of Canvassers and furnishing copies to all concerned we were surprised when we heard over the radio about the complaint of Mr. Jose Concepcion of NAMFREL, about the dagdag-bawas on the votes obtained by the two (2) candidates for Vice-Governor and we tried to review and check all the entries in the Statement of Votes (SOV) and we did not notice any error; it was only in Certificate of Canvass wherein the number of votes of the two (2) candidates for Vice-Governor were erroneously typed, indicating 35,754 votes for Teodoro O'Hara instead of the actual total of 28,754 and 18, 871 for Jovita Rodriguez instead of the actual 18,870 votes;

"8. That the error was due to the fact that the votes of 7,000 which is the sub-total of one hundred precincts was brought forwarded thereby

including the same in the total which is indicated in the last page of the tabulation which is 28,754; hence the grand total, instead of 28,754 became 35,754.”^[3]

The MBC of Binangonan submitted the affidavit of Evelyn Ramirez, the Municipal Accountant of Binangonan, Rizal, admitting that she committed the mathematical error.^[4]

On May 25, 2001, respondent Rodriguez filed with the COMELEC a petition to annul the proclamation of the winning candidate for vice-governor of the province of Rizal, and to correct an alleged manifest mathematical error.^[5] Respondent Rodriguez asserted that after the mathematical error would have been corrected, she would obtain a plurality of 215,422 votes as against petitioner’s 209,798.

Petitioner filed his answer to the petition, arguing that there was no manifest error apparent in the certificate of canvass which respondent Rodriguez and the MBC of Binangonan sought to correct, and that respondent Rodriguez’s petition was filed out of time.

On July 25, 2001, the COMELEC *en banc* issued a resolution in the cases, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Petitions are GRANTED. Accordingly, the proclamation of Respondent Teodoro O. O’Hara as elected Vice-Governor of Rizal is hereby annulled. The Provincial Board of Canvassers of Rizal is hereby ordered as follows:

- (a) To reconvene and correct the manifest mathematical error in the votes obtained by respondent O’Hara from 216,798 to 209,798 and as well as the votes for Petitioner Rodriguez from 215,423 to 215,422 as appearing in the Statement of Votes by Municipality.
- b) To proclaim Jovita Rodriguez as the duly elected Vice-Governor of Rizal.

SO ORDERED.

Accordingly, on July 27, 2001, the PBC of Rizal reconvened. However, petitioner was not notified of the proceedings of the PBC of Rizal.

On the same day, the PBC of Rizal issued another certificate of canvass of votes and proclamation of the winning candidates for provincial officers, and on the basis thereof proclaimed private respondent as the duly elected Vice-Governor of Rizal. Immediately, respondent Rodriguez took her oath of office before Judge Leila Suarez Acebo, Regional Trial Court, Pasig City.

Hence, this petition.^[6]

On July 31, 2001, the Court issued a temporary restraining order directing respondents “to CEASE and DESIST from implementing COMELEC Resolution dated 25 July 2001 issued in SPC Case Nos. 01-165 and SPC Case No. 01-129.”^[7]

On August 2, 2001, respondent Rodriguez filed a manifestation alleging that the temporary restraining order issued by this Court has been rendered moot and academic since she had assumed the office of Vice-Governor of Rizal.^[8]

Thus, on August 14, 2001, the Court issued a resolution to the effect that "the temporary restraining order remains effective and is extended to restrain respondent from assuming the office of the vice-governor."^[9]

Petitioner raises the following issues before the Court:

- (1) Whether or not the Comelec gravely abused its discretion when it annulled the proclamation of petitioner as vice-governor of Rizal.
- (2) Whether or not the Comelec gravely abused its discretion when it ordered the provincial board of canvassers of Rizal to reconvene and correct the alleged manifest mathematical error supposedly committed by the municipal board of canvassers of Binangonan, Rizal.
- (3) Whether or not the Comelec gravely abused its discretion when it allowed the provincial board of canvassers of Rizal to proclaim respondent Rodriguez as the duly elected vice-governor of Rizal, despite the fact that the resolution dated 25 July 2001 had not yet attained finality.

We find the petition impressed with merit.

In any election contest, the ultimate issue is to determine the electoral will. In other words, who among the candidates was the voters' choice.

In this jurisdiction, an election means "the choice or selection of candidates to public office by popular vote," through the use of the ballot, and the elected officials of which are determined through the will of the electorate."^[10] An election is the embodiment of the popular will, the expression of the sovereign power of the people. Specifically, the term election, in the context of the Constitution, may refer to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes.^[11]

Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.^[12]

The petition of the MBC of Binangonan, Rizal, before the COMELEC alleges in pertinent part:

6. That after finalizing the Certificate of Canvass, same was reviewed by all of us and being confident that it was prepared by an accountant whom the community regards as an honest person, we, Chairman and Members of the Municipal Board of Canvassers

signed the same without noticing any mistake;

7. That after the submission of the final copy to the Provincial Board of Canvassers and furnishing copies to all concerned we were surprised when we heard over the radio about the complaint of Mr. Jose Concepcion of NAMFREL, about the dagdag-bawas on the votes obtained by the two (2) candidates for Vice Governor and we tried to review and check all the entries in the Statement of Votes (SOV) and we did not notice any error; it was only in the Certificate of Canvass wherein the number of votes of the two (2) candidates for vice-governor were erroneously typed, indicating 35,754 votes for Teodoro O'Hara instead of the actual total 28,754 and 18,871 for Jovita Rodriguez instead of the actual 18,870 votes;
8. That the error was due to the fact that the votes of 7,000 which was the sub-total of one hundred precincts was brought forwarded thereby including the same in the total which is indicated in the last page of the tabulation which is 28,754; hence the grand total instead of 28,754 became 35,754.

It is apparent that the errors do not appear on the face of the certificate of canvass that respondent Rodriguez sought to be corrected. There is nothing on the certificate of canvass that shows the addition of 7,000 votes in favor of petitioner. Likewise, the MBC of Binangonan failed to specify the one hundred precincts whence the 7,000 votes came. Clearly then, the petition filed by the municipal board of canvassers of Binangonan does not merely seek the correction of a manifest error but calls for the examination of the election returns from the 100 precincts and the recount of the votes therefrom.

As previously stated, the MBC of Binangonan, Rizal explains the discrepancy or error as follows:

8. That the error was due to the fact that the votes of 7,000 which is the sub-total of one hundred precincts was brought forwarded (sic) thereby including the same in the total which is indicated in the last page of the tabulation which is 28,754; hence the grand tabulation which is 28,754 became 35,754; x x x^[13]

This was affirmed by Evelyn Ramirez, the Municipal Accountant of Binangonan, Rizal and tabulator who stated:

6. That due to fatigue, sleepless nights and physical exhaustion, I did not notice that the sub-total of 7,000 from the preceding page was carried forward in the addition of the votes of the last remaining precincts and reflected in the grand total 35,754 instead of 28,754 which is the actual count.^[14]

Clearly, the MBC of Binangonan and Evelyn Ramirez tried to explain the alleged error by referring to a "preceding page" of a certain document which, however, was neither identified nor presented in evidence. They also mentioned "100 remaining precincts" but neither the COMELEC nor the MBC of Binangonan or PBC of Rizal either the respondents were able to identify the said precincts. In fine, there is nothing on record to show where the "sub-total of 7,000 from the preceding page

was carried forward in the addition of the votes of the last remaining precincts" (according to Evelyn Ramirez who attempted to rationalize her "mistake") can be located. These circumstances render their statement suspect.

Despite the confusing explanation of the MBC of Binangonan, the COMELEC relied heavily thereon when it issued the assailed resolution. The correction of the certificate of canvass necessitates the examination of several documents which the MBC of Binangonan and Evelyn Ramirez mentioned in their petition and affidavit, respectively. Specifically, the correction of the MBC of Binangonan's mistake, if any, requires the examination of the election returns of the alleged "100 precincts" and the supposed "preceding page." The COMELEC cannot simply rely on the Statement of Votes per precinct submitted by respondents to determine the true mandate of the electorate of Rizal considering that these Statements of Votes were prepared by the very same members of the MBC of Binangonan, Rizal who claimed to have made a mistake due to "fatigue, sleepless nights and physical exhaustion." Reliance on the Statement of Votes per precinct would have been proper had the COMELEC determined if these individuals did not commit any other mistake in the tabulation or preparation of the Statements of Votes.

Indeed, the alleged error which the COMELEC perceived to be manifest from the certificate of canvass does not fall under the definition of "manifest error" which we laid down in the case of *Trinidad vs. Commission on Elections*:^[15]

Some of the definitions given for the word "manifest" are that it is evident to the eye and understanding; visible to the eye; that which is open, palpable, uncontrovertible; needing no evidence to make it more clear; not obscure or hidden. xxx.

"A manifest clerical error is –

" one that is visible to the eye or obvious to the understanding, and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have committed xxx."

In the case of *Chavez vs. Comelec*,^[16] this Court explained that:

x x x To be manifest, the errors must appear on the face of the certificates of canvass or election returns sought to be corrected and/or objections thereto must have been made before the board of canvassers and specifically noted in the minutes of their respective proceedings.

The alleged error which the MBC of Binangonan committed and which it attributes to physical exhaustion and sleepless nights, is obviously not a plain error apparent from the Certificate of Canvass. It would have been more prudent to order at least the examination of the election returns to verify the existence of the alleged error instead of concluding outright that the Statements of Votes submitted by respondents were accurate and correctly prepared. A more thorough study of the matter would have been more appropriate under the circumstances specially considering that what is at stake is the sanctity of the right of suffrage which we are bound to uphold.

Equally important to note is the fact that the COMELEC relied heavily on the self-