

EN BANC

[G.R. No. 121031, March 26, 1997]

**ATTY. ROSAURO I. TORRES, PETITIONER, VS. COMMISSION ON
ELECTIONS AND VICENTE RAFAEL A. DE PERALTA,
RESPONDENTS.**

DECISION

BELLOSILLO, J.:

This case involves the power of the Commission on Elections (COMELEC) to annul the proclamation of a winning candidate for Municipal Councilor in view of an error in the computation of totals in the Statement of Votes which was made the basis of the proclamation, and to direct the Municipal Board of Canvassers to reconvene and proclaim the rightful winner.

On 9 May 1995 the Municipal Board of Canvassers of Tanza, Cavite, issued a Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices (Municipal Councilors) as follows: (1) Wilfredo A. Nuñez, 14,888 votes; (2) Yuri A. Pacumio, 13,445 votes; (3) Rogelino A. Dones, 12,428 votes; (4) Francisco C. Pasco, 12,218 votes; (5) Rosauro I. Torres, 12,055 votes; (6) Rosalita C. Cenizal, 12,035 votes; (7) Eliseo R. Arcaira Jr., 11,939 votes; (8) Policarpio A. Bocalan, 11,790 votes. Accordingly, petitioner Atty. Rosauro I. Torres was proclaimed as the fifth winning candidate for councilor.^[1]

Two (2) days after or on 11 May 1995 the same Municipal Board of Canvassers requested the COMELEC for correction of the number of votes garnered by petitioner who was earlier proclaimed as the fifth winning candidate for councilor. The letter-request was signed by Rudolph Melon and Norma Abril as Vice Chairman and Secretary, respectively. The letter reads—

The undersigned members of the Board of Canvassers, Tanza, Cavite, respectfully request for the correction of votes garnered by Mr. Rosauro I. Torres who was proclaimed as the fifth winning candidate for Councilor instead of Mr. Vicente Rafael A. de Peralta who landed in the number eight (8th) position. The votes intended for MR. BERNARDO C. DIMAALA in the sub-total as reflected in the Statement of Votes by precinct was erroneously added to Mr. Torres for a total of Nine Hundred Thirty Four (934) votes. Mr. Torres should have been number ten (10) in the winning column and that if correction shall be made Mr. Torres shall garner a total of Eleven Thousand One Hundred Twenty One (11,121) votes while Mr. de Peralta garnered a total of Eleven Thousand Six Hundred Ten (11,610) votes.^[2]

On 16 May 1995 the COMELEC set the case for hearing. Summonses with notices of hearing were sent to petitioner Atty. Rosauro I. Torres and private respondent

Vicente Rafael A. de Peralta requiring them to file their respective answers to the letter of the Municipal Board of Canvassers.

Petitioner filed his answer alleging that the subject matter of the letter-petition of the Municipal Board of Canvassers, which was the correction of votes garnered by him, properly falls within the jurisdiction of the Regional Trial Court pursuant to Sec. 251 of the Omnibus Election Code. On the other hand, private respondent argued for the annulment of the proclamation of petitioner and prayed for his (private respondent) proclamation as the winning candidate.

On 28 June 1995 respondent COMELEC issued the assailed En Banc resolution granting the letter-request of the Municipal Board of Canvassers for the correction of the number of votes garnered by petitioner. Respondent COMELEC also ordered the Municipal Board of Canvassers to reconvene and proclaim private respondent Vicente Rafael A. de Peralta as the eighth winning councilor of Tanza, Cavite.

On 5 July 1995 the Municipal Board of Canvassers issued a corrected Certificate of Canvass of Votes and Proclamation of the Winning Candidates which included private respondent Vicente Rafael A. de Peralta as the eighth winning councilor and excluded petitioner from the new list of winning candidates.^[3]

Petitioner came up to this Court alleging that public respondent COMELEC acted without or in excess of its jurisdiction in granting the request of the Municipal Board of Canvassers to correct the votes garnered by petitioner and in ordering the proclamation of private respondent as the eighth winning candidate thereby ousting petitioner from the new list of winners. Petitioner also argues that the Municipal Board of Canvassers had no legal personality to file the action *motu proprio* before the COMELEC for correction; that corrections are allowed only when there has been no proclamation yet, citing *Respicio v. Cusi*,^[4] and finally, that once the Municipal Board of Canvassers has declared and proclaimed the winners in an election its functions are finished and its existence is terminated.

The Office of the Solicitor General submits that respondent COMELEC acted beyond the limits of its power and authority when it ordered the Municipal Board of Canvassers to reconvene and correct its alleged mistake in counting the votes cast for candidate Dimaala in favor of petitioner; that by having done so, respondent COMELEC had exercised original jurisdiction over a municipal election contest contrary to what the Constitution mandates; that Art. IX-C, Sec. 2, par 2, of the Constitution provides that the Commission on Elections shall exercise appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Respondent COMELEC filed its own comment alleging that the proclamation of petitioner was flawed from the beginning for being tainted with clerical error or mathematical mistake in the addition of votes; that pursuant to the ruling in *Villaroya v. COMELEC*^[5] public respondent has original jurisdiction on all matters relating to election returns, including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order to ensure that the true will of the people is known; and, that according to *Tatlonghari v. Comelec*,^[6] when what is involved is purely