

**EN BANC**

**[ G.R. No. 122013, March 26, 1997 ]**

**JOSE C. RAMIREZ, PETITIONER, VS. COMMISSION ON  
ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF GIPORLOS,  
EASTERN SAMAR AND ALFREDO I. GO, RESPONDENTS.**

**D E C I S I O N****MENDOZA, J.:**

Petitioner Jose C. Ramirez and private respondent Alfredo I. Go were candidates for vice mayor of Giporlos, Eastern Samar in the election of May 8, 1995. Petitioner was proclaimed winner by the Municipal Board of Canvassers (MBC) on the basis of results showing that he obtained 1,367 votes against private respondent's 1,235 votes.<sup>[1]</sup>

On May 16, 1995, private respondent filed in the COMELEC a petition for the correction of what he claimed was manifest error in the Statement of Votes (SPC No. 95-198). He alleged that, based on the entries in the Statement of Votes, he obtained 1,515 votes as against petitioner's 1,367 votes but that because of error in addition, he was credited with 1,235 votes as shown in the following recomputation:<sup>[2]</sup>

Precinct No.	Go, Alfredo I.	Ramirez, Jose C.
8-A	23	43
9	23	10
8	37	49
2-A	31	48
12	50	42
12-A	65	29
7-A	36	73
20	7	19
3	88	56
1-A	54	67

13-A	43	47
18	39	12
14	19	65
4	27	37
5-A	43	67
13	37	42
2	73	79
15	49	49
11	58	18
11-A	66	32
6	115	98
1	130	52
17	54	15
7	86	67
10	60	13
5	50	55
19	41	61
21	59	46
16	52	76
Total 29 Precincts	1,235	1,367

(Should be 1,515)

his Answer with Counter-Protest,<sup>[3]</sup> petitioner Jose C. Ramirez disputed private respondent's claim. He said that instead of the total of the votes for private respondent Alfredo Go, it was actually the entries relating to the number of votes credited to him in Precinct Nos. 11, 11-A, 6, 1, 17, 7, and 10 which were erroneously reflected in the Statement of Votes. According to petitioner, the entries in the Statement of Votes actually referred to the number of votes obtained by Rodito Fabillar, a mayoralty candidate, and not to the votes obtained by private respondent. Petitioner alleged that, as shown in the Certificate of Votes prepared by the Board of Election Inspectors, the votes cast for Go in the precincts in question

were as follows:

Precinct Nos.	Per Statement of Votes	Per Certificate of Votes
11	58	32
11-A	66	18
6	115	65
1	130	61
17	54	48
7	86	37
10	60	28

The addition of the number of votes (reflected in the Certificate of Votes) to the number of votes from other precincts confirms the MBC's certificate that the total number of votes cast was actually 1,367 for petitioner and 1,235 for private respondent.

On August 1, 1995, the COMELEC en banc issued its first questioned resolution, directing the MBC to reconvene and recompute the votes in the Statement of Votes and proclaim the winning candidate for vice mayor of Giporlos, Eastern Samar accordingly.<sup>[4]</sup>

Petitioner Jose C. Ramirez and public respondent Municipal Board of Canvassers filed separate "motions for clarification." On September 26, 1995, the COMELEC en banc issued its second questioned resolution, reiterating its earlier ruling. It rejected the MBC's recommendation to resort to election returns:<sup>[5]</sup>

The Municipal Board of Canvassers is reminded that pursuant to Section 231 of the Omnibus Election Code, it is the Statement of Votes, duly prepared, accomplished during the canvass proceedings, and certified true and correct by said Board which supports and form (sic) the basis of the Certificate of Canvass and Proclamation of winning candidates. In fact and in deed, the Municipal Board of Canvassers/Movant had submitted to the Commission, attached to and forming part of the Certificate of Canvass and Proclamation a Statement of Votes without any notice of any discrepancy or infirmity therein. To claim now that the proclamation was not based on said Statement of Votes but on the Certificate of Votes because the entries in the Statement of Votes are erroneous is too late a move, considering that by the Board's act of submitting said Statement of Votes as attachment to the Certificate of Proclamation and Canvass, it had rendered regularity and authenticity thereto.

Hence this petition for certiorari and mandamus seeking the annulment of the two resolutions, dated August 1, 1995 and September 26, 1995, of the Commission on

Elections, and the reinstatement instead of the May 10, 1995 proclamation of petitioner Jose C. Ramirez as the duly elected vice mayor of Giporlos, Eastern Samar. Petitioner contends that (1) the COMELEC acted without jurisdiction over SPC No. 95-198 because the case was resolved by it without having been first acted upon by any of its divisions, and (2) the MBC had already made *motu proprio* a correction of manifest errors in the Statement of Votes in its certification dated May 22, 1995, showing the actual number of votes garnered by the candidates and it was a grave abuse of its discretion for the COMELEC to order a recomputation of votes based on the allegedly uncorrected Statement of Votes.

With respect to the first ground of the petition, Art. IX, §3 of the Constitution provides:

§3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Comelec en banc. (Emphasis added)

Although in *Ong, Jr. v. COMELEC*<sup>[6]</sup> it was said that "By now it is settled that election cases which include pre-proclamation controversies must first be heard and decided by a division of the Commission"<sup>[7]</sup> <sup>¾</sup> and a petition for correction of manifest error in the Statement of Votes, like SPC No. 95-198 is a pre-proclamation controversy <sup>¾</sup> in none of the cases<sup>[8]</sup> cited to support this proposition was the issue the correction of a manifest error in the Statement of Votes under §231 of the Omnibus Election Code (B.P. Blg. 881) or §15 of R.A. No. 7166. On the other hand, Rule 27, §5 of the 1993 Rules of the COMELEC expressly provides that pre-proclamation controversies involving, inter alia, manifest errors in the tabulation or tallying of the results may be filed directly with the COMELEC en banc, thus

§5. Pre-proclamation Controversies Which May Be Filed Directly With the Commission. <sup>¾</sup> (a) The following pre-proclamation controversies may be filed directly with the Commission:

. . . .

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 had 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.

. . . .

(e) The petition shall be heard and decided by the Commission en banc.

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