

## EN BANC

[ G.R. No. 120140, August 21, 1996 ]

**BENJAMIN U. BORJA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, PATEROS MUNICIPAL BOARD OF CANVASSERS AND JOSE T. CAPCO, JR., RESPONDENTS.**

### D E C I S I O N

**ROMERO, J.:**

Petitioner Benjamin U. Borja, Jr. questions the authority of respondent Commission on Elections en banc to hear and decide at the first instance a petition seeking to declare a failure of election without the benefit of prior notice and hearing.

During the May 8, 1995 elections, Borja and private respondent Jose T. Capco vied for the position of Mayor of the Municipality of Pateros which was won by Capco by a margin of 6,330 votes. Capco was consequently proclaimed and has since been serving as Mayor of Pateros.

Alleging lack of notice of the date and time of canvass, fraud, violence, terrorism and analogous causes, such as disenfranchisement of voters, presence of flying voters, and unqualified members of the Board of Election Inspectors, Borja filed before the COMELEC a petition to declare a failure of election and to nullify the canvass and proclamation made by the Pateros Board of Canvassers.

Concluding that the grounds relied upon by Borja were warranted only in an election contest, the COMELEC en banc dismissed the petition in its resolution dated May 25, 1995. It declared that "forced majeure, violence, terrorism, fraud and other analogous causes . . . are merely the causes which may give rise to the grounds to declare failure of elections." These grounds, which include (a) no election held on the designated election date; (b) suspension of election before the hour fixed by law for the closing of voting; and (c) election in any polling place resulted in a failure to elect, were not present in Borja's petition.

Aggrieved by said resolution, petitioner elevated the matter to this Court, arguing the same matters while claiming that the COMELEC committed grave abuse of discretion in issuing the questioned resolution of May 25, 1995. He avers that the COMELEC en banc does not have the power to hear and decide the merits of the petition he filed below because under Article IX-C, Section 3 of the Constitution, all election cases, including pre-proclamation controversies, "shall be heard and decided in division, provided that motions for reconsideration of decision shall be decided by the Commission en banc."

After a careful scrutiny of petitioner's arguments, this Court finds the same to be untenable. The petition must inevitably be dismissed.

In order to resolve the threshold issue formulated at the outset, there must first be a determination as to whether a petition to declare a failure of election qualifies as an election case or a pre-proclamation controversy. If it does, the Constitution mandates that it be heard and adjudged by the COMELEC through any of its Divisions. The COMELEC en banc is only empowered to resolve motions for reconsideration of cases decided by a Division for Article IX-C, Section 3 of the Constitution expressly provides:

"SEC 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 shall be decided by the Commission en banc."

In the case at bar, no one, much less the COMELEC, is disputing the mandate of the aforementioned Article IX-C, Section 3 of the Constitution. As Borja himself maintained, the soundness of this provision has already been affirmed by the Supreme Court in a number of cases, albeit with some dissent.<sup>[1]</sup> In Ong, the Court declared that if a case raises "pre-proclamation issues, the COMELEC, sitting en banc, has no original jurisdiction" over the same. Accordingly, said case should be remanded to the COMELEC which, in turn, will refer the same to any of its Divisions for proper disposition.

A petition to declare a failure of election is neither a pre-proclamation controversy as classified under Section 5(h), Rule 1 of the Revised COMELEC Rules of Procedure, nor an election case.

It must be remembered that Capco was duly elected and proclaimed as Mayor of Pateros. "Such proclamation enjoys the presumption of regularity and validity."<sup>[2]</sup> To destroy the presumption, Borja must convincingly show that his opponent's victory was procured through extra-legal means. This he tried to do by alleging matters in his petition which he thought constituted failure of election, such as lack of notice of the date and time of canvass; fraud, violence, terrorism and analogous causes; disenfranchisement of voters; presence of flying voters; and unqualified members of the Board of Election Inspectors. These grounds, however, as correctly pointed out by the COMELEC, are proper only in an election contest but not in a petition to declare a failure of election and to nullify a proclamation. Section 6 of the Omnibus Election Code lays down the instances when a failure of election may be declared. It states thus:

"SEC. 6. Failure of Election. -- If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice, and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the