



Republic of the Philippines
Supreme Court
Manila

EN BANC

JOEL P. QUIÑO, MARY
ANTONETTE C. DANGOY,
JOSEPHINE T. ABING, JOY
ANN P. CABATINGAN, TESSA
P. CANG, WILFREDO T. CALO,
HOMER C. CANEN, JOSE L.
CAGANG, ALBERTO
CABATINGAN and FRANCISCO
T. OLIVERIO,
Petitioners,

G.R. No. 197466

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, JJ.

- versus -

COMMISSION ON ELECTIONS
and RITCHIE R. WAGAS,
Respondents.

Promulgated:

NOVEMBER 13, 2012

X-----X

DECISION

VILLARAMA, JR., J.:

This is a petition for certiorari filed under Rule 65 in conjunction with Section 2, Rule 64 of the 1997 Rules of Civil Procedure, as amended, seeking to annul the Resolution¹ dated January 12, 2011 of the Commission on Elections (COMELEC) Second Division and Resolution² dated June 13, 2011 of the COMELEC *En Banc*, and to sustain the proclamation by the

¹ Rollo, pp. 49-60.

² Id. at 61-72.

Municipal Board of Canvassers (MBOC) of petitioners as the duly elected municipal officials of Compostela, Cebu in the May 10, 2010 elections.

The factual antecedents:

Petitioner Joel P. Quiño and private respondent Ritchie R. Wagas both ran for the position of Mayor of Compostela, while petitioner Mary Antonette C. Dangoy was a candidate for vice-mayor, during the May 10, 2010 elections. Petitioners Josephine T. Abing, Joy Ann P. Cabatingan, Tessa P. Cang, Wilfredo T. Calo, Homer C. Canen, Jose L. Cagang, Alberto Cabatingan and Francisco T. Oliverio were candidates for municipal councilors.

Results of the canvassing showed that Quiño obtained 11,719 votes as against 9,338 votes garnered by Wagas.³ Quiño, along with the rest of the petitioners who were the winning candidates for members of the *Sangguniang Bayan*, were proclaimed by the MBOC on May 11, 2010.

On May 14, 2010, Wagas filed an Election Protest⁴ against Quiño before the Regional Trial Court (RTC) of Mandaue City.

On May 21, 2010, Wagas also filed a petition⁵ for annulment of proclamation in the COMELEC, docketed as SPC No. 10-041. He claimed that after the proclamation, it was discovered that the Audit/Print Logs of the Consolidating Machine of the MBOC did not reflect at least fourteen (14) clustered precincts, and that despite such absence the Consolidating Machine generated, among others, the Certificate of Canvass and Statement of Votes (SOV). As it appears that the electronic election returns (EERs) of 14 precincts were already stored in the Consolidating Machine, the same are therefore falsified ERs. Notably, the EER for Clustered Precinct No. 19 showed that more than 700 votes were cast but the Statement of Votes reflected only 10 votes. Contending that the Certificates of Canvass and

³ Id. at 99-100.

⁴ Id. at 106-111.

⁵ Id. at 114-120.

Proclamationare without authentic basis, Wagas prayed that the proclamation of the winning candidates be declared null and void.

In his Answer,⁶ Quiño denied the allegations of irregularities in the canvassing of votes. He asserted that he had no hand in, or access to the preparation, installation and operation of the Precinct Count Optical Scan (PCOS) machines before and during the elections, nor is he familiar with their intricacies and configurations including security codes, with the result that he was dependent upon the members of the Board of Election Inspectors (BEI) who presided over the elections. Assuming that the PCOS did not have print/audit logs with respect to the 14 Clustered Precincts, Quiño argued that this does not mean that the PCOS machines were tampered or pre-programmed to cheat; such is pure speculation. He insisted that the few problems or deficiencies encountered, such as the audit/print logs, did not affect the integrity of the elections, and hence the proceedings of the MBOC and the proclamation of the winning candidates were proper and lawful. He moved for the dismissal of the petition on the following grounds: (1) the issues are governed by an election protest, which should have been filed with the RTC; (2) there is no payment of the filing fee and cash deposit; (3) the members of the MBOC are indispensable parties who were not impleaded; (4) he was not served with copy of the petition before its filing; and (5) the petition is barred by prescription, estoppel and laches, and its filing amounts to forum-shopping.

On June 18, 2010, Wagas filed an Extremely Urgent Motion to Suspend the Effect of Proclamation,⁷ attaching thereto separate Affidavits⁸ executed by Lorenzo D. Almodiel and Alberto Y. Melendres, Vice-Chairman and Member, respectively, of the MBOC stating that:

2. x x x most of the [EERs] x x x, were not remotely transmitted but locally or manually transmitted to the consolidating machine;
3. x x x these locally or manually transmitted [EERs], that were stored in the individual Flash Memory per precinct x x xwere

⁶ Id. at 124-130.

⁷ Id. at 131-134.

⁸ Id. at 135-136.

merely inserted to the flash reader of the consolidating machine and canvass or consolidated without digital authentication[.][Thus,] it cannot be ascertained whether the EERs in the flash memory were genuine and the same electronic documents produced by the PCOS on election day x x x;

4. x x x the Audit Log of the consolidating machine failed to log/record fourteen (14)[EERs] or Flash Memories, as such [it] cannot be determined where these 14 EERs c[a]me from, x x x what [was] the mode of [their] transmission x x x to the consolidating machine; and how these EERs were canvassed or consolidated by the Consolidating Machine;
5. x x x the election result generated from the x x x fourteen (14) EERs from the Precinct to MBOC were directly consolidated and the Statement of Votes per Precinct included the election result of the fourteen (14) EERs, despite the fact that the Audit Log of the consolidating machine failed to log/record [said]fourteen (14) EERs;

x x x x

7. x x x the responsibility of the MBOC was merely to give the pin and thereafter [was] converted to technically a mere bystander or watcher and to proclaim the winners after the consolidating machine produced the printed results without verification or comparison to the printed ERs; and except for physical verification or analog authentication of flash memories; [and]

x x x x

9. x x x after the election, the used and valid ballots in the clustered precincts in Barangay Mulao, Compostela were not placed inside the official ballot boxes and instead were placed in two separate cartons/boxes, and were alleged to have been at the Comelec Office in Compostela and the same were found/discovered more than days or weeks after the election; [a]nd the ballot boxes that were left at the Treasurer's Office were empty[.]

A similar report was submitted by Election Officer Desierto N. Hortelano, Jr. to the Provincial Election Officer, Atty. Lionel Marco R. Castellano.⁹

On June 28, 2010, petitioners took their oath of office and immediately assumed office.

On the same day, however, the COMELEC Second Division issued an Order¹⁰ as follows:

⁹ Id. at 137.

¹⁰ Id. at 151-157. Signed only by Presiding Commissioner Nicodemo T. Ferrer for and in behalf of the Second Division.

WHEREFORE, premises considered, the Commission ORDERS to, as it does hereby, GRANT the “Extremely Urgent Motion to Suspend the Effect of Proclamation” filed by petitioner Ritch[i]e Wagas, hereby immediately suspending the effect of the proclamation of the candidates for mayor, vice-mayor and eight councilors of Compostela, Cebu. In the meantime, said petitioner is hereby give[n] three (3) days from receipt of this Order to amend the instant Petition in order to implead said indispensable parties.

SO ORDERED.¹¹

Wagas filed an Amended Petition for Proclamation to which petitioners filed their Answer.

On January 12, 2011, the Second Division citing COMELEC Resolution No. 8989¹² (also cited in the June 28, 2010 Order) issued a Resolution¹³ granting the amended petition, thus:

WHEREFORE, premises considered the Commission RESOLVES to, as it hereby:

1. GRANTS the instant Petition to Annul Proclamation;
2. ANNULS the proclamation of the presumptive winning candidates in the Municipality of Compostela, Cebu, in connection with the 10 May 2010 Automated National and Local Elections, namely, the herein respondents, Joel Quiño as the mayor-elect, Mary Antonette Dangoy as the vice-mayor-elect and the eight (8) municipal-councilors-elect Josephine T. Abing, Joy Ann P. Cabatingan, Tessa P. Cang Wilfredo T. Calo, Homer C. Canen, Jose L. Cagang, Alberto Cabatingan and Francisco Oliverio.
3. ORDERS the MBOC to CONVENE, CANVASS and thereafter PROCLAIM the rightful winners after it has verified and corrected the EERs and other pertinent documents.

SO ORDERED.¹⁴

Petitioners filed a motion for reconsideration with the Commission.

In the assailed Resolution¹⁵ dated June 13, 2011, the Commission, by majority vote of four (4) Commissioners, denied the motion for reconsideration, reasoning as follows:

¹¹ Id. at 157.

¹² “IN THE MATTER OF ANNULING THE PROCLAMATION OF WINNING CANDIDATES WHERE FIELD TESTING AND SEALING RESULTS INSTEAD OF ELECTION DAY RESULTS HAVE BEEN TRANSMITTED TO THE MUNICIPAL/CITY OR PROVINCIAL BOARD OF CANVASSERS”, which was expressly made applicable to all candidates similarly situated.

¹³ *Rollo*, pp. 49-60.

¹⁴ Id. at 59.

¹⁵ Id. at 61-72.

The Commission has the authority to annul the proclamation of a candidate if it discovers that the proclamation thereof proceeds from invalid and insufficient ground. A proclamation based on invalid canvass is no proclamation at all. Since the results of 14 clustered precincts were not transmitted and therefore were not included in the final canvass of votes, this Commission finds the proclamations of the presumptive winners as invalid. An irregularity also is reflected in the results for clustered precinct no. 19 where only ten votes were reflected in the Statement of Votes while seven hundred (700) votes were said to have cast their votes per election return. The factual circumstances of the case at bar are in all fours with Resolution No. 8989, contrary to the view of the respondents.

To settle the unrest resulting from this controversy and to truly determine the will of the electorate of Compostela Cebu, the Commission deems it necessary to canvass the votes in the clustered precincts subject of this controversy.¹⁶

Commissioners Augusto C. Lagman and Armando C. Velasco concurred with the dissenting opinion¹⁷ of Commissioner Rene V. Sarmiento who voted to reverse the annulment of proclamation of Quiño and those of the rest of petitioners “only for the reason that it could not be determined from the records whether the total number of votes in Clustered Precinct No. 19 could not anymore affect the winning margin of votes of the said candidates.”¹⁸ The dissent was anchored on the following findings and conclusions:

Nothing in the records would prove that the results for the 14 clustered precincts were not transmitted and were not included in the final canvass of votes. In fact, a careful scrutiny of the attached copies of the SOV in support of the Certificate of Canvass (COC) would demonstrate that results for clustered precincts 5, 6, 7, 8, 9, 10, 11, 15, 16, 21, 22, 26, 29 and 34 have been duly canvassed. The petitioner however disputes the genuineness and authenticity of the COC and the supporting SOV on the sole basis that the audit logs contain no record that the results for the said 14 precincts have indeed been transmitted. Question: Does such contention reasonably warrant the annulment of one’s proclamation?

x x x with the advent of the Automated Election System, the scope of pre-proclamation controversy has now been limited into only two (2) issues, to wit: a) illegal composition of the Board of Canvassers; and b) illegal proceedings, as when there is precipitate canvassing, terrorism, lack of sufficient notice to the members of the Board of Canvassers, and improper venue.

Obviously, the alleged irregularity on the audit logs does not fall within the ambit of the new definition of a pre-proclamation controversy.

¹⁶ Id. at 66.

¹⁷ Id. at 68-72.

¹⁸ Id. at 72.

Further, it bears emphasizing that under Comelec Resolution No. 8809 in relation to Republic Act No. 9369, it was expressly provided that there shall be no pre-proclamation cases on issues/controversies relating to the generation, transmission, receipt and custody and appreciation of election returns or certificates of canvass. (*Emphasis supplied.*)

Assuming *arguendo* that the Commission, in the exercise of its plenary power, may validly rule on that issue raised by petitioner, such contention is still doomed to fail as no strong evidence has been adduced establishing that the COC and its supporting SOV do not reflect the true election results. Jurisprudence dictates that there is a presumption that an election was honestly conducted, and the burden of proof to show otherwise is on the party assailing the results. Thus, in the absence of strong evidence to the contrary, the COC and the corresponding SOV are deemed to have been regularly issued.

x x x x

While indeed the controversy involving Clustered Precinct No. 19 is similar with Comelec Resolution No. 8989 such that it pertains to an error in the transmission of election results which needs rectification, the undersigned however is of the opinion that annulment of proclamation is not at all times necessary. Similar with the doctrine involved in petitions for correction of manifest errors, there must first be a determination of whether the discrepancy would materially affect the results of the election. If, despite the reconciliation of votes, the previously proclaimed candidate still managed to obtain the plurality of votes, annulment of proclamation is certainly futile.

In the case at bar, a scrutiny of the records reveal that Clustered Precinct No. 19 has a total of Nine Hundred Seventy-Nine (979) registered voters; yet, the margin of votes between petitioner Wagas and respondent Quiño is Two Thousand Three Hundred Eighty[-]One (2,381) votes. Even if we give petitioner Wagas an additional 900 plus votes, there is no doubt that respondent Quiño would still [have] emerged as the winner. Thus, annulment of proclamation is not necessary.

Undersigned could not however say the same to the other respondents considering that the records are silent as to the winning margin of votes for the vice-mayoralty and municipal councilor race.¹⁹

Meanwhile, on November 18, 2011, the COMELEC En Banc granted the request of Wagas to transfer the venue of canvassing from Compostela, Cebu to the COMELEC Main Office in Manila and to constitute a new Board of Canvassers for that purpose. In an order dated December 7, 2011, a new Board of Canvassers was constituted and the date was set for its convening on December 15, 2011.

¹⁹ Id. at 69-72.

On December 8, 2011, Wagas filed a Most Extremely Urgent Motion for Clarification praying for a manual recount of the ballots, due to which the convening of the new board of canvassers was suspended pending resolution of the motion.

On January 26, 2012, the COMELEC En Banc issued an order denying Wagas' request for manual recount. The new MBOC was set to convene on February 27, 2012. Wagas, however, filed a petition for certiorari before this Court (G.R. No. 200505) assailing the denial of his motion for recount and seeking injunctive relief.

On March 20, 2012, this Court issued a Resolution dismissing G.R. No. 200505 "for failure to sufficiently show that any grave abuse of discretion was committed by the Commission on Elections in rendering the challenged resolution which, on the contrary, appears to be in accord with the facts and applicable law and jurisprudence."

In his Comment, the Solicitor General prayed for the denial of the present petition as the Commission did not gravely abuse its discretion in ordering the suspension of the effect of petitioners' proclamation based on documents which would support the contention of Wagas that the election results generated by the PCOS machines during the May 10, 2010 elections should not be the basis of the proclamation of the elected municipal officials of Compostela, Cebu.²⁰

As per the Manifestation²¹ dated August 16, 2012 filed by Wagas, the Special Board of Canvassers of Compostela, Cebu already proclaimed the petitioners as the winning candidates for municipal mayor, vice-mayor and councilors. With this development, the reliefs prayed for in the present petition have become moot and academic.

²⁰ Id. at 556-577.

²¹ Id. at 635-636.

Accordingly, there no longer exists an actual controversy between the parties and resolving the merits of this case would no longer serve any useful purpose. As we held in *Ocampo v. House of Representatives Electoral Tribunal*.²²


At any rate, the petition has become moot and academic. The Twelfth Congress formally adjourned on June 11, 2004. And on May 17, 2004, the City Board of Canvassers proclaimed Bienvenido Abante the duly elected Congressman of the Sixth District of Manila pursuant to the May 10, 2004 elections.

In the recent case of *Enrile vs. Senate Electoral Tribunal*, we ruled that **a case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.** Worth reiterating is our pronouncement in *Gancho-on vs. Secretary of Labor and Employment*, thus:

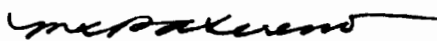
“It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition.”²³
(Emphasis supplied)

WHEREFORE, the present petition for certiorari is **DISMISSED** on the ground of **MOOTNESS**.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

²² G.R. No. 158466, June 15, 2004, 432 SCRA 144.

²³ Id. at 150.




ANTONIO T. CARPIO
Associate Justice




PRESBITERO J. VELASCO, JR.
Associate Justice



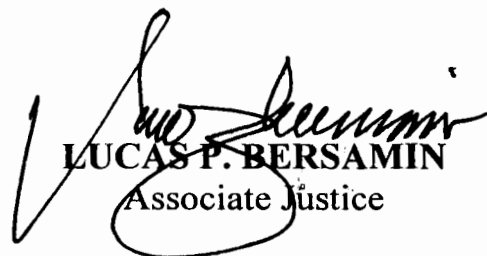
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



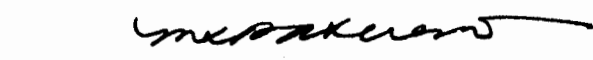
BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice