

EN BANC

[G.R. No. 175121, June 08, 2007]

**EN BANC ADELINA TAMAYO-REYES, M.D., PETITIONER, VS.
COMMISSION ON ELECTIONS AND FERNANDO R. CABITAC,
RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

Before this Court is a *Petition for Certiorari and Prohibition with prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order*. The petition seeks to annul the Resolution of the Commission on Elections (COMELEC) *En Banc* dated 16 October 2006,^[1] allegedly with grave abuse of discretion, affirming the Resolution^[2] of the COMELEC First Division dated June 30, 2006 dismissing the petition for correction of manifest errors and nullification of proclamation filed by petitioner Adelina Tamayo-Reyes, M.D.

Petitioner and private respondent Fernando Cabitac were candidates for Vice-Mayor of Taytay, Rizal during the May 10, 2004 elections. After the counting of votes and the canvassing of election returns, the Municipal Board of Canvassers (MBOC) proclaimed, on May 15, 2004, private respondent as the duly elected Vice-Mayor of Taytay, Rizal, with a total of 34,715 votes as against the 33,147 votes garnered by petitioner, or a margin of 1,568 votes.

Dissatisfied, petitioner caused the compilation of all copies of the election returns and the statement of votes by precinct and discovered discrepancies thereon. Then, almost four (4) months after the proclamation of private respondent, or on September 6, 2004, petitioner filed her petition for correction of manifest errors in the election returns and the statement of votes and for nullification of the proclamation of private respondent as Vice-Mayor of Taytay, Rizal. The petition was docketed as SPC No. 04-300^[3] and was raffled to the COMELEC First Division. According to petitioner, if the discrepancies were corrected, she would have won over private respondent by a plurality of 172 votes. The summary^[4] of alleged discrepancies for correction is as follows:

	CABITAC	REYES
Double Entry	1057	751
Fabricated SOV	1495	1263
Non-Existing/Non-Registered Precincts	164	76
Single Precinct No. Clustered with Other Precinct No.	269	221
Clustered Precincts Split into 2	221	159
Questionable Envelope No. and Seal No.	126	78

Precincts Missing in Minutes Tabulated in SOV	587	434
Regular Precinct in POP Listed with Different M/C Precinct	996	555
TOTAL	4915	3537

Total Votes to be Excluded	34715 33147 - 4915 3537 ----- -----
TOTAL	29800 29610
Add: Missing Precincts in SOV w/ ER and COV to be Included	+ 570 917
TOTAL	30370 30527
Add: Appreciated in Minutes/Missing in SOV	+ 91 106 ----- -
TOTAL	30,461 30,633

Public respondent below, the MBOC of Taytay, Rizal, in its Answer, invoked the legal presumption that official duty has been performed since no objection was ever made during the canvassing on the alleged errors in computation.

Private respondent filed before the COMELEC First Division a Motion to Dismiss on the ground of lack of cause of action and for want of jurisdiction since the provisions of Section 35 of COMELEC Resolution 6669^[5] were not observed.

The COMELEC First Division, in its Resolution dated June 30, 2006,^[6] or 21 months after the filing of the petition, dismissed said petition on the ground that the correction in the tabulation would be futile as it would not affect the results of the election. It found that, of the ten irregularities cited by petitioner as grounds for correction, only five were proper for action pursuant to Section 7, Rule 27 of the 1993 COMELEC Rules of Procedure,^[7] to wit:

1. Double entry precincts in SOV that were tabulated twice (election returns were tabulated twice);
2. Non-existing/Non-registered precincts in Project of Precincts indicated in SOV and were tabulated. (Tabulation of results from non-existent precincts);
3. Clustered precincts split into two and tabulated separately in the SOV;
4. Missing precincts in SOV and Minutes registered in Project of Precincts and with Election Returns and Certificate of Votes (Results from existing precincts were not tabulated); and

5. Precincts appreciated in Minutes and registered in Project of Precincts with election return missing and not tabulated in SOV (Results from existing precincts were not tabulated).^[8]

It said, even if correction was made on these matters and using the data proffered by petitioner, private respondent would, at the very least, still enjoy a majority of 750 votes over petitioner as can be shown below:

TOTAL NUMBER OF VOTES PER PROCLAMATION		CABITAC	REYES
		34,715	33,147
LESS:			
INVALID RESULTS PER DATA OF PETITIONER	DOUBLE ENTRY/TABULATED TWICE IN SOV	1,057	751
	NON-EXISTING PRECINCTS TABULATED IN SOV	164	76
	CLUSTERED PRECINCTS SPLIT INTO TWO AND TABULATED IN SOV	221	159
SUB-TOTAL		33,273	32,161
ADD:			
VALID RESULTS PER DATA OF PETITIONER	MISSING PRECINCTS IN SOV WITH ER & COV	570	917
	PRECINCTS REGISTERED IN POP WITH MISSING ER AND NOT TABULATED IN SOV	91	106
GRAND TOTAL		33, 934	33,184

Petitioner filed a Motion for Reconsideration on July 10, 2006^[9] arguing that the COMELEC First Division, with the admission that there were indeed manifest errors to be corrected, did not undertake to make the necessary corrections nor cause the said corrections to be made. Petitioner further ascribed error to the COMELEC First Division when it ruled that the other irregularities she raised could only be verified by examining evidence aliunde and yet refused to verify the same. Finally, petitioner found fault in the position taken by the MBOC of Taytay, Rizal, that it regularly performed its official duties as such.

The COMELEC *En Banc*, in its Resolution dated October 16, 2006,^[10] affirmed the ruling of the COMELEC First Division and denied the motion for want of merit; hence, this petition raising essentially the same issues as in the motion for reconsideration.

In the Resolution dated November 21, 2006,^[11] this Court required respondents, both public and private, to file their respective comments on the petition.

In a Manifestation and Motion dated December 19, 2006,^[12] the Office of the Solicitor General prayed that it be excused from filing a comment in view of Section 5, Rule 65 of the 1997 Rules on Civil Procedure that it shall be the duty of the private respondent to appear and defend, both on his behalf and on behalf of the public respondent affected by the proceedings. The Court granted the motion in its Resolution dated January 23, 2007.^[13]

On the other hand, private respondent failed to file his comment. Thus, this Court, in its Resolution^[14] dated March 6, 2007 directed the counsel for private respondent, Atty. Bernardo Pablo C. Masilang, to explain why he should not be disciplinarily dealt with or held in contempt for such failure, and to comply by filing the required comment within ten (10) days from notice.

On April 20, 2007, Atty. Masilang filed his Compliance (Apologia and Explanation)^[15] dated April 11, 2007 apologizing profusely for his failure to file the comment for private respondent allegedly on account of illness, political harassment, and failure of his staff to file said comment. Except for the affidavit of the person taking on the blame for the non-filing of the comment, there was no other evidence submitted by Atty. Masilang to support his explanation. Moreover, the required comment was still not filed. Finding the explanation unsatisfactory, this Court ruled that the filing of the comment for private respondent be dispensed with and the case deemed submitted for decision.

The petition should be dismissed.

It should be noted that what petitioner filed was a petition for correction of manifest errors and nullification of proclamation, which is a pre-proclamation controversy. A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition or political parties before the board or directly with the COMELEC, or any matter raised under Sections 233, 234, 235, and 236 of the Omnibus Election Code, in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns.^[16] It is limited to an examination of the election returns on their face and the COMELEC, as a general rule, need not go beyond the face of the returns and is without jurisdiction to go beyond or behind them and investigate the alleged election irregularities.^[17]

Albeit it is regrettable that the COMELEC First Division took 21 months from the filing of the petition to resolve the case, it nonetheless acted correctly when it ordered the dismissal of the petition. Indeed, it did not gravely abuse its discretion when it considered only five out of the ten irregularities pointed out by petitioner as matters proper for correction of manifest errors. Applying the data proffered by petitioner herself, it turned out that private respondent would still emerge as the duly elected Vice- Mayor of Taytay, Rizal.

The correction of manifest errors has reference to errors in the election returns, in the entries in the Statement of Votes (SOV) by precinct per municipality or in the