



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

ANTONIA P. CERON,  
Petitioner,

G.R. No. 199084

Present:

- versus -

COMMISSION ON ELECTIONS,  
GRACE P. VALDEZ, EVA T. PAUIG  
and ARJOLYN T. ANTONIO, in  
their capacity as MEMBERS OF  
THE BOARD OF ELECTION  
TELLERS OF CLUSTERED  
PRECINCTS 0844A and 0844B of  
BARANGAY 201, PASAY CITY  
and ROMEO ARCILLA,  
Respondents.

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

Promulgated:

SEPTEMBER 11, 2012

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x

DECISION

CARPIO, J.:

The Case

This is a petition for certiorari<sup>1</sup> under Rule 64 of the Rules of Court.  
The petition assails the following resolutions of the Commission on

<sup>1</sup> Rollo, pp. 3-17.

Elections (COMELEC) in SPC No. 10-205 (BRGY): (1) Resolution<sup>2</sup> promulgated by the COMELEC First Division on 1 July 2011; and (2) Resolution<sup>3</sup> promulgated by the COMELEC *En Banc* on 11 October 2011.

**The Facts**

Petitioner Antonia P. Ceron (Ceron) and private respondent Romeo O. Arcilla (Arcilla) were candidates for the position of Barangay Kagawad of Barangay 201, Pasay City during the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections.

After the canvass of votes, the Barangay Board of Canvassers (BBOC) proclaimed Ceron as one of the seven duly elected Barangay Kagawads. Based on the Statement of Votes by Precinct<sup>4</sup> and the Certificate of Canvass of Votes and Proclamation of Winning Candidates,<sup>5</sup> Ceron received a total of nine hundred and twenty-one (921) votes and ranked sixth in the tally of votes. The Certificate of Canvass of Votes and Proclamation of Winning Candidates lists the following candidates who obtained the seven highest numbers of votes for the position of Barangay Kagawad of Barangay 201, Pasay City:

Names of Candidates	Number of Votes Received	
	(In Figures)	(In Words)
1. BONTILAO, JAIME	2238	Two Thousand Two Hundred Thirty-Eight
2. SALCEDO, LEOPOLDO	1492	One Thousand Four Hundred Ninety-Two
3. CANAREZ, ANTONIO	1458	One Thousand Four Hundred Fifty-Eight
4. ABAD,	1299	One Thousand Two Hundred

<sup>2</sup> Id. at 87-93.  
<sup>3</sup> Id. at 22-29.  
<sup>4</sup> Serial Nos. 5245415-17; id. at 49-51.  
<sup>5</sup> No. 1941843; id. at 84.

ZENAIDA		Ninety-Nine
5. LIOK, JOSEPH	1170	One Thousand One Hundred Seventy
<b>6. CERON, ANTONIA</b>	<b>921</b>	<b>Nine Hundred Twenty-One</b>
7. CANLAS, CARLA	920	Nine Hundred Twenty <sup>6</sup>

The aforesaid candidates were thus proclaimed the duly elected Barangay Kagawads of Barangay 201, Pasay City. On the other hand, Arcilla was not proclaimed as he only obtained nine hundred and nineteen (919) votes and ranked eighth in the tally of votes.<sup>7</sup>

Arcilla thereafter filed a petition<sup>8</sup> protesting the election of Ceron with the Metropolitan Trial Court of Pasay City, docketed as Case No. E-03-10.<sup>9</sup> Arcilla alleged that there is a discrepancy between the *taras*<sup>10</sup> and the written words and figures corresponding to the votes obtained by Ceron recorded in the Election Return for Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.<sup>11</sup> He claimed that the *taras* recorded in the said Election Return corresponding to the votes obtained by Ceron were tabulated as follows: seven (7), six (6), thirteen (13), thirteen (13) and eleven (11).<sup>12</sup> Thus, the total number of *taras* is fifty (50). However, the recorded total number of votes obtained by Ceron in written words and figures is fifty-six (56).<sup>13</sup> There is therefore a discrepancy of six (6) votes between the *taras* and the written words and figures. Arcilla argued that the written words and figures should be equal to the total number of *taras*, and that the total

<sup>6</sup> Id. Boldfacing supplied.  
<sup>7</sup> Id. at 49-52, 84.  
<sup>8</sup> Id. at 30-35.  
<sup>9</sup> The case was entitled “Romeo O. Arcilla v. Antonia Ceron” and raffled to the Metropolitan Trial Court, Branch 47, Pasay City; id. at 64.  
<sup>10</sup> The term “*tara*” refers to the vertical line representing each vote in the recording of votes on the election return, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines. Batas Pambansa Blg. 881 (hereinafter “OMNIBUS ELECTION CODE”), Section 210. See also *Doromal v. Biron*, G.R. No. 181809, 17 February 2010, 613 SCRA 160, 164.  
<sup>11</sup> *Rollo*, pp. 32-33.  
<sup>12</sup> Id. at 32.  
<sup>13</sup> Id.

number of votes received by Ceron should therefore be nine hundred and fifteen (915) and not 921.<sup>14</sup> Arcilla then concluded that he received a higher number of votes than Ceron, particularly 919 compared to 915, and should therefore be declared as the seventh ranking Barangay Kagawad of Barangay 201, Pasay City.<sup>15</sup>

On 24 November 2010, Presiding Judge Eliza B. Yu of the Metropolitan Trial Court, Branch 47, Pasay City promulgated an Order<sup>16</sup> dismissing the election protest of Arcilla pursuant to Section 13 of A.M. No. 07-4-15-SC.<sup>17</sup> The election protest was dismissed for failure of the petition of Arcilla to “specifically state the total number of precincts of the x x x Barangay concerned,” as required under Section 11(d) of A.M. No. 07-4-15-SC.<sup>18</sup> It does not appear from the records that Arcilla filed a motion for reconsideration or appealed the Order dismissing the election protest.

On 27 November 2010, Grace P. Valdez (Valdez), Eva T. Pauig (Pauig) and Arjolyn T. Antonio (Antonio), in their capacity as members of the Board of Election Tellers (BET) of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City, filed a verified petition<sup>19</sup> with the COMELEC docketed as SPC No. 10-205 (BRGY). Valdez, Pauig and Antonio were the Chairman, Poll Clerk and Third Member, respectively, of the said BET.<sup>20</sup> They alleged that on 17 November 2010 they received a letter from the winning Barangay Chairman of Barangay 201, Pasay City, inviting them to explain the discrepancy between the *taras* and the written words and figures pertaining to the number of votes received by Ceron in the Election Return for Clustered Precinct Nos. 844A and 844B.<sup>21</sup> Valdez, Pauig

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<sup>14</sup> Id. at 32-33.

<sup>15</sup> Id. at 33-35.

<sup>16</sup> Id. at 64.

<sup>17</sup> Administrative Matter No. 07-4-15-SC is entitled “Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials.”

<sup>18</sup> *Rollo*, p. 64.

<sup>19</sup> Id. at 41-45.

<sup>20</sup> Id. at 42.

<sup>21</sup> Id.

and Antonio further alleged that upon reviewing the said Election Return, they discovered that they made an erroneous entry therein with respect to the total number of votes received by Ceron.<sup>22</sup> They claimed that Valdez dictated the total number of votes received by each candidate, and that Pauig did not properly hear the dictation of the total number of votes received by Ceron possibly due to “too much noise created by the watchers inside and outside of the polling precinct.”<sup>23</sup> Thus, through honest mistake, Pauig recorded in written words and figures a total of 56 votes for Ceron, instead of the 50 votes dictated by Valdez corresponding to the total number of *taras* recorded.<sup>24</sup>

Valdez, Pauig and Antonio prayed that the COMELEC direct the members of the BET of Clustered Precinct Nos. 844A and 844B and the members of the BBOC of Barangay 201, Pasay City to reconvene, in order for the BET to prepare a corrected Election Return for the said clustered precincts, and for the BBOC to prepare a corrected Statement of Votes by Precinct and a corrected Certificate of Canvass of Votes and Proclamation of Winning Candidates.<sup>25</sup> They further prayed that the COMELEC set aside the proclamation of Ceron as the sixth winning Barangay Kagawad, and proclaim Carla Canlas (Canlas) as the sixth winning Barangay Kagawad and Arcilla as the seventh winning Barangay Kagawad.<sup>26</sup>

On 20 January 2011, Arcilla filed an Answer<sup>27</sup> to the petition of the members of the BET. He agreed with the material allegations of the petition with respect to the error in recording the total number of votes received by Ceron in Clustered Precinct Nos. 844A and 844B.<sup>28</sup> Arcilla outlined the same prayers set forth in the petition.<sup>29</sup>

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<sup>22</sup> Id.

<sup>23</sup> Id. at 43.

<sup>24</sup> Id. at 42.

<sup>25</sup> Id. at 44.

<sup>26</sup> Id.

<sup>27</sup> Id. at 54-56.

<sup>28</sup> Id. at 55.

<sup>29</sup> Id. at 56.

In the Comment<sup>30</sup> to the petition filed on 14 February 2011, Ceron averred that the issues raised in the petition were moot and academic, given that these issues were already raised in the election protest previously filed by Arcilla and dismissed by the Metropolitan Trial Court, Branch 47, Pasay City in the Order dated 24 November 2010.<sup>31</sup> Ceron stated that the said Order was final and executory since Arcilla did not file any appeal.<sup>32</sup> Ceron also filed a Position Paper<sup>33</sup> on 16 February 2011. She reiterated that the issues raised in the petition were moot and academic, and further alleged that Valdez, Pauig and Antonio did not possess the requisite legal personality since they would not be affected nor stand to benefit from the resolution of the petition.<sup>34</sup> Furthermore, Ceron argued that the petition was filed beyond the period allowed by law for any alteration or correction in the election return.<sup>35</sup>

### **The Ruling of the COMELEC First Division**

The COMELEC First Division promulgated on 1 July 2011 a Resolution in SPC No. 10-205 (BRGY). It declared that the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City committed an error in recording the votes received by Ceron in written words and figures in the Election Return.<sup>36</sup> The COMELEC First Division observed that there is a discrepancy between the *taras* and the written words and figures. In particular, the total number of *taras* recorded in the Election Return is 50 while the written words and figures are “fifty-six” and “56”, respectively.<sup>37</sup> It recognized the settled rule that the number of votes reflected by the *taras* prevails in the event of a discrepancy between the

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<sup>30</sup> Id. at 59-62.

<sup>31</sup> Id. at 60.

<sup>32</sup> Id.

<sup>33</sup> Id. at 73-78.

<sup>34</sup> Id. at 76-77.

<sup>35</sup> Id. at 77.

<sup>36</sup> Id. at 90.

<sup>37</sup> Id.

number of *taras* and the written words and figures.<sup>38</sup> It therefore concluded that the total number of votes received by Ceron is 915, and the resulting ranking of the candidates is as follows:

RANK	NAME	VOTES OBTAINED
1 <sup>st</sup>	BONTILAO, Jaime	Two Thousand Two Hundred Thirty Eight (2238)
2 <sup>nd</sup>	SALCEDO, Leopoldo	One Thousand Four Hundred Ninety-Two (1492)
3 <sup>rd</sup>	CAÑARES, Antonio Sr.	One Thousand Four Hundred Fifty-Eight (1458)
4 <sup>th</sup>	ABAD, Zenaida	One Thousand Two Hundred Ninety-Nine (1299)
5 <sup>th</sup>	LIOK, Joseph	One Thousand One Hundred Seventy (1170)
6 <sup>th</sup>	CANLAS, Carla	Nine Hundred Twenty (920)
7 <sup>th</sup>	ARCILLA, Romeo	Nine Hundred Nineteen (919)
Dislodged	CERON, Antonia (previously proclaimed as 6 <sup>th</sup> in rank)	Nine Hundred Fifteen (915) <sup>39</sup>

The COMELEC First Division thus granted the petition. The dispositive portion of the Resolution dated 1 July 2011 states:

**WHEREFORE**, premises considered, the Commission (First Division) **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the instant Petition. The proclamation of Antonia Ceron and Carla Canlas as the 6<sup>th</sup>

<sup>38</sup> Id. at 90-91.  
<sup>39</sup> Id. at 91.

and 7<sup>th</sup> ranking sangguniang barangay kagawad, respectively, of Brgy. 201, Pasay City is hereby **ANNULLED**.

Accordingly, the Barangay Board of Canvassers of Brgy. 201, Pasay City is hereby **DIRECTED** to **RECONVENE** for the purpose of:

a. **RECTIFYING** the errors committed in the Election Return of Clustered Precinct No[s]. 844A and 844B and the corresponding Statement of Votes; and

b. **PROCLAIMING** candidates Carla Canlas and Romeo Arcilla as the 6<sup>th</sup> and 7<sup>th</sup> ranking sangguniang barangay kagawad, respectively.

The Board is hereby ordered to prepare a new Certificate of Canvass of Votes and Proclamation.

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**SO ORDERED.**<sup>40</sup>

Ceron subsequently filed a Motion for Reconsideration<sup>41</sup> of the Resolution dated 1 July 2011. Ceron argued that the proper procedure to resolve the dispute is for the COMELEC to order the opening of the ballot box to recount the votes cast, pursuant to Section 236 of Batas Pambansa Blg. 881 or the Omnibus Election Code.<sup>42</sup> This procedure is also mandated under Section 68 of COMELEC Resolution No. 9030.<sup>43</sup> Ceron further argued that it is improper to categorize the alleged error in the Election Return as a manifest error since this did not occur in the tabulation or tallying of the election returns during canvassing.<sup>44</sup> The alleged error in the Election Return is not one of the instances of manifest error provided under Section 69 of COMELEC Resolution No. 9030.<sup>45</sup> Finally, Ceron argued that the dismissal of the election protest filed by Arcilla bars the resolution of the issues raised in the petition under the principle of *res judicata*.<sup>46</sup>

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<sup>40</sup> Id. at 92.

<sup>41</sup> Id. at 94-102.

<sup>42</sup> Id. at 95-96.

<sup>43</sup> COMELEC Resolution No. 9030 dated 21 September 2010 is entitled "General Instructions for the Board of Election Tellers (BET) and Barangay Board of Canvassers (BBOC) in connection with the conduct of the October 25, 2010, Synchronized Barangay and Sangguniang Kabataan Elections."

<sup>44</sup> *Rollo*, p. 96.

<sup>45</sup> Id. at 96-98.

<sup>46</sup> Id. at 99-100.



**The Ruling of the COMELEC *En Banc***

The COMELEC *En Banc* denied the Motion for Reconsideration of Ceron in a Resolution<sup>47</sup> promulgated on 11 October 2011. It ruled that the discrepancy between the *taras* and the written words and figures representing the number of votes received by Ceron constitutes manifest error.<sup>48</sup>

According to the COMELEC *En Banc*, a manifest error is “evident to the eye and understanding; visible to the eye; that which is open, palpable, incontrovertible; needing no evidence to make it more clear [sic]; not obscure or hidden.”<sup>49</sup> It further stated that a mistake in the addition of the votes of any candidate is one of the instances of manifest error under Section 69 of COMELEC Resolution No. 9030. The COMELEC *En Banc* observed that the error in the Election Return of Clustered Precinct Nos. 844A and 844B is evident to the eye, and a mere recounting of the number of *taras* reveals the disparity with the written words and figures.<sup>50</sup>

The COMELEC *En Banc* explained the procedure in rectifying the manifest error in the said Election Return, thus:

The error in the said Election Returns affects the computation of the total number of votes received by [Ceron] during the canvassing and eventually, the final result or the determination of the winning candidates. This is a clear case of manifest error.

However, to correct such error, there is no need to open the ballot box and recount the votes cast. The mistake in the Election Returns can be easily traced and there is no need to seek additional evidence to rectify such error. The expedient course of action is for COMELEC to direct the board of canvassers to reconvene and, after notice and hearing in accordance with Section 7, Rule 27 of the COMELEC Rules of Procedure, to effect the necessary corrections and on the basis thereof, proclaim the

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<sup>47</sup> Id. at 22-29.

<sup>48</sup> Id. at 96.

<sup>49</sup> Id. at 24.

<sup>50</sup> Id. at 25.

winning candidate. It has been ruled that in case of discrepancy, the taras/tally would prevail.<sup>51</sup>

The COMELEC *En Banc* ruled that the procedures under Section 236 of the Omnibus Election Code and Section 68 of COMELEC Resolution No. 9030 are only applicable in the event that there is a discrepancy among the authentic copies of the same election returns.<sup>52</sup>

With respect to the application of the principle of *res judicata*, the COMELEC *En Banc* determined that there was no identity of parties in the election protest filed by Arcilla and the petition filed by the members of the BET.<sup>53</sup> Furthermore, the dismissal of the election protest was not based on merit but on technicality.<sup>54</sup>

Hence, this instant petition filed by Ceron assailing the Resolution promulgated by the COMELEC First Division on 1 July 2011 and the Resolution promulgated by the COMELEC *En Banc* on 11 October 2011.

### **The Issues**

Ceron raises the following issues:

1. Whether the COMELEC may order the BBOC of Barangay 201, Pasay City to reconvene and make the proper correction in the Election Return of Clustered Precinct Nos. 844A and 844B; and
2. Whether the COMELEC may take cognizance of the petition filed by Valdez, Pauig and Antonio, in their capacity as members of the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.<sup>55</sup>

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<sup>51</sup> Id.

<sup>52</sup> Id. at 26-27.

<sup>53</sup> Id. at 27-28.

<sup>54</sup> Id. at 28.

<sup>55</sup> Id. at 8.

### **The Ruling of the Court**

The petition is unmeritorious.

#### **I.**

Ceron argues that the proper procedure is for COMELEC to direct the opening of the ballot box of Clustered Precinct Nos. 844A and 844B for purposes of recounting the votes cast in favor of the candidates affected, pursuant to Section 236 of the Omnibus Election Code and Section 68 of COMELEC Resolution No. 9030.<sup>56</sup> Section 236 of the Omnibus Election Code provides:

SECTION 236. *Discrepancies in election returns.* - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

Section 68 of COMELEC Resolution No. 9030 states:

SECTION 68. *Discrepancies in Election Returns.* - In case it appears to the BBOC that there exist discrepancies in the votes of any candidate in words and figures in the same returns, and in either case the difference affects the results of the elections the Commission shall, upon motion of the BBOC or any candidate affected and after due notice to all candidates concerned, proceed summarily to determine whether the integrity of the ballot box had been preserved.

Once the Commission is satisfied that the integrity of the ballot box had been preserved, it shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

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<sup>56</sup>

Id. at 9-10.

If upon opening the ballot box as ordered by the Commission, it should appear that there are signs of replacement, tampering, or violation of the integrity of the ballots, the Commission shall not recount the ballots but forthwith seal the ballot box and order its safekeeping.

Ceron further argues that the alleged error in the subject Election Return is not a manifest error as contemplated under Section 69 of COMELEC Resolution No. 9030.<sup>57</sup> She claims that the provision does not apply to errors in the election return, but is only applicable to errors committed in the tabulation or tallying of the election returns during the canvassing.<sup>58</sup>

On the other hand, the COMELEC claims that it correctly ordered the BBOC of Barangay 201, Pasay City to reconvene and make the proper correction in the Election Return of Clustered Precinct Nos. 844A and 844B.<sup>59</sup> It argues that the discrepancy between the *taras* and the written words and figures is a manifest error that is evident to the eye.<sup>60</sup> It is not necessary to open the ballot box and recount the ballots since the manifest error can be rectified by simply correcting the written words and figures to reflect the number of *taras*.<sup>61</sup> Thus, the applicable provision is Section 69 of COMELEC Resolution No. 9030. The section states:

SECTION 69. *Manifest Error.* - (a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or tallying [of] election returns during the canvassing, the BBOC may *motu proprio*, or upon verified petition by any candidate, after due notice and hearing, correct the errors committed.

There is manifest error in the tabulation or tallying of the result during the canvassing when:

- 1) A copy of the election returns was tabulated more than once;
- 2) Two or more copies of the election returns for one precinct were tabulated;

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<sup>57</sup> Id. at 10-12.

<sup>58</sup> Id.

<sup>59</sup> Id. at 141.

<sup>60</sup> Id. at 144-145

<sup>61</sup> Id. at 145-146.

3) There was a mistake in the copying of the figures from the election returns to the statement of votes;

4) Election returns from non-existent precincts were included in the canvass;

5) Election returns from precinct of one barangay were included in the canvass for another barangay; and

6) There was a mistake in the addition of the votes of any candidate.

(b) If the manifest error is discovered before proclamation, the BBOC shall promulgate an order in writing for the correction of the manifest error. Then effect the necessary correction in the statement of votes/certificate of canvass and proclamation by crossing out the erroneous figures/entries to be initialed by the members of the BBOC and entering the correct figures/entries. The correction of manifest error made by the BBOC shall be recorded in the minutes of canvass.

Any candidate aggrieved by the said order may appeal the same to the Commission within twenty-four (24) hours from promulgation. The appeal must implead as respondents the board of canvassers concerned and all candidates that may be adversely affected.

Once an appeal is made, the board of canvassers shall not proclaim the winning candidate, unless the votes are not affected by the appeal.

Upon receipt of the appeal, the Clerk of Court concerned shall forthwith [issue] summons together with a copy of the appeal of the respondent. The Clerk of Court concerned shall immediately set the appeal for hearing. The appeal shall be heard and immediately decided by the Commission en banc.

(c) Manifest errors discovered after proclamation the same [sic] shall be filed by the board or any aggrieved party with the Commission.

Similarly, Arcilla claims that the COMELEC may order the BBOC of Barangay 201, Pasay City to reconvene and make the proper correction in the subject Election Return.<sup>62</sup> He argues that the *taras* prevail in case of a discrepancy between the number of *taras* and the written words and figures.<sup>63</sup> The applicable provision is Section 69(3) of COMELEC Resolution No. 9030 since the BBOC “should not have copied the figures

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<sup>62</sup> Id. at 119.

<sup>63</sup> Id. at 120.

from the election returns but should have given credit to the taras, this being the prevailing rule in canvassing.”<sup>64</sup>

This Court disagrees with Ceron and respondents as to the statutory and regulatory provisions applicable to this case. The applicable provisions are Section 216 of the Omnibus Election Code and Section 51 of COMELEC Resolution No. 9030. Section 216 of the Omnibus Election Code outlines the procedure for alterations and corrections in the election returns, thus:

SECTION 216. *Alterations and corrections in the election returns.*  
— Any correction or alteration made in the election returns by the board of election inspectors before the announcement of the results of the election in the polling place shall be duly initialed by all the members thereof.

After the announcement of the results of the election in the polling place has been made, the board of election inspectors shall not make any alteration or amendment in any of the copies of the election returns, unless so ordered by the Commission upon petition of the members of the board of election inspectors within five days from the date of the election or twenty-four hours from the time a copy of the election returns concerned is opened by the board of canvassers, whichever is earlier. The petition shall be accompanied by proof of service upon all candidates affected. If the petition is by all members of the board of election inspectors and the results of the election would not be affected by said correction and none of the candidates affected objects thereto, the Commission, upon being satisfied of the veracity of the petition and of the error alleged therein, shall order the board of election inspectors to make the proper correction on the election returns.

However, if a candidate affected by said petition objects thereto, whether the petition is filed by all or only a majority of the members of the board of election inspectors and the results of the election would be affected by the correction sought to be made, the Commission shall proceed summarily to hear the petition. If it finds the petition meritorious and there are no evidence or signs indicating that the identity and integrity of the ballot box have been violated, the Commission shall order the opening of the ballot box. After satisfying itself that the integrity of the ballots therein has also been duly preserved, the Commission shall order the recounting of the votes of the candidates affected and the proper corrections made on the election returns, unless the correction sought is such that it can be made without need of opening the ballot box. (*Sec. 169, 1978 EC*)

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<sup>64</sup>

Id.

Section 51 of COMELEC Resolution No. 9030 states:

SECTION 51. *Alterations and Corrections in the Election Returns.*

— Any correction or alteration made on the election returns by the BET before the announcement of the results of the elections in the precinct shall be duly initialed by all the members thereof.

After the announcement of the results of the elections in the precinct, the BET shall not make any alteration or amendment in any copy of the election returns, unless so ordered by the Commission.

Although Section 216 of the Omnibus Election Code refers to the Board of Election Inspectors, the provision is equally applicable to the BET. Section 51 of COMELEC Resolution No. 9030, promulgated by the COMELEC *En Banc* for the conduct of the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections, adopts Section 216 of the Omnibus Election Code. Furthermore, the primary duties of the Board of Election Inspectors and the BET are identical. In the conduct of regular or special elections, Section 168(a) of the Omnibus Election Code provides that the Board of Election Inspectors shall “[c]onduct the voting and counting of votes in their respective polling places.” In the conduct of barangay elections, Section 40(2) of the Omnibus Election Code states that the BET “shall supervise and conduct the election in their respective polling places, count the votes and thereafter prepare a report in triplicate on a form prescribed by the Commission.”

The Court considers the verified petition as one filed pursuant to Section 216 of the Omnibus Election Code and Section 51 of COMELEC Resolution No. 9030. The verified petition was filed with the COMELEC by all the members of the BET after the announcement of the results of the election has been made in Clustered Precinct Nos. 844A and 844B. It seeks to correct the erroneous entry in the Election Return of Clustered Precinct Nos. 844A and 844B, particularly the written words and figures which do not correspond to the number of *taras*. In the verified petition, Valdez, Pauig and Antonio, in their capacity as members of the BET, admitted that they

made an erroneous entry in the said Election Return with respect to the total number of votes received by Ceron.<sup>65</sup> They explained that through honest mistake, Pauig as the Poll Clerk recorded in written words and figures a total of fifty-six (56) votes for Ceron, instead of the 50 votes corresponding to the total number of *taras* recorded.<sup>66</sup> They claimed that Pauig incorrectly heard the number of votes dictated by the Chairman of the BET possibly due to “too much noise created by the watchers inside and outside of the polling precinct.”<sup>67</sup>

In correcting the erroneous entry, the COMELEC need not order the opening of the ballot box for the purpose of recounting the votes of the candidates affected. Section 216 of the Omnibus Election Code dispenses with the requirement of opening the ballot box and conducting a recount of the ballots if **“the correction sought is such that it can be made without the need of opening the ballot box.”**<sup>68</sup> The Court observes that the discrepancy between the *taras* and the written words and figures is apparent on the face of the subject Election Return. The discrepancy can be corrected by the BET without the necessity of opening the ballot box. The correction can be carried out by recounting the number of *taras* in the Election Return and revising the written words and figures to conform to the number of *taras*.

The correction of the discrepancy in the Election Return will therefore result in the deduction of six (6) votes from the total votes previously recorded for Ceron, particularly the previous 921 votes will be reduced to 915 votes. The resulting ranking of the three candidates affected, as correctly tabulated by the COMELEC First Division, will be as follows:

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<sup>65</sup> Id. at 42.

<sup>66</sup> Id.

<sup>67</sup> Id. at 43.

<sup>68</sup> Boldfacing supplied.



RANK	NAME	VOTES OBTAINED
6 <sup>th</sup>	CANLAS, Carla	Nine Hundred Twenty (920)
7 <sup>th</sup>	ARCILLA, Romeo	Nine Hundred Nineteen (919)

Dislodged	CERON, Antonia (previously proclaimed as 6 <sup>th</sup> in rank)	Nine Hundred Fifteen (915) <sup>69</sup>
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Consequently, the previous proclamation of Ceron and Canlas as the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) ranked Barangay Kagawads, respectively, must be annulled. After the BET has corrected the subject Election Return and the BBOC has corrected the corresponding Statement of Votes by Precinct, Canlas and Arcilla should be proclaimed as the duly elected sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) ranked Barangay Kagawads, respectively.

II.

Ceron further claims that the COMELEC does not have jurisdiction over the verified petition filed by Valdez, Pauig and Antonio in their capacity as members of the BET.<sup>70</sup> According to Ceron, the Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 dismissing the election protest filed by Arcilla has attained finality and therefore constitutes *res judicata*.<sup>71</sup> Ceron avers that the issues raised in the verified petition were already raised in the election protest filed by Arcilla.<sup>72</sup>

On the other hand, the COMELEC and Arcilla similarly argue that the dismissal of the election protest does not amount to *res judicata*. They claim that there is no identity of parties between the election protest and the

<sup>69</sup> Rollo, p. 91.  
<sup>70</sup> Id. at 13.  
<sup>71</sup> Id. at 14.  
<sup>72</sup> Id.

verified petition.<sup>73</sup> In addition, the dismissal of the election protest was not based on the merits but on technicality.<sup>74</sup>

The Court agrees with the arguments of the COMELEC and Arcilla. The Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 does not constitute *res judicata*. Although the issue on the discrepancy between the number of *taras* and the written words and figures in the Election Return was raised both in the election protest and the verified petition,<sup>75</sup> some of the requisites of *res judicata* are not present.

The doctrine of *res judicata* provides that “a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit.”<sup>76</sup> The following are the requisites of *res judicata* as a bar by prior judgment: (1) finality of the former judgment; (2) the court which rendered the judgment had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and causes of action.<sup>77</sup> The third and fourth requisites of *res judicata* as a bar by prior judgment are not present in the case.

The Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 is not a judgment on the merits. The Order dismissed the election protest filed by Arcilla based on technicality for failure of his petition to “specifically state the total number of precincts of the x x x Barangay concerned,” as required under Section 11(d) of A.M. No. 07-4-15-SC.<sup>78</sup> Section 13(b) of A.M. No. 07-4-15-SC states that the court shall

<sup>73</sup> Id. at 122-123, 152.

<sup>74</sup> Id.

<sup>75</sup> See *rollo*, pp. 32-33, 42-44.

<sup>76</sup> *Chu v. Spouses Cunanan*, G.R. No. 156185, 12 September 2011, 657 SCRA 379, 391.

<sup>77</sup> *Selga v. Brar*, G.R. No. 175151, 21 September 2011, 658 SCRA 108, 121.

<sup>78</sup> *Rollo*, p. 64.

summarily dismiss an election protest if “[t]he petition is insufficient in form and content as required in Section 11 hereof.”

There is also an absence of identity of parties between the election protest filed by Arcilla and the verified petition filed by Valdez, Pauig and Antonio. Identity of parties exists “where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity.”<sup>79</sup> The parties in the first and second actions are clearly not the same. There is also no privity between them and they are not successors-in-interest. The election protest was filed solely by Arcilla as a candidate in the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections, while the verified petition was filed by Valdez, Pauig and Antonio in their capacity as members of the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.

**WHEREFORE**, the petition is **DISMISSED** for lack of merit. The proclamation of Antonia P. Ceron and Carla Canlas as the sixth and seventh ranked Barangay Kagawads of Barangay 201, Pasay City, respectively, is hereby **ANNULLED**. Pursuant to Section 216 of the Omnibus Election Code, respondent COMELEC is **DIRECTED** to order the Board of Election Tellers of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay, City to **RECONVENE** in order to **CORRECT** the discrepancy between the number of *taras* and the written words and figures corresponding to the total number of votes received by Antonia P. Ceron in the subject Election Return of the said clustered precincts. Respondent COMELEC is further **DIRECTED** to order the Barangay Board of Canvassers of Barangay 201, Pasay City to **RECONVENE** in order to: (1) **CORRECT** the Statement of Votes by Precinct of Barangay 201, Pasay City on the basis of the corrected

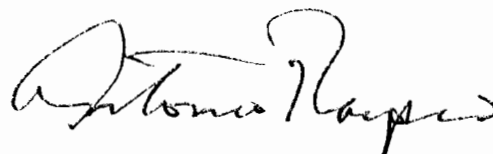
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<sup>79</sup> *Cagayan de Oro Coliseum, Inc. v. Court of Appeals*, 378 Phil. 498, 519 (1999).

Election Return; (2) **PREPARE** a new Certificate of Canvass of Votes and Proclamation of Winning Candidates on the basis of the corrected Statement of Votes by Precinct; and (3) **PROCLAIM** Carla Canlas and Romeo Arcilla as the duly elected sixth and seventh ranked Barangay Kagawads of Barangay 201, Pasay City, respectively.

The 1 July 2011 Resolution of the COMELEC First Division and the 11 October 2011 Resolution of the COMELEC *En Banc* are hereby **MODIFIED** accordingly.

**SO ORDERED.**




**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice

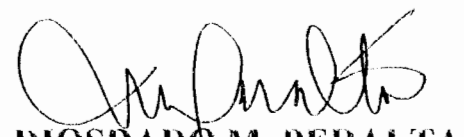


**PRESBITERO J. VELASCO, JR.**  
Associate Justice

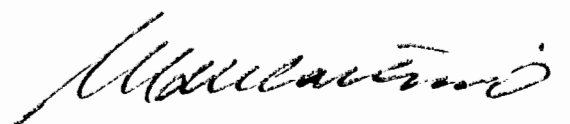


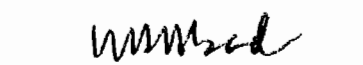
**TERESITA J. LEONARDO-  
DE CASTRO**  
Associate Justice

  
**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

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE C. MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

## **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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