

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**JOSE EMMANUEL L. CARLOS,
*Petitioner,***

-versus-

**G.R. No. 142907
November 29, 2000**

**HON. ADORACION G. ANGELES, IN
HER CAPACITY AS THE ACTING
PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT IN
CALOOCAN CITY (BRANCH 125) and
ANTONIO M. SERAPIO,
*Respondents.***

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DECISION

PARDO, J.:

The Case

The case before the Court is an original Special Civil Action for Certiorari and Prohibition with Preliminary Injunction or Temporary Restraining Order seeking to annul the decision of the Regional Trial Court, Caloocan City, Branch 125, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, the proclamation of the Protestee, Jose Emmanuel Carlos, by the Board of Canvassers is accordingly SET ASIDE.

“The Court hereby FINDS the Protestant, ANTONIO SERAPIO, as the DULY ELECTED MAYOR OF VALENZUELA CITY.

“SO ORDERED.”^[1]

The Facts

Petitioner Jose Emmanuel L. Carlos and respondent Antonio M. Serapio were candidates for the position of mayor of the municipality of Valenzuela, Metro Manila (later converted into a City) during the May 11, 1998 elections.

On May 21, 1998, the Municipal Board of Canvassers, Valenzuela, Metro Manila proclaimed petitioner as the duly elected mayor of Valenzuela having obtained 102,688 votes, the highest number of votes in the election returns.

On June 1, 1998, respondent Antonio M. Serapio who obtained 77,270 votes, the second highest number of votes, filed with the Regional Trial Court, Valenzuela, Metro Manila, an election protest challenging the results. Due to the inhibition of all judges of the Regional Trial Court in Valenzuela, the case was ultimately assigned to the Regional Trial Court, Caloocan City, Branch 125, presided over by respondent Judge Adoracion G. Angeles.

On June 26, 1998, petitioner filed with the trial court an answer with affirmative defenses and motion to dismiss. The court denied the motion to dismiss by order dated January 14, 1999. Petitioner elevated the order to the Commission on Elections (Comelec) on petition for certiorari and prohibition,^[2] which, however, has remained unresolved up to this moment.

In the course of the protest, the municipal treasurer of Valenzuela, who by law has custody of the ballot boxes, collected the ballot boxes and delivered them to the Regional Trial Court, Caloocan City. The

trial court conducted a pre-trial conference of the parties but it did not produce a substantial result as the parties merely paid superficial service and only agreed on the following:

1. Both parties admit their capacity to sue and be sued;
2. Both parties admit that the protestant was a candidate during the May 11, 1998 election;
3. Both parties admit that the protestee has been proclaimed as the elected mayor of Valenzuela, Metro Manila, on May 21, 1998;
4. Both parties admit that the protestee allegedly obtained 102,688 votes while the protestant obtained 77,270 votes per canvass of election returns of the Board of Canvassers.

The pre-trial was then concluded and the parties agreed to the creation of seven (7) revision committees consisting of a chairman designated by the court and two members representing the protestant and the protestee.

Meantime, on May 12, 1999, petitioner filed a consolidated motion that included a prayer for authority to photocopy all the official copies of the revision reports in the custody of the trial court. However, the trial court denied the issuance of such authorization.^[3] The court likewise denied a motion for reconsideration of the denial.^[4] Then petitioner raised the denial to the COMELEC on petition for certiorari and mandamus,^[5] which also remains unresolved until this date.

The Revision Results

The revision of the ballots showed the following results:

- (1) Per physical count of the ballots:
 - (a) protestant Serapio — 76,246 votes.
 - (b) protestee Carlos — 103,551 votes.

(2) Per revision, the court invalidated 9,697 votes of the protestant but validated 53 stray votes in his favor.

The court invalidated 19,975 votes of the protestee and validated 33 stray votes in his favor.

The final tally showed:

- (a) protestant Serapio — 66,602 votes.
- (b) protestee Carlos — 83,609 votes, giving the latter a winning margin of 17,007 votes.

The Trial Court's Ruling

Nevertheless, in its decision, the trial court set aside the final tally of valid votes because of its finding of “significant badges of fraud,” namely:

1. The keys turned over by the City Treasurer to the court did not fit into the padlocks of the ballot boxes that had to be forcibly opened;
2. Seven (7) ballot boxes did not contain any ballot and two (2) ballot boxes out of the seven (7) ballot boxes did not contain any election returns;
3. Some schools where various precincts were located experienced brownouts during the counting of votes causing delay in the counting although there was no undue commotion or violence that occurred; and
4. Some of the assigned watchers of protestant were not in their posts during the counting of votes.

On the basis of the foregoing badges of fraud, the trial court declared that there was enough pattern of fraud in the conduct of the election for mayor in Valenzuela. The court held that the fraud was attributable to the protestee who had control over the election

paraphernalia and the basic services in the community such as the supply of electricity.

On April 24, 2000, the trial court rendered a judgment ruling that the perpetuation of fraud had undoubtedly suppressed the true will of the electorate of Valenzuela and substituted it with the will of the protestee. Notwithstanding the plurality of valid votes in favor of the protestee, the trial court set aside the proclamation of protestee Jose Emmanuel Carlos by the Municipal Board of Canvassers and declared protestant Antonio M. Serapio -as the duly elected mayor of Valenzuela City.^[6]

Hearing news that the protestant had won the election protest, protestee secured a copy of the decision from the trial court on May 4, 2000. On the other hand, notice of the decision was received by the protestant on May 03, 2000.

On May 4, 2000, protestant filed with the trial court a motion for execution pending appeal.^[7] On May 4, 2000, the trial court gave protestee five (5) days within which to submit comment or opposition to the motion.^[8]

Petitioner's Appeal to Comelec

Meantime, on May 04, 2000, petitioner filed a notice of appeal from the decision of the trial court to the Commission on Elections.^[9]

The Petition at bar

On May 8, 2000, petitioner filed the present recourse.^[10]

Petitioner raised the following legal basis:

- (1) The Supreme Court has original jurisdiction to entertain special civil actions of certiorari and prohibition;
- (2) There are important reasons and compelling circumstances which justify petitioner's direct recourse to the Supreme Court;

- (3) Respondent judge committed grave abuse of discretion when she declared respondent Serapio as the duly elected mayor of Valenzuela despite the fact that she found that petitioner obtained 17,007 valid votes higher than the valid votes of respondent Serapio;
- (4) The assailed decision is contrary to law, based on speculations and not supported by the evidence as shown in the decision itself.^[11]

The Issues

The issues raised are the following:

1. Whether the Supreme Court has jurisdiction to review, by petition for certiorari as a special civil action, the decision of the regional trial court in an election protest case involving an elective municipal official considering that it has no appellate jurisdiction over such decision.
2. Whether the trial court acted without jurisdiction or with grave abuse of discretion when the court set aside the proclamation of petitioner and declared respondent Serapio as the duly elected mayor of Valenzuela City despite its finding that petitioner garnered 83,609 valid votes while respondent obtained 66,602 valid votes, or a winning margin of 17,007 votes.

TRO Issued

On May 8, 2000, we issued a temporary restraining order ordering respondent court to cease and desist from filing taking cognizance of Election Protest No. 14-V-98 more specifically from taking cognizance of and acting on the Motion for Execution Pending Appeal filed by respondent Serapio on May 4, 2000.^[12]

Respondent's Position

On May 15, 2000, respondent Serapio filed his comment with omnibus motion to lift the temporary restraining order and to declare

petitioner in contempt of court for violating the rule against forum shopping.^[13] He submitted that Comelec and not the Supreme Court has jurisdiction over the present petition for certiorari assailing the decision dated April 24, 2000 of the regional trial court. Assuming that this Court and Comelec have concurrent jurisdiction and applying the doctrine of primary jurisdiction, the Comelec has jurisdiction since petitioner has perfected his appeal therewith before the filing of the instant petition. Certiorari cannot be a substitute for an appeal; the present petition is violative of Revised Circular No. 28-91 on forum-shopping; issues raised are factual, not correctable by certiorari; and that the temporary restraining order should be lifted, the petition dismissed, and petitioner and counsel should be made to explain why they should not be punished for contempt of court.

The Court's Ruling

We find the petition impressed with merit.^[14]

I. The Supreme Court is vested with original jurisdiction to issue writs of certiorari, prohibition and mandamus against the decision of the regional trial court in the election protest case before it, regardless of whether it has appellate jurisdiction over such decision.

Article VIII, Section 5 (1) of the 1987 Constitution provides that:

“SECTION 5. The Supreme Court shall have the following powers:

“(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.”

X X X

Rule 65, Section 1 of the 1997 Rules of Civil Procedure, as amended, provides that:

“SECTION 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.”

By Constitutional fiat, the Commission on Election (Comelec) has appellate jurisdiction over election protest cases involving elective municipal officials decided by courts of general jurisdiction, as provided for in Article IX (C), Section 2 of the 1987 Constitution:

“SECTION 2. The Commission on Elections shall exercise the following powers and functions:

“(1) x x x

“(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.”

In like manner, the Comelec has original jurisdiction to issue writs of certiorari, prohibition and mandamus involving election cases in aid

of its appellate jurisdiction.^[15] This point has been settled in the case of *Relampagos vs. Cumba*,^[16] where we held:

“In the face of the foregoing disquisitions, the court must, as it now does, abandon the ruling in the *Garcia and Uy* and *Veloria* cases. We now hold that the last paragraph of Section 50 of B.P. Blg. 697 providing as follows:

The Commission is vested with exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases remains in full force and effect but only in such cases where, under paragraph (2), Section 1, Article IX-C of the Constitution, it has exclusive appellate jurisdiction. Simply put, the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition, and mandamus only in aid of its appellate jurisdiction.” (Emphasis ours).

Consequently, both the Supreme Court and Comelec have concurrent jurisdiction to issue writs of certiorari, prohibition, and mandamus over decisions of trial courts of general jurisdiction (regional trial courts) in election cases involving elective municipal officials. The Court that takes jurisdiction first shall exercise exclusive jurisdiction over the case.^[17]

Ergo, this Court has jurisdiction over the present petition of certiorari as a special civil action expressly conferred on it and provided for in the Constitution.

Relative to the appeal that petitioner filed with the COMELEC, the same would not bar the present action as an exception to the rule because under the circumstances, appeal would not be a speedy and adequate remedy in the ordinary course of law.^[18] The exception is sparingly allowed in situations where the abuse of discretion is not only grave and whimsical but also palpable and patent, and the invalidity of the assailed act is shown on its face.

II. Certiorari lies. The trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Its decision is void.

The next question that arises is whether certiorari lies because the trial court committed a grave abuse of discretion amounting to lack or excess of jurisdiction in deciding the way it did Election Protest Case No. 14-V-98, declaring respondent Serapio as the duly “elected” mayor of Valenzuela, Metro Manila.

In this jurisdiction, an election means “the choice or selection of candidates to public office by popular vote”^[19] through the use of the ballot, and the elected officials of which are determined through the will of the electorate.^[20] “An election is the embodiment of the popular will, the expression of the sovereign power of the people.”^[21] “Specifically, the term ‘election’, in the context of the Constitution, may refer to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes.”^[22] The winner is the candidate who has obtained a majority or plurality of valid votes cast in the election.^[23] “Sound policy dictates that public elective offices are filled by those who receive the highest number of votes cast in the election for that office. For, in all republican forms of government the basic idea is that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election.”^[24] In case of protest, a revision or recount of the ballots cast for the candidates decides the election protest case. The candidate receiving the highest number or plurality of votes shall be proclaimed the winner. Even if the candidate receiving the majority votes is ineligible or disqualified, the candidate receiving the next highest number of votes or the second placer, can not be declared elected.^[25] “The wreath of victory cannot be transferred from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration of election in favor of the person who has obtained a plurality of votes and does not entitle a candidate receiving the next highest number of votes to be declared elected.”^[26] In other words, “a defeated candidate cannot be deemed elected to the office.”^[27]

“Election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing election contests

must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case, the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. The Supreme Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.”^[28]

In this case, based on the revision of ballots, the trial court found that:

First, by canvass of the Municipal Board of Canvassers the results were:

Carlos	—	102,668 votes
Serapio	—	77,270 votes, or a winning margin of 25,418 votes
Ramon Ignacio	—	20 votes.

and consequently, the Board of Canvassers proclaimed petitioner Carlos the duly elected mayor of Valenzuela, Metro Manila.

Second, by physical count of the ballots, the results were:

Carlos	—	103,551 votes
Serapio	—	76,246 votes, or a winning margin of 27,305 votes.

Third, by revision of the ballots, the trial court found in a final tally that the “valid” votes obtained by the candidates were as follows:

Carlos	—	83,609 votes
Serapio	—	66,602 votes, or a winning margin of 17,007 votes.

Consequently, the final tally clearly showed petitioner Carlos as the overwhelming winner in the May 11, 1998 elections.

However, the trial court set aside the final tally of votes because of what the trial court perceived to be “significant badges of fraud” attributable to the protestee.^[29] These are:

First: The failure of the keys turned over by the City Treasurer to the trial court to fit the padlocks on the ballot boxes that compelled the court to forcibly open the padlocks. The trial court concluded that the real keys were lost or the padlocks substituted pointing to possible tampering of the contents of the ballot boxes.

Procedurally, the keys to the ballot boxes were turned over by the Board of Election Inspectors from the precinct level to the Municipal Board of Canvassers and finally to the municipal treasurer for safekeeping. The three-level turn-over of the keys will not prevent the possibility of these keys being mixed up. This is an ordinary occurrence during elections. The mere inability of the keys to fit into the padlocks attached to the ballot boxes does not affect the integrity of the ballots. At any rate, the trial court easily forced open the padlocks and found valid votes cast therein;

Second: Seven (7) ballot boxes were found empty. Thus, the trial court concluded that there were “missing ballots” and “missing election returns.” This is pure speculation without factual basis. “The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.”^[30] On the other hand, the Summary of Votes as revised does not show any unaccounted precinct or whether there was any precinct without any ballot or election returns. It is a standard procedure of the Commission on Elections (Comelec) to provide extra empty ballot boxes for the use of the Board of Election Inspectors or the Board of Canvassers, in case of necessity.

The empty ballot boxes found could be the empty reserve ballot boxes that were not used by the Board of Election Inspectors or the Board of Canvassers since there was neither proof nor even a claim of missing ballots or missing election returns.

Third: Some schoolhouses experienced brownout during the counting of votes. There was nothing extraordinary that would invite serious doubts or suspicion that fraud was committed during the brownout that occurred. Indeed, one witness stated that it was the first time

that he observed brownout in Dalandanan Elementary School and another stated that the brownout was localized in Coloong Elementary School. Since counting of votes lasted until midnight, the brownouts had caused only slight delay in the canvassing of votes because the election officials availed themselves of candles, flashlights and emergency lights. There were no reports of cheating or tampering of the election returns. In fact, witnesses testified that the counting of votes proceeded smoothly and no commotion or violence occurred. So, the brownouts had no effect on the integrity of the canvass.

Fourth: The absence of watchers for candidate Serapio from their posts during the counting of votes. This cannot be taken against candidate Carlos since it is the candidate's own look-out to protect his interest during the counting of votes and canvassing of election returns. As long as notices were duly served to the parties, the counting and canvassing of votes may validly proceed in the absence of watchers. Otherwise, candidates may easily delay the counting of votes or canvassing of returns by simply not sending their watchers. There was no incomplete canvass of returns, contrary to what the trial court declared. The evidence showed complete canvass in Valenzuela, Metro Manila.^[31]

“We cannot allow an election protection such flimsy averments to prosper, otherwise, the whole election process will deteriorate into an endless stream of crabs pulling at each other, racing to disembank from the water.”^[32]

Assuming for the nonce that the trial court was correct in holding that the final tally of valid votes as per revision report may be set aside because of the “significant badges of fraud”, the same would be tantamount to a ruling that there were no valid votes cast at all for the candidates, and, thus, no winner could be declared in the election protest case. In short, there was failure of election.

In such case, the proper remedy is an action before the Commission on Elections en banc to declare a failure of election or to annul the election.^[33] However, the case below was an election protest case involving an elective municipal position which, under Section 251 of the Election Code, falls within the exclusive original jurisdiction of the appropriate regional trial court.^[34]

Nonetheless, the annulment of an election on the ground of fraud, irregularities and violations of election laws may be raised as an incident to an election contest. Such grounds for annulment of an election may be invoked in an election protest case. However, an election must not be nullified and the voters disenfranchised whenever it is possible to determine a winner on the basis of valid votes cast, and discard the illegally cast ballots. In this case, the petitioner admittedly received 17,007 valid votes more than the protestee, and therefore the nullification of the election would not lie. The power to nullify an election must be exercised with the greatest care with a view not to disenfranchise the voters, and only under circumstances that clearly call for such drastic remedial measure.^[35]

As heretofore stated, in this jurisdiction, elections are won on the basis of a majority or plurality of votes cast and received by the candidates. “The right to hold an elective office is rooted on electoral mandate, not perceived entitlement to the office.”^[36]

More importantly, the trial court has no jurisdiction to declare a failure of election.^[37]

Section 6 of the Omnibus Election Code provides that:

“SECTION 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 of 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 election not held, suspended or which resulted in a failure to elect but not later than thirty (30) days after the

cessation of the cause of such postponement or suspension of the election or failure to elect.” (Emphasis supplied)

Likewise, RA 7166 provides that:

“SECTION 4. Postponement, Failure of Election and Special Elections.” — The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.” (Emphasis supplied)

It is the Commission (Comelec) sitting en banc that is vested with exclusive jurisdiction to declare a failure of election.^[38]

“In a petition to annul an election under Section 6, Batas Pambansa Blg. 881, two conditions must be averred in order to support a sufficient cause of action. These are: (1) the illegality must affect more than 50% of the votes cast and (2) the good votes can be distinguished from the bad ones. It is only when these two conditions are established that the annulment of the election can be justified because the remaining votes do not constitute a valid constituency.”^[39]

We have held that: “To declare a failure of election, two (2) conditions must occur: first, no voting has taken place in the precincts concerned on the date fixed by law or, even if there were voting, the election nevertheless resulted in a failure to elect; and, second, the votes not cast would affect the result of the election.”^[40] Neither of these conditions was present in the case at bar.

More recently, we clarified that, “Under the pertinent codal provision of the Omnibus Election Code, there are only three (3) instances where a failure of elections may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force

majeure, violence, terrorism, fraud, or other analogous causes; or (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.”^[41]

Thus, the trial court in its decision actually pronounced a failure of election by disregarding and setting aside the results of the election. Nonetheless, as herein-above stated, the trial court erred to the extent of ousting itself of jurisdiction because the grounds for failure of election were not significant and even non-existent. More importantly, the commission of fraud can not be attributed to the protestee. There was no evidence on record that protestee had a hand in any of the irregularities that protestant averred. It is wrong for the trial court to state that the protestee had control over the “election paraphernalia” or over electric services. The Commission on Elections has control over election paraphernalia, through its officials and deputies.^[42] The Comelec can deputize with the concurrence of the President, law enforcement agencies and instrumentalities of the government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.^[43] On the other hand, electric utility services in Metro Manila, including Valenzuela are under the control of its franchise holder, particularly the Manila Electric Company, a public service company, certainly not owned or controlled by the protestee. In fact, during election period, Comelec has control over such utilities as electric and even telephone service.^[44] What is important, however, is that the voters of Valenzuela were able to cast their votes freely and fairly. And in the election protest case, the trial court was able to recount and determine the valid votes cast.

Assuming that the trial court has jurisdiction to declare a failure of election, the extent of that power is limited to the annulment of the election and the calling of special elections.^[45] The result is a failure of election for that particular office. In such case, the court can not declare a winner.^[46] A permanent vacancy is thus created. In such eventuality, the duly elected vice-mayor shall succeed as provided by law.^[47]

We find that the trial court committed a grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its decision proclaiming respondent Serapio the duly elected mayor of Valenzuela, Metro Manila, on the basis of its perception of the voice of the people of Valenzuela, even without a majority or plurality votes cast in his favor. In fact, without a single vote in his favor as the trial court discarded all the votes. Thus, the decision is not supported by the highest number of valid votes cast in his favor. This violated the right to due process of law of petitioner who was not heard on the issue of failure of election, an issue that was not raised by the protestant. “A decision is void for lack of due process if, as a result, a party is deprived of the opportunity of being heard.”^[48] The trial court can not decide the election protest case outside the issues raised. If it does, as in this case, the trial court is ousted of its jurisdiction. Likewise, it is a basic principle that a decision with absolutely nothing to support it is void.^[49] “A void decision may be assailed or impugned at any time either directly or collaterally, by means of a petition filed in the same case or by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked.”^[50] Here, the trial court indulged in speculations on its view of the voice of the people, and decided the case disregarding the evidence, but on its own intuition, ipse dixit.^[51] How was this voice communicated to the trial court? Certainly not by competent evidence adduced before the court as it should be, but by extra-sensory perception. This is invalid in law. Contrary to its own finding that petitioner obtained 83,600 valid votes against 66,602 valid votes for the respondent as second placer, or a plurality of 17,007 votes, the trial court declared the second placer as the winner. This is a blatant abuse of judicial discretion by any account. It is a raw exercise of judicial function in an arbitrary or despotic manner, amounting to evasion of the positive duty to act in accord with law.^[52]

In a special civil action for certiorari, the burden is on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent Judge. “By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must

be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.”^[53] We must emphasize that election to office is determined by the highest number of votes obtained by a candidate in the election.

The Judgment

WHEREFORE, the Court **GRANTS** the petition. The Court **ANNULS** and **DECLARES VOID** the decision dated April 24, 2000 of the trial court in Election Protest Case No. V-14-98.

The temporary restraining order we issued on May 8, 2000, is made permanent.

Let Election Protest Case No. V-14-98 be remanded to the trial court for decision within a non-extendible period of fifteen (15) days from notice of this decision. The judge shall report to this Court on the decision rendered within five (5) days from rendition submitting a copy thereof to the Office of the Clerk of Court en banc.

This decision is immediately executory.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago and De Leon, Jr., JJ., concur.

[1] In Election Protest No. 14-V-98, Petition, Annex “A”, Rollo, pp. 38-59.

[2] Docketed as SPR No. 7-99.

[3] Per Order dated August 6, 1999.

[4] Per Order dated September 9, 1999.

[5] Docketed as SPR No. 50-99.

[6] Petition, Annex “A”, pp. 38-69.

[7] Petition, Annex “B”, pp. 70-72.

[8] Petition, Annex “C”, Rollo, p. 73.

[9] Comment, Annex “A”, Rollo, p. 95.

- [10] Petition filed on May 8, 2000, Rollo, pp. 5-37.
- [11] Petition, pp. 13-14, Rollo, pp. 17-18.
- [12] Rollo, pp. 73-A to 73-B.
- [13] Comment, etc., Rollo, pp. 74-94.
- [14] Considering the petition and the comment thereon, we resolve to give due course to the petition.
- [15] B.P. Bilang 697, Section 50.
- [16] 243 SCRA 690 [1995]; See also *Edding vs. Commission on Elections*, 246 SCRA 502 [1995]; *Camlian vs. Commission on Elections*, 338 Phil. 474, 479 [1997].
- [17] *Wilson Ong Ching Kian Chung vs. China National Cereal Oil and Foodstuffs Import and Export Corporation*, G.R. No. 131502, June 8, 2000, citing *Viva Productions, Inc. vs. Court of Appeals*, 336 Phil. 642 [1997]; *Panlilio vs. Salonga*, 233 SCRA 476, 482-483 [1994].
- [18] Moran, *Comments on the Rules of Court*, Vol. III, 1997 ed. pp. 226-228.
- [19] *Gonzales vs. Commission on Elections*, 129 Phil. 7, 33 [1967]; *Taule vs. Santos*, 200 SCRA 512, 519 [1991].
- [20] *Taule vs. Santos*, supra, Note 19.
- [21] *Taule vs. Santos*, supra, Note 19, p. 519, citing *Hontiveros vs. Altavos*, 24 Phil. 636 [1913].
- [22] *Taule vs. Santos*, supra, Note 19, p. 519, citing *Javier vs. Commission on Elections*, 228 Phil. 193, 205 [1986].
- [23] Cf. *Sunga vs. Commission on Elections*, 351 Phil. 310, 326 [1998].
- [24] *Geronimo vs. Ramos*, 136 SCRA 435, 446-447 [1985].
- [25] *Aquino vs. Commission on Elections*, 248 SCRA 400, 425-429 [1995]; *Reyes vs. Commission on Elections*, 324 Phil. 813, 831 [1996]; *Labo, Jr. vs. Commission on Elections*, 211 SCRA 297, 311 [1992]; *Garvida vs. Sales*, 338 Phil. 484, 504 [1997]; *Nolasco vs. Commission on Elections*, 341 Phil. 761, 778-779 [1997]; *Abella vs. Commission on Elections*, 201 SCRA 253, 275-277 [1991].
- [26] *Sunga vs. Commission on Elections*, supra, Note 23.
- [27] *Garvida vs. Sales*, supra, Note 25.
- [28] *Benito vs. Commission on Elections*, 235 SCRA 436, 442 [1994]; *Juliano vs. Court of Appeals*, 127 Phil. 207, 219 [1967]; *Tatlonghari vs. Commission on Elections*, 199 SCRA 849, 858-859 [1991]; *Duremdes vs. Commission on Elections*, 178 SCRA 746, 759 [1989].
- [29] *Supra*, p. 6.
- [30] *People vs. Ganan*, 333 Phil. 84, 116 [1996].
- [31] See Exhs. "B" to "B-64", in relation to Exhs. "J", "J-1" to "J-63"; See also Exhs. "85" to "1230".
- [32] *Peña vs. House of Representatives Electoral Tribunal*, 337 Phil. 70, 78 [1997].
- [33] *Loong vs. Commission on Elections*, 326 Phil. 790, 807 [1996]; *Garay vs. Commission on Elections*, 329 Phil. 972 [1996].
- [34] *Borja vs. Commission on Elections*, 329 Phil. 409, 414 [1996].

- [35] Ruiz vs. Commission on Elections, G.R. No. 105324, March 11, 1993, en banc, min. res., cited in Martinez, Summary of 1993 Supreme Court Rulings, January to June 1993, Part 1, Political Law, p. 245.
- [36] Robles vs. HRET, 181 SCRA 780, 786 [1990].
- [37] Omnibus Election Code, Section 6.
- [38] Loong vs. Commission on Elections, supra, Note 33, at p. 807; Garay vs. Commission on Elections, supra, Note 33.
- [39] Ruiz vs. Commission on Elections, supra, Note 35, Martinez, op. cit., at p. 244.
- [40] Loong vs. Commission on Elections, supra, Note 33, at p. 808; Typoco, Jr. vs. Commission on Elections, G. R. No. 136191, November 29, 1999, citing Mitmug vs. Commission on Elections, 230 SCRA 54, 60 [1994].
- [41] Sison vs. Commission on Elections, 304 SCRA 170, 175 [1999].
- [42] Article IX C, Sec. 2, Constitution; B.P. Blg. 881, as amended, Section 52.
- [43] Ibid., Sec. 2 (4).
- [44] Ibid., Sec. 4.
- [45] Cf. Hassan vs. Commission on Elections, 332 Phil. 144, 157 [1996].
- [46] Sunga vs. Commission on Elections, supra, Note 23 at p. 325-326.
- [47] Sunga vs. Commission on Elections, supra, Note 23, at p. 327 citing Nolasco vs. Commission on Elections, supra, Note 25, at pp. 777-778; Geronimo vs. Ramos, supra, Note 24.
- [48] The Summary Dismissal Board etc. vs. Torcita, G.R. No. 130442, April 6, 2000, citing Palu-ay vs. Court of Appeals, 293 SCRA 358 [1998]; David vs. Aquilizan, 94 SCRA 707, 714 [1979].
- [49] Moran, Comments on the Rules of Court, Vol. II, 1996 ed., pp. 211-212, citing Yangeo vs. Court of First Instance of Manila, 29 Phil. 183, 191 [1932]; Air France vs. Carrascoso, 124 Phil. 722 [1966]; DBP vs. Bautista, 135 Phil. 201 [1968].
- [50] Ang Lam vs. Rosillosa, 86 Phil. 447, 452 [1950].
- [51] To borrow the term used in Yao vs. Court of Appeals, G. R. No. 132428, October 24, 2000.
- [52] Moran, Comments on the Rules of Court, Vol. III, 1997 ed., p. 221.
- [53] Don Orestes Romualdez vs. NLRC, G. R. No. 128389, November 25, 1999, citing Solvic Industrial Corporation vs. NLRC, 296 SCRA 432, 441 [1998]; Tomas Claudio Memorial College, Inc. vs. Court of Appeals, G. R. No. 124262, October 12, 1999.