



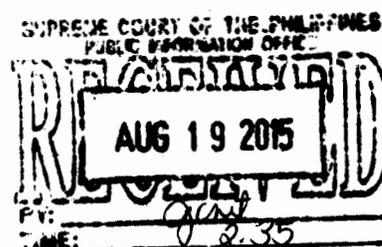
Republic of the Philippines

Supreme Court

Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JULY 14, 2015**, which reads as follows:

“G.R. No. 207337 – BANGON PILIPINAS, represented by BISHOP LEONARDO ALCONGA and in behalf of BRO. EDDIE C. VILLANUEVA, Petitioner, v. COMMISSION ON ELECTIONS, CHAIRMAN HON. SIXTO S. BRILLANTES, JR., COMMISSIONERS LUCENITO N. TAGLE, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM, MA. GRACIA CIELO M. PADACA, LOUIE TITO GUIA, and AL A. PARRENO, SMARTMATIC ASIA PACIFIC and DOMINION VOTING SYSTEM CORPORATION, Respondents.

In this Petition for *Certiorari*, Prohibition and Mandamus under Rule 65 of the Rules of Court, political party Bangon Pilipinas, on behalf of senatorial candidate Bro. Eddie Villanueva, represented by Bishop Leonardo Alconga, seeks from this Court a judgment:

a. Issuing a writ of *certiorari* declaring as null and void, the proclamations of the Senators made by public respondents and all acts in the conduct of 2013 elections insofar as the candidates for senators are concerned by conducting manual recount of the 78,000 precincts because of the discrepancies in the results of the 2013 mid-term elections that brought about the manipulation of 37 million votes, to disregard the pre-programmed and manipulated results of the election with the senators only;

b. Ordering by writ of mandamus the public respondents to comply with their mandate and obligations under R.A. No. 9363, and conduct the canvassing in accordance with law and jurisprudence, and the proclamation legally and lawfully by relying of COC and by conducting a manual count of the results of the election;

c. Ordering the respondents by writ of prohibition to stop using the PCOS machines and the [Automated] Election System of Smartmatic and the “source code” of Dominion Voting System Corporation until this Honorable Court has resolved on their fitness and propriety;

J. B. Villanueva

d. Ordering the COMELEC not to use Automated Election System using PCOS in the October 13, 2013 Barangay Elections and subsequent elections until the matters based herein are finally resolved[.]¹

Petitioner Bangon Pilipinas – in taking the cudgels for Bro. Eddie Villanueva, who placed 19th overall among the 33 candidates vying for the 12 Senate seats in the 2013 elections – base the alleged nullity of the proclamation of the twelve senators as the winners on the following grounds²:

1. Petitioner claims that public respondent Commission on Elections (COMELEC) practically privatized the electoral process and left it to the control and supervision of private respondents Smartmatic Asia Pacific (Smartmatic) and Dominion Voting System Corporation (Dominion);

2. Petitioner argues that Smartmatic violated the Bid Specifications of the COMELEC by not putting in its financial bid any amount for the provision of the Digital Signatures of the Board of Election Inspectors; by using Compact Flash (CF) Cards for data storage which can be written over many times, instead of using WORM (write once, read many) technology; and by the alleged fact that Smartmatic is not the owner of the technology but outsourced the same to Dominion, in alleged violation of the Bid Specifications of the COMELEC and the Philippine Procurement Law;

3. Petitioner claims that the COMELEC prematurely proclaimed the twelve winning senatorial candidates in the 2013 elections based on a “projection using grouped canvass reports” which allegedly has no basis in law;

4. Petitioner claims that “it is common knowledge” that the source codes used for the 2013 elections were not made available for review;

5. Petitioner claims that the PCOS machines used are not capable of producing digital signatures; and

6. Petitioner claims that the canvassed returns showed that they were programmed to produce a “60-30-10” pattern, wherein 60% of the votes favored Team PNoy, 30% of the votes went to the United Nationalist Alliance (UNA), and the remaining 10% of the votes went to small parties and independent candidates including petitioner Villanueva. Petitioner claims that this is statistically improbable.

On January 6, 2015, petitioner filed an Urgent Application for Temporary Restraining Order/Preliminary Injunction praying that public respondents be enjoined from “using the PCOS machines in the 2016

¹ *Rollo*, Vol. II, p. 1109.

² *Id.* at 1092-1108.

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Presidential Election or any other PCOS machines whether by purchase or loan or any other mode of acquisition including bidding or award, until further orders from this Honorable Court.”³

Respondents COMELEC and Smartmatic filed their responsive pleadings and essentially assailed Bangon Pilipinas’s petition and prayers for injunctive relief as deficient in both form and substance.

After a thorough review of the issues raised, the Court finds that the petition cannot be given due course.

Impropriety of the Petition for *Certiorari* before this Court.

The joinder of other issues notwithstanding, petitioner’s prayer and arguments to declare the nullity of the proclamation of the twelve winning senators in the 2013 National Elections show that the Petition is, as respondents correctly contend, an *election contest*. Pertinently, Section 17, Article VI of the Constitution provides:

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the **sole judge of all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

The phrase “election, returns and qualifications” refers to all matters affecting the validity of the contestee’s title. Particularly, the term “*election*” refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; “*returns*” refers to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and “*qualifications*” refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.⁴

In *Barbers v. Commission on Elections*,⁵ where petitioner Robert Barbers similarly alleged in a *certiorari* petition before this Court that the proclamation of Rodolfo Biazon was illegal and premature for having been

³ Id. at 1345.

⁴ *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 725 (2007).

⁵ 499 Phil. 570, 584-585 (2005).

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based on an incomplete canvass, we held that the word “sole” in Section 17, Article VI of the Constitution underscores the categorical and complete jurisdiction of the Senate Electoral Tribunal (SET) over election contests relating to members of the Senate, to the exclusion of all other tribunals, including this Court itself:

The word “sole” in Section 17, Article VI of the 1987 Constitution and Rule 12 of the Revised Rules of the Senate Electoral Tribunal (“SET”) underscores the exclusivity of the SET’s jurisdiction over election contests relating to members of the Senate. The authority conferred upon the SET is categorical and complete. It is therefore clear that this Court has no jurisdiction to entertain the instant petition. Since Barbers contests Biazon’s proclamation as the 12th winning senatorial candidate, it is the SET which has exclusive jurisdiction to act on Barbers’ complaint.

The assertion of other issues relating to the conduct of the canvassing does not divest the SET of its exclusive jurisdiction. Thus, in *Pimentel III v. Commission on Elections*,⁶ this Court held:

Pimentel further claims that he is not challenging Zubiri’s proclamation, but rather the conduct of the proceedings before the NBC and the SPBOC-Maguindanao. This is just a roundabout argument. Pimentel cannot deny that he assails the canvass proceedings because he believes that the annulment and setting aside thereof would result in his winning as the twelfth Senator in the 14 May 2007 elections; and if he is the rightful winner, then logically and necessarily, Zubiri’s proclamation must also be annulled and set aside.

Consequently, *certiorari* will not lie considering that there is an available and adequate remedy in the ordinary course of law for petitioner. Considering the proclamation of twelve candidates as the winners of the 2013 senatorial elections, their taking of their oaths, and their assumption of office, petitioner’s remedy was an electoral contest before the SET.⁷ The alleged statistical improbability of the result, irregularities in the conduct of the canvass proceedings, perceived glitches in the automated election process, and all other matters which may affect the result of the election should therefore be brought up in an election contest filed before the SET. Indeed, the petition is replete with factual allegations that must be threshed out in the proper proceedings before the tribunal with jurisdiction over the same. This is in line with the fundamental principle that this Court is not a trier of facts and is not equipped to receive evidence and determine the truth of factual allegations.⁸

The alleged privatization of the election process and unsatisfactory system capabilities of the PCOS

⁶ 571 Phil. 596, 639-640 (2008).

⁷ Id. at 639. See also *Aggabao v. Commission on Elections*, 490 Phil. 285, 291 (2005).

⁸ *Ejercito v. Commission on Elections*, G.R. No. 212398, November 25, 2014.

Aggabao

machines are issues that have already been passed upon by the Court.

In *Roque, Jr. v. Commission on Elections*,⁹ several petitioners sought the nullification of the COMELEC-Smartmatic-TIM Corporation automation contract on the ground that it supposedly constitutes a wholesale abdication of the poll body's constitutional mandate for election law enforcement. After an exhaustive series of oral arguments and deliberations, this Court held that the COMELEC's mandate and responsibility under the Constitution were not abdicated in the employment of an automated election. Significantly, this Court held:

With the view we take of the automation contract, the role of Smartmatic TIM Corporation is basically to supply the goods necessary for the automation project, such as but not limited to the PCOS machines, PCs, electronic transmission devices and related equipment, both hardware and software, and the technical services pertaining to their operation. As lessees of the goods and the back-up equipment, the corporation and its operators would provide assistance with respect to the machines to be used by the Comelec which, at the end of the day, will be conducting the election thru its personnel and whoever it deputizes.

This Court went on to add that the COMELEC, with its "awesome functions as overseer of fair elections, administrator and lead implementor of laws relative to the conduct of elections," should be afforded ample elbow room and enough wherewithal in devising means and initiatives that would enable it to accomplish the great objective for which it was created — to promote free, orderly, honest and peaceful elections.¹⁰

Furthermore, this Court, in resolving the Motion for Reconsideration in *Capalla v. Commission on Elections*, emphasized that it had already passed upon in *Roque* the issues concerning (1) the compliance of the subject PCOS machines with minimum system capabilities required by law; and (2) the supposed abdication of the COMELEC's exclusive power in the conduct of elections — which are the very same issues being raised in the case at bar:

Lastly, we need not further discuss the issues raised by movants on the alleged glitches of the subject PCOS machines, their compliance with the minimum system capabilities required by law, and the supposed abdication of the Comelec's exclusive power in the conduct of elections as these issues have been either thoroughly discussed in the assailed decision or in the earlier case of *Roque, Jr. v. Commission on Elections*.¹¹

⁹ 615 Phil. 149, 232 (2009).

¹⁰ Id. at 238.

¹¹ *Capalla v. Commission on Elections*, G.R. No. 201112, October 23, 2012, 684 SCRA 367, 386.

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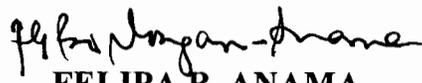
Petitioner has failed to demonstrate that it is entitled to injunctive relief.

As jurisprudence dictates, these requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue: (1) the applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) there is a material and substantial invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.¹²

Evaluating petitioner's requests for the Court to enjoin the use of the subject PCOS machines in the 2016 Presidential Election or in any future election against the foregoing jurisprudential standard, we are hard put to grant Bangon Pilipinas any injunctive relief in this case now before the Court. Quite apart that, as discussed, petitioner should have pursued the proper remedy by filing an election protest, the Court cannot issue an injunction based on factual matters yet to be established and solely on legal arguments already debunked in past case precedents.

WHEREFORE, the Petition for *Certiorari*, Prohibition and Mandamus is hereby **DISMISSED**. The prayers for temporary restraining order and/or petition for injunction in the Petition and in the Urgent Application for Temporary Restraining Order/Preliminary Injunction filed on January 6, 2015 are hereby **DENIED**." Carpio, Brion, Reyes and Jardeleza, JJ., on leave. (26)

Very truly yours,


FELIPA B. ANAMA
Clerk of Court 

¹² *Ermita v. Aldecoa-Delorino*, 666 Phil. 122, 136-137 (2011).

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A handwritten signature in black ink, appearing to read "M. Misador", is written over the bottom right portion of the text for Dominion Voting System Corporation.