

MARGARITO C. SULIGUIN, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF NAGCARLAN, LAGUNA, AND PROMULGATED: ECELSON C. SUMAGUE, RESPONDENTS.

G.R. NO. 166046. March 23, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court seeking to reverse the Resolution [1] of the Commission on Elections (Comelec) En Banc in SPC No. 04-209 dated November 18, 2004 which denied petitioner Margarito Suliguin's motion for reconsideration of the July 21, 2004 Resolution [2] of the Comelec's First Division. The Comelec nullified his proclamation as the 8th Sangguniang Bayan member of Nagcarlan, Laguna.

The antecedents are as follows:

Petitioner Margarito Suliguin was one of the candidates for the Sangguniang Bayan of Nagcarlan, Laguna during the May 10, 2004 elections. At around 6:00 p.m. on said date, respondent Municipal Board of Canvassers (MBOC) convened to canvass the votes for all the candidates. Petitioner received 6,605 votes while respondent Ecelson Sumague received 6,647 votes. However, in the Statement of Votes (SOV) covering Precincts 1A to 19A, Sumague appears to have received only 644 votes when, in fact, he received 844 votes. The MBOC failed to notice the discrepancy and proclaimed the winning candidates at around 7:00 p.m. of May 13, 2004. Petitioner was proclaimed as the 8th Sangguniang Bayan member of Nagcarlan, Laguna, garnering a total of 6,605 votes. [3]

Thereafter, Sumague requested for a recomputation of the votes received by him and Suliguin in a Letter [4] dated May 15, 2004, it appearing that there was a mistake in adding the figures in the Certificate of Canvass of votes. He pointed out that he officially garnered 6,647 votes, as against petitioner's 6,605 votes.

The MBOC summoned petitioner and respondent Sumague to a conference. Upon review, the MBOC discovered that it had, indeed, failed to credit respondent Sumague his 200 votes from Precincts 1A to 19A, and that with his 6,647 votes, he should have been proclaimed as the 8th Sangguniang Bayan member of Nagcarlan, Laguna, instead of petitioner Suliguin.

On May 26, 2004, the MBOC filed before the Comelec a "Petition to Correct Entries Made in the Statement of Votes" for Councilor. The error was attributed to extreme physical and mental fatigue which the members of the board experienced during the election and the canvassing of votes.

In the meantime, on June 9, 2004, petitioner took his oath of office before Judge Renato B. Bercades. [5]

On July 21, 2004, the Comelec (First Division) issued a Resolution [6] granting the petition of the MBOC. The Commission nullified the proclamation of petitioner Suliguin as the 8th Sangguniang Bayan member of

Nagcarlan, Laguna during the May 10, 2004 National and Local Elections "for being based on an erroneous computation of votes." It then ordered the MBOC of Nagcarlan, Laguna to reconvene and effect the necessary corrections in the SOV, and forthwith proclaim Sumague as the 8th duly elected Sangguniang Bayan member of Nagcarlan, Laguna. [7]

Petitioner moved for the reconsideration of the resolution but the Comelec En Banc denied the motion on November 18, 2004; hence, this petition. Petitioner alleges that respondent Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling against him. In support of his petition, he alleges that:

4.1 THE "PETITION TO CORRECT ENTRIES MADE IN THE STATEMENT OF VOTES FOR COUNCILOR, NAGCARLAN, LAGUNA" WAS UNDISPUTEDLY FILED OUT OF TIME, and

4.2 "THE PETITION TO CORRECT ENTRIES MADE IN THE STATEMENT OF VOTES FOR COUNCILOR, NAGCARLAN, LAGUNA" WAS FILED BY THE MUNICIPAL BOARD OF CANVASSERS IN DEFIANCE OF EXISTING COMELEC RULES AND REGULATIONS AND WAS OBVIOUSLY BIAS IN FAVOR OF PRIVATE RESPONDENT CANDIDATE ECELSON C. SUMAGUE. [8]

Petitioner argues that pursuant to Sections 35, [9] 36(c) and (f) [10] of Comelec Resolution No. 6669 (General Instructions for Municipal/City/Provincial and District Boards of Canvassers in Connection with the May 10, 2004 Elections), the MBOC should not have entertained the letter-request of respondent Sumague as it was filed only on May 17, 2004, or four (4) days after the canvassing of votes was terminated and after he (petitioner) was proclaimed winner as the 8th Sangguniang Bayan member of Nagcarlan, Laguna. Furthermore, respondent Sumague never entered any objection during the proceedings of the canvassing of votes. The MBOC itself filed the "Petition to Correct Entries Made in the Statement of Votes" before the Comelec only on May 26, 2004, 13 days after the canvassing of votes was terminated. Petitioner maintains that the Comelec should have denied the petition, since according to the Revised Comelec Rules, it should have been filed not later than five (5) days following the date of the proclamation.

Petitioner likewise questions the personality of the MBOC itself to file the petition before the Comelec. He further argues that upon the proclamation of the winning candidates in the election, the MBOC adjourns sine die and becomes functus officio.

The issue is whether or not respondent Comelec erred in granting the petition of the MBOC to nullify petitioner's proclamation as the 8th member of the Sangguniang Bayan in Nagcarlan, Laguna.

The petition is bereft of merit.

In an election case, the Comelec is mandated to ascertain by all means within its command who the real candidate elected by the electorate is. The 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. [11] In the case at bar, the simple mathematical procedure of adding the total number of votes garnered by respondent Sumague as appearing in the Statement of Votes submitted to the Comelec would readily reveal the result that he has forty-two (42) votes more than petitioner. Such result would, in effect, dislodge petitioner from said post, and entitle respondent Sumague to occupy the eighth and last seat of the Sangguniang Bayan of Nagcarlan, Laguna. Petitioner himself never disputed the discrepancy in the total number of votes garnered by respondent Sumague, and instead questioned the personality of the MBOC to file the petition and insisted that such petition was not filed on time.

Sections 3 [12] and 4 [13] of Rule 1 of the Comelec Rules of Procedure explicitly provide that such rules may be "liberally construed" in the interest of justice. Indeed, the Comelec has the discretion to liberally construe its rules and, at the same time, suspend the rules or any portion thereof in the interest of justice. [14] Disputes in the outcome of elections involve public interest; as such, 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 such disputes 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. [15]

What is involved in the present petition is the correction of a manifest error in reflecting the actual total number of votes for a particular candidate. Section 32, subparagraph 5 of Comelec Resolution No. 6669 includes mistake in the addition of the votes of any candidate as a manifest error. [16] As correctly cited by the Comelec, [17] a manifest clerical error is "one that is visible to the eye or obvious to the understanding and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have been committed."

The MBOC sought relief from the Comelec to reflect the true winner elected by the voting public, to occupy the eighth position as member of the Sangguniang Bayan of Nagcarlan, Laguna. In *Carlos v. Angeles*, [18] the Court had the occasion to declare:

In this jurisdiction, an election means "the choice or selection of candidates to public office by popular vote" through the use of the ballot, and the elected officials of which are determined through the will of the electorate. "An election is the embodiment of the popular will, the expression of the sovereign power of the people." "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." The winner is the candidate who has obtained a majority or plurality of valid votes cast in the election. "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." [19]

We quote, with approval, the ruling of the Comelec (First Division) granting the petition of the MBOC:

A careful perusal of the records show that there was, indeed, an honest error committed by petitioner MBOC in the computation of votes for candidate Ecelson Sumague which resulted in the erroneous proclamation of respondent as one of the winners for the said office.

"A manifest clerical error is one that is visible to the eye or obvious to the understanding and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have been committed."

The contention of respondent that the instant petition should be dismissed for being filed out of time cannot be given merit because his proclamation was flawed. It must be stressed that "a proclamation based on faulty tabulation of votes is flawed, and a petition to correct errors in tabulation under Section 7, Rule 27 of the COMELEC Rules of Procedure, even if filed out of time, may be considered, so as not to thwart the proper determination and resolution of the case on substantial grounds and to prevent a stamp of validity on a palpably void proclamation based on an erroneous tabulation of votes."

Furthermore, "where the proclamation is flawed because it was based on a clerical error or mathematical mistake in the addition of votes and not through the legitimate will of the electorate, there can be no valid proclamation to speak of and the same can be challenged even after the candidate has assumed office."

There is no showing that petitioner MBOC acted with manifest bias and committed a grave abuse of discretion.

"Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." Petitioner MBOC is merely doing its function that is mandated by law — to canvass votes in the election returns submitted to it in due form, adding or compiling the votes cast for each candidate as shown in the face of such returns and eventually proclaim the winning candidates. Respondent miserably failed to prove that petitioner exhibited manifest bias thereby thwarting his chances of winning the last slot for Sangguniang Bayan Member. "Absent a strong showing to the contrary, the court must accept the presumption of regularity in the performance of official duty and strong evidence is necessary to rebut this presumption."

Likewise, it cannot be said that petitioner MBOC violated the sanctity of the ballots. Unlike the Board of Election Inspectors which counts the votes from the precinct levels, the MBOC computes the votes as appeared in the election returns.

Finally, a subsequent annulment of the proclamation of the respondent does not constitute a clear violation of his right. In the first place, there is no valid proclamation to speak of. He was not elected by a majority or plurality of voters. His alleged right was based on an erroneous proclamation. By any mathematical formulation, the respondent cannot be construed to have obtained such plurality of votes; otherwise, it would be sheer absurdity to proclaim a repudiated candidate as the choice of the voters. "Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to make such declaration a nullity." Respondent also cannot claim that he was denied of his right to due process of law since he was given the opportunity to be heard. He was duly notified by petitioner MBOC of the erroneous computation which resulted in his proclamation and was afforded the opportunity to be heard by this Commission.

"The COMELEC exercises immediate supervision and control over the members of the Boards of Election Inspectors and Canvassers. Its statutory power of supervision and control includes the power to revise, reverse or set aside the action of the boards, as well as to do what boards should have done, even if questions relative thereto have not been elevated to it by an aggrieved party, for such power includes the authority to initiate motu proprio or by itself steps or actions that may be required pursuant to law." [20]

Petitioner posits that the Comelec's reliance in the ruling of this Court in *Bince, Jr. v. Commission on Elections* [21] is misplaced since, unlike the present petition, petitioner therein was an affected candidate who filed his petition on time.

The argument of petitioner does not persuade. The Court, in *Bince, Jr. v. Commission on Elections*, [22] declared that:

Assuming for the sake of argument that the petition was filed out of time, this incident alone will not thwart the proper determination and resolution of the instant case on substantial grounds. Adherence to a technicality that would put a stamp of validity on a palpably void proclamation, with the inevitable result of frustrating the people's will cannot be countenanced. In *Benito v. COMELEC*, we categorically declared that:

x x x Adjudication of cases on substantive merits and not on technicalities has been consistently observed by this Court. In the case of *Juliano vs. Court of Appeals* (20 SCRA 808) cited in *Duremdes v. Commission on Elections* (178 SCRA 746), this Court had the occasion to declare that:

Well-settled is the doctrine that 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. And also settled is the rule that 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 (*Gardiner v. Romulo*, 26 Phil. 521; *Galang v. Miranda*, 35 Phil. 269; *Jalandoni v. Sarcon*, G.R. No. L-6496, January 27, 1962; *Macasunding v. Macalañang*, G.R. No. L-22779, March 31, 1965; *Cauton v. Commission on Elections*, G.R. No. L-25467, April 27, 1967). 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. (*Ibasco v. Ilao*, G.R. No. L-17512, December 29, 1960). x x x (*Juliano vs. Court of Appeals*, *supra*, pp. 818-819). (Italics ours)

In the later case of *Rodriguez v. Commission on Elections* (119 SCRA 465), this doctrine was reiterated and the Court went on to state that:

Since the early case of *Gardiner v. Romulo* (26 Phil. 521), this Court has made it clear that it 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. This bent or disposition continues to the present. (*Id.*, at p. 474).

The same principle still holds true today. Technicalities of the legal rules enunciated in the election laws should not frustrate the determination of the popular will.

Undoubtedly therefore, the only issue that remains unresolved is the allowance of the correction of what are purely mathematical and/or mechanical errors in the addition of the votes received by both candidates. It does not involve the opening of ballot boxes; neither does it involve the examination and/or appreciation of ballots. The correction sought by private respondent and respondent MBCs of Tayug and San Manuel is correction of manifest mistakes in mathematical addition. Certainly, this only calls for a mere clerical act of reflecting the true and correct votes received by the candidates by the MBCs involved. In this case, the manifest errors sought to be corrected involve the proper and diligent addition of the votes in the municipalities of Tayug and San Manuel, Pangasinan.[23]

The Court made a similar pronouncement in *Tatlonghari v. Commission on Elections*,[24] to wit:

The argument is devoid of merit. For one thing, records indicate that respondent's assumption of office was effected by a clerical error or simple mathematical mistake in the addition of votes and not through the legitimate will of the electorate. Thus, respondent's proclamation was flawed right from the very beginning. Having been based on a faulty tabulation, there can be no valid proclamation to speak of insofar as respondent Castillo is concerned. As this Court once said:

"x x x Time and again, this Court has given its imprimatur on the principle that Comelec is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed office, we have said, is no bar to the exercise of such power. It, of course, may not be availed of where there has been a valid proclamation. Since private respondent's petition before the Comelec is precisely directed at the annulment of the canvass and proclamation, we perceive that inquiry into this issue is within the area allocated by the Constitution and law to Comelec.

x x x

"We have but to reiterate the oft-cited rule that the validity of a proclamation may be challenged even after the irregularly proclaimed candidate has assumed office.

x x x

"It is, indeed, true that, after proclamation, the usual remedy of any party aggrieved in an election is to be found in an election protest. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues." (*Aguam v. Commission on Elections*, 23 SCRA 883 [1968]; cited in *Agbayani v. Commission on Elections*, 186 SCRA 484 [1990]).[25]

Thus, the Comelec was correct in annulling the proclamation of petitioner for being based on an erroneous computation of votes. As the Court declared in *Espidol v. Commission on Elections*, [26] where the proclamation is null and void, the proclaimed candidate's assumption of office cannot deprive the Commission the power to declare such proclamation a nullity. We emphasized that a defeated candidate cannot be deemed elected to the office. [27]

In fine, the Comelec did not commit grave abuse of discretion in annulling the proclamation of petitioner. In a special civil action for certiorari, the burden is on the part of 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 issuing the impugned order. Grave abuse of discretion means a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough, it must be so grave 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. [28]

To the credit of the MBOC, when it realized that it made a mistake in computing the total number of votes for respondent Sumague, it took swift action and called the attention of the Comelec by filing the Petition to Correct Entries Made in the Statement of Votes for Councilor.

IN LIGHT OF ALL THE FOREGOING, the Resolutions of the Commission on Elections in SPC No. 04-209 dated July 21, 2004 and November 18, 2004 are AFFIRMED. The Status Quo Order issued by the Court dated January 11, 2005 is LIFTED.

SO ORDERED.

Panganiban, C.J., Puno, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia. JJ. concur.
Quisumbing, J., on official leave.

[1] Rollo, pp. 25-28.

[2] Penned by Commissioner Resurreccion Z. Borra, with Presiding Commissioner Rufino SB. Javier and Commissioner Virgilio O. Garcillano, concurring; id. at 18-24.

[3] Rollo, p. 29.

[4] Id. at 31.

[5] Id. at 30.

[6] Id. at 18-24.

[7] Id. at 24.

[8] Id. at 7.

[9] Sec. 35. Pre-proclamation controversies; How commenced. — Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code, in relation to the preparation, transmission, receipt, custody and appreciation of the election returns and certificates of canvass, shall be brought in the first instance before the board of canvassers only.

[10] Section 36. Procedure in the Disposition of Contested Election Returns/Certificates of Canvass. — The

following procedure is mandatory and shall be strictly observed in the board of canvassers:

x x x x

c. Simultaneous with the oral objections, the objecting party shall submit his objections in writing in the form prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support thereof, which shall be attached to the written objections. Within the same period of twenty-four (24) hours, after the presentation of the objection(s), any party may file a written and verified opposition to the objection in the form prescribed by the Commission attaching thereto supporting evidence, if any. The board of canvassers shall not entertain any objection or opposition unless reduced in writing in the prescribed form.

The evidence attached to the objection or opposition, shall be immediately and formally admitted to the records of the board by the chairman by affixing his signature at the back of each and every page thereof.

x x x x

f. After all the uncontested returns/certificates have been canvassed and the contested return/certificate ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an inextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

[11] Carlos v. Angeles, G.R. No. 142907, November 29, 2000, 346 SCRA 571, 583.

[12] Sec. 3. Construction. — These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

[13] Sec. 4. Suspension of the Rules. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

[14] Baddiri v. Comelec, G.R. No. 165677, June 8, 2005, 459 SCRA 808, 816.

[15] Carlos v. Angeles, supra note 11, at 583.

[16] Said Section 32 provides in full:

Sec. 32. Manifest error. — There is manifest error in the tabulation or tallying of the results during the canvassing where:

- A copy of the election returns or certificate of canvass was tabulated more than once;
- Two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately;
- There was a mistake in the copying of the figures from the election returns to the statement of votes by precinct or from the municipality/city Certificate of Canvass to the Statement of Votes by Municipality; or from the Provincial/City Certificate of Canvass to the SOV by province/city.
- Returns from non-existent precinct were included in the canvass; or
- There was a mistake in the addition of the votes of any candidate.

[17] Rollo, p. 21, citing Trinidad v. Comelec, 378 Phil. 603 (1999).

[18] Supra note 11.

[19] Id. at 582.

[20] Rollo, pp. 21-23.

[21] 312 Phil. 316 (1995).

[22] Supra.

[23] Id. at 286-288.

[24] G.R. No. 86645, July 31, 1991, 199 SCRA 849.

[25] Supra, at 857-858.

[26] G.R. No. 164922, October 11, 2005, 472 SCRA 380.

[27] Carlos v. Angeles, supra note 11, at 583.

[28] Id. at 591.

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