

ATTY. GABRIEL B. OCTAVA, PETITIONER, VS. COMMISSION ON ELECTIONS, COMPOSED OF MANUEL A. BARCELONA, JR., COMMISSIONER PONENTE, BENJAMIN S. ABALOS, SR., CHAIRMAN, RUFINO S. B. JAV...

G.R. NO. 166105. March 22, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari under Rule 65 in relation to Rule 64 of the Rules of Court seeks to reverse and set aside the Resolutions dated August 16, 2004[1] and November 2, 2004[2] of public respondent Commission on Elections (COMELEC) in SPC No. 04-230. The COMELEC had annulled and set aside the proclamation of herein petitioner Atty. Gabriel B. Octava as the 10th Sangguniang Panlungsod member of Trece Martires City, Cavite.

The facts as found by the COMELEC are as follows:

A petition was filed by private respondent Josefo B. Lubigan against the City Board of Canvassers (CBOC) of Trece Martires City, Cavite, and petitioner, in connection with the May 10, 2004 national and local elections. Petitioner and Lubigan were candidates for membership in the Sangguniang Panlungsod of Trece Martires City.

Lubigan sought (1) to correct the statements of votes (SOVs) by precinct prepared by the CBOC of Trece Martires City, and (2) to nullify and set aside the proclamation of petitioner as the 10th duly elected Sangguniang Panlungsod member. Lubigan alleged that during the canvass proceedings, the CBOC erred in the preparation of the SOVs with respect to the votes that he garnered. According to him, instead of counting 7,740 votes in his favor, he was merely credited with 7,540 votes. He claimed that had he been credited with the correct number of votes, he should have been the 10th Sangguniang Panlungsod member instead of petitioner. Instead, it was petitioner who was credited with 7,656 votes and was proclaimed by the CBOC.

In its answer to the COMELEC, the CBOC admitted that there was indeed an error in the tabulation of the total number of votes garnered by petitioner and Lubigan. It was only during the delivery of the ballot boxes containing the election returns and upon double-checking that it discovered the discrepancy in the SOVs.[3]

Petitioner, however, contended that the CBOC did not commit any error in the computation of votes, especially those pertaining to the votes of Lubigan. The records of the CBOC did not show manifest errors. If there were, these would have been noted in the minutes of the proceedings and ruled upon by the CBOC. Petitioner further alleged that since he was already proclaimed, any petition in the nature of a pre-proclamation controversy was no longer available. The appropriate remedy should either be an election protest or a quo warranto proceeding to be filed in the proper court having jurisdiction.[4]

The COMELEC ruled:

WHEREFORE, in the light of the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the instant petition. The proclamation of private respondent Gabriel B. Octava as the 10th Sangguniang Panlungsod Member for Trece Martires City, Cavite is hereby ANNULLED and SET ASIDE.

ACCORDINGLY, the City Board of Canvassers of Trece Martires City, Cavite is hereby DIRECTED to RECONVENE and EFFECT the necessary corrections in the Statement of Votes and forthwith PROCLAIM the rightful winner for the 10th Sangguniang Panlungsod Member for Trece Martires City, Cavite during the May 10, 2004 National and Local Elections.

SO ORDERED.[5]

The motion for reconsideration filed by petitioner was likewise denied by the COMELEC.[6]

Hence, the instant petition.

The sole issue raised in the petitioner's Memorandum[7] is:

WHETHER OR NOT RESPONDENT COMMISSION ON ELECTIONS HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ANNULING THE PROCLAMATION OF PETITIONER HEREIN AS THE 10TH SANGGUNANG PANLUNGSOD MEMBER FOR TRECE MARTIRES CITY, CAVITE, AND IN DIRECTING THE CITY BOARD OF CANVASSERS OF TRECE MARTIRES CITY TO RECONVENE AND EFFECT THE NECESSARY CORRECTIONS IN THE STATEMENT OF VOTES AND FORTHWITH PROCLAIM RESPONDENT HEREIN JOSEFO BITONES LUBIGAN THE RIGHTFUL WINNER FOR THE 10TH SANGGUNANG PANLUNGSOD MEMBER FOR TRECE MARTIRES CITY, CAVITE, DURING THE MAY 10, 2004 NATIONAL AND LOCAL [ELECTIONS].[8]

Simply put, we must resolve whether there was grave abuse of discretion amounting to excess or lack of jurisdiction on the part of COMELEC in its assailed Resolutions.

Petitioner states that he was denied due process when he was not furnished a copy of the answer of the CBOC before the COMELEC.[9] He says that had he been furnished such, he could have raised the discrepancy[10] between the allegation of Lubigan that the latter objected to the results of the tally, and the claim of the CBOC that Lubigan had made no objection. Petitioner suggests that it was rather strange that the COMELEC did not bother to require the CBOC to furnish him a copy of their answer to satisfy the substantive and procedural requirements of the law.

Lubigan counters that a party cannot successfully invoke deprivation of due process if he was accorded the opportunity of a hearing through either oral arguments or pleadings.[11]

We agree with Lubigan's submission. The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of his defense.[12] Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.[13] What is offensive to due process is the denial of the opportunity to be heard.[14]

In *Adamson & Adamson, Inc. v. Amores*,[15] we held:

While administrative tribunals exercising quasi-judicial powers are free from the rigidity of certain procedural requirements they are bound by law and practice to observe the fundamental and essential requirements of due process in justiciable cases presented before them. However, the standard of due process that must be met in administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. Hence, there is no denial of due process where records show that hearings were held with prior notice to adverse parties. But even in the absence of previous notice, there is no denial of procedural due process as long as the parties are

given the opportunity to be heard.[16]

In this case, petitioner filed an answer to the petition before the COMELEC after summons was duly issued to him.[17] Patently, the requirements of due process were met by the COMELEC, as the parties were given enough opportunity to be heard.

Petitioner further states that the COMELEC erred in allowing Lubigan to file his petition 15 days after the proclamation of petitioner as the 10th member of the Sangguniang Panlungsod of Trece Martires City.[18] Lubigan claims that such technicality should not be allowed in the determination of the will of the electorate.[19]

Section 5 (b),[20] Rule 27 of the COMELEC Rules of Procedure provides that a petition for certiorari must be filed not later than five days following the date of proclamation. However, Section 4, Rule 1 of the same Rules allows suspension of the rules. It states:

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.

Since the COMELEC has the power to suspend its rules and the mandate to determine the true victor in an electoral contest, we hold that it committed no grave abuse of discretion when it allowed Lubigan to file his petition 15 days after petitioner's proclamation.

The COMELEC has the primary duty to ascertain by all feasible means the will of the electorate in an election case.[21] Towards that end, we have consistently employed liberal construction of procedural rules in election cases to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections.[22]

WHEREFORE, finding no grave abuse of discretion on the part of the COMELEC, we DENY the instant petition for certiorari for lack of merit. The Resolutions dated August 16, 2004 and November 2, 2004 of the COMELEC in SPC No. 04-230 are AFFIRMED.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.
Callejo, Sr., J., on leave.

[1] Rollo, pp. 25-30.

[2] Id. at 18-24.

[3] Id. at 26.

[4] Id. at 27.

[5] Id. at 29-30.

[6] Id. at 24.

[7] Id. at 189-204.

[8] Id. at 193-194.

[9] Id. at 194.

[10] Id. at 196.

[11] Id. at 243-244.

[12] *Busuego v. Court of Appeals*, G.R. No. 95326, March 11, 1999, 304 SCRA 473, 480.

[13] *Gacutana-Fraile v. Domingo*, G.R. No. 138518, December 15, 2000, 348 SCRA 414, 423, citing *Alba v. Nitorreda*, G.R. No. 120223, March 13, 1996, 254 SCRA 753, 763-764.

[14] *Garments and Textile Export Board v. Court of Appeals*, G.R. Nos. 114711 & 115889, February 13, 1997, 268 SCRA 258, 299.

[15] No. L-58292, July 23, 1987, 152 SCRA 237.

[16] Id. at 250.

[17] *Rollo*, p. 23.

[18] Id. at 199.

[19] Id. at 254.

[20] Sec. 5. Pre-proclamation Controversies Which May Be Filed Directly With the Commission. - ...

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(b) If the petition involves the illegal composition or proceedings of the board...it must be filed immediately when the board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the board, or immediately at the point where the proceedings are or begin to be illegal.

If the petition is for correction, it must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby.

[21] *Dela Llana v. Commission on Elections*, G.R. No 152080, November 28, 2003, 416 SCRA 638, 647.

[22] *Balajonda v. Commission on Elections*, G.R. No. 166032, February 28, 2005, 452 SCRA 643, 650.

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