NILO L. DOJILLO, PETITIONER, VS. COMMISSION ON ELECTIONS AND RODRIGO N. VIDAL, RESPONDENTS.

G.R. NO. 166542. July 25, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] of the Order dated 29 April 2003[2] and the Resolution dated 3 January 2005[3] of the Commission on Elections En Banc ("COMELEC En Banc"). The 3 January 2005 Resolution affirmed with modification the findings of the Commission on Elections' Second Division ("COMELEC Second Division"). The COMELEC Second Division reversed the Decision dated 8 August 2002[4] of the 4[th] Municipal Circuit Trial Court of San Fabian, San Jacinto, Pangasinan ("trial court").

The trial court proclaimed petitioner Nilo L. Dojillo ("petitioner") the duly elected Punong Barangay of Barangay Nibaliw Vidal, San Fabian, Pangasinan and nullified the previous proclamation of respondent Rodrigo N. Vidal ("respondent") by the Board of Election Tellers (BET) of Nibaliw Vidal. The COMELEC En Banc's 29 April 2003 Order was a status quo ante order directing the restoration of conditions that prevailed before the issuance of the trial court's decision. The 29 April 2003 Order reinstated respondent to the position of Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan.

The Facts

Petitioner and respondent were two of three candidates for Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan in the 15 July 2002 synchronized elections for the Barangay and the Sangguniang Kabataan. Respondent obtained 374 votes while petitioner received 371 votes. The BET declared respondent as the elected Punong Barangay by a plurality of three votes.

Petitioner filed an election protest before the trial court on 19 July 2002. Docketed as Election Protest No. 012 (SF-02), petitioner questioned the election results in Precinct Nos. 84-A, 86-A1, and 87-A1 on grounds of misappreciation of ballots and incorrect tallying of votes. On 24 July 2002, respondent filed his answer with counter-protest on grounds of misappreciation of ballots, padding of votes, and presence of flying voters. On 3 August 2002, the trial court issued an order dismissing the counter-protest due to respondent's failure to pay the required filing fee within the period of filing his answer. Respondent promptly filed a notice of appeal. However, the Regional Trial Court denied respondent's appeal for lack of jurisdiction, apart from the order being merely interlocutory.

In his election protest, petitioner objected to 26 ballots[5] as marked ballots for respondent and claimed two ballots[6] as votes. For his part, respondent objected to 36 ballots[7] as marked ballots for petitioner and claimed five ballots[8] as votes.

The Ruling of the Trial Court

In its decision dated 8 August 2002, the trial court found that one ballot previously regarded as a stray vote should be counted in favor of petitioner and that 11 ballots previously counted in favor of respondent should be declared as marked ballots. The trial court tallied its findings as follows:

> In Precinct 84-A:
>
> Votes for [Petitioner] 48+1 = 49 votes
> Votes for [Respondent] 54-3 = 51 votes
> In Precinct 87A-1:
>
> Votes for [Petitioner] = 28 votes
> Votes for [Respondent] 77-3 = 74 votes
>
> In Precinct 86A-1:
>
> Votes for [Petitioner] = 48 votes
> Votes for [Respondent] 63-5 = 58 votes
>
> Thus the total votes garnered by each of the parties are as follows:
>
> For [Petitioner] 371+1 = 372 total votes
>
> For [Respondent] 374-11 = 363 total votes[9]

The dispositive portion of the trial court's decision reads thus:

> WHEREFORE, a Decision is hereby rendered declaring the protestant NILO L. DOJILLO, winner by nine (9) votes over protestee as Chairman or Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan and hereby proclaims the said NILO L. DOJILLO the duly elected Chairman/Punong Barangay of Barangay Nibaliw, Vidal, San Fabian, Pangasinan, and hereby declares the previous proclamation of protestee Rodrigo N. Vidal as the duly elected Chairman/Punong Barangay made by the Board of Election Tellers of Nibaliw Vidal nullified and of no effect.
>
> Let [a] copy of this Decision be furnished:
>
> The Comelec, the Department of [Interior and] Local Government and the Commission on Audit.
>
> SO ORDERED.[10]

Respondent filed his notice of appeal on 14 August 2002 and submitted his appeal brief to the COMELEC Second Division.

The Ruling of the COMELEC

The COMELEC Second Division visually scrutinized all the questioned ballots and changed the election results according to its findings. The COMELEC Second Division tallied its findings as follows:

DOJILLO VIDAL

Total votes per Election Returns
Add valid claims

371

1

374

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3

Total
Less invalid votes

372

2

377
2

Total valid votes 370 375[11]

In a Resolution dated 20 March 2003, the COMELEC Second Division reversed the decision of the trial court. The dispositive portion of the Resolution of the COMELEC Second Division reads thus:

> WHEREFORE, the decision of the 4[th] Municipal Circuit Trial Court of San Fabian, San Jacinto, Pangasinan rendered on August 3, 2002 in Election Protest No. 012 (SF-02) entitled "Nilo N. [sic] Dojillo, Protestant versus Rodrigo N. Nival [sic], Protestee" is hereby REVERSED and SET ASIDE. Protestee-Appellant Rodrigo N. Vidal is hereby declared as the duly elected Punong Barangay of Barangay Nibaliw Vidal, San Fabian, Pangasinan.
>
> No costs.
>
> SO ORDERED.[12]

Petitioner filed his Motion for Reconsideration with the COMELEC En Banc on 25 March 2003. On 29 April 2003, the COMELEC En Banc, through Chairman Benjamin S. Abalos, issued a Status Quo Ante Order the pertinent portions of which read:

> In the meantime, pending resolution of the instant motion, after due deliberation, and finding that there was no writ of execution of decision pending appeal issued by the lower court, this Commission hereby issues a STATUS QUO ANTE ORDER, which is the condition prevailing before the promulgation of the questioned decision of the court a quo dated August 8, 2002 in EP No. 012(SF-02) entitled Dojillo vs. Vidal, reinstating protestee-appellant Rodrigo N. Vidal to his position as Punong Barangay of Nibaliw [Vidal], Pangasinan, effective immediately and continuing until further orders from this Commission.
>
> SO ORDERED.[13]

Respondent filed an Urgent Ex Parte Motion to have the Status Quo Ante Order personally served by an officer of the COMELEC. This motion was granted in an Order dated 30 April 2003. On 5 May 2003, petitioner filed an Extremely Urgent Motion for Partial Reconsideration to Lift Status Quo Ante Order. Petitioner alleged that the Status Quo Ante Order is procedurally misplaced because he did not include it in the prayer in his appeal. Moreover, the Status Quo Ante Order is without factual and legal basis. Petitioner asserted that the incumbent occupied the position of Punong Barangay before the trial court promulgated its decision. Respondent never occupied the position of Punong Barangay and thus the COMELEC cannot reinstate him to that position. On 13 May 2003, petitioner filed his Memorandum with the COMELEC. He also filed an Urgent Motion for Early Resolution of Motion for Partial Reconsideration to Lift Status Quo Ante Order on the same day.

Without discussing the question raised by its issuance of the Status Quo Ante Order, the COMELEC En Banc denied petitioner's motion for reconsideration in a Resolution dated 3 January 2005. The COMELEC En Banc also modified the COMELEC Second Division's findings as follows:

DOJILLO VIDAL

Total votes per Election Returns
Add valid claims 371
1
374
3

Total
Less invalid votes 372
1 377
3

Total
Add valid votes 371
1 374
0

Total valid votes 372 374[14]

The dispositive portion of the COMELEC En Banc's Resolution reads as follows:

WHEREFORE, premises considered, the summary of findings of the Second Division is AFFIRMED with MODIFICATION. The Motion for Reconsideration is hereby DENIED.

SO ORDERED.[15]

The Issues

Petitioner alleged that as the COMELEC's Resolutions are not supported by substantial evidence and are contrary to law and settled jurisprudence, COMELEC committed grave abuse of discretion amounting to lack of or excess of jurisdiction. Petitioner raised the following issues before this Court:

- THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND/OR IN EXCESS OF ITS JURISDICTION IN ITS APPRECIATION OF BALLOTS PARTICULARLY IN EXHIBITS "1-J", "A-5", "B-1", "B-2", "3-8", "C", "C-1", "C-3" TO "C-5", WHICH SHOULD NOT BE COUNTED FOR VIDAL.

- THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND/OR IN EXCESS OF ITS JURISDICTION IN ADDING THE DECLARED STRAY BALLOTS OF VIDAL PARTICULARLY EXHIBITS "2-F", "A", "A-1", "A-3", "B-3" "3-8" AND "C-10", TO HIS VOTES WHERE IT SHOULD HAVE BEEN DEDUCTED FROM HIS VOTES.

- THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND/OR IN EXCESS OF ITS JURISDICTION WHEN THE COMELEC THROUGH ITS CHAIRMAN BENJAMIN ABALOS ARBITRARILY AND CAPRICIOUSLY ISSUED THE 29 APRIL 2003 STATUS QUO ANTE ORDER "REINSTATING OR REINSTALLING" VIDAL TO THE POSITION HE NEVER OCCUPIED OR ASSUMED (Emphasis in the original).[16]

The Ruling of the Court

The petition has partial merit.

The main issue in this appeal is whether respondent is the duly elected Punong Barangay of Barangay Nibaliw Vidal, San Fabian, Pangasinan. A discussion on the issues of appreciation of ballots and of the propriety of the

issuance of the Status Quo Ante Order is necessary to resolve the main issue.

Appreciation of Ballots

A ballot indicates the voter's will. There is no requirement that the entries in the ballot be written nicely or that the name of the candidate be spelled accurately.[17] In the reading and appreciation of ballots, every ballot is presumed valid unless there is a clear reason to justify its rejection. The object in the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.[18]

Petitioner separates his question on appreciation of ballots into two. First is the appreciation of ballots which petitioner previously objected to as marked ballots and which the COMELEC should not have counted in favor of respondent. Second is the appreciation of ballots which are stray votes and which the COMELEC should not have counted in favor of respondent.

Petitioner appeals the COMELEC's ruling on the following ballots for being marked ballots: Exhibits "1-J", "A-5", "B-1", "B-2", "3-8", "C", "C-1", "C-3" to "C-5."[19]

We relied on the descriptions of the ballots given by the parties, the trial court, and the COMELEC, and weighed their assertions. Based on jurisprudence, Section 211 of Batas Pambansa Blg. 881, as amended ("Omnibus Election Code"), and Section 49 of COMELEC Resolution No. 4846 ("Resolution 4846"), which enumerate the rules on appreciation of ballots, we find that we have no reason to overturn the COMELEC's decision. We shall refer to the pertinent rulings of the trial court and of the COMELEC Second Division and COMELEC En Banc accordingly.

Respondent objected to Exhibit "1-J" as a marked ballot for petitioner. The trial court ruled that this is a valid vote for petitioner. The COMELEC Second Division reversed the trial court and stated that Exhibit "1-J" is indeed a marked ballot: "The distinctive use of, and several impositions with blue ink on the name of Dojillo with the rest of the votes written in black ink, indicates no other intention than to identify the ballot." The COMELEC En Banc affirmed the COMELEC Second Division's finding. In affirming the ruling against the validity of Exhibit "1-J", we apply paragraph 22 of Section 211 of the Omnibus Election Code, the pertinent portion of which reads: "Unless it should clearly appear that they have been deliberately put by the voter as identification marks, xxx the use of two or more kinds of writing shall not invalidate the ballot."

Petitioner objected to Exhibit "A-5" as a marked ballot for respondent. The trial court ruled that this is a marked ballot: "A big "X" is written on the space[s] 2 to 7 for kagawad after Pedeglorio Victor L. x x x The voter is quite intelligent as shown by the hand writing, but the big X can not be considered as desistance, but to mark and identify his vote." The COMELEC Second Division reversed the trial court and ruled that the "X" mark merely indicates the voter's desistance from voting further. The COMELEC En Banc affirmed the COMELEC Second Division's finding. In affirming the ruling for the validity of Exhibit "A-5", we apply paragraph 21 of Section 211 of the Omnibus Election Code, the pertinent portion of which reads: "[C]rosses x x x put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot."

Petitioner objected to Exhibit "B-1" as an invalid vote for respondent. The trial court stated: "What was written is neither the name or surname of [respondent]. It can not even be considered under the rule on idem sonans, the writing seems to be in latin [sic] or greek [sic] VIONI, VIOBI, IMBERRP, DUCA, SERONO." The COMELEC Second Division reversed the trial court and ruled that the vote is valid under the intent and idem sonans rule. The voter intended to write "Vidal" but, due to poor handwriting, only "Vida" was legible. The COMELEC En Banc affirmed the COMELEC Second Division's finding. In affirming the ruling for the validity of Exhibit "A-5", we

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apply paragraph 7 of Section 211 of the Omnibus Election Code, which reads: "A name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor." The idem sonans rule does not require exactitude nor perfection in the spelling of names. The question whether a name sounds the same as another is not one of spelling but of pronunciation.[20]

Petitioner objected to Exhibit "B-2" as a marked ballot for respondent. The trial court agreed with petitioner. However, the COMELEC Second Division considered the sequence of votes written on Exhibit "B-2" and ruled that Exhibit "B-2" is a valid vote for respondent under the intent rule. The ballot contained two names on the space for Punong Barangay: "Vedal Jing" and "Vic Pedeglorio." The COMELEC En Banc affirmed the COMELEC Second Division's finding. In affirming the ruling for the validity of Exhibit "B-2", we apply paragraph 19 of Section 211 of the Omnibus Elections Code, which states that "[a]ny vote in favor of x x x a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot." Vic Pedeglorio was not a candidate for Punong Barangay, but for Kagawad.

Petitioner objected to Exhibit "C" as a stray ballot that should not be counted for respondent. The trial court's description of the ballot states that the entry in the space for Punong Barangay is "JINV Pedeglorio." The trial court decreed that Exhibit "C" is indeed a stray ballot. However, the COMELEC Second Division held that Exhibit "C" is a valid vote for respondent. It saw that the name Jing Pedeglorio was written on the space for Punong Barangay, with the surname Vidal superimposed in capital letters over the surname Pedeglorio. The ballot indicated the voter's intention to correct his vote for respondent. The COMELEC En Banc affirmed the COMELEC Second Division's finding. In affirming the ruling for the validity of Exhibit "C", we apply paragraph 22 of Section 211 of the Omnibus Election Code, the pertinent portion of which reads: "Unless it should clearly appear that they have been deliberately put by the voter as identification marks, x x x the use of two or more kinds of writing shall not invalidate the ballot."[21] We also apply paragraph 9 of the same section, which reads: "When in a space in the ballot there appears a name of a candidate that is erased and another clearly written, the vote is valid for the latter."

Petitioner objected to Exhibit "C-1" as a marked ballot for respondent. The trial court agreed with petitioner because respondent's name is written in "big printed and bold capital letters" unlike the rest of the entries. Again, the COMELEC Second Division disagreed with the trial court and ruled that the name "JING-VIDAL", which was boldly written, does not nullify the ballot as marked. The voter merely emphasized his intent to vote for respondent. The COMELEC En Banc affirmed the COMELEC Second Division's finding. In affirming the ruling for the validity of Exhibit "C-1", we apply paragraph 22 of Section 211 of the Omnibus Election Code, the pertinent portion of which reads: "Unless it should clearly appear that they have been deliberately put by the voter as identification marks, x x x hyphens between the first name and surname of a candidate x x x, the use of two or more kinds of writing shall not invalidate the ballot."

Petitioner objected to Exhibits "C-3" to "C-5" as marked ballots for respondent. The trial court agreed with petitioner's position. There was a star drawn on Exhibit "C-3," a human head was drawn after the entry of "Juvy Vidal" for Kagawad on line 4 of Exhibit "C-4," and a drawing was made after the entry of "Rodrigo Vidal" for Punong Barangay on Exhibit "C-5." Both the COMELEC Second Division and the COMELEC En Banc disagreed with the trial court and stated the figures or symbols which appeared on Exhibits "C-3" to "C-5" were written by a person other than the voter after the voting process. The COMELEC Second Division and the COMELEC En Banc considered the difference in the writing materials used in Exhibits "C-3" and "C-5" and the color of the pen used in Exhibit "C-4." In affirming the ruling for the validity of Exhibits "C-3" to "C-5", we apply jurisprudence[22] which ruled on marks made after the ballot was cast. A ballot should be counted if it is marked afterwards by some person or persons other than the voter himself. Subsequent changes in the ballot made by a

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person other than the voter should not be permitted to affect the result of the election or destroy the will of the voters.

Petitioner appeals the COMELEC's ruling on the following ballots for being stray ballots: Exhibits "2-F", "A", "A-1", "A-3", "B-3", "3-8" and "C-10."[23] As in the previous paragraphs, we shall refer to the pertinent rulings of the trial court and of the COMELEC Second Division and COMELEC En Banc accordingly.

Respondent claimed that in Exhibit "2-F" the name "Jing Calong" is written in the space for Punong Barangay. "Jing" is respondent's nickname, while "Calong" is petitioner's nickname. The trial court ruled that this is a stray ballot. The COMELEC Second Division agreed with the trial court. The COMELEC En Banc was silent on Exhibit "2-F." In affirming the ruling against the validity of Exhibit "2-F", we apply paragraph 14 of Section 211 of the Omnibus Election Code, the pertinent portion of which reads: "Any vote x x x which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot."[24]

Petitioner objected to Exhibits "A", "A-1", "A-3", "B-3" and "C-10" as stray ballots and should not have been counted in favor of respondent. These ballots had "J. Vidal" written on the space for Punong Barangay. The trial court considered these as valid votes for respondent. The COMELEC Second Division and COMELEC En Banc upheld the trial court and stated that "J" in "J. Vidal" stands for the initial of "Jing," Vidal's registered nickname. In affirming the ruling for the validity of Exhibits "A", "A-1", "A-3", "B-3" and "C-10", we apply the ruling in Gonzaga v. Seno[25] and Moya v. Del Fierro:[26] the initial of the nickname of the candidate may be used together with the surname of the candidate for the purpose of identifying the candidate for whom the voter votes.

Propriety of the Issuance of the Status Quo Ante Order

Petitioner also questions the propriety of the Status Quo Ante Order as it reinstates respondent to a position which he never assumed.

We agree with petitioner that, as written, the Status Quo Ante Order raised more questions than it solved the legal problems of the case. The Status Quo Ante order had the nature of a temporary restraining order. We agree with petitioner that the Status Quo Ante Order had a life span of more than 20 days since the directive was qualified by the phrase "until further orders from this Commission." In line with Repol v. Commission on Elections,[27] the Status Quo Ante Order automatically ceased to have effect on 19 May 2003 since the COMELEC En Banc did not issue a writ of preliminary injunction.

However, in contrast to Repol, no execution pending appeal was ever issued to any party in the present case. Upon examination of the events in this case, we find that respondent was proclaimed as the duly elected Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan by the BET on 15 July 2002. This was the condition prevailing before the promulgation of the 8 August 2002 decision of the trial court. On the other hand, the trial court found that petitioner is the duly elected Punong Barangay. Thus, if an execution pending appeal were issued by the trial court, petitioner should have occupied the position of Punong Barangay. It is the court's decision that should prevail between the determination by the trial court of who of the candidates won the elections and the finding of the Board of Canvassers as to whom to proclaim.[28]

Nevertheless, the COMELEC's subsequent ruling in favor of respondent and our succeeding affirmation of the COMELEC's ruling defeats the execution pending appeal and brings us to the present situation: notwithstanding the previous oaths of office taken by both parties, respondent is the duly elected Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan.

WHEREFORE, we PARTIALLY GRANT the petition. We AFFIRM the Resolution of the Commission on

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Elections En Banc dated 3 January 2005. We PROCLAIM respondent Rodrigo N. Vidal the duly elected Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan with a total of 374 votes against petitioner Nilo L. Dojillo with a total of 372 votes, or a winning margin of two votes. We SET ASIDE the Order of the Commission on Elections En Banc dated 29 April 2003.

No costs.
SO ORDERED.

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

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[1]Under Rule 64 of the 1997 Rules of Civil Procedure.

[2]Penned by Chairman Benjamin S. Abalos.

[3]Penned by Commissioner Rufino S.B. Javier, with Chairman Benjamin S. Abalos and Commissioners Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., Virgilio O. Garcillano, and Manuel A. Barcelona, concurring.

[4]Penned by Judge Aniceto L. Madronio.

[5] Precinct 84-A: Exhibits "A", "A-1" to "A-6"; Precinct 87A-1: Exhibits "B", "B-1" to "B-5"; and Precinct 86A-1: Exhibits "C", "C-1" to "C-12."

[6]Precinct 84-A: Exhibits "A-7" to "A-8."

[7] Precinct 84-A: Exhibits "1", "1-A" to "1-K"; Precinct 87A-1: Exhibits "2", "2-A" to "2-E"; and Precinct 86A-1: Exhibits "3", "3-A" to "3-Q."

[8] Precinct 84-A: Exhibits "1-L" to "1-M"; Precinct 87A-1: Exhibit "2-F"; and Precinct 86A-1: Exhibit "3-R" to "3-S."

[9] Rollo, p. 78.

[10]Id.

[11] Id. at 54.

[12] Id. at 55.

[13] Id. at 57.

[14]Id. at 66.

[15] Id.

[16] Id. at 22.

[17] See Abrea v. Lloren, 81 Phil. 809 (1948); Mandac v. Samonte, 49 Phil. 284 (1926) .

[18] See Farin v. Gonzales, 152 Phil. 598 (1973).

[19]There is no Exhibit "3-8" mentioned in the decision of the trial court or in any of the resolutions of the COMELEC.

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[20] See Cecilio v. Tomacruz, 62 Phil. 689 (1935).

[21] See also Torres v. House of Representatives Electoral Tribunal, G.R. No. 144491, 6 February 2001, 351 SCRA 312; Juliano v. Court of Appeals, 127 Phil. 207 (1967).

[22] See Valenzuela v. Carlos and Lopez de Jesus, 42 Phil. 428 (1921); Dayrit v. San Agustin and Valdez, 40 Phil. 782 (1920); Paulino v. Cailles, 37 Phil. 825 (1918); Hontiveros v. Altavas, 26 Phil. 213 (1913).

[23] See note 19.

[24] See also Garcia v. Court of Appeals, 146 Phil. 1065 (1970).

[25] No. L-20522, 23 April 1963, 7 SCRA 741.

[26] 69 Phil. 199 (1939).

[27]G.R. No. 161418, 28 April 2004, 428 SCRA 321.

[28] See Santos v. Comelec and Panulaya, 447 Phil. 760 (2003).

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