

ANTENOR A. ARBONIDA, PETITIONER, COMMISSION ON ELECTIONS AND ROMEO C. CARINGAL, RESPONDENTS.

G.R. NO. 167137. March 14, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari filed by petitioner Antenor A. Arbonida assails the Resolution[1] dated November 18, 2004 of the Commission on Elections (COMELEC) in SPC No. 04-274. In its resolution, the COMELEC had annulled the proclamation of Arbonida as municipal councilor of Tanza, Cavite and instead, ordered the proclamation of private respondent Romeo C. Caringal as the duly elected eighth municipal councilor.

The Resolution was later affirmed by the COMELEC en banc in another Resolution[2] dated February 23, 2005, also herein assailed.

Arbonida prays that the questioned COMELEC resolutions be reversed and set aside, and that the COMELEC be directed to (1) annul the proclamation of Caringal and order him to vacate the post of councilor, and (2) issue a new resolution affirming the election of Arbonida and reinstating him to his position as councilor of Tanza, Cavite.

The antecedent facts are as follows:

Arbonida and Caringal were candidates for the Sangguniang Bayan of Tanza, Cavite during the May 10, 2004 synchronized national and local elections. After the canvassing of votes on May 12, 2004, the Municipal Board of Canvassers of Tanza (MBOC) proclaimed Arbonida the eighth winning candidate with 14,620 votes as against the 14,552 votes of Caringal.[3] On June 16, 2004, Caringal filed a petition with the COMELEC seeking to annul Arbonida's proclamation on the ground of manifest errors in the statement of votes by precinct (SOVP). Caringal alleged that the MBOC committed mistakes in the copying of figures from the election returns to the SOVPs. Arbonida filed a motion to dismiss[4] arguing that the COMELEC had no jurisdiction to take cognizance of the petition since dagdag-bawas did not constitute manifest error but rather a ground for an election protest. He also claimed that a pre-proclamation controversy was no longer viable after the proclamation of the winning candidate.

After an examination and comparison of the subject election returns and SOVPs, the COMELEC found that there indeed existed discrepancies in the number of votes sufficient to have an effect on the last place for municipal councilor being contested. Consequently, the COMELEC First Division annulled the proclamation of Arbonida and instead proclaimed Caringal as the duly elected eighth municipal councilor of Tanza, Cavite, as follows:

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GRANT the instant petition finding it imbued with merit.

The proclamation of ANTENOR A. ARBONIDA as the eighth (8th) Municipal Councilor of Tanza, Cavite in the May 10, 2004 Synchronized National and Local Elections is hereby ANNULLED and he is ORDERED to CEASE AND DESIST from exercising the powers and duties of the aforesaid office and to VACATE the

same.

ACCORDINGLY, the Municipal Board of Canvassers of Tanza, Cavite are (sic) hereby DIRECTED to RECONVENE, make the proper corrections and PROCLAIM petitioner ROMEO C. CARINGAL as the duly elected eighth (8th) Municipal Council of Tanza, Cavite in the May 10, 2004 Synchronized National and Local Elections.[5]

On appeal, the COMELEC en banc denied the motion for reconsideration:

IN VIEW OF THE FOREGOING PREMISES, the instant Motion for Reconsideration is hereby DENIED for LACK OF MERIT.

Accordingly, the status quo ante order issued by this Commission on 14 December 2004 is hereby lifted. The Municipal Board of Canvassers of Tanza, Cavite is therefore directed to (i) reconvene after due notice to all concerned parties, (ii) correct the errors in the Statement of Votes by Precinct based on the figures appearing on the election returns of the subject precincts, (iii) prepare a new Certificate of Canvass of Votes and Proclamation and thereafter, (iv) proclaim Romeo C. Caringal as the 8th winning candidate for Sangguniang Bayan of Tanza, Cavite, during the May 10, 2004 National and Local Elections.

x x x x[6]

Petitioner now raises the following issues for this Court's consideration:

I.

WHETHER OR NOT, CONSIDERING THE ALLEGATIONS CONTAINED THEREIN, SPC NO. 04-274 IS A PRE-PROCLAMATION CASE, AND EVEN IF IT WERE, WHETHER OR NOT IT COULD BE FILED BEYOND FIVE (5) DAYS FROM PROCLAMATION;

II.

WHETHER OR NOT CARINGAL COULD CHANGE HIS CAUSE OF ACTION TO ONE FOR DECLARATION OF NULLITY OF PROCLAMATION WHICH COULD BE BEYOND FIVE DAYS FROM PROCLAMATION - (35 days from proclamation);]

III.

AND ASSUMING COMELEC HAS JURISDICTION OVER SPC NO. 04-274 WHETHER OR NOT IT COULD BE RESOLVED BY THE DIVISION OF THE COMMISSION;

IV.

WHETHER OR NOT GIVEN THE FACTS OF THIS CASE, A MOTION TO DISMISS COULD BE VALIDLY FILED[;]

V.

WHETHER OR NOT THE COMELEC COULD VALIDLY SUSPEND THE RULES IN THE CASE AT BAR WHERE IT HAS NO JURISDICTION OVER THE MAIN CASE AND WHETHER OR NOT THE COMELEC COULD VALIDLY SUSPEND THE RULES IN THE CASE AT BAR TO JUSTIFY ITS ASSUMPTION OF JURISDICTION;

VI.

WHETHER OR NOT THE RESOLUTION OF FEBRUARY 23, 2005...AND OF NOVEMBER 18, 2004...SHOULD BE NULLIFIED FOR WANT OF JURISDICTION ON THE PART OF COMELEC.[7]

Simply stated, the issues for our resolution are (1) whether the petition filed is a proper subject of a pre-proclamation controversy; (2) if so, whether the COMELEC has jurisdiction to entertain a petition filed beyond the period provided by law and the rules; and (3) whether the COMELEC First Division is without jurisdiction to issue the November 18, 2004 resolution.

Arbonida claims that the allegation of dagdag-bawas which was the ground upon which Caringal anchored his petition before the COMELEC, was not a proper subject of a pre-proclamation case.[8] He stated that dagdag-bawas is cheating,[9] and hence, properly threshed out in a regular election protest. He also avers that when Caringal was confronted with a motion to dismiss, he changed the nature of his petition from a pre-proclamation case to a petition for annulment of proclamation, in order to confer jurisdiction on the COMELEC and escape the requirement of filing within a five-day reglementary period.[10]

Caringal argues that the rule on the five-day filing period presupposes a valid proclamation. Thus, when the proclamation appears to be a nullity, a pre-proclamation case may still be given due course.[11]

The findings of the COMELEC First Division are as follows:

An examination and comparison of the subject Election Returns and the Statement of Votes by Precincts clearly reveals that there were indeed discrepancies in the number of votes reflected between the two documents. The discrepancies stand thus:

INCREASE FOR THE PRIVATE RESPONDENT [ARBONIDA]

PRECINCT NO. VOTES AS PER ELECTION RETURNS VOTES IN STATEMENT OF VOTES PER
PRECINCT

48C 35 55

49A 26 36

50B 37 57

50C 22 32

84C

53 65

96A 25 35

100A 23 33

100B 57 77

101A 47 57

104A 67 77

104C 66 76

105A/106A 73 83

107A 55 65

107B 61 67

107C 57 67

107D/107E 78 88

32A 24 34

32D 31 51

32E 21 41

TOTAL: 858 TOTAL: 1098[12]

DECREASE FOR PETITIONER [CARINGAL]

PRECINCT NO. VOTES AS PER ELECTION RETURNS VOTES IN STATEMENT OF VOTES PER
PRECINCT

29B 27 21

143C 43 42

TOTAL: 70 TOTAL: 63

x x x x

By virtue of these errors, private respondent [Arbonida] gained two hundred forty (240) additional votes. Deducting it from the fourteen thousand six hundred twenty (14,620) he supposedly received, as reflected in the Statement of Votes by Precinct, private respondent [Arbonida] wound up with fourteen thousand three hundred eighty (14,380) votes.

As regard (sic) the petitioner [Caringal], a total of seven (7) votes were subtracted from his votes. Adding it to the fourteen thousand five hundred fifty-two (14,552) votes he obtained, as written in the Statement of Votes by Precinct, petitioner [Caringal] should instead have fourteen thousand five hundred fifty-nine (14,559) votes.

Therefore, seeing that, between the two, the petitioner [Caringal] garnered more votes, he, and not the private respondent [Arbonida], should have been proclaimed as the duly elected eighth (8th) Municipal Councilor of Tanza, Cavite.[13]

The Omnibus Election Code defines a pre-proclamation controversy as follows:

Sec. 241. Definition. - A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

In this case, the petition filed by Caringal before the COMELEC involves a pre-proclamation controversy and not an election contest. Although the petition alleged fraud, the remedy sought was merely for correction of erroneous entries in the statements of votes which were based on the election returns.

In *Milla v. Balmores-Laxa*,[14] where a similar factual background existed, this Court stated that the statement of votes forms the basis of the certificate of canvass and of the proclamation. Any error in the statement ultimately affects the validity of the proclamation.[15] If a candidate's proclamation is based on a statement of votes which contains erroneous entries, it is a nullity. As the COMELEC correctly stated,[16] where a proclamation is null and void, it is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to annul the proclamation.[17] Moreover, it is well-entrenched in our jurisprudence that the COMELEC has the power to suspend its own rules so as not to defeat the will of the electorate.[18] In *Milla*,

the Court allowed the filing of a petition one month after the proclamation of the petitioner therein on the ground that an invalid proclamation is no proclamation. It pronounced thus:

...While our election laws are silent when such and similar petitions may be filed directly with the COMELEC, the above-quoted Section 5, Rule 27 of the Rules of Procedure sets a prescriptive period of five (5) days following the date of proclamation. The COMELEC, however, could suspend its own Rules of Procedure so as not to defeat the will of the electorate. For adherence to technicality that would put a stamp on a palpably void proclamation, with the inevitable result of frustrating the people's will, cannot be countenanced.[19]

And so it is in the case at bar.

Therefore, the COMELEC correctly assumed jurisdiction over Caringal's petition for the correction of the entries, and consequently, to declare the nullity of Arbonida's proclamation.

Anent the issue of whether the COMELEC First Division had jurisdiction to issue the November 18, 2004 Resolution, Arbonida claims that it has no jurisdiction to hear and decide the petition in question based on Section 5, Rule 27 of the COMELEC Rules of Procedure, stating that pre-proclamation controversies are to be heard and decided by the Commission en banc.[20]

The claim has no merit. We need only to look at Section 3 of Article IX-C of the 1987 Constitution which provides:

Section 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc. (Emphasis supplied.)

The Constitution clearly mandates that pre-proclamation controversies must be first heard and decided by a division of the COMELEC, and then by the en banc if a motion for reconsideration were filed. This Court has consistently ruled that the requirement of hearing and decision of election cases, including pre-proclamation controversies, at the first instance by a division of the COMELEC, and not by it as a whole, is mandatory and jurisdictional.[21] The constitutional provision yields to no other interpretation other than what its plain meaning presents.

In view of the foregoing, the COMELEC First Division and COMELEC en banc did not gravely abuse their discretion in issuing their respective Resolutions.

WHEREFORE, the instant petition for certiorari is DISMISSED for lack of merit. There being no grave abuse of discretion committed by public respondent COMELEC, the assailed Resolution of the COMELEC First Division in SPC No. 04-274 dated November 18, 2004 and the en banc Resolution dated February 23, 2005 are AFFIRMED. Costs against petitioner.

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. 29-36.

[2] Id. at 22-28.

[3] Id. at 22.

[4] Id. at 47-50.

[5] Id. at 35.

[6] Id. at 27.

[7] Id. at 157.

[8] Id. at 10 and 49.

[9] Id. at 158 and 160.

[10] Id. at 161.

[11] Id. at 185.

[12] The total number of votes should be 1096.

[13] Rollo, pp. 33-34.

[14] G.R. No. 151216, July 18, 2003, 406 SCRA 679.

[15] Id. at 684.

[16] Rollo, p. 34.

[17] Milla v. Balmores-Laxa, *supra* at 685; See Ramirez v. Commission on Elections, G.R. No. 122013, March 26, 1997, 270 SCRA 590, 602; Torres v. Commission on Elections, G.R. No. 121031, March 26, 1997, 270 SCRA 583, 589.

[18] Jaramilla v. Commission on Elections, G.R. No. 155717, October 23, 2003, 414 SCRA 337, 343-344; Baddiri v. Commission on Elections, G.R. No. 165677, June 8, 2005, 459 SCRA 808, 816.

[19] Milla v. Balmores-Laxa, *supra* note 17.

[20] Rollo, p. 15.

[21] See Balindong v. Commission on Elections, G.R. Nos. 153991-92, October 16, 2003, 413 SCRA 583, 591-592; Baytan v. Commission on Elections, G.R. No. 153945, February 4, 2003, 396 SCRA 703, 716; Jaramilla v. Commission on Elections, *supra* note 18, at 341, citing Milla v. Balmores-Laxa, *supra* note 14.

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