

NOLITO L. MAÑAGO, PETITIONER, VS. COMMISSION ON ELECTIONS AND NICANOR BIGAY, RESPONDENTS.

G.R. No. 167224. September 21, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for certiorari to reverse and set aside the Resolution[1] dated January 5, 2004 of the Commission on Elections (COMELEC) in EAC No. 144-2003 and the Resolution[2] dated March 2, 2005 denying the motion for reconsideration. The COMELEC had affirmed the Decision[3] dated July 9, 2003 of the Municipal Trial Court (MTC) of Mercedes, Camarines Norte, declaring private respondent the duly elected Punong Barangay of Barangay Quinapaguian, Mercedes, Camarines Norte.

The facts in this case are as follows.

Petitioner Nolito Mañago and private respondent Nicanor Bigay both ran for Punong Barangay of Barangay Quinapaguian, Mercedes, Camarines Norte, during the Sangguniang Kabataan and Barangay Elections held on July 15, 2002. The results showed Mañago won with 156 votes over Bigay who garnered 155 votes. Mañago was proclaimed Punong Barangay. Bigay then protested Mañago's proclamation in an election protest before the MTC where he prayed for a judicial recount of the ballots in Precinct No. 71-A.

After the revision proceedings, the trial court, in a Decision dated July 9, 2003, found Bigay with a total of 159 votes and Mañago with only 152 votes. The trial court then declared Bigay as the duly elected Punong Barangay. The MTC ruled as follows:

WHEREFORE, premises considered, protestant NICANOR BIGAY is declared the true and lawfully elected Punong Barangay of Barangay Quinapaguian, Mercedes, Camarines Norte in the July 15, 2002 barangay election.

No pronouncement as to cost. No damages awarded there being no evidence presented to that effect.

Let copy of this Decision be furnished the Sangguniang Bayan thru its Secretary of Mercedes, Camarines Norte; the local DILG Office; the local Comelec Office; and the Secretary of the Sangguniang Panlalawigan, Daet, Camarines Norte.

SO ORDERED.[4]

Aggrieved, Mañago appealed the decision to the COMELEC. He argued that the trial court did not acquire jurisdiction over the case because Bigay allegedly failed to pay the correct amount of filing fees. The COMELEC First Division, however, noted that Bigay made a total payment of One Hundred Fifty Pesos (P150) covered by two receipts: one in the amount of Ninety Pesos (P90) and the other Sixty Pesos (P60).[5] The COMELEC ruled that the payments adequately answered for the filing fee prescribed under the COMELEC Rules of Procedure.

The COMELEC, although noting that Mañago raised no other issue, also made the following findings and

conclusions:

ON THE BALLOTS OF MAÑAGO CONTESTED BY BIGAY:

Exhs. "B-1" and "B-2" - ink spots smudged the ballots.

The ballots are VALID. The ink imprints could have been accidentally made by the voters themselves. It must be remembered that procedurally, voters are made, before being given the ballot, to place their thumb marks on the voting record. It is very possible the ink smudges were the ink residue in the voter's fingers.

"When smears appear to have been made by the voter's fingers, the ballot is valid."

All the ballots of MAÑAGO contested by BIGAY are hereby found VALID.

ON THE BALLOTS OF BIGAY CONTESTED BY MAÑAGO:

Exh. "M-1" - An erasure was made by the voter in the entry for kagawad.

The ballot is VALID.

The erasure was intended to correct an error in the spelling of the name. Since the erasure was innocent, it did not mark the ballot.

"Where erasures are innocent and cannot be regarded as marks, the ballot should be counted."

Exh. "M-2" - "P, Bar" was written on the space for Punong Barangay. It was erased. "Bigay, N" was then written on the same slot.

The vote is VALID.

"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."

Exh. "M-3" - "Bigaey" was written on the space for Punong Barangay. The written entry was a misspelling of "Bigay", the surname of protestant-appellee. The ballot is VALID for Bigay on the basis of the principle of idem sonans explained thus:

"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."

Exh. "M-4" - "Karate" was voted for in the ballot. In his Certificate of Candidacy, Nicanor Bigay indicated that "Karate" is the nickname by which he is generally or popularly known in the locality. Said nickname therefore sufficiently identified Bigay as the candidate for which the ballot was cast, hence, the vote is VALID.

"...if the nickname used is accompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the same shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname."

Exhs. "M-5"[,] "M-6" and "M-7" - objected to allegedly for being marked. There is nothing on the ballots which could be considered identifying signs. The ballots are clean and regular on their faces, hence VALID.

Exhs. "M-8", "M-10"[,] "M-14"[,] and "M-18" - sought to be excluded for allegedly having been prepared by two persons are hereby declared VALID.

There is no striking dissimilarity noted in the entries on each of the ballots. On the contrary, there was consistency of strokes in the handwritings on each of the ballots thus contested, negating any anomaly in the preparation thereof.

"In order to reach the conclusion that two writings are by the same hand there must be not only be present class characteristics but also individual characteristics or "dents and scratches" in sufficient quantity to exclude the theory or accidental coincidence: to reach the conclusion that writings are by different hands, we may find numerous likenesses in class characteristics but divergences in individual characteristics or we may find divergences in both, but the divergence must be something more than mere superficial differences."

Exhs. "M-9", "M-13", "M-15", "M-16", and "M-17" - contested as marked ballots because superimpositions were made on several entries, allegedly with the intent to identify the ballots.

The superimpositions perceived as identifying marks were actually retracings of letters in the entries. The same were made for the purpose of stressing the corrections effected in the spelling of the names voted therein. The retracings or superimpositions were innocent, hence, they did not mark the ballots. The ballots are VALID.

"Erasures made with an eraser or with horizontal lines, and corrections otherwise made due manifestly to the inexperience of the voters who prepared the ballots, do not invalidate the ballots."

Exh. "M-11" - contested as marked ballot because crosses (x's) were drawn across the unfilled spaces is hereby counted as VALID.

"Circles, crosses or lines 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."

Exh. "M-12" - "Karate Begs" was written on the ballot. Objected to on the ground that the candidate voted for cannot be identified, the ballot is hereby admitted as VALID. "Karate" was the name indicated in the Certificate of Candidacy of Bigay as the nickname by which he is popularly known in the locality. The nickname therefore sufficiently identified Bigay as the candidate voted for in the ballot.[6]

Thus, the COMELEC affirmed the decision of the trial court, declaring Bigay as the duly elected Punong Barangay of Barangay Quinapaguian, Mercedes, Camarines Norte:

WHEREFORE[,] in view of the foregoing, the Commission (FIRST DIVISION) DISMISSES the Appeal for lack of merit. The decision of the Municipal Trial Court of Mercedes, Camarines Norte, dated July 9, 2003 is hereby AFFIRMED. The proclamation of NOLITO MAÑAGO as Punong Barangay of Quinapaguian, Mercedes, Camarines Norte is ANNULLED. Protestant NICANOR BIGAY is hereby declared the duly elected Punong Barangay of said Barangay.

ACCORDINGLY, the Commission (FIRST DIVISION) hereby ORDERS Protestee NOLITO MAÑAGO to VACATE the contested post in favor of NICANOR BIGAY and to CEASE and DESIST from performing the functions attached to said office.

No pronouncement as to costs.

SO ORDERED.[7]

Petitioner Mañago's motion for reconsideration was likewise denied.[8] Hence, this petition which raises the following issues:

I.

WHETHER THE COMMISSION ON ELECTIONS...GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT APPLYING THE SOLER DOCTRINE IN THE INSTANT CASE.

II.

WHETHER THE COMELEC ERRED IN FAILING TO RESOLVE THE ISSUE OF ENTERTAINING THE

ELECTION PROTEST DESPITE THE ABSENCE OF ANY ALLEGATION IN THE PROTEST THAT OBJECTIONS HAVE BEEN MADE DURING THE APPRECIATION OF THE BALLOTS IN THE PRECINCT.[9]

Was there grave abuse of discretion on the part of the COMELEC in affirming that Bigay is the duly elected Punong Barangay?

Mañago contends that the COMELEC failed to apply the doctrine in *Soller v. Commission on Elections*,^[10] where the Court ruled that errors in the payment of filing fees in election cases are no longer excusable.^[11] Bigay, on the other hand, claims that the doctrine is inapplicable since petitioner is guilty of estoppel.^[12]

We find the petition bereft of merit.

In *Soller*, the protestee timely raised the issue of non-payment in a motion to dismiss. Such, however, was not the case here. Mañago filed an Answer with Counter-Protest on July 30, 2002, actively participated during the hearings and revision of ballots, and then filed his Formal Offer of Exhibits, but never assailed the proceedings of the trial court for lack of jurisdiction. He only raised the issue after the court promulgated a decision adverse to his interest. Estoppel thus set in in this case. In *Pantranco North Express, Inc. v. Court of Appeals*^[13] we held:

The petitioner raised the issue regarding jurisdiction for the first time in its Brief filed with the public respondent [Court of Appeals]....After vigorously participating in all stages of the case before the trial court and even invoking the trial court's authority in order to ask for affirmative relief, the petitioner is effectively barred by estoppel from challenging the trial court's jurisdiction.^[14]

Moreover, in *Jaramilla v. Commission on Elections*,^[15] the Court held 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.^[16] It is highly imperative that the will of the electorate be determined, and technicalities dispensed with if it hampers such determination. A stubborn subservience to technicalities that would result in upholding a patently void proclamation will never be allowed by this Court.^[17]

Clearly, the COMELEC did not abuse its discretion in taking cognizance of the election protest, considering the fact regarding estoppel on petitioner's part, as well as the COMELEC's mandate to ascertain the true victor in election contests. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to a lack or excess of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.^[18] There was no such abuse committed by the COMELEC here.

WHEREFORE, the instant petition is DISMISSED. The COMELEC Resolutions dated January 5, 2004 and March 2, 2005 in EAC No. 144-2003 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., Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 12-24.

- [2] Id. at 25-29.
- [3] Records, pp. 14-24. Penned by Acting Judge Norberto R. Dating.
- [4] Id. at 23-24.
- [5] Id. at 25-26.
- [6] Rollo, pp. 16-19.
- [7] Id. at 23.
- [8] Id. at 25-29.
- [9] Id. at 5.
- [10] G.R. No. 139853, September 5, 2000, 339 SCRA 685.
- [11] Id. at 693.
- [12] Rollo, p. 122.
- [13] G.R. No. 105180, July 5, 1993, 224 SCRA 477.
- [14] Id. at 491.
- [15] G.R. No. 155717, October 23, 2003, 414 SCRA 337.
- [16] Id. at 344.
- [17] Milla v. Balmores-Laxa, G.R. No. 151216, July 18, 2003, 406 SCRA 679, 685.
- [18] Lalican v. Vergara, G.R. No. 108619, July 31, 1997, 276 SCRA 518, 528.

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