JAIME ABAD, PETITIONER, VS. PRIMITIVO CO AND COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. NO. 167438. July 25, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for certiorari[1] of the 4 March 2005 Resolution[2] of the Commission on Elections (COMELEC) En Banc. The COMELEC En Banc declared Primitivo Co ("Co") the winning Punong Barangay of Barangay Maura, Aparri, Cagayan in the 15 July 2002 Barangay and Sangguniang Kabataan Elections.

The Antecedent Facts

Jaime Abad ("Abad") and Co were among the candidates for Punong Barangay of Barangay Maura, Aparri, Cagayan in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections. After the canvassing of votes, the Board of Election Tellers (BET) proclaimed Co the duly elected Punong Barangay. The BET declared that Co obtained 460 votes against Abad's 458 votes.

Abad filed an Election Protest alleging that the BET erred in considering as stray or invalid at least nine votes in his favor. Abad further alleged that the BET failed to credit in his favor several votes cast for him. In an Order[3] dated 3 September 2002, the 8[th] Municipal Circuit Trial Court of Aparri-Calayan, Cagayan, Branch 1 (MCTC) constituted a Revision Committee to recount, revise and re-appreciate the votes cast.

After considering the reports of the Revision Committee, the MCTC rendered its Decision[4] dated 2 June 2003, as follows:

> In fine the number of votes found to be deducted from FOUR HUNDRED SIXTY (460) votes of the protestee is NINE (9) votes which will reduce his total votes to FOUR HUNDRED FIFTY ONE (451) votes. On the other hand the number of votes found to be deducted from the Four Hundred Fifty Eight (458) vo[t]es of the Protestant is SIX (6) votes which will also reduce his total votes to Four Hundred Fifty Two (452) votes. Hence, the protestant WON by one (1) vote against the Protestee.
>
> WHEREFORE, judgment is hereby RENDERED setting aside the proclamation of the protestee as the duly elected PUNONG BARANGAY of Maura, Aparri, Cagayan. FURTHER, the protestant is hereby proclaimed the duly elected PUNONG BARANGAY of Maura, Aparri, Cagayan and is ORDERED to discharge the functions of that Office upon taking his oath of Office.
>
> SO ORDERED.[5]

Co appealed the MCTC Decision before the COMELEC. Abad filed a Motion for Execution Pending Appeal which the MCTC granted in its Order of 28 July 2003.

The Ruling of the COMELEC

In its Resolution[6] promulgated on 25 October 2004, the COMELEC First Division ruled:

> After the re-appreciation conducted by the Commission (First Division) both the protestee-appellant and the protestant-appellee got four hundred fifty-six (456) votes resulting in a tie for the position of Punong Barangay of Barangay Maura, Aparri, Cagayan. In view of this, the provisions of the Omnibus Election Code and COMELEC Resolution No. 4846 promulgated on June 13, 2002 shall govern to finally determine the winner.
>
> WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to DIRECT the Barangay Board of Canvassers of Barangay Maura, Aparri, Cagayan to RECONVENE and, after the requisite notice to the parties concerned, hold the DRAWING OF LOTS and PROCLAIM as the Punong Barangay of Barangay Maura, Aparri, Cagayan the winner thereof.
>
> SO ORDERED.[7]

Abad filed a Motion for Reconsideration seeking the reversal of the 25 October 2004 Resolution of the COMELEC First Division and praying for the issuance of a new resolution declaring him the duly elected Punong Barangay of Barangay Maura, Aparri, Cagayan.

In its Resolution promulgated on 4 March 2005, the COMELEC En Banc reversed the 25 October 2004 Resolution of the COMELEC First Division. The dispositive portion of the 4 March 2005 Resolution reads:

> IN VIEW OF THE FOREGOING PREMISES, the 25 October 2004 Resolution of the First Division is hereby REVERSED.
>
> Consequently, PRIMITIVO CO, having garnered the highest number of votes of four hundred fifty eight (458), is hereby DECLARED the WINNING BARANGAY CHAIRMAN of Brgy. Maura, Aparri, Cagayan in the July 15, 2002 Barangay and Sangguniang Kabataan Elections.
>
> Let the Department of Interior and Local Government (DILG) implement this Resolution.
>
> SO ORDERED.[8]

Hence, the petition before this Court.

The Issue

Abad raises this sole issue before the Court:

> Whether the COMELEC En Banc gravely abused its discretion amounting to lack or excess of jurisdiction in declaring Co the winning Punong Barangay of Barangay Maura, Aparri, Cagayan in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

Abad assails the re-appreciation of ballots by the COMELEC First Division and the computation made by the COMELEC En Banc.

The Ruling of This Court

The petition has no merit.

Erroneous Computation of the MCTC

Abad claimed nine ballots during the revision: Exhibits "A," "B," "C," "D," "F," "I," "J," "K" and "M."[9] The MCTC ruled that four ballots (Exhibits "A," "B," "D" and "F") are invalid and credited only five ballots (Exhibits "C," "I," "J," "K" and "M") for Abad.

Co claimed ten ballots: Exhibits "1," "2," "3," "4," "5," "6," "7,"[10] "8,"[11] "9"[12] and "10."[13] The MCTC

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ruled that seven ballots (Exhibits "1," "2," "4," "5," "6," "7" and "9") are invalid and only three ballots (Exhibits "3," "8" and "10") are valid for Co.

The MCTC also found that in Precinct 26A-1 & 2, the tally sheet showed that Abad obtained 57 votes but the revision showed that he only received 56 votes. In Precinct 27A-1, the tally sheet showed that Co obtained 35 votes but the revision showed that he actually received 36 votes. In Precinct 28A-1, the tally sheet showed that Abad obtained 43 votes but the revision showed he only received 42 votes.[14] In the same precinct, the tally sheet also showed that Co obtained 32 votes but the revision showed that he only received 30 votes.[15] Hence, in the three precincts, the MCTC should have deducted two votes from Abad and two votes from Co. The MCTC also should have added one vote for Co.

Tallying the votes, the MCTC invalidated seven votes for Co and deducted another two votes from Precinct 28A-1. The MCTC deducted a total of nine votes from Co's 460 votes and declared that he received a total of 451 votes. The MCTC invalidated four votes for Abad and deducted another two votes (one vote each from Precinct 26A-1 & 2 and Precinct 28A-1). The MCTC deducted a total of six votes from Abad's 458 votes and declared that he received a total of 452 votes. The MCTC then ruled that Abad won by one vote over Co. The Court notes that in making the final tally, the MCTC forgot to add one vote for Co from Precinct 27A-1. The final tally, based on the MCTC revision, should have been 452 votes in favor of Co and 452 votes in favor of Abad.

Re-Appreciation of the Ballots by the COMELEC First Division

The COMELEC First Division re-appreciated the ballots and reversed the MCTC's rulings in some of the ballots. The COMELEC First Division credited Exhibits "A," "D," "E" and "F" for Abad. The COMELEC First Division credited "Exhibits "1," "2," "5," "6" and "9" for Co. Thus, the COMELEC First Division added five votes to Co and four votes to Abad.

Abad claimed that the COMELEC First Division erred in crediting Exhibits "1," "2," "5" and "6" in favor of Co. The COMELEC En Banc sustained the COMELEC First Division.

We agree with the COMELEC En Banc. In each of these ballots (Exhibits "1," "2," "5" and "6"), the space for Punong Barangay is blank. "Tibong Co" is written on the first line of the space for Barangay Kagawad. The votes are valid for Co under the neighborhood rule.[16]

However, the COMELEC First Division used the erroneous tally of the MCTC. It added five votes to Co's 451 votes for a total of 456 votes. The COMELC First Division added four votes to Abad's 452 votes for a total of 456 votes. The COMELEC First Division then declared a tie between Co and Abad.

The COMELEC First Division also erred in appreciating Exhibit "E" for Abad.[17] The MCTC invalidated Exhibit "E" because of the check marks placed after the names of the candidates for Kagawad. The COMELEC First Division reversed the MCTC and ruled that the check marks were not mentioned in the revision report. The COMELEC First Division concluded that the check marks were placed after the revision and declared the vote valid for Abad.[18] However, the name written on the first line of the space for Barangay Kagawad[19] in Exhibit "E" is "Tibong Co." Hence, the COMELEC First Division should have counted the vote in favor of Co and not in favor of Abad. The COMELEC First Division should have added six votes to Co and only three votes to Abad. Using the correct tally of votes, the COMELEC First Division should have added six votes to Co's 452 votes for a total of 458 votes. Three votes should have been added to Abad's 452 votes for a total of 455 votes.

The COMELEC En Banc reversed the COMELEC First Division in counting Exhibit "E" in favor of Abad. The COMELEC En Banc also corrected the tally of the MCTC by deducting one vote it erroneously added to Abad and adding this one vote to Co's votes. Hence, the COMELEC En Banc arrived at the correct tabulation of votes.

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Co garnered 458 votes against Abad's 455 votes. The COMELEC En Banc did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it declared Co the winning Punong Barangay of Barangay Maura, Aparri, Cagayan in the 15 July 2002 Barangay and Sangguniang Kabataan Elections.

WHEREFORE, we DISMISS the petition. We AFFIRM the 4 March 2005 Resolution of the COMELEC En Banc declaring Primitivo Co the winning Punong Barangay of Barangay Maura, Aparri, Cagayan in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, 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 Commissioner Florentino A. Tuason, Jr. with Chairman Benjamin S. Abalos, Sr. and Commissioners Mehol K. Sadain, Rufino S.B. Javier, Resurreccion Z. Borra, Manuel A. Barcelona, Jr. and Virgilio O. Garcillano, concurring. Rollo, pp. 27-32.

[3] Signed by Presiding Judge Felino U. Bangalan. Rollo, pp. 48-49.

[4] Penned by Judge-Designate Nathaniel C. Pattugalan. Rollo, pp. 76-87.

[5] Id. at 87.

[6] Penned by Commissioner Resurreccion Z. Borra with Commissioner Virgilio O. Garcillano, concurring; Presiding Commissioner Rufino S.B. Javier was on official business. Rollo, pp. 90- 101.

[7] Id. at 100-101. Footnotes deleted, emphasis in the original text.

[8] Id. at 31-32. Emphasis in the original text.

[9] Also Exhibit "11" for Co.

[10] Also Exhibit "E" for Abad.

[11] Also Exhibit "G" for Abad.

[12] Also Exhibit "H" for Abad.

[13] Also Exhibit "L" for Abad.

[14] The MCTC erroneously stated that one vote should be deducted from protestee (Co). The MCTC was actually referring to protestant (Abad).

[15] Rollo, pp. 86-87.

[16] In Ferrer v. Commission on Elections, 386 Phil. 431 (2000), the Court applied the neighborhood rule and credited for the candidates for Punong Barangay the votes written on the first line for Kagawad. The spaces for Punong Barangay were left vacant.

[17] Also Exhibit "7" for Co. See note 10.

[18] Rollo, p. 98.

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[19] The space for Punong Barangay is blank. Rollo, p. 58.

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