

BARTOLOME BALINGIT, PETITIONER, VS. COMMISSION ON ELECTIONS AND PABLO YAMAT, RESPONDENTS.

G.R. NO. 170300. February 09, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Pablo Yamat (Yamat) was declared the elected Punong Barangay of Nigui, Masantol, Pampanga, in the last July 28, 2002 barangay elections, with Yamat obtaining 257 votes, and his opponent, Bartolome Balingit (Balingit), 250 votes.

Balingit filed an election protest with the Municipal Circuit Trial Court (MCTC) of Macabebe-Masantol, Macabebe, Pampanga, alleging fraud in the counting and preparation of the election returns. After revision of the ballots, the tally turned out with Balingit still having 250 votes, while Yamat had 255 votes.

Thereafter, in a Decision dated September 24, 2003, the MCTC declared Balingit as the duly elected punong barangay, with the following tabulation:[1]

Precinct Nos. Balingit Yamat

53-A 64 16

54-A 52 4

55-A 87 13

56-A 11 57 (97+1-41)

57-A 16 (17-1) 48 (63+1-16)

58-A 19 34 (62+1-29)

Total Votes 249 172

The MCTC invalidated a total of 86 ballots cast in Precinct Nos. 56-A, 57-A, and 58-A, and credited three separate votes cast in these three precincts, resulting in 172 votes cast in Yamat's favor. On the other hand, the MCTC discredited in Balingit's favor one vote cast in Precinct No. 57-A for having been a marked ballot, reducing the latter's number of votes to 249.

Yamat appealed to the Commission on Elections (COMELEC).

On the other hand, Balingit filed a Motion for Execution Pending Appeal of the MCTC Decision which was granted by the COMELEC Second Division in its Order dated January 26, 2005.[2]

On April 11, 2005, the COMELEC Second Division rendered its Resolution on Yamat's appeal, reversing the MCTC Decision. The dispositive portion of the Resolution reads:

ACCORDINGLY, the Decision of the Municipal Trial Court of Macabebe-Masantol, Macabebe, Pampanga, in Election Case No. 02(01) declaring appellee Bartlome [sic] Balingit the duly elected Punong Barangay of Barangay Nigui, Masantol, Pampanga, during the 2002 Barangay Elections is hereby REVERSED.

Let the Department of Interior and Local Government (DILG) implement this Resolution.

SO ORDERED.[3]

The COMELEC Second Division validated 80 out of the 86 ballots previously invalidated by the MCTC and counted them in favor of Yamat, while the other six ballots remained invalid. The six ballots were as follows:

Precinct No. Exhibit Nos.

56-A B44

B45

B5

B7

58-A 135

136

Thus, a total of 252 votes were considered in favor of Yamat, with Balingit still having the same number of votes - 249.

COMELEC Commissioner Mehol K. Sadain, however, registered his dissent on the Commission's findings with regard to six other ballots, namely: Exhibits B-3, B-6, B-41, B-72, B-137, and B-138. These six ballots were among the 86 ballots previously invalidated by the MCTC but were held to be valid by the Commission. It was Commissioner Sadain's view that these ballots appear to have been written by one person and should have been invalidated and not credited in favor of Yamat. Thus, only a total of 246 votes should be credited in favor of Yamat, making Balingit, with 249 votes, the winner by a margin of three votes.[4]

Balingit filed a Motion for Reconsideration of the COMELEC Resolution with the COMELEC En Banc but it was denied per Resolution dated November 12, 2005. The dispositive portion of the Resolution reads:

WHEREFORE in view of the foregoing, the Commission En Banc DENIES the Motion for Reconsideration for lack of merits. The Resolution of the Second Division promulgated [on] April 11, 2005 is hereby AFFIRMED. The proclamation of PABLO YAMAT as Punong Barangay of Barangay Nigui, Masantol, Pampanga is UPHELD.

ACCORDINGLY, the Commission EN BANC hereby ORDERS:

- Appellee BARTOLOME BALINGIT to VACATE the contested post which he assumed by virtue of the Order of the Second Division dated January 26, 2005 granting execution pending appeal, in favor of PABLO YAMAT and to CEASE and DESIST from performing the functions attached to said office.

- The Deputy Executive Director for operations of the Commission to furnish a copy thereof to the Office of the President of the Philippines, the Secretary of the Department of Interior and Local Government, and the Office of the Secretary of the Sangguniang Bayan, Masantol, Pampanga.

Considering the proximity of the end of the term of the contested office in this case, this resolution is hereby declared immediately executory.

No pronouncement as to costs.

SO ORDERED.[5]

Balingit filed before the Court a Petition for Certiorari on the following grounds:

- THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION, WHEN IT LIMITED AND FOCUSED ONLY ITSELF FROM CONDUCTING AN ALLEGED "EXAMINATION OF BALLOTS" WHICH ARE THE SUBJECT OF COMMISSIONER MEHOL K. SADAIN'S DISSENTING OPINION, BUT DID NOT EXAMINE THE ENTIRE BALLOTS AND EVIDENCE SUBJECT OF BALINGIT'S MOTION FOR RECONSIDERATION.

- THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION, WHEN IT MISLED THE PARTIES TO JUSTIFY THE IMMEDIATE EXECUTION OF ITS ASSAILED RESOLUTIONS IN HOLDING THAT "PROXIMITY OF THE END OF TERM OF THE CONTESTED OFFICE IN THIS CASE" WHEN IN TRUTH, THE TERM OF OFFICE OF THE BARANGAY OFFICIALS ELECTED ON JULY 15, 2002 HAS BEEN EXTENDED TO LAST MONDAY OF OCTOBER 2007 BY REPUBLIC ACT NO. 9340, APPROVED ON 22 SEPTEMBER 2005

- THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION WHEN IT PROMULGATED ITS ASSAILED 11 APRIL 2005 RESOLUTION WITHOUT CONSIDERING THE STRONG AND VALID OBJECTIONS OF BALINGIT ON THE CONTESTED BALLOTS, AS CORRECTLY RULED BY THE TRIAL COURT, THAT THOSE CONTESTED BALLOTS OF PABLO YAMAT WILL CLEARLY REVEAL THAT MOST, IF NOT ALL ARE GROUPS OF BALLOTS WRITTEN BY ONE AND THE SAME PERSON (WBO) AND SINGLE BALLOTS WRITTEN BY TWO PERSONS (WBT).

- THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF AND EXCESS OF ITS JURISDICTION WHEN IT PROMULGATED ITS ASSAILED 11 APRIL 2005 RESOLUTION IN SWEEPINGLY VALIDATING THE EIGHTY (80) CONTESTED BALLOTS OF YAMAT, WHICH THE TRIAL COURT CORRECTLY RULED AS GROUPS OF BALLOTS WRITTEN BY ONE AND THE SAME PERSON (WBO), WHOSE FINDINGS/RULINGS THEREON DO NOT CLEARLY AND DISTINCTLY EXPRESSED [sic] THE FACTS AND THE LAW ON WHICH THEY WERE BASED.[6]

Grave abuse of discretion means such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[7]

In this case, Balingit laments the manner in which the COMELEC, both the Second Division and En Banc, resolved the issue on the contested ballots, arguing that it committed grave abuse discretion when it merely limited itself to the six ballots that Commissioner Sadain found to be invalid, that it did not consider his arguments on the invalidity of all the contested ballots and "sweepingly" validated these ballots without setting forth the basis, and that it erroneously justified the immediate execution of the decision.

A review by the Court of the assailed Resolution dated April 11, 2005 rendered by the COMELEC's Second Division and Resolution dated November 12, 2005 of the COMELEC En Banc failed to establish any grave abuse of discretion such that these Resolutions should be set aside.

The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the

country, as it is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. In the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings, and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court.[8]

The MCTC originally found a total of 86 ballots cast in favor of Yamat in Precinct Nos. 56-A, 57-A, and 58-A as invalid for having been written by only one person. Both the COMELEC Second Division and En Banc, however, nullified the MCTC's findings on 80 of these ballots and found them to be valid.

It is fallacious for Balingit to argue that the COMELEC "sweepingly" validated the contested ballots and did not take into consideration his objections thereto, and that the COMELEC did not clearly set out the basis for its findings, as the assailed Resolution dated April 11, 2005 shows otherwise. The COMELEC's Second Division, in fact, physically examined each set or pair of contested ballots and accordingly made its corresponding factual findings, viz.: [9]

Precinct No. Exhibit No. Commission's Finding/Ruling

56A B2, B8, B16

B39, B40, B41,

B44, B45, B50,

B51, B54, B55,

B56, B57, B58,

B61, B65, B66,

B67, B68, B69,

B70, B72, B74,

B75, B80 and

B83 Contrary to the finding of the trial court, these ballots are valid. The differences in strokes, writing styles, dents, alignment of letters, color of ink used and the point of the pen are glaring.

We found however Exhibit Nos. B44 and B45 as pair of ballots written by one person. The Minutes of Voting and Counting does not show that there was a physically disabled or illiterate voter assisted during the voting. We cannot therefore uphold the validity of these ballots.

B53, B73, B78,

B79 and B81 Valid ballots

Strokes are different.

B3, B4, B5, B6 and B7 Exhibit Nos. B3, B4 and B6 are valid ballots.

However, Exhibit Nos. B5 and B7 are two (2) ballots that could hardly be considered valid. The similarities in strokes, handwriting, dents, color of the ink and pen point, and the spacing of letter are so obvious to the naked eye.

B21 and B22 Valid ballots

The dents and scratches, the alignment and the spacing of the letters are different.

B29 and B30 Valid ballots

The strokes, terminals and loops of the letters are strikingly different, specifically the way the letters Y, L, D and

Z is written.

57A B86, B87, B88

B91, B113, B114

B115, B116, B117, B118, B119, B121, B122, B128 and B129 Valid ballots

Writing styles, strokes and dents of the letters are strikingly different.

58A B135, B136, B142, B143, B144, B153, B161, B162, B163, B164, B165, B166, B167, B168, B182, B186, B192 and B196 Exhibit Nos. 135 and 136 are invalid ballots for their obvious similarities in handwriting, strokes or dents and scratches of letters. They are undoubtedly written by one person. No illiterate or physically disabled voter had been assisted during the voting as manifested by the Minutes of Voting and Counting duly issued by the members of the Board of Election Tellers.

The rest of the contested ballots are valid.

B137 and B138 Valid ballots.

These ballots were all written in script but the dissimilarities in the strokes, loops, connecting and spurs are evident.

The handwriting of different people may appear to bear a marked resemblance to each other, although, on analysis of the structure of the master patterns can be shown to be quite distinctive and unlikely to be confused.

B139, B140 and B150 Valid ballots

See ruling in Exhibit Nos. 137 and 138 above.

B157 and B158 Valid ballots

The strokes, dents and spacing of letters are not similar.

B159 and B160 Valid ballots

We do not see any fluency and rhythm in the handwriting evidently showing that they were accomplished by only one person.

The total votes obtained by appellant and appellee based on the rulings discussed above are now as follows:

Appellant Appellee

Number of Votes Per Decision of the Trial Court 172 249

Plus: Number of Votes Validated by the Commission 80 0

Minus: Number of Votes Invalidated by the Commission 69 0

Equals: Total Number of Votes Obtained from All Precincts 252 249

And, contrary to Balingit's allegations in the petition, the COMELEC En Banc conducted its own examination of the ballots and did not limit itself only to the six ballots that were validated, subject matter of the dissent of Commissioner Sadain, thus:

The Commission En Banc could have conveniently upheld the dispositions of the Division and declared the same as appropriate finding of facts. However, considering that Presiding Commissioner Mehol K. Sadain dissented therefrom and manifested his different appreciation of the ballots, the Commission En Banc conducted its own examination of the ballots to arrive at a judicious determination.

Hereunder are our findings:

Precinct No. 56A

The Commission En Banc AFFIRMS the rulings of the Second Division declaring as INVALID only the ballots marked as Exhs. B44 and B45, B5 and B7. The similarities in the handwritings in these ballots were glaringly similar that there is sufficient reason to believe that these two ballots were prepared by only one person.

The other ballots alleged as prepared in sets or groups by only one person must be considered VALID. The Division correctly cited in the Resolution *Silverio v. Castro* as the basis of its rulings. It is therein taught: 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 of 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.

"x x x the rule is simple - whatever features two specimen handwriting may have in common, they cannot be considered to be of common authorship if they display but a single dissimilarity in any feature which is fundamental to the structure of the handwriting and whose presence is not capable of reasonable explanation." (*Silverio v. Castro*, 19 SCRA 520)

Putting it simply, where the writings in said ballots were strikingly alike, these ballots must be ruled to be of single authorship and must be rejected.

The Second Division is right in its observation that the handwritings on the questioned ballots were glaringly different and no identical characteristics are impressive. Indeed, it could justifiably be concluded that the cited ballots were each prepared by the individual voters and not in sets or pairs by only one person.

Whatever perceived similarities in the handwritings were but pictorial effects and general resemblances which were insufficient to warrant a finding of single authorship.

Precinct No. 57A

We AFFIRM the Division's rulings that the ballots questioned as having been written in sets or pairs by one person are VALID because the strokes, dents, and slants were distinctly different and it could not be justifiably concluded that only one hand prepared the ballots.

Precinct No. 58A

We agree with the Division that only the ballots marked as Exh. Nos. B135 and B136 are INVALID because of the obvious similarities in the strokes, slants and dents of the handwriting on the ballots.

All the other ballots contested on the allegation that they were written in sets or pairs by only one person did not show remarkable similarities which could sufficiently warrant a finding that they were written by only one hand.

By the En Banc's own computation, the total number of votes to be credited to Appellant are as follows:

PABLO YAMAT

Votes per physical count - - - - - 255

Less: Votes Invalidated

By the Division and En Banc - - - - - 6

149

Add: Validated Claims +3

252

There being no issue as regards the disposition on the ballots of Balingit, The Commission En Banc left the findings of the Trial Court and the Second Division that Bartolome Balingit obtained a total of 249 votes, undisturbed.[10]

Based on its own physical assessment of the contested ballots, the COMELEC En Banc agreed with the Division's conclusions that the invalidity of Exhibits Nos. B-44, B-45, B-5, B-7, B-135, and B-136 should be sustained, while the other ballots shall remain valid.[11]

Balingit also appears to be in awe of the MCTC's disquisition on the invalidity of these ballots, quoting the MCTC's use of the term "autoptic proference" in maintaining that its rulings on the objections and claims of the parties is the valid ruling.[12] Autoptic proference, in legal parlance, simply means a tribunal's self-perception, or autopsy, of the thing itself.[13] The COMELEC may not have used such a high-sounding term, nevertheless, it does not follow that it did not examine the ballots or that its findings were flawed.

The Court cannot imagine how Balingit can argue as he did when the foregoing findings clearly show that all the 86 contested ballots were physically examined by the COMELEC, and the basis for upholding the validity of 80 of these ballots was sufficiently established. The Court also cannot find any salient distinction between the MCTC's and the COMELEC's treatment of these ballots such that the MCTC's findings should outweigh the COMELEC's. Both tribunals physically examined the contested ballots and made their respective findings thereon. The divergence lies in the physical and actual appreciation and interpretation of the perceived defects in the ballots, and it need not be stressed that given that the COMELEC is the specialized agency tasked with the supervision of elections all over the country,[14] which the framers of the Constitution intended to place on a level higher than statutory administrative organs, its factual finding is binding on the Court.[15]

Balingit wants the Court to consider in his favor the six ballots that Commissioner Sadain opined to be invalid and should not be credited to Yamat, thus giving him an edge of three votes, i.e. 249 as against Yamat's 246, and making him the victor. Suffice it to say that the COMELEC adequately explained the reason for holding these six ballots as valid,[16] and absent any evidence to the contrary, the appreciation of these ballots by the COMELEC, acting as a collegial body, should be upheld.[17]

Finally, with regard to Balingit's view that it was misplaced and misleading for the COMELEC En Banc to justify the immediate execution of its assailed Resolution dated November 12, 2005, with the proximity of the elections when Republic Act (R.A.) No. 9340 amended R.A. No. 9164 by extending the term of barangay and sangguniang kabataan until October of 2007; indeed, the Court finds it odd that the COMELEC should justify the immediate execution of its decision with the "proximity of the elections."

The COMELEC, being the specialized agency tasked with the supervision of elections, is presumed to be aware of the passage of R.A. No. 9340. As Balingit correctly pointed out, R.A. No. 9340 extended the term of barangay and sangguniang kabataan to October 2007, thereby amending R.A. No. 9164, which initially set the synchronized elections on the last Monday of October three years after the July 15, 2002 elections, i.e., October 2005.

Obviously, the COMELEC cannot refer to the proximity of the October 2005 elections since at the time it issued its November 12, 2005 Resolution, the elections would have already passed. Neither can the COMELEC refer to

the October 2007 elections because it would not then be proximate (or immediate) because such elections will take place a little less than two years after the issuance of the November 12, 2005 Resolution.

Nevertheless, such mistake will not render the issuance of the assailed Resolutions tainted with any grave abuse of discretion.

WHEREFORE, the petition is DISMISSED. The proclamation of Pablo Yamat as Punong Barangay of Nigui, Masantol, Pampanga is UPHELD; and the order for petitioner Bartolome Balingit to vacate, cease and desist from performing the functions attached to said office per COMELEC En Banc Resolution dated November 12, 2005 is REITERATED.

Costs against petitioner.

SO ORDERED.

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

[1] Rollo, p. 75.

[2] Id. at 42-50.

[3] Id. at 57.

[4] Id. at 59-61.

[5] Id. at 69-70.

[6] Id. at 21-22.

[7] Cantoria v. Commission on Elections, G.R. No. 162035, November 26, 2004, 444 SCRA 538, 543.

[8] Punzalan v. Commission on Elections, 352 Phil. 538, 552-553 (1998).

[9] Rollo, pp. 55-57.

[10] Rollo, pp. 66-69.

[11] Id.

[12] Id. at 29.

[13] Calde v. Court of Appeals, G.R. No. 93980, June 27, 1994, 233 SCRA 376, 382.

[14] Punzalan v. Commission on Elections, *supra* note 8, at 552.

[15] Dagloc v. Commission on Elections, 463 Phil. 263, 288 (2003).

[16] See Resolution dated April 11, 2005, rollo, pp. 55-56.

[17] Idulza v. Commission on Elections, G.R. No. 160130, April 14, 2004, 427 SCRA 701, 707-708.

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