

CELSO LOPEZ OCATE, PETITIONER, VS. COMMISSION ON ELECTIONS AND ANGELITO M. LOPEZ, RESPONDENTS.

G.R. NO. 170522. November 20, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari^[1] assailing the Resolution dated 13 July 2005^[2] of the Second Division of the Commission on Elections (COMELEC) and the Resolution dated 12 November 2005^[3] of the COMELEC En Banc. The 12 November 2005 Resolution affirmed en toto the findings of the COMELEC Second Division. The COMELEC Second Division affirmed with modification the Decision dated 4 August 2004^[4] of Branch 23, Metropolitan Trial Court of Manila ("trial court").

The trial court proclaimed respondent Angelito M. Lopez ("respondent") the duly elected Punong Barangay of Barangay 308 of the third district of Manila and recalled the previous proclamation of petitioner Celso Lopez Ocate ("petitioner") by the Board of Election Tellers (BET).

The Facts

Petitioner and respondent ran for Punong Barangay of Barangay 308 of the third district of Manila in the 15 July 2002 synchronized elections for the Barangay and the Sangguniang Kabataan. Respondent obtained 369 votes while petitioner received 374 votes. The BET declared petitioner as the elected Punong Barangay by a plurality of five votes.

Respondent filed an election protest before the trial court on 26 July 2002. Docketed as EPC No. 001446, respondent questioned the election results in the clustered Precinct Nos. 1202A and 1203A, 1204A and 1207A, 1205A and 1208A, 1206A and 1209A, and Precinct Nos. 1210A and 1210A-1 on grounds of "irregularities, electoral fraud and anomalies in the casting, counting and canvassing of votes, substitution of voters, rampant violations of electoral laws, rules and regulations" committed by petitioner and his followers. On 6 August 2002, petitioner filed his answer with counterclaim and stated that the trial court had no jurisdiction to hear and decide the election protest as it was filed out of time. Respondent allegedly incurred a one-day delay in filing the election protest due to the suspension of work at the trial court because of typhoon Kaka. Petitioner also stated that respondent's claims are false and that respondent himself violated COMELEC rules.

On 3 September 2002, the trial court upheld its jurisdiction over the case and ordered the recount and revision of the ballots. Respondent promptly filed a petition for certiorari and prohibition before the COMELEC on 9 September 2002. The trial court proceeded with the case until 18 November 2003, when it received a temporary restraining order from the COMELEC Second Division. The trial court thus set the continuation of the proceedings on 10 December 2002, which was moved to 7 January 2003 on motion of petitioner.

On 13 February 2003, the COMELEC Second Division issued a Resolution which dismissed respondent's petition

because of lack of jurisdiction. However, on 25 November 2003, the COMELEC En Banc granted respondent's motion for reconsideration and reversed the 13 February 2003 resolution of the COMELEC Second Division. Petitioner then filed a petition for certiorari, docketed as G.R. No. 160865, before this Court. On 18 December 2003, this Court granted petitioner's prayer for a status quo ante order. However, we dismissed the petition in our Resolution dated 9 March 2004. We found that the COMELEC did not commit any grave abuse of discretion when it ruled that respondent's election protest was filed within the reglementary period. The application of technical rules had to yield to the determination of the true will of the electorate.

Undaunted, petitioner filed a motion for reconsideration and was granted a temporary restraining order by this Court on 19 April 2004. However, we denied with finality the motion on 27 April 2004.

Finally, the trial court proceeded with the revision of the ballots of Barangay 308. The Revision Committee finished revision on 6 May 2004 and submitted their report during the hearing on 25 June 2004.

The Ruling of the Trial Court

In its decision dated 10 August 2004, the trial court found that respondent established his cause as alleged in the election protest. The trial court's ruling on the parties' objections on alleged marked ballots, sets of ballots written by one person, ballots containing entries written by two persons, and ballots that bear no signature of the Board of Election Inspectors (BEI) reads thus:

A close examination of the contested ballots indeed showed that there were certain noticeable marks entered or written in some ballots, such as "X," circle, or line, but the court finds such marks as innocently made and are not hard and sufficient evidence to invalidate such ballots. At most, such marks shall be considered as signs of desistance from voting. (See Sec. 211 (21) Omnibus Election Code)

Moreover, as a rule, slight variations in writing are not sufficient to show that the ballot was prepared by two hands and where there is doubt as to whether the names were written by two persons, the doubt must be resolved in favor of the validity of the ballot. Minor and insignificant variations in handwriting must be perceived as indicia of genuineness rather than of falsity.

Lastly, as regards to [sic] the objection raised upon the set of ballots that bear NO signature of the Board of Election Inspector[s], the court wishes to invoke the ruling given by the Honorable Supreme Court in the [c]ase of Punzalan [v.] COMELEC, G.R. No. 126669, April 27, 1998[,] thus:

While Section 24 of Republic Act No. 7166, otherwise know[n] as "An Act Providing For Synchronized National And Local Election[s] and For Electoral Reforms," requires the BEI Chairman to affix his signature at the back of the ballot, the mere failure to do so does not invalidate the same although it may constitute an election offense imputable to the BEI chairman. Nowhere in said provision does it state that the votes contained therein shall be nullified. It is a well-settled rule that the failure of the BEI chairman or any of the members of the board to comply with their mandated administrative responsibility, i.e., signing, authenticating and thumbmarking of ballots, should not penalize the voter with disenfranchisement, thereby frustrating the will of the people.

x x x x

Similarly, Section 211 of Batas Pambansa Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines" provides that in the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is a clear and good reason to justify its rejection. Certainly, the inefficiency of an election officer in failing to affix his signature at the back of the ballot does not constitute as a good and clear reason to justify the rejection of a ballot.[5]

The trial court tallied the Revision Committee's findings as follows:

Precinct No.

Celso L. Ocate
([Petitioner])

Angelito M. Lopez
([Respondent])

1202A/1203A

26

51

1204A/1207A

64

74

1205A/1208A

74

77

1206A/1209A

75

85

1210A

57

48

1210A-1

72

43

Total

368

378[6]

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

WHEREFORE, judgment is hereby rendered declaring [respondent] Angelito M. Lopez as the true and duly elected winner for the position of Punong Barangay, Barangay 308, District III, City of Manila during the election held on July 15, 2002.

The proclamation made on [petitioner] Celso L. Ocate is ordered recalled and set aside.

SO ORDERED.[7]

Respondent filed his notice of appeal and submitted his appeal brief to the COMELEC on 16 August 2004.

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:

[Respondent] Lopez [Petitioner] Ocate

Total Number of Votes Obtained per Ruling of the Court/Revision Reports

378

68

Plus: Total Number of Votes Validated and Credited by the Commission

4

7

Minus: Total Number of Votes Invalidated by the Commission

5

5

Equals: TOTAL NUMBER OF VOTES FROM ALL PRECINCTS

377

370[8]

In a Resolution promulgated on 13 July 2005, the COMELEC Second Division affirmed with modification the decision of the trial court. The dispositive portion of the Resolution of the COMELEC Second Division reads thus:

CONSIDERING THEREFORE that Angelito M. Lopez garnered three hundred seventy seven (377) votes or a margin of seven (7) votes over the three hundred seventy (370) votes of Celso L. Ocate, the [10] August 2004 Decision of the Metropolitan Trial Court of Manila, Branch 23, in Civil Case No. 001446-EC is hereby AFFIRMED with modification insofar as the total number of votes of the parties are concerned.

ACCORDINGLY, the instant appeal is hereby DISMISSED for LACK OF MERIT.

SO ORDERED.[9]

Petitioner filed his Motion for Reconsideration with the COMELEC En Banc on 19 July 2005. Petitioner questioned the COMELEC Second Division's rulings in Exhibits "D-75," "D-76," "F-63," "B-12," "B-13," "2-O," "3-G," "3-P," "3-Q," "3-T," "3-U," "3-FFF," "3-RRR," "3-SSS," "3-T," "3-U," "3-X," "3-AA," "3-DD," "3-HH," "3-JJ," "3-ZZ," "3-E," and "2-JJ." The COMELEC En Banc conducted a reappreciation of the questioned ballots and concluded that there is no reason to disturb the findings of the COMELEC Second Division. In a Resolution promulgated on 12 November 2005, the COMELEC En Banc ruled thus:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby denied for lack of merit. The assailed Resolution of this Commission (Second Division) is affirmed en toto. Upon finality of this Resolution,

protestee-appellant CELSO OCATE is ORDERED to vacate his post as Punong Barangay of Barangay 308, District III, Quiapo, City of Manila and turn over the same to ANGELITO M. LOPEZ who shall forthwith assume the function of the said position.

SO ORDERED.[10]

Petitioner received a copy of the COMELEC En Banc Resolution on 14 November 2005.

On 16 November 2005, Atty. Norberto D. Enriquez ("Atty. Enriquez"), Director of the Manila Barangay Bureau, requested for a comment from Atty. Melchor R. Monsod ("Atty. Monsod"), the City Legal Officer of Manila, regarding the effect of the COMELEC's decision on respondent's election protest. In his opinion dated 23 November 2005, Atty. Monsod relied on Section 2(2) of Article IX-C of the 1987 Constitution and Section 2 of Rule 37 of the COMELEC Rules of Procedure which both state that decisions involving municipal and barangay officials are not appealable. Pursuant to the two provisions, Atty. Monsod stated that the Resolution of the COMELEC En Banc denying the Motion for Reconsideration of its Decision dismissing petitioner's appeal and upholding respondent's election was already executory and could be legally implemented. On 25 November 2005, Atty. Enriquez sent a memorandum to petitioner and attached copies of the COMELEC En Banc Resolution and Atty. Monsod's opinion.

On 9 December 2005, well within the period for filing a petition under Rule 64, petitioner filed the present petition before this Court. Copies of the petition were sent through registered mail to the COMELEC, respondent's counsel, the trial court, and the Office of the Solicitor General. More than a week after, on 17 December 2005, respondent, without assistance of his counsel, filed before the COMELEC an Ex-Parte Motion for the Issuance of Entry of Judgment. Respondent stated that more than 30 days have elapsed since the time of receipt of the COMELEC En Banc's Resolution. Respondent did not mention petitioner's petition before this Court.

On 22 December 2005, the COMELEC En Banc, through Chairman Benjamin S. Abalos, granted respondent's motion and declared its 12 November 2005 resolution as final and executory. Thus:

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department (ECAD), this Commission, is directed to immediately issue an entry of judgment in the instant case and to record the same in the Book of Entries of Judgments, and the Chief, Judicial Records Division, same department, to remand the original records of the case to the court a quo for appropriate action.

Further, the said Clerk of the Commission is likewise directed to send copies of this Order and the Resolution of November 12, 2005 to Her Excellency, President Gloria Macapagal-Arroyo, the Secretary of the Department of Interior and Local Government, the Chairman of the Commission on Audit and the Secretary of the Sangguniang Barangay of Barangay 308, District III, Quiapo, City of Manila, in accordance with Section 11 (b), Rule 18, x x x Comelec [Rules of Procedure].

SO ORDERED. (Emphasis in the original)[11]

Respondent terminated the services of Ms. Mary Jane La Torre, Barangay Secretary; Ms. Susan Piamonte, Barangay Treasurer; and the Barangay Tanod Volunteers in separate letters, all dated 2 January 2006. On 5 January 2006, Atty. Enriquez gave to Barangay 308's Council Members copies of the COMELEC En Banc Order, Entry of Judgment, COMELEC En Banc Resolution and respondent's Oath of Office signed by Manila Mayor Jose L. Atienza, Jr. Respondent secured a writ of execution from the trial court. On 3 April 2006, trial court sheriff Ferdinand W.M. Callera issued to petitioner a notice to vacate his post.

The Issues

Petitioner raises the following issues before this Court:

- WHETHER THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT APPRECIATED THE BALLOTS ON REVISION WITHOUT TAKING INTO CONSIDERATION THAT THE INTEGRITY OF THE BALLOTS ON REVISION WAS TAINTED PRIOR TO REVISION.
- WHETHER THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO RULE THAT THE INTEGRITY OF THE BALLOTS ON REVISIONS HAS BEEN TAINTED AND DULY AFFECTED BASED ON THE CONCLUSIVE AND ESTABLISHED FACT THAT THERE EXIST PIECES OF EVIDENCE THAT THE BALLOT BOXES WERE OPENED WITHOUT AUTHORITY BEFORE [THE] REVISION PROPER.
- WHETHER THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED AND REFUSED TO RULE THAT THE [TRIAL COURT] MANIPULATED AND MALICIOUSLY CONDUCTED PRO-FORMA PROCEEDINGS DESPITE BEING APPARENT FROM THE RECORDS OF THE CASE X X X.
- WHETHER THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED AND REFUSED TO RULE THAT THE 10 AUGUST 2004 DECISION OF THE [TRIAL COURT] HAS NO BASES DESPITE HAVING NO RULING ON THE QUESTIONABLE FORMAL OFFER OF EVIDENCE OF ANGELITO AND DESPITE THE EXISTENCE OF DERAILEMENT OF PROCEEDINGS THEREAT X X X.[12]

The Ruling of the Court

The petition has no merit.

The COMELEC did not Commit Grave Abuse of Discretion

Petitioner alleged that the COMELEC acted with grave abuse of discretion and exceeded its jurisdiction when it affirmed the trial court's decision declaring respondent the duly elected Punong Barangay of Barangay 308, District III, Quiapo, City of Manila. A thorough reading of the present petition for certiorari reveals that petitioner is, in fact, questioning the COMELEC's decision based on its appreciation of the facts and evidence in the present case. More particularly, petitioner disagrees with the COMELEC's appreciation of Exhibits "B-12," "B-13," "D-1," "D-75," "D-76," "F-63," "2-O," "2-JJ," "3-E," "3-G," "3-P," "3-Q," "3-T," "3-U," "3-X," "3-AA," "3-DD," "3-HH," "3-JJ," "3-ZZ," "3-FFF," "3-RRR," and "3-SSS."

Petitioner invoked *Cuizon v. Remoto*,^[13] which stated that this Court does not review findings of facts on petition for certiorari unless there are exceptional circumstances. These exceptional circumstances are: (1) where the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) where the information made is manifestly mistaken; (3) where there is abuse of discretion; (4) where the judgment is based on a misapplication of facts, and the findings of the trial court and the appellate court are contradicted by the evidence on record; and (5) when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case. However, petitioner mistakes the present petition for certiorari (also known as a special civil action for certiorari) under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure for *Cuizon's* remedy of petition for review on certiorari (also known as appeal by certiorari) under Rule 45 of the same Rules.

The purpose of a petition for certiorari is to determine whether the challenged tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, any resort to a petition for certiorari under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is

limited to the resolution of jurisdictional issues.

The COMELEC's conclusion on a matter decided within its competence is entitled to utmost respect. It is not sufficient to allege that the COMELEC gravely abused its discretion. Such allegation should also be justified. In the present case, petitioner failed to justify his allegations of grave abuse of discretion against the COMELEC. We have examined petitioner's submissions and found that the COMELEC did not gravely abuse its discretion. The COMELEC's proceedings were conducted in accordance with the prevailing laws and regulations. The records show that the COMELEC Second Division did not merely rely on the ruling of the trial court. The COMELEC Second Division conducted a reappreciation of the contested ballots and modified the tally of the trial court and its revisors. Unfortunately for petitioner, the COMELEC's modified tally did not change the results of the elections.

WHEREFORE, we DISMISS the petition. No costs.

SO ORDERED.

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

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Penned by Commissioner Florentino A. Tuason, Jr., with Commissioners Mehol K. Sadain and Manuel A. Barcelona, Jr., concurring. Rollo, pp. 45-71.

[3] Penned by Commissioner Rufino S.B. Javier, with Chairman Benjamin S. Abalos, Sr. and Commissioners Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., concurring. Id. at 39-43.

[4] Penned by Judge Tingaraan U. Guiling. Id. at 72-79.

[5] Rollo, pp. 77-78.

[6] Id. at 76.

[7] Id. at 78.

[8] Id. at 69-70.

[9] Id. at 70.

[10] Id. at 42.

[11] Id. at 647.

[12] Id. at 16.

[13] G.R. No. 143027, 11 October 2005, 472 SCRA 274.

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