

LAISAN T. PERMAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND LINO LANDONG IDDONG, RESPONDENTS.

G.R. NO. 174010. February 08, 2007

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Special Civil Action for Certiorari under Rule 64 of the Rules of Court with Prayer for the issuance of Temporary Restraining Order (TRO), Writ of Preliminary Injunction and/or Status Quo Ante Order.

Petitioner Laisan T. Perman and private respondent Lino Landong Iddong were duly certified candidates for Punong Barangay of Barangay Tipo-Tipo Proper, Tipo-Tipo, Basilan in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections. Private respondent was proclaimed by the Barangay Board of Canvassers as the winning candidate by a margin of sixty-seven (67) votes.

Petitioner filed an election protest with the Municipal Circuit Trial Court (MCTC) of Lamitan, Tipo-Tipo-Tuburan, Lamitan, Basilan, docketed as Election Protest Case No. 11-02. After the revision of ballots, the trial court invalidated eighty-three (83) ballots in favor of private respondent for being marked and deducted the same from his total votes.

Consequently, on 9 July 2004, the MCTC rendered a decision,[1] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court finds the Protestant, LAISAN T. PERMAN as having won over Protestee, LINO LANDONG IDDONG, with a majority of 13 votes during the Barangay Election[s] in Barangay Tipo-Tipo Proper, Municipality of Tipo-Tipo, Basilan Province held on July 15, 2002.

SO ORDERED.

Private respondent filed an appeal with the Commission on Elections (COMELEC).[2] On 23 February 2005, the COMELEC First Division validated the ballots that were invalidated by the MCTC and consequently ruled in favor of private respondent who came out as the winning candidate by a margin of sixty-seven (67) votes.[3]

Petitioner filed a Motion for Reconsideration of the 23 February 2005 resolution. On 31 July 2006, the COMELEC En banc denied the motion for reconsideration.[4] Hence, this petition.

A perusal of the petition shows that there is actually only one issue to be resolved: whether the COMELEC En banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in its appreciation of the contested ballots, sixty-five (65) ballots for private respondent and two (2) ballots for petitioner.

The COMELEC En banc validated sixty-five (65) ballots in favor of private respondent and added the same to his total votes. Petitioner contends that said ballots should be invalidated for having been written by two persons.

As for the other two (2) ballots for petitioner, the COMELEC En banc invalidated them for being marked and accordingly deducted petitioner's total votes by two (2). Petitioner contends that the poll body should have credited the two (2) ballots to him consistent with its rulings on similarly situated ballots of private respondent

and with the rules of appreciation of ballots which favor validity in case of doubt in order to uphold the will of the voters.

The petition is bereft of merit.

The applicable rule on appreciation of ballots, embodied in Rule 23 under Sec. 211 of the Omnibus Election Code (B.P. Blg. 881), provides:

23. Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.

The Court had occasion to explain this rule in *Trajano v. Inciso*.^[5] The rule of interpretation then in force was found in Sec. 149 (23) of Republic Act No. 180 (Revised Election Code), the text of which is exactly as that found in Sec. 211 (23) of the Omnibus Election Code quoted above. The Court in that case held:

The allowance or rejection of a ballot filled by more than one person depends on its condition before it was cast in the ballot box: If at the time it was cast it was filled only by one person, but thereafter it was tampered and entries were made thereon by other persons, the ballot is valid. If, on the other hand, it already bore the fillings of two or more persons when cast, said ballots are deemed marked and thus void. [Emphasis supplied.]

The presumption *juris tantum* is that a ballot found to be with the handwriting of two or more persons suffered this defect before it was cast.^[6] It is only a presumption *juris tantum*, rebuttable by evidence. x x x

The presumption that a ballot found to be in the handwriting of two or more persons suffered this defect before it was cast was overcome in *Trajano*. Similarly, in the case at bar, the COMELEC En banc, found that the presumption had indeed been overcome. Following *Columbres v. COMELEC*,^[7] the presumption was overcome by evidence that the ballots were tampered with after they had been deposited in the ballot box.

The COMELEC En banc arrived at the following findings:

- In all the ballots coming from the three different precincts, only one and the same person made the insertions as can be gleaned from the singular handwriting that characterizes these insertions;
- This person made it a point to always use a color of pen different from the one used by the original voter, as if he wanted to make sure that the insertion is readily noticed. The person even took the effort of overwriting his own color of pen with another upon noticing that the first pen he used matched the color of the pen used by the original voter. Thus, if the color of pen used by the original voter was black, the insertion was made with the use of a blue pen, and vice versa; and
- The insertions made were redundant. Even after the original voter already wrote a clear and categorical vote for appellant, the one person making the insertions still inserted the name of appellant, either by writing it on the lines for kagawad or by adding it to the name already written on the line for punong barangay.^[8] [Emphasis supplied.]

In arriving at the above findings, the COMELEC En banc closely scrutinized the contested ballots. It painstakingly described and examined each and every insertion or mark therein. It then concluded that, in view of the findings above, the sixty-five (65) ballots for private respondent were tampered with after they were deposited in the ballot box. We agree with the conclusion reached by the COMELEC En banc.

Verily, it must have been a different person or persons who made the marks. At the time the ballots in question were deposited in the ballot box, these were not marked, containing, as they did, only the will of the voters concerned as expressed in the writings originally found in the ballots.

As to the two (2) ballots for petitioner, experience has shown that it is difficult to lay down any absolute rule as to

what constitutes cause for rejecting a ballot as marked, and, therefore, great care must be exercised in rejecting such ballots.[9] In order for a ballot to be considered marked, in the sense necessary to invalidate it, it must appear that the voter designedly placed some superfluous sign or mark on the ballot which might serve to identify it thereafter. No ballot should be discarded as a marked ballot unless its character as such is unmistakable.[10] The distinguishing mark which the law forbids to be placed on the ballots is that which the elector may have placed with the intention of facilitating the means of identifying said ballot, for the purpose of defeating the secrecy of suffrage which the law establishes.[11] Thus, marked ballots are ballots containing distinguishing marks, the purpose of which is to identify them.

In the case at bar, Exhibits 24 and 24-A contained the encircled numbers "16" and "15," respectively, in the voter's own handwriting after the name of petitioner. There can be no reason for placing the said numbers immediately after the name of the candidate, which mark is too big for a period, except to mark the ballot.[12] It was also for this same reason that the COMELEC En banc similarly invalidated eleven (11) ballots for private respondent.[13]

Finally, this is a petition for certiorari under Rule 64 of the Rules of Court. Under this rule, findings of fact of the COMELEC supported by substantial evidence shall be final and non-reviewable.[14] We see no reason to depart from the principle.

WHEREFORE, premises considered, the instant petition for certiorari is DISMISSED. The prayer for a Temporary Restraining Order, Writ of Preliminary Injunction and/or Status Quo Ante Order is DENIED for being moot. The questioned Resolutions dated 23 February 2005 and 31 July 2006, of the COMELEC First Division and En banc, respectively, in EAC No. 58-2004, are AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 65-74.

[2] Docketed as EAC No. 58-2004.

[3] Rollo, pp. 28-41.

[4] Id. at 43-55.

[5] No. L-23895, 16 February 1967, 19 SCRA 340, 342-343.

[6] Citing *Gutierrez v. Reyes*, L-13137, 28 February 1959.

[7] G.R. No. 142038, 18 September 2000, 340 SCRA 609.

[8] Rollo, pp. 50-51.

[9] See *Sarenas v. Generoso*, 61 Phil. 549 (1935).

[10] See *Valenzuela v. Carlos and Lopez de Jesus*, 42 Phil. 428 (1921) and *Lucero v. De Guzman*, 45 Phil. 852 (1924).

[11] *Cailles v. Gomez*, 42 Phil. 496 (1921) and *Lucero v. De Guzman*, 45 Phil. 852 (1924).

[12] See also *Protacio v. De Leon*, No. L-21135, 8 November 1963, 9 SCRA 472, where we invalidated a ballot for being marked with an "X" immediately after the candidate's name.

[13] Exhibits SS (containing the letter "S" above the vote for Iddong), SS-1 (same with Exhibit SS), SS-2 (same with Exhibit SS), SS-3 (same with Exhibit SS), EEE (same with Exhibit SS), EEE-1 (same with Exhibit SS), EEE-2 (same with Exhibit SS), UU (containing a heart drawn on top of the ballot), UU-1 (containing two distinct parallel lines above the line for punong barangay), UU-2 (containing the letters "MLL" and underlined twice), and UU-3 (containing a diamond drawn on the line for punong barangay) were invalidated as they were in the voter's handwriting to identify himself.

[14] See Rules of Court, Rule 64, Sec. 5.

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