DOMICIANO R. LAURENA, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS AND NESTOR L. ALVAREZ, RESPONDENTS.

G.R. NO. 174499. June 29, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This Petition for Certiorari seeks to annul and set aside the Resolution[1] of the Commission on Elections (COMELEC), Second Division, dated September 21, 2005, which dismissed the Election Protest filed by Domiciano Laurena, Jr., and affirmed the proclamation of Nestor L. Alvarez as the duly elected mayor of the City of Muñoz, Nueva Ecija. The petition likewise assails the Resolution[2] of the COMELEC En Banc, dated August 22, 2006, which affirmed with modification the Second Division's resolution.

Antecedents

Domiciano R. Laurena, Jr. and Nestor L. Alvarez were candidates for mayor in the City of Muñoz, Nueva Ecija in the May 10, 2004 elections. In the canvass of votes, Laurena obtained 13,321 votes while Alvarez garnered 16,855 votes. With the 3,534 votes difference, Alvarez was proclaimed mayor of Muñoz on May 14, 2004.

On May 22, 2004, Laurena, claiming that massive electoral fraud and irregularities attended Alvarez's victory, filed an election protest[3] impugning the results of the elections in all 175 precincts of Muñoz. In particular, he cited the following grounds as basis for his protest:

> - Valid votes of protestant were not counted and tallied in his favor in the election returns and/or were erroneously counted and tallied in the election returns as votes of protestee;
>
> - Valid ballots containing votes legally cast in favor of protestant were considered stray;
>
> - Valid ballots containing valid votes for protestant were erroneously misappreciated and considered as marked ballots and were declared as null and void;
>
> - Invalid ballots containing votes for protestee because they were obviously and deliberately marked by the voters who were bought by protestee were just the same counted in his favor;
>
> - Invalid ballots containing votes for protestee which were marked because of pattern markings, or because they are posted with stickers, or because of impertinent, unnecessary, irrelevant words, or expressions used to identify the ballots were unlawfully read and counted in his favor;
>
> - Fake or unofficial ballots wherein the name of protestee was written were illegally read and counted in his favor;
>
> - Groups of two (2) or more ballots for protestee (which) were prepared by one (1) person and, therefore, void, were still credited in favor of protestee; and
>
> - Individual ballots for protestee (which) were obviously prepared by two (2) persons and, therefore, void were just the same considered as valid ballots and counted in favor of protestee.[4]

Protestant thus insisted on the necessity of a revision or recount of the ballots and other election documents in all the protested precincts.[5]

In his Answer,[6] protestee characterized the suit as a nuisance designed to harass and inconvenience him. He likewise claimed that the allegations in the pleading were general and ambiguous, as protestant failed to cite a single concrete incident illustrative of such grounds he purportedly relied upon.[7] Lastly, he pointed out that protestant failed to make of record his complaints against the electoral procedure conducted at the proper time and before the right forum. As such, he could not now make sweeping and general accusations of fraud and anomalies.[8]

In an Order[9] issued on August 2, 2004, the Second Division denied protestee's call for the dismissal of the case. It recognized that ballot revision is the most expeditious and the best means to determine the truth or falsity of protestant's allegations.[10] It likewise laid down the guidelines for the retrieval of the ballot boxes and directed the payment of the required cash deposits to defray revision expenses.[11]

On February 23, 2005, the Second Division directed the constitution of three (3) revision committees for purposes of revising the protested precincts. The committees were instructed to convene and commence the revision of ballots starting on March 7, 2005 and every day thereafter, from Monday to Friday, until terminated.[12]

After the revision was completed, the physical count of votes showed Alvarez garnering a total of 16,539 votes and Laurena getting 12,785 votes, or a difference of 3,754. During the regular canvass, Alvarez garnered 16,855 while Laurena obtained 13,321, or a difference of 3,534 votes.[13]

With the admission of the parties' respective formal offer of evidence and the submission of their memoranda, the Second Division issued the assailed Resolution[14] dismissing the protest. The fallo reads:

> WHEREFORE, in view of the foregoing, the instant protest is hereby DISMISSED for lack of merit. The proclamation of Nestor L. Alvarez as the duly elected mayor of the City of Muñoz, Nueva Ecija[,] is affirmed.
>
> SO ORDERED.[15]

The Resolution affirmed the victory and validated the proclamation of protestee, it being clear that he obtained more votes than the protestant. Thus, it found no more need to individually consider the claimed ballots of the two contending parties.[16] The Second Division based its conclusion on the revision reports and all the data registered therein, including the objections to the ballots interposed by the parties.[17]

On the basis of the revision report, the Second Division ruled that, out of the revised 16,539 ballots of protestee, forty-nine (49) ballots were declared invalid while out of the revised 12,785 ballots of protestant, fifty-four (54) were declared invalid. The ballots in four precincts were not revised because they were not found inside the ballot boxes. As reflected in the election returns in these four precincts, protestee garnered an additional 346 votes, while protestant obtained 336 votes. Adding these numbers to those of the revised ballots and deducting therefrom the ballots that were considered invalid, protestee got 16,836 while protestant got 13,067 votes. As such, protestee won by 3,769 votes.[18]

As to the ballots which the Board of Election Inspectors did not count, the Second Division considered them immaterial as they would not in any way affect the results.[19]

Unsatisfied, protestant moved for the reconsideration of the above decision before the COMELEC En Banc.

In its Resolution[20] dated August 22, 2006, the COMELEC En Banc affirmed the Resolution of the Second Division, with the modification that the number of votes garnered by protestee was 16,834, and not 16,836.[21]

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Protestant, now the petitioner, comes before this Court in this special civil action for certiorari, on the sole issue of

> WHETHER OR NOT THE PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, IN PROMULGATING THE QUESTIONED RESOLUTIONS OF SEPTEMBER 21, 2005 (BY THE COMELEC SECOND DIVISION) AND AUGUST 22, 2006 (BY THE COMELEC EN BANC).[22]

The arguments set forth by petitioner essentially shows that he questions the COMELEC's appreciation of the contested ballots. He claims that various sets of ballots of respondent which were challenged by petitioner for being written by one person/written by two persons/marked ballots, were accordingly and rightly invalidated by the COMELEC, but he insists that more ballots should have been invalidated. He likewise strongly opposes the nullification of the sets of ballots in his favor since they appear regular. He thus urges this Court to rectify the error of the COMELEC as such mistake, according to him, is equivalent to grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner further asserts that the ballots he claimed which were no longer examined and appreciated by the COMELEC should be considered by this Court in order to determine the exact will of the electorate and such votes should be credited to the petitioner based on the intent rule, neighborhood rule and/or idem sonans rule.

In sum, petitioner wants this Court to review the factual findings and conclusions of law made by the COMELEC – both the Second Division and En Banc – as he imputes grave abuse of discretion on its part.

The petition must necessarily fail.

Section 2,[23] Rule 64 of the Revised Rules of Court, states that from a judgment or final order or resolution of the COMELEC, the aggrieved party may file a petition for certiorari with this Court under Rule 65. Thus, the only question that may be raised is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[24]

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.[25] The review by the Court of the assailed Resolutions of the Second Division and the COMELEC En Banc failed to establish any grave abuse of discretion.

Moreover, 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. The COMELEC is, after all, 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.[26]

The Second Division, in its Resolution, explained that it had tediously examined the contested ballots to appreciate their admissibility as a valid expression of the voters' will. It then took into account the revision reports and all the data registered therein including the objections to the ballots interposed by the parties. Lastly, in the reading and appreciation of the ballots, it presumed every ballot to be valid unless there was clear and good reason to justify its rejection.[27]

It is noteworthy that the issues raised in the protest had also been passed upon by the COMELEC En Banc which

upheld the findings of the Second Division and concluded that even a re-examination of the contested ballots showed that the Division did not err in putting a stamp of validity on most of the contested ballots.[28] There being no glaring error in the COMELEC's conclusions, this Court finds no cogent reason to disturb the same.

As to the ballots objected to on the ground that each of them was prepared by two persons, the Second Division invalidated 5 ballots for respondent and 18 ballots for petitioner, and made the following conclusion which this Court finds proper:

> In this resolution, the Commission did not see as written by two those ballots where the entries were alternately written in print or script or in small and capital letters. It is a rule that the use of two or more kinds of writing on the ballot does not invalidate a ballot, unless the purpose is to identify the ballot. Although there could be a shift in the style of handwriting that appeared in the ballot, but regardless of the shift, the strokes and the style remained consistent, then, the participation of another person in the preparation of the ballot is negated.[29]

As to the ballots objected to on the ground that multiple ballots were written by one person, the Second Division exercised great caution in the appreciation thereof and rejected only several ballots that were strikingly alike.[30] If the COMELEC were less prudent, the result would have been disenfranchisement of several votes. This resulted in the invalidation of 45 ballots for respondent and 31 ballots for petitioner.

As to the ballots separately claimed by petitioner and respondent as correctly set forth in the assailed Resolutions, even if all the ballots claimed by petitioner will be validated and all those claimed by respondent will be nullified, respondent would still emerge as winner.[31]

Finally, petitioner seeks to invalidate 96 ballots on the ground that they contain identifying marks. It is true that the Second Division, as affirmed by the COMELEC En Banc, failed to clearly state in the body of the Resolution the reason for its decision to invalidate some but not all the allegedly marked ballots. This notwithstanding, we affirm its general conclusion to uphold the validity of the ballots. Considering that respondent won over petitioner by 3,767 votes, even if all the 96 votes were to be nullified, there would be no drastic change in the results as would affect the validity of the proclamation of respondent.

In view of the foregoing, this Court affirms the conclusion of the Second Division, as modified by the COMELEC En Banc:

ALVAREZ LAURENA

Votes obtained per physical count 16,539 12,785

Less: Invalidated Ballots 51 54

Add: Votes from the precincts not revised 346 336

TOTAL 16,834 13,067

Respondent Alvarez obtained 16,834 votes while petitioner Laurena got 13,067 votes. As such, Alvarez was properly proclaimed as the elected mayor of Muñoz, Nueva Ecija.

Well-settled is the rule that the will of the voters is embodied in the ballots, and to ascertain and carry out such will, the ballots must be read and appreciated according to the rule that every ballot is presumed valid unless there is clear and good reason to justify its rejection.[32] On this matter, the findings of the COMELEC are accorded great respect, if not finality, by the Court.[33] Votes cannot be nullified on the mere sweeping allegation of the petitioner that fraud and irregularity attended the election. Ample and credible evidence is necessary to back up such claim. This is especially true if the petitioner failed to make timely objections during the canvass of the

votes, as in the present case.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. The Resolution of the COMELEC En Banc, dated August 22, 2006, affirming with modification the Resolution of the COMELEC, Second Division, dated September 21, 2005, is AFFIRMED.

SO ORDERED.

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

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[1] Issued by Presiding Commissioner Mehol K. Sadain and Commissioner Florentino A. Tuason, Jr.; rollo, pp. 55-93.

[2] Issued by Chairman Benjamin S. Abalos, Sr. and Commissioners Resureccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento and Nicodemo T. Ferrer; id. at 94-99.

[3] The Election Protest was docketed as EPC No. 2004-10 and was raffled to the Second Division; id. at 100-109.

[4] Rollo, p. 104.

[5] Id. at 105.

[6] Id. at 115-120.

[7] Id. at 116.

[8] Id. at 117-118.

[9] Id. at 169-172.

[10] Id. at 170.

[11] Id. at 170-172.

[12] Id. at 57-58.

[13] Id. at 58.

[14] Id. at 55-93.

[15] Id. at 93.

[16] Id.

[17] Id. at 59.

[18] Id. at 91-92.

[19] Id. at 93.

[20] Supra note 2.

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[21] The dispositive portion of which reads:

ACCORDINGLY, the Resolution of the Commission (Second Division) promulgated on September 21, 2005, upholding the proclamation of Nestor L. Alvarez as the duly elected mayor of the City of Muñoz, Nueva Ecija, is hereby AFFIRMED with modification on the number of votes garnered by protestee from 16,836 to 16,834.

SO ORDERED. (Rollo, p. 98.)

[22] Rollo, p. 19.

[23] The provision specifically states:

Section 2. Mode of Review. – A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

[24] Manzala v. COMELEC, G.R. No. 176211, May 8, 2007.

[25] Mutilan v. COMELEC, G.R. No. 171248, April 2, 2007; Pagaduan v. COMELEC, G.R. No. 172278, March 29, 2007; Balingit v. COMELEC, G.R. No. 170300, February 9, 2007.

[26] Manzala v. COMELEC, supra; Balingit v. COMELEC, supra.

[27] Rollo, p. 59.

[28] Id. at 97.

[29] Rollo, p. 59.

[30] Id. at 60.

[31] Id. at 97-98.

[32] De los Reyes v. COMELEC, G.R. No. 170070, February 28, 2007.

[33] Pagaduan v. COMELEC, supra; De los Reyes v. COMELEC, id.

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