

ALDO B. CORDIA, PETITIONER, VS. JOEL G. MONFORTE AND COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. No. 174620. March 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Aldo B. Cordia (petitioner) and Joel G. Monforte (respondent) were official candidates for the position of Punong Barangay of Barangay 16 (East Washington) in Legazpi City, Albay during the July 15, 2002 synchronized Barangay and Sangguniang Kabataan elections.

After the canvassing of votes, the Barangay Board of Canvassers proclaimed petitioner as the winning candidate, having obtained 614 votes against the 609 votes obtained by respondent.

On July 18, 2002, respondent filed an Election Protest before the Municipal Trial Court in Cities (MTCC) of Legazpi City, alleging that "(f)or lack of familiarity with the Rules on Appreciation of ballot[s] under Sec. 49 of COMELEC Resolution No. 4846 dated June 13, 2002, the Board of Election Teller failed to credit [him]with as many as ten (10) votes." [1]

The MTCC ordered a recount of the votes which yielded the following results:[2]

JOEL MONFORTE
[respondent]

ALDO CORDIA
[petitioner]

UNCONTESTED VOTES

591

440

ADD: CONTESTED/OBJECTED But Credited Votes

18

174

ADD: CLAIMED and ADMITTED VOTES

7

0

TOTAL:

616

614

The MTCC thereupon rendered judgment in favor of respondent, accordingly annulling and setting aside the proclamation of petitioner, declaring respondent as the lawful and duly elected Punong Barangay, directing petitioner to vacate the Office of the Punong Barangay and to relinquish said position to respondent, and ordering petitioner to pay the total amount of P6,350.00 representing the honoraria of the members of the Revision Committee and its support staff and other miscellaneous expenses.[3]

On appeal, the Second Division of the COMELEC affirmed the MTCC Decision by Resolution[4] of August 14, 2003.

On Motion for Reconsideration, the COMELEC En Banc affirmed[5] the decision of the Second Division by a 5-1 vote with Commissioner Rene V. Sarmiento dissenting.[6]

Hence, petitioner's present Petition for Certiorari (With Urgent Application for Temporary Restraining Order),[7] alleging that the COMELEC committed grave abuse of discretion

(I)

x x x in applying the neighborhood rule when it disregarded judicial precedents and credited as votes in favor of respondent, a candidate for punong barangay, the questioned ballots marked as Exhibits A, D, E, F, H, and K on the mere basis that his name was written on the first space or line intended for the position of kagawad

(II)

x x x in applying the principle of idem sonans when it counted in favor of private respondent the vote "Mantete" appearing in the questioned ballot marked as Exhibit "A" and worse, written not on the line or space for punong barangay but kagawad.

(III)

x x x when it ruled that the circle mark on the ballot marked as Exhibit C-17 xxx is but an ink smudge which is not a marking of the ballot.[8] (Emphasis supplied)

In the meantime, the MTCC issued on October 31, 2006 a writ of execution.[9] In view of petitioner's filing before this Court of an Extremely Urgent Motion Reiterating the Application for Issuance of Temporary Restraining Order,[10] the MTCC recalled and set aside the Writ of Execution.[11] And, on respondent's Motion for Execution of Judgment,[12] the COMELEC declared its Resolution final and executory,[13] and entered its judgment.[14] On January 15, 2007, respondent took his oath of office.[15]

The Court finds the petition bereft of merit.

The object of the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.[16] When placed in issue, the appreciation of contested ballots and election documents, which involves a question of fact, is best left to the determination of the COMELEC.[17]

The COMELEC, in crediting to respondent the vote for "Mantete" in Exhibit "A," following the idem sonans rule, the Court finds no grave abuse discretion.

Petitioner posits that "Mantete" could refer to Pedro Andes, a candidate for kagawad who, according to him, was fondly called "Pete" or "Mang Pete" in the barangay.[18] As respondent counters, that there is no proof that "Mang Pete" is Andes' registered nickname.[19]

Neither does the Court find grave abuse of discretion in the COMELEC's application to Exhibits "A," "D," "E," "F," "H," and "K"[20] of the "neighborhood rule," which rule refers to:

As used by this Court, this nomenclature, loosely based on a rule of the same name devised by the House of Representatives Electoral Tribunal (HRET), refers to an exception to the rule on appreciation of misplaced votes under Section 211 (19) of Batas Pambansa Blg. 881 (Omnibus Election Code) which provides:

"Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot." (Emphasis supplied.)

Section 211 (19) is meant to avoid confusion in the minds of the election officials as to the candidates actually voted for and to stave off any scheming design to identify the vote of the elector, thus defeating the secrecy of the ballot which is a cardinal feature of our election laws. Section 211 (19) also enforces Section 195 of the Omnibus Election Code which provides that in preparing the ballot, each voter must "fill his ballot by writing in the proper place for each office the name of the individual candidate for whom he desires to vote."

Excerpted from Section 211 (19) are ballots with (1) a general misplacement of an entire series of names intended to be voted for successive offices appearing in the ballot, (2) a single or double misplacement of names where such names were preceded or followed by the title of the contested office or where the voter wrote after the candidate's name a directional symbol indicating the correct office for which the misplaced name was intended; and (3) a single misplacement of a name written (a) off-center from the designated space, (b) slightly underneath the line for the contested office, (c) immediately above the title for the contested office, or (d) in the space for an office immediately following that for which the candidate presented himself. In these instances, the misplaced votes are nevertheless credited to the candidates for the office for which they presented themselves because the voters' intention to so vote is clear from the face of the ballots. This is in consonance with the settled doctrine that ballots should be appreciated with liberality to give effect to the voters' will.[21] (Underscoring and italics supplied)

Nor does the Court find grave abuse of discretion in the COMELEC's not rejecting Exhibit "C-17"[22] as a marked ballot, there being no indication that the blot therein was deliberately placed to identify the voter. Thus, Section 211 (22) of the Omnibus Election Code states

Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot. (Underscoring supplied)

Petitioner argues, nevertheless, that the COMELEC did not examine the original ballot marked as Exhibit "C-17," for if it did, it could have seen that what appears thereon is not a mere ink smudge but a hole with "searing around it deliberately burned by a lighted cigarette." [23] Both parties admitted the authenticity of the copies of the ballots examined in the case, however.[24]

Even assuming that what appears to be an ink smudge on Exhibit "C-17" is actually a hole burned by a lighted cigarette, there is no proof that the burning was deliberately done to identify the voter.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, and Peralta, JJ., concur.

Ynares-Santiago, Austria-Martinez, and Tinga, J., on official leave.

[1] Rollo, p. 51.

[2] Id. at 62.

[3] Id. at 63.

[4] Penned by Commissioner Florentino A. Tuason, Jr. with the concurrences of Commissioners Ralph C. Lantion and MeHol K. Sadain. Id. at 64-71.

[5] Resolution of September 6, 2006, penned by Commissioner Resurreccion Z. Borra, with the concurrences of Chairman Benjamin S. Abalos, Florentino A. Tuason, Jr., Romeo A. Brawner, and Nicodemo T. Ferrer and with the dissent of Commissioner Rene V. Sarmiento. Id. at 64-77.

[6] Id. at 78-82.

[7] Id. at 3-39.

[8] Id. at 14.

[9] Id. at 106-107.

[10] Id. at 86-unnumbered page after p. 88.

[11] Id. at 108.

[12] Id. at 162-163.

[13] Id. at 162-163.

[14] Id. at 164-164.

[15] Rollo, unnumbered page between pp. 164-165.

[16] *Juan v. Commission on Elections*, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 126.

[17] Id. at 126-127.

[18] Rollo, p. 30.

[19] Id. at 144.

[20] Id. at 40-45.

[21] *Velasco v. Commission on Elections*, G.R. No. 166931, February 22, 2007, 516 SCRA 447, 456-459.

[22] Rollo, p. 46.

[23] Id. at 31-32.

[24] Id. at 51.

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