

DAVID K. SALAZAR, PETITIONER, VS. COMMISSION ON ELECTIONS AND MIGUELA M. DOLORIEL, RESPONDENTS.

G.R. NO. 175112. April 24, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition[1] for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction assailing the Resolutions of the Commission on Elections (COMELEC), First Division, and the COMELEC en banc which were respectively issued on April 18, 2006 and October 16, 2006 in EAC No. 02-2004.

The facts[2] are as follows:

Petitioner and private respondent were candidates for the position of Punong Barangay of Barangay Poblacion, Bislig City, Surigao del Sur in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan (SK) elections. Private respondent was proclaimed the winner after garnering 1,399 votes as against petitioner's 1,374 votes or a margin of 25 votes.

On July 22, 2002, petitioner filed an election protest before the Municipal Trial Court in Cities, Bislig City, Surigao del Sur where the case was docketed as Election Protest Case No. 03.

After the revision of ballots, petitioner obtained a total of 1,025 votes while private respondent's votes were reduced to 919.

Consequently, the lower court annulled and set aside the proclamation of private respondent as Punong Barangay and ordered the latter to vacate and relinquish her post in favor of petitioner.[3]

On appeal, the COMELEC, First Division, found that private respondent won with a winning margin of 28 votes over petitioner. Thus, on April 18, 2006, it reversed and set aside the Decision of the lower court and declared private respondent as the duly elected Punong Barangay. The pertinent portions of the Resolution read:

The Commission (First Division) painstakingly examined every piece of evidence from the records and used the applicable rules on appreciation of ballots enumerated under Section 49 of Resolution No. 4846 (Rules and Regulations on the Conduct of the July 15, 2002 Synchronized Barangay and SK Elections) and other applicable jurisprudence....

x x x

The protestee-appellant DOLORIEL leads with a margin of 28 votes over the protestant-appellee SALAZAR.

WHEREFORE, premises considered, the Commission (First Division) RESOLVED as it hereby RESOLVES to GRANT the herein appeal. The decision of [the] Municipal Trial Court In Cities, Bislig City, Surigao del Sur, dated December 10, 2003 is hereby REVERSED and SET ASIDE.

Consequently, Protestant-Appellant MIGUELA M. DOLORIEL is hereby DECLARED the duly elected

Barangay Chairman in Barangay Poblacion, Bislig City, Surigao del Sur, during the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan elections.

SO ORDERED.[4]

On May 8, 2006, petitioner filed a motion for reconsideration, while on the next day or on May 9, 2006, private respondent filed a motion for execution pending appeal.

On May 22, 2006, pursuant to an Order of the COMELEC, First Division, the motion for reconsideration was elevated to the COMELEC en banc.

On October 16, 2006 the COMELEC en banc issued its Resolution, the pertinent portions read:

Based on the above findings[,] only six (6) ballots of the protestee contested by the protestant is invalidated, therefore the final tally is one thousand three hundred ninety eight (1398) votes for protestee-appellant Doloriel and one thousand three hundred seventy six (1376) votes for protestant-appellee Salazar. Protestee-appellant Doloriel leads with a margin of twenty two (22) votes over the protestant-appellee Salazar.

WHEREFORE, premises considered, the Commission's (First Division) Resolution promulgated in April 18, 2006 is hereby AFFIRMED with modification as to the final number of votes obtained by the parties.

SO ORDERED.[5]

Hence, this petition based on the following grounds:

- The COMELEC (First Division) committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Resolution dated April 18, 2006 in EAC No. 02-2004 reversing the December 10, 2003 Decision of the Municipal Trial Court in Cities, Bislig City, Surigao del Sur in Election Protest Case No. 03 and thereby validating several ballots in favor of Miguela M. Doloriel, said questioned Resolution not being supported by evidence on record and is not in accordance with law.
- The COMELEC (en banc) committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Resolution denying the herein petitioner David K. Salazar's Motion for Reconsideration and affirming with modification the said questioned Resolution of the COMELEC (First Division) dated April 18, 2006 in EAC No. 02-2004, such resolution being clearly without basis in fact and in law.

Briefly, the issue is whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that private respondent is the duly elected Punong Barangay of Barangay Poblacion, Bislig City, Surigao del Sur.

For grave abuse of discretion to arise, the lower court or tribunal must have violated or contravened the Constitution, the law, or existing jurisprudence.[6]

Here, the resolutions of the COMELEC were based on the evidence on record, and the ballots were appreciated in accordance with existing jurisprudence and the applicable provisions under Section 49 of COMELEC Resolution No. 4846 or the Rules and Regulations on the Conduct of the July 15, 2002 Synchronized Barangay and SK Elections.[7]

The applicable provisions under Section 49 of COMELEC Resolution No. 4846 are as follows:

...

- (b) Where the first name of a candidate is written on the ballot which when read has a sound similar to the surname of another candidate, the vote shall be counted in favor of the candidate with such surname.

...

(i) When in a space in the ballot there appears a name of a candidate that is erased and another clearly written, the vote is valid for the latter.

...

(l) Ballots which contain prefixes such as "Sir", "Mr.", "Datu", "Don", "Ginoo", "Hon", "Gob", or suffixes like "Hijo", "Jr.", "Segundo" (sic) are valid;

(m) The use of nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they are used as a means to identify the voter, in which case the whole ballot is invalid. Provided, that if the nickname used is unaccompanied by the name or surname of a candidate and it is one by which he is generally or popularly known in the locality, the name shall be counted in favor of the said candidate for the same office with the same nickname;

...

(o) Any ballot written with crayon, lead, pencil or ink wholly or in part shall be valid;

...

(r) If the candidates voted for exceeded the number of those to be elected, the ballot is valid, but the votes shall be counted only in favor of the candidates whose names were firstly written by the voter within the spaces provided for said office in the ballot until the authorized number is covered;

(s) 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;

...

(t) Circles and crosses, or line put on the spaces on which the voter has not voted shall be considered as signs to indicate the desistance from voting and shall not invalidate the ballot;

...

(u) Unless it should clearly appear that they have been deliberately put by the voter to serve as identification mark, commas, dots, or hyphens between the first name and the surname of a candidate, or in other parts of the ballots, traces of the letter "T", "J" and other similar ones, the first letters or syllables of names which the voter does not continue, of two (2) or more kinds in writing and unintentional or accidental flourishes, strokes, or strains shall not invalidate the ballot.

While both the Division and the COMELEC en banc had similar findings as regards the winning candidate, the Court agrees with the COMELEC en banc in invalidating the six (6) ballots for protestee-appellant Doloriel for the reason that four of the ballots were marked^[8] and the rest were written by two distinct persons.^[9]

Based on the foregoing, the Court does not find any ground to disturb the COMELEC's ruling as the same is in consonance with law and jurisprudence. Moreover, factual findings of the COMELEC which are supported by substantial evidence are generally binding on the Court.^[10]

WHEREFORE, the petition is DISMISSED for lack of merit. The Resolution of the Commission on Elections en banc dated October 16, 2006 in EAC No. 02-2004 is AFFIRMED.

No costs.

SO ORDERED.

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

[1] Under Rule 64 of the Rules of Court.

[2] Rollo, pp. 25-69.

[3] Id. at 24-25.

[4] Id. at 28-54.

[5] Id. at 78.

[6] Banal III v. Panaganiban, G.R. No. 167474, November 15, 2005, 475 SCRA 164.

[7] Rollo, pp. 28-30, 61-62

[8] Big bold letters that occupies all the spaces for the specific position should be invalidated inasmuch as this is an evident intent to mark the ballot (Ong v. Comelec, G.R. No. 144197, December 13, 2000, 347 SCRA 681). Also, where the name of a candidate is written twice on the same space in the ballot by one who apparently is an intelligent voter and a good writer the intent to mark the ballot is manifest (Garcia v. Court of Appeals, G.R. No. L-31775, December 28, 1970, 36 SCRA 582).

[9] Section 49 (w) of COMELEC Resolution No. 4846 provides that any ballot which clearly appears to be filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void. General appearance or pictorial effect is not enough to warrant the conclusion that the two writings are by the same hand. Where there are differences and variations in the ballots concerned, and there is a view that such differences are due to differences in authorship rather than disguise, the rule of liberality in the appreciation of ballots demands that such doubts be resolved in favor of the ballots validity. In other words, similarities in handwriting must be judged based on individual characteristics or dents and scratches in sufficient quantity to exclude the theory of mere coincidence (Silverio v. Castro, G.R. No. L-23827, February 28, 1967, 19 SCRA 520).

[10] Baddiri v. Commission on Elections, G.R. No. 165677, June 8, 2005, 459 SCRA 808.

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