

JONAS TAGUIAM, PETITIONER, VS. COMMISSION ON ELECTIONS AND ANTHONY C. TUDDAO, RESPONDENTS.

G.R. No. 184801. July 30, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for certiorari with prayer for issuance of a temporary restraining order and writ of preliminary injunction[1] assails the December 20, 2007 Resolution[2] of the Second Division of the Commission on Elections (COMELEC) in SPC No. 07-171 which granted private respondent Anthony C. Tuddao's Petition for Correction of Manifest Error and Annulment of Proclamation of petitioner Jonas Taguiam as the 12[th] winning candidate for the Sangguniang Panglungsod of Tuguegarao City, Cagayan. Also assailed is the October 9, 2008 Resolution[3] of the COMELEC En Banc denying petitioner's Motion for Reconsideration.[4]

Petitioner and private respondent were candidates for the position of Sangguniang Panglungsod of Tuguegarao City in Cagayan during the 2007 National and Local Elections. On May 19, 2007, petitioner was proclaimed by the City Board of Canvassers (CBOC) as the 12[th] ranking and winning candidate for the said position with 10,981 votes.[5] Private respondent obtained 10,971 votes[6] and was ranked no. 13.

On May 25, 2007, private respondent filed with the COMELEC a petition for correction of manifest errors in the Election Returns and Statement of Votes for 27 clustered precincts[7] and for the annulment of the proclamation of the affected winning candidate in Tuguegarao City. He alleged that he was credited with less votes in several Statements of Votes by Precincts (SOVP) as compared with the tally of his votes in the election returns ERs), whereas petitioner was credited with more votes. Private respondent offered evidence in the following nine precincts: 0035A/0036A, 0061A/0063A, 69A/69B, 87A/87B, 192A/192B, 264A/265A, 324A/325B, 326A, and 328B.

Petitioner denied the allegations of private respondent and argued that the petition should be dismissed for having been filed late or six days after the proclamation of the winning candidates.[8] Meanwhile, the members of the CBOC of Tuguegarao City denied private respondent's allegations of manifest errors in the SOVP; maintained that petitioner garnered more votes than those obtained by private respondent; and that they have properly performed their duties and functions.[9]

On December 20, 2007, the Second Division of the COMELEC issued the assailed Resolution, to wit:

IN VIEW OF THE FOREGOING, the instant Petition filed by Anthony Tuddao for Correction of Manifest Error and Annulment of Proclamation of Jonas Taguiam is hereby GRANTED.

ACCORDINGLY, the City Board of Canvassers of Tuguegarao, Cagayan is hereby DIRECTED to (i) RECONVENE after giving due notice to the concerned parties, (ii) CORRECT the errors in the Statement of Votes by Precinct (SOVP), and thereafter proclaim the 12[th] winning candidate for the Sangguniang Panlungsod of Tuguegarao, Cagayan.

Let the City Board of Canvassers of Tuguegarao, Cagayan implement this Resolution with dispatch.

SO ORDERED.[10]

The COMELEC held that the belated filing of private respondent's petition cannot deter its authority to ascertain the true will of the electorate and thereafter affirm such will. Thus, after due proceedings, the COMELEC found private respondent's allegations duly substantiated with material evidence and confirmed the following:

A. With regard to the votes of private respondent:

Precinct No.

SOVP No.

ER No.

Votes in SOVP

Votes in ER

Votes Affected

1

69A/69B

15327

9602679

27

27

0

2

87A/87B

10543

9602699

13

13

0

3

192A/192B

10531

9602801

20

19

-1

4

326A

10532

9602921

43

53

+10

TOTAL

+9

B. With regard to the votes of petitioner:

Precinct No.

SOVP No.

ER No.

Votes in SOVP

Votes in ER

Votes Affected

1

35A/36A

10543

9602647

40

33

-7

2

61A/63A

10539

9602672

55

50

-5

3

264A/265A

10528

9602871

39

29

-10

4

324A/325A

10533

9602920

62

61

-1

5

328B

10527

9602924

33

32

-1

TOTAL

-24

The COMELEC concluded that nine votes should be added to the total number of votes garnered by private respondent; while 24 votes should be deducted from the total number of votes obtained by petitioner. Thus, the total number of votes obtained by private respondent was 10,980, while the total number of votes received by petitioner was 10,957. As such, private respondent was rightfully the 12[th] winning candidate for the Sangguniang Panglungsod of Tuguegarao City, Cagayan.

Petitioner filed a motion for reconsideration which was denied by the COMELEC En Banc on October 9, 2008.

Hence, this Petition for Certiorari[11] raising the issue of whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of private respondent's petition for correction of manifest errors in the Election Returns and Statement of Votes despite its late filing.

Petitioner avers that private respondent's petition for correction of manifest errors should have been dismissed

outright for failure to show any justification for its late filing; that, if the petition had been properly dismissed, private respondent had other remedies available, such as an election protest.

Rule 27, Section 5 of the 1993 COMELEC Rules of Procedure expressly states that:

Pre-proclamation Controversies Which May Be Filed Directly with the Commission -

(a) The following pre-proclamation controversies may be filed directly with the Commission:

x x x x

2) When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, (3) there has been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass, or (4) so-called returns from non-existent precincts were included in the canvass, and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.

x x x x

If the petition is for correction, it must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby.

While the petition was indeed filed beyond the 5-day reglementary period, the COMELEC however has the discretion to suspend its rules of procedure or any portion thereof. Sections 3 and 4 of Rule 1 of the COMELEC Rules of Procedure state, to wit:

Sec. 3. Construction. - These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

Sec. 4. Suspension of the Rules. - In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

Certainly, such rule of suspension is in accordance with the spirit of Section 6, Article IX-A of the Constitution which bestows upon the COMELEC the power to "promulgate its own rules concerning pleadings and practice before it or before any of its offices" to attain justice and the noble purpose of determining the true will of the electorate.[12]

In *Jaramilla v. Commission on Elections*[13] and *Dela Llana v. Commission on Elections*,[14] the Court affirmed the COMELEC's suspension of its rules of procedure regarding the late filing of a petition for correction of manifest error and annulment of proclamation in view of its paramount duty to determine the real will of the electorate. We have consistently employed liberal construction of procedural rules in election cases to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections.[15]

In the instant case, records show that petitioner was declared the 12th winning candidate based on SOVPs containing mathematical and clerical errors. The total number of votes in the SOVPs of the identified precincts are markedly different from the votes tabulated in their respective ERs, i.e., petitioner was given additional votes, while private respondent's votes were reduced, which altered the outcome of the election. Petitioner was declared the last winning candidate for the position of Sangguniang Panglungsod of Tuguegarao City, instead of private

respondent.

In *Torres v. Commission on Elections*,^[16] the Court reiterated that while the remedy of the losing party is an election protest after his opponent has already been proclaimed as winning candidate, such recourse is on the assumption, however, that there has been a valid proclamation. Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation.^[17]

It is significant to note that petitioner did not assail the factual findings of the COMELEC of manifest error in the tabulation of votes but only raised issues on the foregoing technicalities. Hence, the COMELEC's un rebutted findings of fact are therefore sustained.

Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence. Grave abuse of discretion means such capricious and whimsical exercise of judgment as would amount to lack of jurisdiction; it contemplates a situation where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law. In a certiorari proceeding, as in the instant case, it is imperative for petitioner to show caprice and arbitrariness on the part of the court or agency whose exercise of discretion is being assailed.^[18]

For acting pursuant to its Constitutional mandate of determining the true will of the electorate with substantiated evidence, the Court finds no grave abuse of discretion on the part of COMELEC in annulling the proclamation of petitioner. Said proclamation is flawed from the beginning because it did not reflect the true and legitimate will of the electorate. Having been based on a faulty tabulation, there can be no valid proclamation to speak of.^[19]

WHEREFORE, this petition for certiorari is DISMISSED for lack of merit. The December 20, 2007 Resolution of the Second Division of the Commission on Elections (COMELEC) and the October 9, 2008 Resolution of the COMELEC En Banc are hereby AFFIRMED.

SO ORDERED.

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

Brion, J., on official leave.

[1] Rollo, pp. 3-20.

[2] *Id.* at 26-35; penned by Presiding Commissioner Florentino A. Tuason, Jr. and concurred in by Commissioners Rene V. Sarmiento and Nicodemo T. Ferrer.

[3] *Id.* at 36-46; penned by Commissioner Moslemen T. Macarambon and concurred in by Chairman Jose A.R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Leonardo L. Leonida, and Lucenito N. Tagle.

[4] *Id.* at 161-172.

[5] As per the Certificate of Canvass of Votes and Proclamation of the Winning Candidates for City Offices issued by the City Board Canvassers of Tuguegarao City; *id.* at 47.

[6] As per the May 24, 2007 Certification issued by the Office of the City Election Officer of COMELEC in Tuguegarao City; *id.* at 57.

[7] Id. at 49-54: Precincts 004A/004B, 0015S/0020A, 0030A/0032A, 0035A/0036A, 0041B/0045B, 0049A, 0061A/0063A, 0064A/0064B, 0067A/0067B, 0069A/0069B, 0087A/0087B, 0106A/0107B, 0139A/0140B, 133A/174B, 0178A/0178B, 0179A, 0190A/0190B, 0192A/0192B, 0216, 0229A/0229B, 0257A/0257B, 0264A/0265A, 0266A/0267A, 0283A/0283B, 0324A/0325B, 0326A, 0328B.

[8] Id. at 133-138.

[9] Id. at 139-142.

[10] Id. at 34.

[11] Id. at 3-20.

[12] Dela Llana v. Commission on Elections, 462 Phil. 355, 372 (2003).

[13] 460 Phil. 507 (2003).

[14] Supra note 12.

[15] Octava v. Commission on Elections, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 765-766.

[16] 337 Phil. 270 (1997).

[17] Id. at 275-276, citing Duremdes v. Commission on Elections, G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746 and Aguam v. Commission on Elections, 132 Phil. 353 (1968).

[18] Fernandez v. Commission on Elections, G.R. No. 171821, October 9, 2006, 504 SCRA 116.

[19] Tatlonghari v. Commission on Elections, G.R. No. 86645, July 31, 1991, 199 SCRA 849, 857-858.

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