

**EMILIO DAYAG, PETITIONER, VS. HONORABLE JUDGE JUAN A. ALONZO, REGIONAL TRIAL COURT, BRANCH XXV, TABUK, KALINGA-APAYAO AND GLORIA GUIAWAN, RESPONDENTS.**

*G.R. No. 66427. January 17, 1985*

Ponente: MELENCIO-HERRERA, J.

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**MELENCIO-HERRERA, J.:**

Petitioner EMILIO Dayag and private respondent GLORIA Guiawan were the only candidates for Punong Barangay (Barang-ay Captain) of Gobgob, Tabuk, Kalinga-Apayao in the Barangay elections of May 17, 1982.

There were two voting centers in that Barangay. There was no question in respect of the election results in Voting Cen-ter No. 2 where EMILIO obtained 163 votes while GLORIA garner-ed 166 votes.

In Voting Center No. 1, however, a controversy arose regarding the correct appreciation of votes where the names of the candidates for Punong Barangay were written not on the proper space but elsewhere in the ballot. The Board of Election Tellers considered the votes as invalid, which act-ion sparked a commotion. To prevent an aggravation of the situation, the Board padlocked the ballot box, and together with the ballot box for Voting Center No. 2, took them to the Municipal Building under the safekeeping of the Police Station Commander.

At that point, the results of the voting, as shown by the tally were:

EMILIO Dayag

GLORIA Guiawan

Voting Center No. 1

144

159

Voting Center No. 2

163

166

Total

307

325

No official return was submitted, however, for Voting Center No. 1.

The Board of Election Tellers verbally referred the controversy to the Municipal Election Registrar, who informed the Board that the votes should have been appreciated for the candidate whose name was written since there was no showing that the ballots were marked.

The next day, or on May 18, 1982, the Provincial Election Supervisor issued a memorandum to the Board of Canvassers to complete the canvassing and to proclaim the winning candidate. In turn, the Board of Canvassers required the Board of Election Tellers to submit its election return.

Instead of submitting the election return, however, the Board of Election Tellers notified the candidates in writing of a recounting of votes on May 19, 1982 at the Municipal Hall. GLORIA refused to participate and, instead, submitted a letter protesting the recounting. The recounting proceeded nonetheless with the following results:

EMILIO Dayag

GLORIA Guiawan

Voting Center No. 1

192

146

Voting Center No. 2

163

166

Total

355

312

With a plurality of 43 votes, the Board of Canvassers proclaimed EMILIO as the duly elected Punong Barangay. A certificate of Proclamation was issued on May 19, 1982 and EMILIO took his oath of office on May 28, 1982.

GLORIA filed an Election Contest with the Municipal Trial Court of Tabuk, Kalinga-Apayao, to declare the recounting and proclamation null and void and for her declaration as the winning candidate. In a Decision dated June 14, 1982, the Municipal Trial Court dismissed the Protest for lack of merit thereby upholding the recounting of votes and the proclamation of EMILIO.

On appeal, the Regional Trial Court, Branch XXV, Tabuk, Kalinga-Apayao, reversed the Municipal Trial Court and held that the recounting of votes on May 19, 1982 was void since the Board of Election Tellers had acted beyond its authority, and on the basis of the first counting, declared GLORIA as the duly elected Punong Barangay.

EMILIO filed a notice of appeal with the Regional Trial Court on October 28, 1983.

On November 29, 1983, EMILIO filed with this Court an appeal by Certiorari, which we treated as a special civil

action for Certiorari. After Comment and Reply were submitted, we resolved to give due course without requiring the filing of Memoranda, the facts and the issues being clear.

The principal issue to be resolved is whether or not the Board of Election Tellers had the authority to conduct a re-counting for the re-appreciation of the votes previously excluded, after a tally had been made, but before the accomplishment of the election returns and announcement of the results.

Section 160 of the 1978 Election Code (P.D. No. 1296), which is applicable in a suppletory character to the election of Barangay officials (Sec. 21, Barangay Election Law), provides:

"SEC. 160. Alterations and corrections in the election returns. - Any correction or alteration made in the election returns by the committee before the announcement of the results of the election in the voting center shall be duly initialed by all the members thereof.

"After the announcement of the results of the election in the voting center has been made, the committee shall not make any alteration or amendment in any of the copies of the election returns unless so ordered by the Commission upon petition of the members of the committee within five days from the date of the election or twenty four hours from the time of copy of the election returns concerned is opened by the board of canvassers, whichever is earlier. x x x"

It is clear from the foregoing provision that the Board of Election Tellers may make alterations and corrections in the election returns before the announcement of the results. In the case at bar, the alteration and correction was made in the tally stage and even before the preparation of the election returns. The Board of Election Tellers, therefore, acted within its prerogatives in making a recount specially considering that the Municipal Election Registrar had informed the Board in response to its query that the votes should have been appreciated for the candidates whose names were written even in the wrong space since there was no showing that the ballots were marked.

Be that as it may, we note the allegation in the Petition that a recount before the Regional Trial Court had been made with the agreement of the parties but that the results thereof were disregarded in that Court's Decision (p. 9, Petition). The Petition further discloses that approximately 40 votes were misappreciated by the Board of Election Tellers (par. V, Petition) but the recount added 58 votes to EMILIO and deducted 13 votes from GLORIA, showing some discrepancy.

ACCORDINGLY, the Decision of the Regional Trial Court, Branch XXV, Tabuk, Kalinga-Apayao, is hereby set aside, and in the primordial interest of determining the true will of the electorate definitively and conclusively, said Court is hereby ordered to recount and re-appreciate the votes in Voting Center No. 1, Gobgob, Tabuk, Kalinga-Apayao, with deliberate speed, and to render judgment accordingly.

**SO ORDERED.**

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

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