

EN BANC

[G.R. NO. 174763, April 24, 2007]

ANTONIO A. DIMAYUGA, PETITIONER, VS. COMMISSION ON ELECTIONS AND MARIO V. MAGSAYSAY, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition^[1] for Certiorari and Prohibition with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order seeking the nullification of the Order of the Commission on Elections (COMELEC) *en banc* issued on October 10, 2006.

The facts^[2] are as follows:

Petitioner and private respondent vied for the mayoralty post of the Municipality of San Pascual, Batangas in the May 10, 2004 elections. Private respondent won with 9,005 votes as against petitioner's 7,775 votes or a difference of 1,230 votes in favor of the former.

Petitioner filed an election protest^[3] before the Regional Trial Court, Branch 3, of Batangas City based on the following grounds: a) misreading or miscounting of ballots; b) substitute voting; c) disenfranchisement of voters when they failed to register; d) clustering of precincts; and e) erasures in the Statement of Votes by Precinct.

After the revision of ballots, the case was submitted for decision. On April 18, 2006, the trial court rendered its Decision declaring petitioner the winner by 41 votes after invalidating a total of 1,192 ballots for private respondent.

On April 21, 2006, private respondent filed with the trial court a Notice of Appeal.^[4] On the same date, petitioner filed his Motion for Execution Pending Appeal. An Opposition to the aforesaid motion was filed by private respondent on April 27, 2006.

On May 2, 2006, the trial court issued a Special Order granting execution pending appeal, hence, a Writ of Execution was subsequently issued on May 3, 2006.

On May 4, 2006, private respondent filed a petition for *certiorari* with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction with the COMELEC, Second Division,^[5] assailing the May 2, 2006 Special Order of the trial court. He alleged that: a) no good reason was cited to justify the issuance of the Special Order and the Writ of Execution; b) the Writ of Execution did not comply with the requirements of the Special Order since it was issued without the required

bond of P100,000; c) there is yet no final determination that a "majority" of the electorate of San Pascual, Batangas really voted for petitioner; and d) and that there is no certainty that the appealed decision of the trial court would be affirmed.

On May 5, 2006, the COMELEC, Second Division, issued an Order granting private respondent's prayer for the issuance of a TRO, the pertinent portion of which reads:

The margin of forty-one (41) votes coupled with the grounds mentioned in the Special Order which, to our mind, were merely general statements lacking in specific justifications, do not warrant the issuance of the extraordinary writ of execution pending appeal. It is therefore deemed that great or irreparable injury shall befall upon the petitioner if the order granting execution pending appeal is immediately implemented.

And it is also to the best interest of the electorate of San Pascual, Batangas that the said Order is stayed for the meantime.

WHEREFORE, premises considered, the prayer for the issuance of [a] temporary restraining order is hereby granted.

Respondent Judge Galvez is hereby ordered to cease and desist from implementing the May 2, 2006 Special Order together with the May 3, 2006 Writ of Execution.

The hearing for the issuance of the writ of preliminary injunction is hereby set on May 23, 2006 at 10:00 o'clock in the morning at the COMELEC Session Hall.

Respondent Antonio A. Dimayuga is also hereby ordered to submit his comment and/or answer to the petition within five (5) days from receipt hereof.

SO ORDERED. [6]

On May 20, 2006, petitioner filed his motion to lift the temporary restraining order.

Meanwhile, the hearing for the issuance of the writ of preliminary injunction was reset to June 13, 2006.

In his Manifestation and Motion filed on May 25, 2006, petitioner intimated his re-assumption to the Office of the Mayor of San Pascual, Batangas on May 29, 2006 in view of the expiration of the injunctive writ issued on May 5, 2006.

On June 5, 2006, private respondent filed his Opposition to Motion and Comment on the Manifestation of petitioner, averring that Section 5, Rule 30 of the Comelec Rules of Procedure has been amended by Comelec Resolution No. 7630, extending the effectivity of an injunctive writ from 20 to 60 days.

Meanwhile, the hearing for the issuance of the writ of preliminary injunction was again reset to June 15, 2006. During the hearing, the parties agreed that the main petition and all incidents thereto be deemed submitted for resolution without the filing of memoranda.

On July 4, 2006, the COMELEC, Second Division, issued a Resolution denying the petition, and affirming the Special Order of the Trial Court, thus:

WHEREFORE, the petition is hereby DENIED. Let the Writ of Execution issued by public respondent dated May 3, 2006 be implemented.

SO ORDERED.^[7]

On July 5, 2006, private respondent filed a Motion for Reconsideration of the above resolution, and the case was elevated to the COMELEC *en banc*.

On September 29, 2006, petitioner and his supporters occupied the Mayor's Office of the municipality by forcibly opening the door and breaking its locks. This resulted to a complicated situation wherein there were two persons, petitioner and private respondent, discharging the duties, powers and functions of the Mayor.

Due to this mayoralty controversy, Secretary Ronaldo V. Puno of the Department of the Interior and Local Government issued a Memorandum on October 2, 2006, stating:

. . .

It could be recalled that in view of the legal question involved in the mayoralty controversy in San Pascual, Batangas, the Department initially referred the matter to the COMELEC for clarification and guidance in taking further actions. As of this date, however, we are still awaiting the reply of the COMELEC.

In view of this turn of events, and in order to ease the tension brought about by the intense emotions from the supporters of each camp, and in order to restore order in the municipal government so as not to jeopardize the delivery of essential basic public services, this Department is thus constrained, based on available records whereupon we can reasonably draw our objective and fair legal position, to recognize the incumbency of Mr. Antonio A. Dimayuga as Mayor of San Pascual, Batangas, his re-assumption to office having been made by virtue of a Writ of Execution Pending Appeal earlier issued by the court.

May we emphasize, however, that this pronouncement is subject to whatever official reply that the COMELEC will make on our earlier query...

[8]

On October 4, 2006, private respondent filed an *Urgent Motion for Resolution of the Issue as to Whether the Special Order of Execution Pending Appeal Could be Executed Pending Resolution of the Motion for Reconsideration and/or Motion for Immediate Resolution of the Pending Motion for Reconsideration* with the COMELEC *en banc*.

On October 10, 2006, the COMELEC *en banc* issued an Order granting the above Motion. The pertinent portions of the Order read: