

## EN BANC

[ G.R. No. 176211, May 08, 2007 ]

### **MAYOR IBARRA R. MANZALA, PETITIONER, VS. COMMISSION ON ELECTIONS AND JULIE R. MONTON, RESPONDENTS.**

#### **DECISION**

##### **AZCUNA, J.:**

This is a petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order (TRO), or *status quo ante* order, and/or writ of preliminary injunction.

Petitioner Ibarra R. Manzala seeks to annul the resolution, dated August 24, 2006, of the Former Second Division<sup>[1]</sup> of the Commission on Elections (COMELEC), declaring private respondent Julie R. Monton to be the duly elected Municipal Mayor of Magdiwang, Romblon in the May 10, 2004 National and Local Elections, and the resolution of the COMELEC *en banc*,<sup>[2]</sup> dated January 24, 2007, denying petitioner's motion for reconsideration and affirming the Resolution of August 24, 2006 with modification as to the number of votes obtained by both parties after re-appreciation.

The antecedents are as follows:

Petitioner Ibarra R. Manzala and private respondent Julie R. Monton were mayoralty candidates in the Municipality of Magdiwang, Romblon, during the May 10, 2004 National and Local Elections. On May 13, 2004, the Municipal Board of Canvassers proclaimed private respondent as the duly elected Municipal Mayor with 2,579 votes, or a margin of 13 votes, over petitioner's 2,566 votes.

On May 19, 2004, petitioner filed an election protest with the Regional Trial Court of Romblon, Branch 81 (Election Protest Case No. 7), seeking recount in the 10 precincts of Magdiwang on the grounds of fraud, serious irregularities, and willful violation of the Omnibus Election Code (Batas Pambansa Bilang 881) and other pertinent COMELEC rules allegedly committed by the voters and the Chairman and members of the Board of Election Inspectors during the election.

Private respondent filed an Answer with Counter-Protest and Counterclaim, averring that the election was held peacefully with no irregularity whatsoever. By way of counter-protest, private respondent contested the election in certain precincts, to wit: Precincts 41A, 40A, 39A, 38A, 37A, 36A and 35A of Barangay Tampayan; Precincts 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A and 9B of Barangay Poblacion; Precinct 16A of Barangay Agutay; Precinct 24A of Barangay Dulangan; and Precinct 32A of Barangay Jao-asan.

Thereafter, petitioner filed a Reply and Answer to the Counter-Protest and

Counterclaim.

A revision of ballots was later conducted. In its decision of December 8, 2005, the trial court rendered judgment in favor of petitioner, thus:

WHEREFORE, premises considered, protestant IBARRA R. MANZALA is hereby proclaimed as the duly-elected Municipal Mayor of Magdiwang, Romblon during the election of May 10, 2004 who won over protestee JULIE R. MONTON with a majority of 137 valid votes and is entitled to occupy said position. The proclamation by the MUNICIPAL BOARD OF CANVASSERS of Magdiwang, Romblon that JULIE R. MONTON was the duly-elected MAYOR is hereby ANNULLED.

SO ORDERED.<sup>[3]</sup>

Petitioner moved for the execution of the decision pending appeal which the trial court granted on December 16, 2005.

On appeal, private respondent raised the following assignment of errors: that the trial court seriously erred in invalidating 144 votes of private respondent ostensibly on the ground of pattern voting; that sets of ballots were marked, as well as written by two persons; that the trial court erred in not considering and appreciating the objections raised by private respondent involving the counter-protested precincts, and in arriving at its decision, it considered only the objections and/or exhibits of the petitioner; and that the trial court seriously erred when it declared petitioner as the duly elected Municipal Mayor of Magdiwang, Romblon despite the patent defects in the appealed decision.

On August 24, 2006, the Former Second Division of the COMELEC issued a Resolution which reversed and set aside the decision of the trial court. It found that private respondent obtained 2,560 votes, or a margin of 17 votes, over petitioner's 2,543 votes. The dispositive portion of the Resolution reads:

WHEREFORE, the instant appeal is hereby GRANTED. The December 8, 2005 Decision of the Regional Trial Court, Fourth Judicial Region, Branch 81, Romblon, Romblon in Election Protest Case No. 7 is hereby REVERSED and SET ASIDE.

ACCORDINGLY, the Commission (Former Second Division) hereby DECLARES protestee-appellant JULIE E. MONTON, the duly-elected Municipal Mayor of Magdiwang, Romblon during the May 10, 2004 National and Local Elections.

SO ORDERED.<sup>[4]</sup>

Petitioner's motion for reconsideration was denied by the COMELEC *en banc* in its Resolution of January 24, 2007. It affirmed the earlier Resolution dated August 24, 2006 which proclaimed private respondent as the duly elected Municipal Mayor with modification as to the number of votes obtained by both parties after re-appreciation, *i.e.*, private respondent garnered 2,535 votes, or a margin of 60 votes, over petitioner's 2,475 votes.

Meanwhile, acting on private respondent's Motion for Immediate Execution and