

**EN BANC**

**[ G.R. No. 204828, December 03, 2013 ]**

**JAIME C. REGIO, PETITIONER, VS. COMMISSION ON ELECTIONS  
AND RONNIE C. CO, RESPONDENTS.**

**D E C I S I O N**

**VELASCO JR., J.:**

**The Case**

This Petition for Certiorari filed under Rule 64, in relation to Rule 65, seeks to nullify and set aside the Resolution dated December 7, 2012 of the Commission on Elections (COMELEC) *En Banc* in EAC (BRGY-SK) No. 161-2011. The assailed Resolution reversed and set aside the Resolution of the COMELEC First Division dated August 23, 2011, which, in turn, affirmed the May 4, 2011 Decision in Election Case No. 02480-EC of the Metropolitan Trial Court (MeTC), Branch 4 in Manila.

**The Facts**

Petitioner Jaime C. Regio (Regio) and private respondent Ronnie C. Co (Co), among other candidates, ran in the October 25, 2010 *barangay* elections in *Barangay* 296, Zone 28, District III of the City of Manila for the position of *punong barangay*.

Immediately following the counting and canvassing of the votes from seven clustered precincts in the adverted *barangay*, Regio, who garnered four hundred seventy-eight (478) votes, as against the three hundred thirty-six (336) votes obtained by Co, was proclaimed winner for the contested post of *punong barangay*. The detailed tally of the votes per precinct, as reflected in the Statement of Votes, is as follows:<sup>[1]</sup>

<b>Candidate</b>	<b>Clustered Precinct Number</b>				<b>Total</b>
	<b>1302A</b>	<b>1304A</b>	<b>1306A</b>	<b>1307A</b>	
	<b>1303A</b>	<b>1305A</b>		<b>1307B</b>	
Co, Ronnie C.	76	113	48	99	336
Regio, Jaime C.	171	151	73	83	478

On November 4, 2010, Co filed an election protest before the MeTC. He claimed, among other things, that the Board of Election Tellers (BET) did not follow COMELEC Resolution No. 9030, as it: (1) did not permit his supporters to vote; (2) allowed “flying voters” to cast votes; and (3) ignored the rules on appreciation of ballots, resulting in misreading, miscounting, and misappreciation of ballots. Additionally, he alleged that Regio committed vote-buying, and engaged in distribution of sample ballots inside the polling centers during the day of the elections.<sup>[2]</sup>

Of the seven clustered precincts (CPs) initially protested, Co would later exclude CP Nos. 1304A and 1305A from the protest. During the preliminary conference, the trial court allowed the revision of ballots. The revision of ballots occurred on January 13-14, 2011.<sup>[3]</sup> Per the report of the revision committee, the number of votes obtained by both candidates in the contested precincts, as shown below, indicated a substantial recovery on the part of Co:

Candidate	Clustered Precinct Number				Total
	1302A	1304A	1306A	1307A	
	1303A	1305A		1307B	
Co, Ronnie C.	<b><u>160</u></b>		<b><u>63</u></b>	98	321
Regio, Jaime C.	<b><u>86</u></b>		<b><u>62</u></b>	84	232

During his turn to present evidence, Co limited his offer to the revision committee report, showing that he garnered the highest number of votes.

Regio, on the other hand, denied that the elections were tainted with irregularities. He claimed that the results of the revision are products of post-elections operations, as the ballots were tampered with, switched, and altered drastically to change the results of the elections. He presented as witnesses the following: poll watchers Evangeline Garcia, Cezar Regio, and Ruben Merilles, who all testified that there were no instances of electoral fraud, irregularities, and anomalies during the day of the elections. Presented too were volunteers Love Agpaoa and Romy Que, who belied allegations of miscounting, misreading, and misappreciation of the ballots during the counting, and Dominador Dela Cruz, Chairperson of the BET for CP Nos. 1302A/1303A, as well as Erlina Hernandez, Chairperson of the BET for CP No. 1306A, who both testified that they followed the rules and regulations in conducting the elections in *Barangay 296*, and that each ballot was correctly tabulated.<sup>[4]</sup>

The results of the revision notwithstanding, the trial court, in its Decision of May 4, 2011, dismissed Co's protest and declared Regio as the duly-elected *punong barangay* of *Barangay 296*. It disposed of the case, as follows:

WHEREFORE, the proclamation of protestee Jaime C. Regio as the duly elected "Punong Barangay" or "Barangay Chairman" of Barangay 296, District III, Manila by the Barangay Board of Canvassers is affirmed by this court. The election protest filed by the protestant Ronnie C. Co is dismissed for lack of merit.<sup>[5]</sup>

According to the trial court, before it can accord credence to the results of the revision, it should first be ascertained that the ballots found in the box during the revision are the same ballots deposited by the voters. In fine, the court "should first be convinced that the ballots counted during the revision have not been tampered with before it can declare the ballots a) as superior evidence of how the electorate voted, and b) as sufficient evidence to set aside the election returns. For the ballots to be considered the best evidence of how the voters voted, their integrity should be satisfactorily established."<sup>[6]</sup>

Invoking *Rosal v. COMELEC*,<sup>[7]</sup> the trial court ruled that Co failed to sufficiently show that the integrity of the contested ballots had been preserved. It then cited the presumption that election returns are genuine, and that the data and information supplied by the board of election inspectors are true and correct.<sup>[8]</sup> The trial court said:

A closer scrutiny of the premise made by the protestant will reveal that he is trying to prove the misreading, miscounting, and misappreciation of ballots by introducing as evidence the marked difference of the results of the revision and of the results in the election returns. This premise is too presumptuous. The marked difference cannot be used to prove the misreading, miscounting, and misappreciation of ballots because the misreading, miscounting, and misappreciation of ballots is precisely what the protestant needs to prove to justify the marked difference in the results. Prudence dictates that the protestant should first explain where this huge discrepancy is coming from before using it as evidence. In other words, the misreading, miscounting, and misappreciation of ballots should be proven by other independent evidence.

Without any evidence, the allegation of misreading, miscounting, and misappreciation of ballots remains a mere allegation without any probative value.<sup>[9]</sup>

Traversing the allegations of post-elections tampering, the trial court rejected Co's allegation that the ballot boxes were properly locked and sealed. In fact, the trial court said, the envelope containing the ballots for CP Nos. 1302A/1303A was glued on both sides, prompting protestee's revisor to comment that the envelope appears to be re-pasted and tampered. In CP No. 1306A, the report stated that the ballots were not placed in a sealed envelope.<sup>[10]</sup>

Corollarily, the trial court stated the observation that Regio has presented credible witnesses to prove that there were no irregularities or anomalies during the casting and counting of votes.

Aggrieved, Co filed an appeal before the COMELEC, arguing that the trial court erred:

- 1.) In disregarding the result of the physical count of the revised ballots found in Precinct Nos. 1302A/1303A and 1306A;
- 2.) In declaring that the protestant appellant was not able to sufficiently show that the integrity of the contested ballots in Precinct Nos. 1302A/1303A and 1306A was preserved;
- 3.) In declaring that protestant-appellant was not able to overcome the presumption of regularity of the election, counting, and canvassing proceedings in the protested precincts of Barangay 296, Manila;
- 4.) In declaring that the votes obtained by the parties in Precinct Nos. 1302A/1303A and 1306A as reflected in their respective Election Returns are [the] true and actual results of the elections;
- 5.) In giving weight to the incredulous and conflicting testimonies of the obviously biased witnesses of the protestee-appellee;
- 6.) In refusing to lend credence to the testimony of the expert

witness from the Commission on Elections that the ballots obtained from Precinct Nos. 1302A/1303A and 1306A are genuine ballots; and

- 7.) In refusing to appreciate the contested and revised ballots for Precinct Nos. 1302A/1303A and 1306A and the appreciation of the contested ballots found in Precinct No. 1307A/1307B.<sup>[11]</sup>

In a Resolution dated August 23, 2011, the COMELEC First Division<sup>[12]</sup> dismissed the appeal, noting, as the MeTC did, that Co failed to show that the integrity of the ballots in question was in fact preserved. Echoing the trial court, the COMELEC First Division ruled that the absence of any report or record of tampering of the ballot boxes does not preclude the possibility of ballot tampering.<sup>[13]</sup> It also affirmed the rejection of Co's reliance on the revision committee report as proof that no post-election tampering occurred. The COMELEC First Division observed:

We note that protestant-appellant did not offer any evidence to prove his claims of misreading, miscounting, and misappreciation of the ballots; he posits that the variance between the election results according to the election documents and the revision of the ballots is in itself enough to prove his allegations of misreading, miscounting, and misappreciation of the ballots by the Board of Election Tellers. Protestant-appellant begs the question instead of laying support to his claims.

x x x x

Since it could not divine the will of the electorate from the ballots, the trial court had no other recourse other than to rely on the available election documents. And, We cannot fault the trial court for doing so when there was no question as to the election documents' authenticity and validity.

Protestant-appellant harps that the election documents are "mere by-products of the electoral fraud committed to benefit (protestee-appellee) including but not limited to **misreading, miscounting, and misappreciation of ballots by the Chairpersons of the Board of Election Tellers in order to increase the votes of the Protestee-Appellee and decrease the votes that should have been properly credited to Protestant-Appellant Co.**" (emphasis in the original)

As previously mentioned, protestant-appellant's assertion is specious x x x. The records of the case is bereft of any evidence supporting protestant-appellant's claims of electoral fraud and, thus, We concur with the trial court stating, "(w)ithout any evidence, the allegation of misreading, miscounting, and misappreciation of ballots remains a mere allegation without probative value."<sup>[14]</sup>

The COMELEC First Division noted that Co could have, but did not, presented testimonies of witnesses to substantiate his claims of electoral fraud, albeit he attached affidavits of various witnesses in his protest. The affidavits, the COMELEC First Division said, asserted, in one form or another, the electoral malfeasance or misfeasance allegedly committed by the BET. In dismissing the arguments of Co for his failure to present evidence, the COMELEC commented, "[I]t appears that

protestant-appellant [Co] rested on laurels after seeing the result of the physical count of the revised ballots and the conclusion of the Technical Examination. In fine, protestant-appellant proverbially lost the war for want of a nail.”<sup>[15]</sup> The *fallo* of the COMELEC First Division Resolution reads:

**WHEREFORE**, premises considered, the Commission (*First Division*) **RESOLVED**, as it hereby **RESOLVES**, to **DENY** the protestant’s Appeal for **LACK OF MERIT**. The Decision dated 04 May 2011 by Metropolitan Trial Court – Branch 04 City of Manila is hereby **AFFIRMED**.<sup>[16]</sup>

Co then filed a Motion for Reconsideration. In its assailed December 7, 2012 Resolution, the COMELEC *En Banc*<sup>[17]</sup> reconsidered the August 23, 2011 Resolution of the First Division, and accordingly declared Co as the duly elected *punong barangay*. Vital to the *En Banc*’s disposition is its finding that the ballots subjected to revision were genuine. The *En Banc* found:

x x x [W]e find merit in appellant’s motion for reconsideration. For, protestant [Co] has sufficiently established that no untoward incident had attended the preservation of the ballots after the termination of the proceedings of the Board of Election Tellers or from the time the custody of the ballot boxes is transferred from the BET to the City Treasurer and finally to the trial court. Protestee who cried post-election fraud is duty-bound to establish that the genuine ballots found inside the boxes were compromised and tampered at any time during that period and before the revision. However, no such proof has been adduced by protestee except the discrepancy between the figures in the ERs and the physical count on revision. But then, said discrepancy could have been caused by errors in the transposition of the numbers from the ballots to the ERs during the canvassing and not due to tampering.

As earlier intimated, the discrepancy could be attributed to ER manipulation during the canvassing and not because of the tampering of the ballots which were already found by an expert and independent body to be genuine and authentic.<sup>[18]</sup>

The *fallo* of the COMELEC *En Banc*’s Resolution reads:

WHEREFORE, premises considered, the Commission RESOLVED as it hereby RESOLVES to reconsider its Resolution dated August 23, 2011 and proclaim protestant-appellant as the duly elected Punong Barangay of Barangay 296, District III, Manila.<sup>[19]</sup>

Thus, the present recourse, on the argument that the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it arbitrarily set aside the Decision of the MeTC and the Resolution of the COMELEC First Division, in the choice between the revision results in the protested precincts and the official vote count recorded in the election returns. Petitioner further argues that the COMELEC gravely abused its discretion when it demanded from protestee direct proof of actual tampering of ballots to justify consideration of the use of the election returns in determining the winning candidate in the elections. In fine, petitioner questions the ruling of the COMELEC giving precedence to the results of the revision over the official canvassing results.