

EN BANC

[G.R. No. 168792, February 23, 2009]

**ANTONIO B. GUNSI, SR., PETITIONER, VS. THE HONORABLE
COMMISSIONERS, COMMISSION ON ELECTIONS AND DATU
ISRAEL SINSUAT, RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

At bar is a petition for *certiorari* and prohibition under Rule 65^[1] of the Rules of Court filed by petitioner Antonio B. Gunsí Sr. (Gunsí) challenging the June 9, 2005 Resolution^[2] of the Commission on Elections (COMELEC) *En Banc* which affirmed the October 11, 2004 Order^[3] of the COMELEC Second Division.

The undisputed facts:

On January 9, 2004, private respondent Datu Israel Sinsuat (Sinsuat) filed a petition for the denial of due course to or cancellation of the certificate of candidacy (COC) of Gunsí in connection with the May 10, 2004 Synchronized National and Local Elections. Essentially, Sinsuat sought the disqualification of Gunsí for Mayor of South Upi, Maguindanao, alleging, that: (a) Gunsí was not a registered voter in the Municipality of South Upi, Maguindanao since he failed to sign his application for registration; (b) Gunsí's name was inserted illegally in the List of Applicants and Voters by Alice Lim, Acting Election Officer of South Upi, Maguindanao; and (c) the unsigned application for registration has no legal effect.

In refutation, Gunsí asseverated that his failure to sign his application for registration did not affect the validity of his registration since he possesses the qualifications of a voter set forth in Section 116 of the Omnibus Election Code as amended by Section 9 of Republic Act 8189.

On March 12, 2004, after hearing, the Investigating Officer and Provincial Election Supervisor III, Lintang H. Bedol, issued a resolution recommending Gunsí's disqualification to run for Municipal Mayor of South Upi, Maguindanao on the ground that he is not a registered voter of the municipality. Bedol pointed out that the signature in the application for registration is indispensable for its validity as it is an authentication and affirmation of the data appearing therein.

On August 2, 2004, the COMELEC Second Division issued a Resolution,^[4] to wit:

Although this case has become moot and academic since [Sinsuat] had been proclaimed as the winning candidate for the position of Mayor of South Upi, Maguindanao, in connection with the May 10, 2004 Synchronized National and Local Elections, [w]e, however, cannot allow the irregularities accompanying [Gunsí's] registration as raised by

[Sinsuat] in his petition.

The absence of [Gunsi's] signature in his application for registration casts serious doubt in its preparation and execution. It also renders the authenticity of the document questionable. In *Dalumpines v. Court of Appeals*, the Supreme Court ruled that "the absence of the signature of the contracting parties on the deed itself casts serious doubt in the preparation and execution of the deed."

In addition, the inclusion of [Gunsi's] name in the Election Registration Board's Certified List of Applicants for Registration appears to have been added irregularly as the last name in a list of applicants arranged alphabetically.

WHEREFORE, considering that [Gunsi] lost in the election for the position of Mayor of South Upi, Maguindanao and the fact that [Sinsuat] was duly proclaimed as Mayor of South Upi, Maguindanao on May 16, 2004, there being only one respondent, the instant petition is hereby **DISMISSED** for being moot and academic.

The Law Department, however, is directed to investigate the alleged irregularities herein mentioned for possible violation of election laws and to file the necessary information as the evidence warrants.

SO ORDERED.^[5]

Subsequently, the same division of the COMELEC issued the herein assailed Order^[6] clarifying the August 2, 2004 Resolution, thus:

In the light, however, of the pending pre-proclamation case docketed as SPC 04-247, filed by herein respondent, and the resolution issued by the [COMELEC] (First Division) annulling the proclamation of [Sinsuat], the possibility that a re-canvassing of the election returns of the Municipality of South Upi, Maguindanao is becoming more certain. Therefore, the ruling of the [COMELEC] (Second Division) dismissing the present petition for disqualification against herein respondent for being moot and academic becomes ineffective for the fact that, as argued by [Sinsuat] in his manifestation and clarification, his proclamation has been annulled by the [COMELEC] (First Division).

It is therefore, incumbent upon the [COMELEC] (Second Division) to issue a categorical ruling based on its finding as already articulated in the August 2, 2004 resolution.

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In accordance with the above finding of the [COMELEC] (Second Division) it is [o]ur resolve that [petitioner] Antonio B. Gunsi, Sr. is disqualified to run as Mayor of South Upi, Maguindanao for being a non-registered resident of the same municipality.

WHEREFORE, premises considered, the [COMELEC] (Second Division),

hereby, clarifies its August 2, 2004 resolution by declaring that, in accordance with the findings of the [COMELEC] (Second Division) in the promulgated resolution, [petitioner] Antonio B. Gunsí, Sr. is hereby **DISQUALIFIED** to run as Mayor of South Upi, Maguindanao for being a non-registered resident of the same.

SO ORDERED.^[7]

Upon motion for reconsideration of Gunsí, the COMELEC *En Banc* issued the herein assailed Resolution:^[8]

A perusal of the motion for reconsideration would show that the respondent failed to raise any new material issue. All matters raised in the Motion had already been traversed and resolved in the Recommendation of Provincial Election Supervisor Lintang Bedol dated March 12, 2004 and the Resolution of this Commission (Second Division) promulgated last August 2, 2004 as clarified by its Order dated October 11, 2004.

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION is hereby **DENIED**. The ORDER dated October 11, 2004 is **AFFIRMED**.

SO ORDERED.^[9]

Hence, this petition imputing grave abuse of discretion to the COMELEC. Gunsí posits the following issues for our resolution:

WHETHER OR NOT THE HONORABLE COMMISSION HAS JURISDICTION OVER CASES INVOLVING THE RIGHT TO VOTE.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COMMISSION HAS JURISDICTION, WHETHER OR NOT THE HONORABLE SECOND DIVISION CAN CLARIFY ITS RESOLUTION AFTER SIXTY-NINE (69) DAYS FROM ITS PROMULGATION OR AFTER IT HAS BECOME FINAL AND EXECUTORY.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COMMISSION HAS JURISDICTION, WHETHER OR NOT THE HONORABLE COMMISSION COMMITTED SERIOUS ERRORS WHICH IS TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COMMISSION HAS JURISDICTION, WHETHER OR NOT THE HONORABLE COMMISSION IS CORRECT WHEN IT DISQUALIFIED [GUNSÍ] TO RUN AS MAYOR OF SOUTH UPI, MAGUINDANAOS FOR BEING A NON REGISTERED RESIDENT OF THE SAME DUE TO HIS INADVERTENT FAILURE TO AFFIX HIS SIGNATURE OVER HIS HANDWRITTEN NAME IN THE SPACE PROVIDED THEREFOR IN HIS APPLICATION FOR REGISTRATION PERSONALLY FILLED UP, SWORN TO AN ADMINISTERING OFFICER AND DULY FILED WITH THE COMELEC.^[10]