

EN BANC

[G.R. NO. 170070, February 28, 2007]

CORNELIO DELOS REYES, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROMEO H. VASQUEZ, RESPONDENTS.

DECISION**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the October 25, 2004 Resolution^[1] of the Commission on Elections (COMELEC) Second Division and the September 30, 2005 Resolution^[2] of the COMELEC *En Banc* in EAC No. 90-2002.^[3]

The facts are as summarized by the COMELEC and the Metropolitan Trial Court (MeTC), Branch 23, Manila.

In the July 15, 2002 *Barangay* Elections, Cornelio Delos Reyes (Delos Reyes) and Romeo H. Vasquez (Vasquez) vied for the position of *Barangay* Chairman of *Barangay* 414, Zone 42, District 4, Manila (*Barangay* 414). After the canvass of votes, Vasquez was proclaimed duly elected *Barangay* Chairman of *Barangay* 414 with 181 votes as against Delos Reyes's 32 votes.^[4]

Delos Reyes filed with the MeTC a Petition for Recount^[5] of votes in all the precincts, namely Precinct Nos. 1815-A, 1816-A, 1817-A, and 1818-A on the ground that several votes in his favor were read and counted for Vasquez and that the latter employed threat and intimidation against Delos Reyes's watchers in order to perpetrate election irregularities. Vasquez denied these allegations.^[6]

Pursuant to a September 6, 2002 Order of the MeTC, revision proceedings were conducted by a Revision Committee (Committee) composed of Delos Reyes and Vasquez as members and the MeTC Branch Clerk of Court as Chair. The Committee observed that two of the three ballot boxes coming from the disputed precincts had padlocks to which none of the three keys provided by the COMELEC District Office of Manila fit. However, other than this observation, the Committee found nothing more remarkable about the outward physical appearance of the ballot boxes and decided to forcibly open the same. Inside were election paraphernalia in good condition, with COMELEC paper seals still intact. A physical recount was conducted, resulting in the following:

Precinct No.	Delos Reyes	Vasquez
a) 1815-A and 1817-A1	44	20

b) 1816-A and 1818-A	68	30
c) 1817-A	<u>1</u>	<u>46</u>
	113	100 [sic] [7]

However, Vasquez contested 106 ballots^[8] with votes cast for Delos Reyes while the latter contested 67 ballots^[9] containing votes for Vasquez. Their objections were based on the grounds that some ballots were marked while some contained votes written by only one person.^[10]

On October 15, 2002, the MeTC issued a Decision, declaring Delos Reyes the winner, thus:

WHEREFORE, premises considered, the court hereby declares Mr. Cornelio Delos Reyes as the elected winner for the position of Barangay Chairman of Barangay 414, Zone 42, District 4, Manila during the election held on July 15, 2002.

SO ORDERED.^[11]

The MeTC based its Decision on the result of the physical recount conducted by the Revision Committee where Delos Reyes garnered 113 votes and Vasquez, 100^[12] votes. It did not reject any of the contested ballots for it found no evidence to invalidate them.

Vasquez appealed to the COMELEC, raising the following issues:

1. Whether or not the Court erred in -

(a) Declaring Delos Reyes as the duly elected candidate for the position of Barangay Chairman [of *Barangay*] 414, Zone 42, District 4, Manila despite the absence of evidence to substantiate his claim of threats, intimidation and cheating;

(b) Failing to give weight and probative value to the tally sheets; (Annexes "A," "B," and "C") Certificate of Canvass and Proclamation of winning candidates for Punong Barangay (Annex "D") and letter of the Board of Election Tellers to the Court (Annex "F") in the absence of evidence adduced to claim irregularities in the conduct of election;

2. Whether or not the court erred in declaring the validity of the votes counted in favor of Delos Reyes considering that -

(a) The two padlocks protecting two different ballot boxes did not fit with the three keys officially submitted by COMELEC District Office of Manila;

(b) The one hundred six (106) ballots were questioned and or contested by Vasquez on the ground that these were written by one and the same person.

3. Whether or not it is imperative for the Honorable Commission to conduct a physical counting of the ballots cast to determine the authenticity of the ballots

counted in favor of Delos Reyes which was written by one and the same person.^[13]

In its October 25, 2004 Resolution being assailed herein, the COMELEC Second Division, upon examination of all the contested ballots, reversed the findings and conclusion of the MeTC as follows:

1) Exhibits "1", "2", "3", "4", "5", "6", "7", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "20", "21", "22", "38", "2-D", "2-E", "2-F", "2-G", "2-H", "2-I", "2-J", "2-K", "2-L", "2-M", "2-N", "2-O", "2-P", "2-Q", "2-R", "2-S", "2-T", "2-U", "2-V" and "2-W" have all been written by one person. These forty-one (41) ballots with votes for Delos Reyes are therefore considered invalid.

1a) Exhibits "8", "25" and "26" have all been written by one person. These three (3) ballots with votes for Delos Reyes are therefore considered invalid.

2) Exhibit "C" - in the remaining spaces 2 to 7 for the position of Barangay Kagawad, the name "VICENTE DE LEON" has been written in inordinately large block letters. This was evidently done to facilitate identification of the ballot and the voter. Hence, the ballot is considered marked, and invalidates the vote for Vasquez.

3) Exhibits "C-3", "C-4", "C-5", "C-6", "C-7", "C-8", "C-9", "C-10", "C-11", "C-12", "C-13", "C-14", "C-15", "C-16", "C-17", "C-18", "C-19", "C-20", "C-21", "C-22", [and] "C-23", which are ballots with votes for Vasquez, have three (3) consecutive stars affixed after the name of Vasquez.

However, a careful examination would show that these distinguishing marks do not appear to have been written by the voter himself. The "three consecutive stars" appearing on the twenty-one (21) ballots all bear similarity in appearance, stroke and ink-color, indicating that these were written by a single hand. It would therefore appear that the distinguishing marks were placed after the voter concerned had already accomplished and deposited the ballot in the ballot box, and were deliberately made for the purpose of invalidating the ballot. A mark placed on a ballot by a person other than the voter himself does not invalidate the ballot (*Juliano v. Court of Appeals*, 20 SCRA 808). Hence, these ballots are considered valid votes for Vasquez.

4) There are no clear and sufficient reasons or evidence to invalidate the remaining contested ballots. Hence, the same are considered valid.

Based on the above findings, a total of forty-four (44) ballots, all with votes for Delos Reyes, have been invalidated. On the other hand, one (1) ballot with a vote for Vasquez has also been invalidated. After accordingly deducting the invalid votes from the original number of recounted votes of the parties, as determine by the court a quo, we have the following results:

Delos Reyes

Less: Votes declared invalid - 44
Actual No. of Valid Votes Obtained - 69

Vasquez

No. of votes based on the recount - 100 [sic]
Less: Votes declared as invalid - 1
Actual No. of Valid Votes Obtained - 99 [14]

The above results therefore show protestee-appellant Vasquez the winner over protestant-appellee Delos Reyes with a plurality of thirty (30) [15] votes. [16]

The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the October 15, 2002 Decision of the Metropolitan Trial Court of Manila - Branch 23, in Election Case No. 00[1]406, is REVERSED AND SET ASIDE. The protestee-appellant Romeo H. Vasquez is hereby DECLARED THE WINNER for the position of Barangay Chairman of Barangay 414, Zone 42, District 4, Manila, during the July 15, 2002 Barangay Elections.

SO ORDERED. [17]

Delos Reyes filed a Motion for Reconsideration which the COMELEC En Banc denied in the assailed September 30, 2005 Resolution. [18]

And so, the present Petition questioning the COMELEC Resolutions on the following grounds:

A. The COMELEC gravely abused its discretion amounting to lack and excess of its jurisdiction in sweepingly invalidating forty-five (45) [19] valid ballots cast by the innocent voters for the petitioner, allegedly as written by one person (WBOP) without any valid and legal justification, particularly Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "20", "21", "22", "38", "2-D", "2-E", "2-F", "2-G", "2-H", "2-I", "2-J", "2-K", "2-L", "2-M", "2-N", "2-O", "2-P", "2-Q", "2-R", "2-S", "2-T", "2-U", "2-V" and "2-W"; and Exhibits "8", [20] "25" and "26";

B. The COMELEC gravely erred in finding that the twenty-one (21) invalid ballots, particularly Exhibits "C-3", "C-4", "C-5", "C-6", "C-7", "C-8", "C-9", "C-10", "C-11", "C-12", "C-13", "C-14", "C-15", "C-16", "C-17", "C-18", "C-19", "C-20", "C-21", "C-22", and "C-23", were found to be valid for private respondent despite the very obvious markings of three successive stars written after his name. [21]

Petitioner Delos Reyes filed his Memorandum on October 30, 2006 [22] and private respondent Vasquez, on November 22, 2006. [23]

The petition is partly meritorious.

The will of the voters is embodied in the ballots. To ascertain and carry out such will, their ballots must be read and appreciated according to the rule that every ballot is presumed valid unless there is clear and good reason to justify its rejection.^[24] On this matter, the findings of the COMELEC, which exercises original and appellate jurisdiction over election protests involving elective officials in the regional, provincial, city, municipal, and *barangay* levels, are accorded great respect, if not finality by the Court.^[25] The documents and evidence upon which the COMELEC relies for its resolution, and the manner it appreciates said documents and evidence in respect of their sufficiency are ordinarily beyond our scrutiny for the latter is an independent Constitutional body of a level higher than statutory administrative bodies.^[26]

The COMELEC, however, is not infallible. If it is shown to have issued findings that are not supported by evidence or are contrary to the evidence, it is deemed to have acted capriciously and whimsically. The Court steps in to correct its grave abuse of discretion.^[27] This is one case in point.

In reversing the MeTC and holding that the votes cast in favor of Delos Reyes in the 44 ballots marked as Exhibits "1" to "22", Exhibit "38", Exhibits "2-D" to "2-W", and Exhibits "8", "25", and "26" were invalid for having been written by one person, the COMELEC merely made a general declaration that there were "xxx no marked differences in the style of the handwritings x x x" ^[28] on all 44 ballots.

COMELEC's reliance on only one aspect of the handwritings on the ballots is tenuous. In *Silverio v. Clamor*,^[29] the Court reversed the trial court which had invalidated certain ballots merely on a finding that the writings thereon have the same general appearance and pictorial effect. Speaking through Justice Jose Bengzon, the Court said:

Now the court *a quo* invalidated the above eleven ballots, as mentioned, upon the principle of general appearance or pictorial effect. Yet, the very authority referred to and quoted by said court stated that said general resemblance is not enough to warrant the conclusion that two writings are by the same hand x x x:

In order to reach the conclusion that two writings are by the same hand there must not only be present class characteristics but also individual characteristics or "dents and scratches" in sufficient quantity to exclude the theory of accidental coincidence; to reach the conclusion that writings are by different hands we may find numerous likenesses in class characteristics but divergences in individual characteristics, or we may find divergences in both, but the divergence must be something more than mere superficial differences. (Osborn's Questioned Documents, p. 244) ^[30]

In the present case, the finding of the COMELEC fell short of the foregoing standard. It saw no differences in the handwritings on the 44 ballots yet it is silent on whether it discerned in the ballots similarities and divergences in the class and