

## EN BANC

**[ G.R. NO. 170300, February 09, 2007 ]**

### **BARTOLOME BALINGIT, PETITIONER, VS. COMMISSION ON ELECTIONS AND PABLO YAMAT, RESPONDENTS.**

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

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

Pablo Yamat (Yamat) was declared the elected *Punong Barangay* of Nigui, Masantol, Pampanga, in the last July 28, 2002 *barangay* elections, with Yamat obtaining 257 votes, and his opponent, Bartolome Balingit (Balingit), 250 votes.

Balingit filed an election protest with the Municipal Circuit Trial Court (MCTC) of Macabebe-Masantol, Macabebe, Pampanga, alleging fraud in the counting and preparation of the election returns. After revision of the ballots, the tally turned out with Balingit still having 250 votes, while Yamat had 255 votes.

Thereafter, in a Decision dated September 24, 2003, the MCTC declared Balingit as the duly elected *punong barangay*, with the following tabulation:<sup>[1]</sup>

Precinct Nos.	Balingit	Yamat
53-A	64	16
54-A	52	4
55-A	87	13
56-A	11	57 (97+1-41)
57-A	16 (17-1)	48 (63+1-16)
58-A	19	34 (62+1-29)
Total Votes	249	172

The MCTC invalidated a total of 86 ballots cast in Precinct Nos. 56-A, 57-A, and 58-A, and credited three separate votes cast in these three precincts, resulting in 172 votes cast in Yamat's favor. On the other hand, the MCTC discredited in Balingit's favor one vote cast in Precinct No. 57-A for having been a marked ballot, reducing the latter's number of votes to 249.

Yamat appealed to the Commission on Elections (COMELEC).

On the other hand, Balingit filed a Motion for Execution Pending Appeal of the MCTC Decision which was granted by the COMELEC Second Division in its Order dated January 26, 2005.<sup>[2]</sup>

On April 11, 2005, the COMELEC Second Division rendered its Resolution on Yamat's appeal, reversing the MCTC Decision. The dispositive portion of the Resolution reads:

ACCORDINGLY, the Decision of the Municipal Trial Court of Macabebe-Masantol, Macabebe, Pampanga, in *Election Case No. 02(01)* declaring appellee Bartlome [sic] Balingit the duly elected *Punong Barangay of Barangay Nigui*, Masantol, Pampanga, during the 2002 *Barangay Elections* is hereby REVERSED.

Let the Department of Interior and Local Government (DILG) implement this Resolution.

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

The COMELEC Second Division validated 80 out of the 86 ballots previously invalidated by the MCTC and counted them in favor of Yamat, while the other six ballots remained invalid. The six ballots were as follows:

Precinct No.	Exhibit Nos.
56-A	B44 B45 B5 B7
58-A	135 136

Thus, a total of 252 votes were considered in favor of Yamat, with Balingit still having the same number of votes - 249.

COMELEC Commissioner Mehol K. Sadain, however, registered his dissent on the Commission's findings with regard to six other ballots, namely: Exhibits *B-3*, *B-6*, *B-41*, *B-72*, *B-137*, and *B-138*. These six ballots were among the 86 ballots previously invalidated by the MCTC but were held to be valid by the Commission. It was Commissioner Sadain's view that these ballots appear to have been written by one person and should have been invalidated and not credited in favor of Yamat. Thus, only a total of 246 votes should be credited in favor of Yamat, making Balingit, with 249 votes, the winner by a margin of three votes.<sup>[4]</sup>

Balingit filed a Motion for Reconsideration of the COMELEC Resolution with the COMELEC *En Banc* but it was denied per Resolution dated November 12, 2005. The dispositive portion of the Resolution reads:

WHEREFORE in view of the foregoing, the Commission En Banc DENIES the Motion for Reconsideration for lack of merits. The Resolution of the Second Division promulgated [on] April 11, 2005 is hereby AFFIRMED. The proclamation of PABLO YAMAT as Punong Barangay of Barangay Nigui, Masantol, Pampanga is UPHeld.

ACCORDINGLY, the Commission EN BANC hereby ORDERS:

1. Appellee BARTOLOME BALINGIT to VACATE the contested post which he assumed by virtue of the Order of the Second Division dated January 26, 2005 granting execution pending appeal, in favor of PABLO YAMAT and to CEASE and DESIST from performing the

functions attached to said office.

2. The Deputy Executive Director for operations of the Commission to furnish a copy thereof to the Office of the President of the Philippines, the Secretary of the Department of Interior and Local Government, and the Office of the Secretary of the Sangguniang Bayan, Masantol, Pampanga.

Considering the proximity of the end of the term of the contested office in this case, this resolution is hereby declared immediately executory.

No pronouncement as to costs.

SO ORDERED.<sup>[5]</sup>

Balingit filed before the Court a Petition for *Certiorari* on the following grounds:

- A. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION, WHEN IT LIMITED AND FOCUSED ONLY ITSELF FROM CONDUCTING AN ALLEGED "EXAMINATION OF BALLOTS" WHICH ARE THE SUBJECT OF COMMISSIONER MEHOL K. SADAIN'S DISSENTING OPINION, BUT DID NOT EXAMINE THE ENTIRE BALLOTS AND EVIDENCE SUBJECT OF BALINGIT'S MOTION FOR RECONSIDERATION.
- B. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION, WHEN IT MISLED THE PARTIES TO JUSTIFY THE IMMEDIATE EXECUTION OF ITS ASSAILED RESOLUTIONS IN HOLDING THAT "*PROXIMITY OF THE END OF TERM OF THE CONTESTED OFFICE IN THIS CASE*" WHEN IN TRUTH, THE TERM OF OFFICE OF THE BARANGAY OFFICIALS ELECTED ON JULY 15, 2002 HAS BEEN EXTENDED TO LAST MONDAY OF OCTOBER 2007 BY REPUBLIC ACT NO. 9340, APPROVED ON 22 SEPTEMBER 2005
- C. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF ITS JURISDICTION WHEN IT PROMULGATED ITS ASSAILED 11 APRIL 2005 RESOLUTION WITHOUT CONSIDERING THE STRONG AND VALID OBJECTIONS OF BALINGIT ON THE CONTESTED BALLOTS, AS CORRECTLY RULED BY THE TRIAL COURT, THAT THOSE CONTESTED BALLOTS OF PABLO YAMAT WILL CLEARLY REVEAL THAT MOST, IF NOT ALL ARE GROUPS OF BALLOTS WRITTEN BY ONE AND THE SAME PERSON (WBO) AND SINGLE BALLOTS WRITTEN BY TWO PERSONS (WBT).
- D. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF AND EXCESS OF ITS JURISDICTION WHEN IT PROMULGATED ITS ASSAILED 11 APRIL 2005 RESOLUTION IN SWEEPINGLY VALIDATING THE EIGHTY (80) CONTESTED BALLOTS OF YAMAT, WHICH THE TRIAL COURT CORRECTLY RULED AS GROUPS OF BALLOTS WRITTEN BY ONE AND THE SAME PERSON (WBO), WHOSE FINDINGS/RULINGS THEREON DO NOT CLEARLY

AND DISTINCTLY EXPRESSED [sic] THE FACTS AND THE LAW ON WHICH THEY WERE BASED.[6]

Grave abuse of discretion means such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[7]

In this case, Balingit laments the manner in which the COMELEC, both the Second Division and *En Banc*, resolved the issue on the contested ballots, arguing that it committed grave abuse discretion when it merely limited itself to the six ballots that Commissioner Sadain found to be invalid, that it did not consider his arguments on the invalidity of all the contested ballots and "sweepingly" validated these ballots without setting forth the basis, and that it erroneously justified the immediate execution of the decision.

A review by the Court of the assailed Resolution dated April 11, 2005 rendered by the COMELEC's Second Division and Resolution dated November 12, 2005 of the COMELEC *En Banc* failed to establish any grave abuse of discretion such that these Resolutions should be set aside.

The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country, as it is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. In the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings, and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court.[8]

The MCTC originally found a total of 86 ballots cast in favor of Yamat in Precinct Nos. 56-A, 57-A, and 58-A as invalid for having been written by only one person. Both the COMELEC Second Division and *En Banc*, however, nullified the MCTC's findings on 80 of these ballots and found them to be valid.

It is fallacious for Balingit to argue that the COMELEC "sweepingly" validated the contested ballots and did not take into consideration his objections thereto, and that the COMELEC did not clearly set out the basis for its findings, as the assailed Resolution dated April 11, 2005 shows otherwise. The COMELEC's Second Division, in fact, physically examined each set or pair of contested ballots and accordingly made its corresponding factual findings, viz.: [9]

Precinct No.	Exhibit No.	Commission's Finding/Ruling
56A	B2, B8, B16 B39, B40, B41, B44, B45, B50, B51, B54, B55,	Contrary to the finding of the trial court, these ballots are valid. The differences in strokes,

	B56, B57, B58, B61, B65, B66, B67, B68, B69, B70, B72, B74, B75, B80 and B83	<p>writing styles, dents, alignment of letters, color of ink used and the point of the pen are glaring.</p> <p>We found however <i>Exhibit Nos. B44 and B45</i> as pair of ballots written by one person. The Minutes of Voting and Counting does not show that there was a physically disabled or illiterate voter assisted during the voting. We cannot therefore uphold the validity of these ballots.</p>
	B53, B73, B78, B79 and B81	<p>Valid ballots</p> <p>Strokes are different.</p>
	B3, B4, B5, B6 and B7	<p>Exhibit Nos. B3, B4 and B6 are valid ballots.</p> <p>However, Exhibit Nos. <i>B5 and B7</i> are two (2) ballots that could hardly be considered valid. The similarities in strokes, handwriting, dents, color of the ink and pen point, and the spacing of letter are so obvious to the naked eye.</p>
	B21 and B22	<p>Valid ballots</p> <p>The dents and scratches, the alignment and the spacing of the letters are different.</p>
	B29 and B30	<p>Valid ballots</p> <p>The strokes, terminals and loops of the letters are strikingly different, specifically the way the letters Y, L, D and Z is written.</p>
57A	B86, B87, B88 B91, B113, B114 B115, B116, B117, B118, B119, B121, B122, B128 and B129	<p>Valid ballots</p> <p>Writing styles, strokes and dents of the letters are strikingly different.</p>