

EN BANC

[G.R. NO. 172278, March 29, 2007]

LYDIA R. PAGADUAN, PETITIONER, VS. COMMISSION ON ELECTIONS, ARTURO Y. CUSTODIO AND TEODORICO B. CORNES, JR., RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This resolves the Petition for *Certiorari* seeking to set aside the Resolution^[1] of public respondent Commission on Elections First Division (COMELEC First Division) dated December 12, 2005 and the Resolution^[2] of the Commission on Elections *En Banc* (COMELEC *En Banc*) dated April 3, 2006.

The antecedent facts, as accurately summarized in the Resolution of the COMELEC *En Banc* dated April 3, 2006, are as follows:

x x x x

Protestant [petitioner] and protestee [respondent Custodio] were candidates for Municipal Mayor of Zaragoza, Nueva Ecija. The Municipal Board of Canvassers of Zaragoza proclaimed Arturo Custodio as winner having obtained a total number of six thousand five hundred ninety five (6,595) votes as against the six thousand one hundred forty (6,140) votes of Lydia Pagaduan or with a margin of four hundred fifty five (455) votes.

On 21 May 2004, Pagaduan filed an election protest case before the Regional Trial Court of Cabanatuan City, Branch 24, docketed as Election Case No. 02-04. In her petition, Pagaduan contests the results of elections in the following twenty-three (23) precincts: x x x alleging fraud, irregularities and misappreciation in the counting of votes by the Board of Election Inspectors (BEI's).

Protestee, in his Answer, denied the above allegations of the protestant and move for the dismissal of the protest case. Pending decision by the court *a quo*, protestee died. Protestee's counsel move for the dismissal of the protest case claiming that the death of the protestee renders this case moot and academic. This motion was denied by the court *a quo* ruling that Teodorico B. Cornes (Cornes for brevity), the vice-mayor elect, may intervene.

On 2 December 2004, Cornes filed his Answer in Intervention. The court ordered the Revision of the ballots.

On 4 April 2005, the court *a quo*, rendered a decision declaring and proclaiming protestant Lydia R. Pagaduan as the duly elected Municipal Mayor of Zaragoza, Nueva Ecija having obtained a total of six thousand one hundred forty (6,140) votes as against the six thousand seventy five (6,075) votes of protestee.

Unsatisfied, Cornes appealed to this Commission. In its Resolution promulgated on 12 December 2005, the First Division reversed and set aside the decision of the trial court and ruled in favor of protestee having obtained a total number six thousand four hundred seventy three (6,473) votes as against the six thousand one hundred thirty two (6,132) votes of protestant. Vice-Mayor Cornes, Jr., was therefore installed as mayor pursuant to Section 44 of the Local Government Code.^[3]

x x x x

Petitioner then moved for reconsideration of the aforementioned Resolution of the COMELEC First Division and the case was referred to the COMELEC *En Banc*. The latter body then promulgated a Resolution on April 3, 2006, denying petitioner's motion for reconsideration. The dispositive portion of said Resolution states thus:

WHEREFORE, premises considered, the Motion for Reconsideration filed by Lydia S. Pagaduan is hereby **DENIED**. The Resolution of the Commission (First Division) declaring Arturo Y. Custodio as the duly elected Municipal Mayor of Zaragoza, Nueva Ecija during the 10 May 2004 Elections is hereby **AFFIRMED WITH MODIFICATION**: protestee Arturo Y. Custodio has a total number of six thousand five hundred thirty-three 6,533 votes while of Lydia S. Pagaduan has a total of six thousand one hundred forty-three (6,143) votes. Custodio has a marginal lead of 391 votes.

In view of the death of Arturo Y. Custodio, intervenor-appellant Vice-Mayor elect Teodorico B. Cornes, Jr. is hereby declared as Mayor of Zaragoza, Nueva Ecija pursuant to Section 44 of the Local Government Code.

SO ORDERED.^[4]

Aggrieved by the foregoing Resolutions of the COMELEC First Division and the COMELEC *En Banc*, petitioner comes before this Court *via* a Petition for *Certiorari*, alleging that:

1. The COMELEC First Division committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Decision, reversing the 04 April 2005 Decision of the Regional Trial Court in Election Protest Case No. 02-04 and thereby validating several ballots in favor of the deceased protestee Arturo Custodio, said questioned Decision not being supported by evidence on record and is not in accordance with law.
2. The COMELEC First Division committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Decision declaring the deceased protestee Arturo Custodio as the duly elected Municipal Mayor of Zaragoza, Nueva Ecija, such declaration not being supported by the evidence

on record.

3. The COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Resolution denying herein petitioner Lydia R. Pagaduan's Motion for Reconsideration dated 16 December 2005 and affirming with modification the said questioned Decision of the Honorable Commission's First Division, such Resolution being clearly without basis in fact and in law.^[5]

Mainly, petitioner questions the COMELEC's (both the First Division's and the *En Banc*'s) appreciation of the impugned ballots, contending that the COMELEC failed to take into consideration the observation of the Regional Trial Court (RTC) that the padlocks and/ or seals of some ballot boxes were missing, broken or destroyed. Petitioner's main argument is that due to the missing or destroyed padlocks and/or seals of some ballot boxes, the presence of erasures, superimpositions, crossed-out words, alteration of letters in the names of candidates, symbols such as "----, /, or xxx", different handwritings on one ballot or the same handwriting for several ballots, and lack of signature of the Board of Election Inspectors Chairman on some ballots, should have been interpreted by the COMELEC as markings which would invalidate said ballots.

The COMELEC *En Banc* held that pursuant to Section 211 of the Omnibus Election Code, which mandates liberality in the appreciation of ballots, all doubts should be resolved in favor of the validity of the ballot. Hence, after re-examining the ballots, the COMELEC ruled that the appearance of some erasures, superimpositions, alteration of letters, are attempts by the voters to correct or rectify what they had originally written, while the appearance of crosses or lines put on the spaces for which the voter had not voted are signs to indicate the voter's desistance from voting. The COMELEC First Division and the COMELEC *En Banc* then found Arturo Y. Custodio to be the duly elected Municipal Mayor of Zaragoza, Nueva Ecija.

Petitioner insists that it was the RTC which ruled correctly on the validity of the ballots, thereby proclaiming her to be the duly elected mayor.

The other issue presented by petitioner is whether or not it was proper for the COMELEC First Division and the COMELEC *En Banc* to declare Vice-Mayor elect Teodorico B. Cornes, Jr. as Mayor of Zaragoza, Nueva Ecija, pursuant to Section 44 of the Local Government Code.

Petitioner's asseverations are unmeritorious.

The settled principle is that "unless the COMELEC is shown to have committed grave abuse of discretion, its decision will not be interfered with by this Court."^[6] Grave abuse of discretion is described in this wise:

There is grave abuse of discretion where the **public respondent acts in a capricious, whimsical, arbitrary or despotic manner** in the exercise of its judgment as to be equivalent to lack of jurisdiction. The **abuse of discretion must be so patent and gross** as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is