

## EN BANC

[ G.R. NO. 167314, March 20, 2007 ]

### LUISITO O. CUMIGAD, PETITIONER, VS. COMMISSION ON ELECTIONS AND PROMULGATED: MUNICIPAL BOARD OF CANVASSERS OF GAMU, ISABELA, RESPONDENTS.

#### DECISION

##### CARPIO, J.:

Before the Court is a petition for certiorari<sup>[1]</sup> assailing the *En Banc* Resolution<sup>[2]</sup> dated 14 March 2005 of the Commission on Elections (COMELEC) in SPC No. 04-273. The *En Banc* resolution affirmed the Resolution<sup>[3]</sup> dated 3 August 2004 of the COMELEC Second Division, which ordered respondent Municipal Board of Canvassers of Gamu, Isabela (MBOC) to "reconvene and correct x x x manifest errors" in the Statement of Votes for candidates running for the position of municipal councilor in the elections held on 10 May 2004.

##### The Facts

Petitioner Luisito O. Cumigad (petitioner) ran for a seat in the Sangguniang Bayan of Gamu, Isabela during the 10 May 2004 elections. The MBOC completed the canvassing of votes on 12 May 2004 and proclaimed petitioner as having received 3,539 votes, placing him in sixth place among the eight winning candidates.

On 27 May 2004, the MBOC filed a Memorandum<sup>[4]</sup> (MBOC memorandum) before the COMELEC alleging "manifest error" in the proclamation of the winners and requesting authority to reopen the canvassed election returns. The MBOC claimed that upon comparison of its tally with those of the National Movement for Free Elections (NAMFREL) and the Parish Pastoral Council for Responsible Voting (PPCRV), it found "variance [in] the result" and errors "which in a way would [a]ffect the winning and [losing] candidates." The MBOC prayed that in order to "avert any injustice resulting to possible social unrest" and avoid criminal and administrative cases and future election protests, the COMELEC should authorize the MBOC "to reconvene," "reopen the ballot boxes containing the canvassed election [returns]," and "make the necessary corrections as it may deem proper under the circumstances." The names of MBOC Chairperson Marlon D. Manuel (Manuel), Election Officer; Vice-Chairperson Ferdinand G. Baggao, Municipal Treasurer (Baggao); and Secretary Corazon R. Sumaoang from the Department of Education (Sumaoang) were printed at the end of the letter on the space for signatory. However, only Manuel and Sumaoang signed above their names.

The COMELEC docketed the MBOC memorandum as SPC No. 04-273 and set it for hearing on 22 June 2004, with notices sent to the candidates who could be affected by a recomputation of the votes. At the hearing, the COMELEC ordered the parties to submit their respective memoranda, after which it stated that the matter would

be submitted for resolution.

The records show that on 15 May 2004, or shortly before the MBOC filed its memorandum, Gamu parish priest Amadeo Vinasoy (Fr. Vinasoy) issued to Marlo T. Angangan (Angangan), one of the losing candidates, a Certification<sup>[5]</sup> stating that Angangan ranked seventh among the candidates for municipal councilor according to the PPCRV count, "contrary to the result x x x as proclaimed by the [MBOC]." On 27 May 2004, NAMFREL Provincial Secretary for Isabela Gerry Daquiug (Fr. Daquiug) issued a Certification<sup>[6]</sup> stating that Angangan garnered the sixth highest number of votes among the candidates for municipal councilor based on the NAMFREL's copy of the election returns.

On 25 June 2004, petitioner filed his Memorandum<sup>[7]</sup> before the COMELEC, arguing that no manifest error can be said to exist when the tally made by the MBOC differs from that of the NAMFREL, the PPCRV, or of other candidates. Petitioner pointed out that although the MBOC had in its possession the Chairperson's copy of the Certificate of Canvass and Proclamation, it could not say what kind of "manifest error" was committed, arousing the suspicion that there was none apart from the variance between the MBOC's count and those of the NAMFREL and PPCRV. Petitioner also pointed out that the supporting documents submitted by the MBOC consisted solely of the certifications issued by Fr. Vinasoy and Fr. Daquiug and certified true copies of the NAMFREL count. Petitioner argued that any reopening of the ballot boxes and recount of votes in the election returns would therefore be illegal.

On 28 June 2004, the MBOC filed a reply with an urgent motion to suspend the effects or annul the proclamation of the eight municipal councilors. The MBOC denied petitioner's accusation that it reviewed the Certificate of Canvass of Votes only upon being apprised of the results of the NAMFREL and PPCRV count, and that it could therefore be accused of surrendering its official duty of canvassing the votes to the NAMFREL and PPCRV. The MBOC averred that the NAMFREL and PPCRV results only prompted the MBOC "to look deeper" into the matter. Upon a review of the Certificate of Canvass of Votes, the MBOC was convinced that it committed manifest errors. The MBOC clarified that it did not intend to open the ballot boxes and recount the votes cast for the candidates, but only to reconvene and correct manifest errors committed during the canvassing.

In its Resolution<sup>[8]</sup> dated 3 August 2004, the COMELEC Second Division resolved to treat the MBOC's petition as a petition to correct manifest errors.<sup>[9]</sup> The dispositive portion of the resolution states:

WHEREFORE, premises considered, the petition to correct manifest errors in the statement of votes is hereby GRANTED; the Board of Canvassers of Gamu, Isabela is hereby ORDERED to RECONVENE and correct the manifest errors in the statement of votes in accordance with the figures in the election returns; furthermore, the Board is also DIRECTED to NOTIFY all the parties that will be affected by the correction of the manifest errors, and REQUIRE them to be present during the correction of the manifest errors.

SO ORDERED.<sup>[10]</sup>

Petitioner moved for reconsideration of the resolution, reiterating that there was no manifest error even assuming that the MBOC's count differed from those of the NAMFREL and PPCRV. Petitioner later filed an "addendum" to his motion for reconsideration, citing supervening events which allegedly led Baggao and Sumaoang, the two members of the MBOC who signed the memorandum with Manuel, to execute affidavits pertaining to the matter. Their separate but strikingly similar affidavits dated 18 August 2004 state that "after close scrutiny of the minutes of the [MBOC], together with other documentary [evidence]," they came to the conclusion that no manifest error had been committed which could vary the result of the elections.<sup>[11]</sup> Baggao claimed that this was his reason for not signing the MBOC memorandum. Sumaoang, for her part, stated that she was withdrawing her conformity to the MBOC memorandum.

On 23 August 2004, Angangan filed leave to intervene in the COMELEC proceedings and to have his opposition to petitioner's motion for reconsideration admitted as part of the records, alleging his legal interest in the outcome of the controversy. Angangan claimed that if the assailed COMELEC resolutions were to be enforced, he would land as the eighth member of the Sangguniang Bayan. In an addendum that he filed shortly afterwards, Angangan accused Baggao and Sumaoang of conspiring with petitioner to thwart, obstruct, and circumvent the Division resolution.

On 14 March 2005, the COMELEC *En Banc* issued the assailed Resolution denying petitioner's motion for reconsideration and affirming the Division resolution.

On 22 March 2005, petitioner filed this petition with an urgent prayer for the issuance of a temporary restraining order enjoining the implementation of the assailed COMELEC resolutions. On 29 March 2005, we required respondents to file their comment to the petition.

On 29 April 2005, Angangan filed before the Court a Motion for Leave for Intervention and to Admit Comment/Opposition to the petition, his motion to intervene having been unresolved by the COMELEC. Opposing Angangan's motion, petitioner alleged that Angangan cannot be considered an indispensable party to the case, Angangan's presence not being necessary for its final determination. Petitioner contended that Angangan had no part in the filing of the MBOC memorandum. Petitioner further contended that his petition only imputed grave abuse of discretion to the COMELEC as a body and was not directed against any other party, Angangan included.

Meanwhile, the COMELEC on 28 April 2005 issued Minute Resolution No. 05-0436 constituting a special Municipal Board of Canvassers (special MBOC) to convene on 20 May 2005 at the COMELEC office in Intramuros, Manila and implement the assailed resolutions. On 7 June 2005, we issued a temporary restraining order enjoining the COMELEC and the MBOC from implementing the assailed resolutions upon petitioner's posting of a bond. However, a day earlier or on 6 June 2005, the special MBOC had convened and, based on a "rectified Statement of Votes by Precincts," proclaimed Angangan as the eighth winning candidate and member of the Sangguniang Bayan. On the same day, Angangan took his oath of office before Justice Danilo B. Pine of the Court of Appeals.

On the strength of his proclamation and oath of office, Angangan reported to the Sangguniang Bayan on 10 June 2005. In the meetings of the Sangguniang Bayan

held on 17 June 2005 and 24 June 2005, Gamu Vice-Mayor Emelito Caro (Caro), as Presiding Officer, refused to recognize Angangan as a legitimate member. Angangan secured an opinion from Isabela Provincial Election Supervisor Michael Valdez to the effect that there was no legal impediment for Angangan to be recognized as a member of the Sangguniang Bayan. Thus, Angangan in his Manifestation and Urgent Motion<sup>[12]</sup> prays for the lifting of the temporary restraining order issued on 7 June 2005, alleging that his proclamation and oath have rendered the temporary restraining order moot and academic.

### **The Ruling of the COMELEC**

The COMELEC *En Banc* found that the MBOC committed manifest errors in the transfer of entries from the election returns to the Statement of Votes. According to the COMELEC, it was clear upon inspection of the election returns from Precinct Numbers 50A, 51A, 53A, 54A, 55A, 56A, 56B, 57A, and 65A that the votes received by petitioner as indicated in the Statement of Votes was higher by 150 votes than what he actually received. The COMELEC considered the 150 votes deductible from petitioner's total of 3,539 votes as stated in the Certificate of Canvass of Votes and Proclamation. With the COMELEC's recomputation, Angangan ranked eighth with 3,445 votes, while petitioner ranked ninth with 3,389 votes.

The COMELEC resolution explained:

x x x x

We conducted our own comparison of the votes of [petitioner] as indicated in the Election Returns and of his votes found in the Statement of Votes by Precincts alleged by the MBOC as containing manifest errors, using the COMELEC copy of the said documents. x x x

x x x x

Clearly as shown above, there are manifest errors committed which affected the outcome or result of the elections considering that in the Certificate of Canvass of Votes and Proclamation, it is stated that [petitioner] ranked number six (6) with 3,539 votes but with the implementation of the correction, he only ranked number nine (9) with 3,389 votes.

x x x x

Finally, the proclamation of [petitioner] cannot be considered valid because it was based on faulty tabulation. x x x<sup>[13]</sup>

After promulgation of the resolution, Manuel filed before the COMELEC a Very Urgent Motion To Use Other Authentic Copies of the Election Returns and Statement of Votes, claiming unavailability of the copies of election returns kept by the Election Officer of Gamu and praying that the COMELEC authorize the MBOC to use all other authentic copies available of the election returns of the precincts where there were errors in tabulation. Manuel also prayed that the winning candidate be proclaimed

after corrections have been made and that the COMELEC order Baggao and Sumaoang to show cause why they should not be held in contempt for obstructing the implementation of the assailed resolutions. Manuel further prayed that proper investigation be conducted on the disappearance of 71 election returns.

Acting on Manuel's urgent motion, the COMELEC issued an Order directing the MBOC to (1) reconvene, upon prior notice to the parties, candidates, and persons concerned; (2) implement the corrections using the COMELEC's copy of the election returns and Statement of Votes for Precinct Numbers 50A, 51A, 53A, 54A, 55A, 56A, 56B, 57A, and 65A; and (3) proclaim the winning candidates based on the corrected results.

Hence, this petition.

### **The Issues**

For resolution are the following issues:

1. Whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in giving due course to the MBOC memorandum;
2. Whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the MBOC to reconvene and make corrections to the Statement of Votes; and
3. Whether Angangan may intervene in the proceedings.

### **The Court's Ruling**

The petition must fail.

#### ***COMELEC did not commit grave abuse of discretion in giving due course to the MBOC memorandum***

Petitioner raises the issue of the propriety of the COMELEC's decision to give due course to the MBOC memorandum. Petitioner's argument is three-fold.

First, petitioner alleges that the MBOC memorandum cited "alleged manifest errors in the proclamation" of the winning candidates, a matter not recognized by any provision of the 1993 COMELEC Rules of Procedure (COMELEC Rules). Section 4, Rule 27 of the COMELEC Rules speaks only of "correction of manifest errors." Petitioner argues that correction of manifest errors does not refer to errors in proclamation. Petitioner argues that nowhere in the COMELEC Rules is there a basis to treat the MBOC memorandum as a petition to correct manifest errors.

Second, petitioner asserts that even if the COMELEC were correct in treating the MBOC memorandum as a petition to correct manifest errors, still the COMELEC should have dismissed the petition outright for having been filed out of time. Under Section 5, Rule 27 of the COMELEC Rules, a pre-proclamation controversy involving a petition for correction of manifest errors "must be filed not later than five days following the date of proclamation x x x." Petitioner was proclaimed as a member of the Sangguniang Bayan on 12 May 2004. The MBOC memorandum was filed on 27