

EN BANC

[G.R. NO. 171952, March 08, 2007]

**DIEGO T. LIM, PETITIONER, VS. COMMISSION ON ELECTIONS,
HON. ELVIE P. LIM (PRESIDING JUDGE, REGIONAL TRIAL
COURT, BRANCH I, BORONGAN, EASTERN SAMAR), AND
FRANCISCO C. ADALIM, RESPONDENTS.**

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari under Rule 64 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution^[1] dated March 8, 2006 rendered by the Commission on Elections (COMELEC) *En Banc* in SPR No. 23-2005.

Diego T. Lim, petitioner, and Francisco C. Adalim, private respondent, were candidates for mayor in Taft, Eastern Samar during the May 10, 2004 national and local elections.

On May 12, 2004, the Municipal Board of Canvassers of Taft proclaimed petitioner as the duly elected mayor with a lead of 45 votes.

Private respondent then filed with the Regional Trial Court, Branch 1, Borongan, Eastern Samar, presided by respondent Judge Elvie P. Lim, an election protest against petitioner, docketed as EPC No. 01-2004. Private respondent alleged that irregularities attended the canvassing of ballots in 35 precincts within the municipality.

Petitioner filed a motion to dismiss the election protest on the ground that private respondent failed to pay the exact amount of docket and other legal fees prescribed by the COMELEC, but the motion was denied. His motion for reconsideration was likewise denied.

Subsequently, petitioner filed with the COMELEC Second Division a petition for prohibition and injunction praying that the trial court be enjoined from hearing respondent's election protest. The petition was docketed as SPR No. 50-2004.

On February 9, 2005, the COMELEC Second Division issued a Resolution dismissing the petition for prohibition and injunction. Petitioner seasonably filed with the COMELEC *En Banc* a motion for reconsideration.

Meanwhile, upon private respondent's motion, respondent Judge directed the parties to proceed with the photocopying of contested ballots and to formally offer their evidence in writing on or before March 4, 2005.

Subsequently, respondent Judge issued an Order setting on July 4, 2005 the promulgation of her Decision in the election protest. This prompted petitioner to file

with the COMELEC *En Banc* an urgent motion for the issuance of a status quo order.

In an Order dated July 1, 2005, the COMELEC En Banc granted petitioner's motion for reconsideration of the Resolution of the COMELEC Second Division dismissing his petition for prohibition and injunction and directed the trial court to defer any action on the pending election protest "until the case is finally resolved by this Commission." However, on August 2, 2005, the **COMELEC En Banc issued another Resolution, this time denying petitioner's motion for reconsideration of the Resolution of the COMELEC Second Division dismissing his petition for prohibition and injunction.**

Three days thereafter, or on August 5, 2005, respondent Judge promulgated her Decision in the election protest declaring private respondent the winning candidate in the May 10, 2004 mayoralty race in Taft, Eastern Samar with a lead of 456 votes as against petitioner. Thereupon, petitioner filed a notice of appeal.

For his part, private respondent filed a motion for execution pending appeal. It was set for hearing on August 11, 2005. An opposition thereto was filed by petitioner.

On August 11, 2005, the trial court issued a Special Order granting private respondent's motion for execution pending appeal. On the same date, the sheriff implemented the writ of execution.

Immediately, petitioner filed with the COMELEC Second Division a Petition for Certiorari with prayer for a Writ of Preliminary Injunction and Temporary Restraining Order or Status Quo Order, docketed as SPR No. 23-2005, alleging that the trial court acted with grave abuse of discretion in granting private respondent's motion for execution pending appeal.

The COMELEC Second Division, in a Resolution dated October 10, 2005, denied the petition for lack of merit.

Petitioner then filed with the COMELEC *En Banc* a motion for reconsideration, but it was denied in a Resolution dated March 8, 2006.

Petitioner, in his petition before us, contends that the trial court committed grave abuse of discretion when it promulgated its Decision despite the Order of the COMELEC *En Banc* of July 1, 2005 directing the said trial court to defer any action on the election protest "until the case is finally resolved by this Commission."

Petitioner should have remembered that on August 2, 2005, the COMELEC *En Banc* issued a Resolution denying his motion for reconsideration of the Resolution of its Second Division dismissing his petition for prohibition and injunction. Thus, this time, there was no more obstacle for the trial court to promulgate its Decision since the COMELEC *En Banc* had denied his petition for prohibition and injunction.

As to petitioner's other contention that the trial court committed grave abuse of discretion by granting private respondent's motion for execution pending appeal, the same lacks merit.

Before granting an execution pending appeal in election cases, the following requisites must concur: (1) there must be a motion by the prevailing party with