

EN BANC

[G.R. NO. 171063, March 02, 2007]

PETITIONER, VS. COMMISSION ON ELECTIONS AND FLORENCIO P. AGUSTIN, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us for resolution is a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution^[1] dated October 25, 2005 and Order^[2] dated January 5, 2006 of respondent Commission on Elections (COMELEC) issued in EAC No. 34-2002.

The facts are:

Petitioner Eduard V. Tugade and private respondent Florencio P. Agustin were candidates for the position of Punong Barangay of San Raymundo, Balungao, Pangasinan during the July 15, 2002 synchronized Barangay and Sangguniang Kabataan elections.

The result of the canvass showed that petitioner obtained 246 votes, while private respondent garnered 245 votes, or a margin of only one (1) vote.

Hence, on July 16, 2002, the Barangay Board of Canvassers proclaimed petitioner as the elected Punong Barangay.

On July 23, 2002, private respondent filed with the Municipal Trial Court (MTC) of Balungao, Pangasinan an election protest, docketed as Election Protest Case No. 900. He questioned the results of the votes cast and counted in Precinct No. 60-A/60-A-1.

In his answer with counterclaim, petitioner countered that the conduct and final outcome of the election have been regular, credible and in accordance with the Omnibus Election Code and the Rules and Regulations of the July 15, 2002 synchronized Barangay and Sangguniang Kabataan Elections.

On August 13, 2002, the MTC created a Revision Committee. Its report, based on the election returns and the tally sheets, showed the following:

Florencio P. Agustin	- 119
Eduard V. Tugade	- 126
TOTAL	245

However, after the segregation and recount of the ballots contained in the sealed envelopes for the candidates in the contested precincts, the following results were

obtained:

Florencio P. Agustin	-	119
Eduard V. Tugade	-	125
Stray Ballots	-	11
TOTAL		255

Thereafter, the parties, through their Revisors, submitted their respective objections and claims, thus: private respondent objected to three (3) ballots for petitioner (Exhibits "A", "B", "C") and laid claim to one (1) ballot considered as stray by the Board of Canvassers. Petitioner, on the other hand, objected to two (2) ballots counted for private respondent (Exhibits "1" and "2") and laid claim to two (2) ballots (Exhibits "3" and "4"). Later, petitioner withdrew his claim to Exhibit "4".

On September 3, 2002, the MTC rendered its Decision^[3] declaring private respondent the duly elected Punong Barangay, thus:

In recapitulation, the votes garnered by each candidate in the contested precincts are as follows:

Precincts Nos. 60-A/60-A-1

Florencio Agustin	$119 + 1 = 120$
Eduard Tugade	$125 - 3 = 122$

The final tally, therefore, is:

	Precinct 60-A/ 60-A-1	Precinct 61-A/ 61-A-1	Total
Florencio Agustin	120	126	246
Eduard Tugade	122	120	242

On the same date, private respondent filed a motion for execution of the MTC Decision pending appeal.

For his part, petitioner, on September 4, 2002, filed a notice of appeal and an opposition to private respondent's motion for execution pending appeal.

On September 9, 2002, the MTC issued an Order denying private respondent's motion. In another Order of the same date, the court ordered the transmittal of the complete records of the case to respondent COMELEC.

On appeal, the COMELEC (Second Division), on October 25, 2005, issued the assailed Resolution^[4] declaring a tie between petitioner and private respondent, thus:

Based on the above findings, the total number of votes for protestant-appellee and protestee-appellant is as follows:

Agustin Tugade

Total votes from the uncontested precinct per election return	126	120
Add:		
Total votes per physical count from contested precinct	119	125
ADD:		
Validated claimed votes	1	2
LESS:		
Invalidated votes per COMELEC ruling:	0	1
GRAND TOTAL	246	246

The final tally, therefore, is two hundred forty six (246) votes for protestant-appellee Agustin and two hundred forty six (246) votes for protestee-appellant. The foregoing appreciation therefore shows a tie between the two candidates.

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WHEREFORE, premises considered, the instant appeal is GRANTED. The September 3, 2002 Decision of Acting Presiding Judge Manuel F. Pastor, Jr. of the Municipal Trial Court of Balungao, Pangasinan in Election Protest Case No. 900 declaring protestant-appellee Florencio P. Agustin the winner for the position of Punong Barangay of Barangay San Raymundo, Balungao, Pangasinan during the July 15, 2002 synchronized Barangay and Sangguniang Kabataan elections is hereby REVERSED and SET ASIDE.

The Barangay Board of Canvassers of Barangay San Raymundo, Balungao, Pangasinan is hereby ordered to RECONVENE and, after five (5) days due notice to herein protestee-appellant and protestant-appellee, hold a special public meeting at which it shall proceed to the DRAWING OF LOTS (not tossing of a coin) and shall proclaim as elected Punong Barangay of San Raymundo the candidate who may be favored by luck, pursuant to Section 240 of the Omnibus Election Code.

The Election Officer of Balungao, Pangasinan is hereby directed to implement this Resolution. In the accomplishment thereof, he is hereby authorized to appoint new members of the Barangay Board of Canvassers in the event that some members are already unavailable or to convene a new Barangay Board of Canvassers altogether in the absence of the old one.