

EN BANC

[G.R. NO. 174499, June 29, 2007]

**DOMICIANO R. LAURENA, JR., PETITIONER, VS. THE
COMMISSION ON ELECTIONS AND NESTOR L. ALVAREZ,
RESPONDENTS.**

DECISION

NACHURA, J.:

This Petition for *Certiorari* seeks to annul and set aside the Resolution^[1] of the Commission on Elections (COMELEC), Second Division, dated September 21, 2005, which dismissed the Election Protest filed by Domiciano Laurena, Jr., and affirmed the proclamation of Nestor L. Alvarez as the duly elected mayor of the City of Muñoz, Nueva Ecija. The petition likewise assails the Resolution^[2] of the COMELEC *En Banc*, dated August 22, 2006, which affirmed with modification the Second Division's resolution.

Antecedents

Domiciano R. Laurena, Jr. and Nestor L. Alvarez were candidates for mayor in the City of Muñoz, Nueva Ecija in the May 10, 2004 elections. In the canvass of votes, Laurena obtained 13,321 votes while Alvarez garnered 16,855 votes. With the 3,534 votes difference, Alvarez was proclaimed mayor of Muñoz on May 14, 2004.

On May 22, 2004, Laurena, claiming that massive electoral fraud and irregularities attended Alvarez's victory, filed an election protest^[3] impugning the results of the elections in all 175 precincts of Muñoz. In particular, he cited the following grounds as basis for his protest:

1. Valid votes of protestant were not counted and tallied in his favor in the election returns and/or were erroneously counted and tallied in the election returns as votes of protestee;
2. Valid ballots containing votes legally cast in favor of protestant were considered stray;
3. Valid ballots containing valid votes for protestant were erroneously misappreciated and considered as marked ballots and were declared as null and void;
4. Invalid ballots containing votes for protestee because they were obviously and deliberately marked by the voters who were bought by protestee were just the same counted in his favor;

5. Invalid ballots containing votes for protestee which were marked because of pattern markings, or because they are posted with stickers, or because of impertinent, unnecessary, irrelevant words, or expressions used to identify the ballots were unlawfully read and counted in his favor;
6. Fake or unofficial ballots wherein the name of protestee was written were illegally read and counted in his favor;
7. Groups of two (2) or more ballots for protestee (which) were prepared by one (1) person and, therefore, void, were still credited in favor of protestee; and
8. Individual ballots for protestee (which) were obviously prepared by two (2) persons and, therefore, void were just the same considered as valid ballots and counted in favor of protestee.^[4]

Protestant thus insisted on the necessity of a revision or recount of the ballots and other election documents in all the protested precincts.^[5]

In his Answer,^[6] protestee characterized the suit as a nuisance designed to harass and inconvenience him. He likewise claimed that the allegations in the pleading were general and ambiguous, as protestant failed to cite a single concrete incident illustrative of such grounds he purportedly relied upon.^[7] Lastly, he pointed out that protestant failed to make of record his complaints against the electoral procedure conducted at the proper time and before the right forum. As such, he could not now make sweeping and general accusations of fraud and anomalies.^[8]

In an Order^[9] issued on August 2, 2004, the Second Division denied protestee's call for the dismissal of the case. It recognized that ballot revision is the most expeditious and the best means to determine the truth or falsity of protestant's allegations.^[10] It likewise laid down the guidelines for the retrieval of the ballot boxes and directed the payment of the required cash deposits to defray revision expenses.^[11]

On February 23, 2005, the Second Division directed the constitution of three (3) revision committees for purposes of revising the protested precincts. The committees were instructed to convene and commence the revision of ballots starting on March 7, 2005 and every day thereafter, from Monday to Friday, until terminated.^[12]

After the revision was completed, the physical count of votes showed Alvarez garnering a total of 16,539 votes and Laurena getting 12,785 votes, or a difference of 3,754. During the regular canvass, Alvarez garnered 16,855 while Laurena obtained 13,321, or a difference of 3,534 votes.^[13]

With the admission of the parties' respective formal offer of evidence and the submission of their memoranda, the Second Division issued the assailed Resolution^[14] dismissing the protest. The *fallo* reads:

WHEREFORE, in view of the foregoing, the instant protest is hereby DISMISSED for lack of merit. The proclamation of Nestor L. Alvarez as the duly elected mayor of the City of Muñoz, Nueva Ecija[,] is affirmed.

SO ORDERED.^[15]

The Resolution affirmed the victory and validated the proclamation of protestee, it being clear that he obtained more votes than the protestant. Thus, it found no more need to individually consider the claimed ballots of the two contending parties.^[16] The Second Division based its conclusion on the revision reports and all the data registered therein, including the objections to the ballots interposed by the parties.^[17]

On the basis of the revision report, the Second Division ruled that, out of the revised 16,539 ballots of protestee, forty-nine (49) ballots were declared invalid while out of the revised 12,785 ballots of protestant, fifty-four (54) were declared invalid. The ballots in four precincts were not revised because they were not found inside the ballot boxes. As reflected in the election returns in these four precincts, protestee garnered an additional 346 votes, while protestant obtained 336 votes. Adding these numbers to those of the revised ballots and deducting therefrom the ballots that were considered invalid, protestee got 16,836 while protestant got 13,067 votes. As such, protestee won by 3,769 votes.^[18]

As to the ballots which the Board of Election Inspectors did not count, the Second Division considered them immaterial as they would not in any way affect the results.^[19]

Unsatisfied, protestant moved for the reconsideration of the above decision before the COMELEC *En Banc*.

In its Resolution^[20] dated August 22, 2006, the COMELEC En Banc affirmed the Resolution of the Second Division, with the modification that the number of votes garnered by protestee was 16,834, and not 16,836.^[21]

Protestant, now the petitioner, comes before this Court in this special civil action for *certiorari*, on the sole issue of

WHETHER OR NOT THE PUBLIC RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, IN PROMULGATING THE QUESTIONED RESOLUTIONS OF SEPTEMBER 21, 2005 (BY THE COMELEC SECOND DIVISION) AND AUGUST 22, 2006 (BY THE COMELEC *EN BANC*).^[22]

The arguments set forth by petitioner essentially shows that he questions the COMELEC's appreciation of the contested ballots. He claims that various sets of ballots of respondent which were challenged by petitioner for being written by one person/written by two persons/marked ballots, were accordingly and rightly invalidated by the COMELEC, but he insists that more ballots should have been invalidated. He likewise strongly opposes the nullification of the sets of ballots in his favor since they appear regular. He thus urges this Court to rectify the error of the COMELEC as such mistake, according to him, is equivalent to grave abuse of

discretion amounting to lack or excess of jurisdiction. Petitioner further asserts that the ballots he claimed which were no longer examined and appreciated by the COMELEC should be considered by this Court in order to determine the exact will of the electorate and such votes should be credited to the petitioner based on the intent rule, neighborhood rule and/or *idem sonans* rule.

In sum, petitioner wants this Court to review the factual findings and conclusions of law made by the COMELEC – both the Second Division and *En Banc* – as he imputes grave abuse of discretion on its part.

The petition must necessarily fail.

Section 2,^[23] Rule 64 of the Revised Rules of Court, states that from a judgment or final order or resolution of the COMELEC, the aggrieved party may file a petition for *certiorari* with this Court under Rule 65. Thus, the only question that may be raised is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[24]

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.^[25] The review by the Court of the assailed Resolutions of the Second Division and the COMELEC *En Banc* failed to establish any grave abuse of discretion.

Moreover, 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. The COMELEC is, after all, 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.^[26]

The Second Division, in its Resolution, explained that it had tediously examined the contested ballots to appreciate their admissibility as a valid expression of the voters' will. It then took into account the revision reports and all the data registered therein including the objections to the ballots interposed by the parties. Lastly, in the reading and appreciation of the ballots, it presumed every ballot to be valid unless there was clear and good reason to justify its rejection.^[27]

It is noteworthy that the issues raised in the protest had also been passed upon by the COMELEC *En Banc* which upheld the findings of the Second Division and concluded that even a re-examination of the contested ballots showed that the Division did not err in putting a stamp of validity on most of the contested ballots.^[28] There being no glaring error in the COMELEC's conclusions, this Court finds no cogent reason to disturb the same.