

## EN BANC

[ G.R. NO. 174392, August 28, 2007 ]

**NELSON CUNDANGAN, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND CELESTINO V. CHUA, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for certiorari assails the Resolution<sup>[1]</sup> dated October 25, 2005 of the Commission on Elections (COMELEC) First Division and the Resolution<sup>[2]</sup> dated August 18, 2006 of the COMELEC *En Banc* in EAC No. 174-2003. The Resolution dated October 25, 2005 reversed the trial court's Decision dated September 26, 2003, while the Resolution dated August 18, 2006 denied Cundangan's Motion for Reconsideration and affirmed with modification the challenged Resolution dated October 25, 2005.

The antecedent facts are as follows:

Cundangan and Chua were candidates for *Punong Barangay* for *Barangay* Sumilang, Pasig City in the July 15, 2002 Synchronized *Barangay* and *Sangguniang Kabataan* Elections. After the canvass of votes, Cundangan was proclaimed as the duly elected *Punong Barangay*.

On July 23, 2002, Chua filed an election protest which impugned the results of the canvass in all the 19 precincts of said *barangay*.

After the revision proceedings were concluded, the trial court rendered a Decision dated September 26, 2003, affirming the proclamation of Cundangan.

Unsatisfied with the decision of the trial court, Chua filed on October 14, 2003, an appeal with the COMELEC First Division. In its Resolution dated October 25, 2005, the COMELEC First Division reversed the trial court's Decision dated September 26, 2003, and accordingly declared Chua as the duly elected *Punong Barangay* of *Barangay* Sumilang, Pasig City.

On November 2, 2005, Cundangan moved for a reconsideration of the said Resolution. However, the COMELEC *En Banc*, in its Resolution dated August 18, 2006, denied Cundangan's Motion for Reconsideration and affirmed the challenged Resolution of the COMELEC First Division.

Hence, the instant petition raising issues on the following grounds:

#### I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION (*EN BANC*) WHEN THE TOTAL NUMBER OF VOTES FROM **UNCONTESTED BALLOTS IS ENTIRELY DIFFERENT AND CONTRARY TO THE DECISION OF THE TRIAL COURT AND IN THE RESOLUTION OF THE FIRST DIVISION ITSELF.**

## II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION [*EN BANC*] WHEN THE COMELEC **INVALIDATED VALID BALLOTS OF CUNDANGAN** AS FOLLOWS:

a. GROUPS/SETS OF BALLOTS TOTALLING EIGHTY SEVEN (87) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS **WRITTEN BY ONE PERSON (WBOP)** IN THE FOLLOWING PRECINCTS AND EXHIBITS NUMBERS, TO WIT:

- a.1. Precinct No. 499A/499A-1 -- C-1 to C-3 (2 ballots);
- a.2. Precinct No. 503A/504A -- C-15 to C-16, C-30 to C-33 (4 ballots);
- a.3. Precinct 504A-1/508A -- C-4 to C-7 (4 ballots);
- a.4. Precinct No. 505A/506A -- C-1 to C-15 (15 ballots);
- a.5. Precinct No. 507A/507A-1 -- C-1 to C-13 (13 ballots);
- a.6. Precinct No. 510A -- C-1 to C-25 (25 ballots);
- a.7. Precinct No. 510A-1/512A -- C-1 to C-16 (16 ballots);
- a.8. Precinct No. 514A-1/515A -- C-1 to C-4, C-13 to C-14 (6 ballots);
- a.9. Precinct No. 518A/518A-1 -- E and F (2 ballots).

b. SINGLE BALLOTS TOTALLING NINETEEN (19) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS **WRITTEN BY TWO PERSONS (WBTP)** IN THE FOLLOWING PRECINCTS AND EXHIBITS NUMBERS, TO WIT:

- b.1. Precinct No. 498A/500A -- C-3 to C-15, C-17 to C-19 (16 ballots);
- b.2. Precinct No. 504A/508A -- C-1 (1 ballot);
- b.3. Precinct No. 510A -- C-45 and C-46 (2 ballots).

c. THREE (3) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS **MARKED BALLOTS (MB)** IN THE FOLLOWING PRECINCTS AND EXHIBITS [NUMBERS], TO WIT:

- c.1. Precinct No. 510A -- C-47 (1 ballot);
- c.2. Precinct No. 510A-1/512A -- C-24 and C-25 (2 ballots).

## III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION (*EN BANC*) WHEN IT **VALIDATED INVALID BALLOTS OF CHUA** AS FOLLOWS:

a. GROUPS/SETS OF BALLOTS [TOTTALLING] **EIGHTY-NINE (89) INVALID** BALLOTS OF CHUA AS **WRITTEN BY ONE PERSON (WBOP)**, IN THE FOLLOWING PRECINCTS AND EXHIBIT [NUMBERS]:

- a.1. Precinct No. 498A/500A -- N-1 & N-2, N-3 & N-4, N-6 & N-7, N-14 & N-15, N-26 to N-28, N-31 to N-34, N-36 & N-37, N-45, N-46, N-50 & N-51 (21 ballots);
- a.2. Precinct No. 499A/499A-1 -- N-1 to N-4, N-9, N-10, N-13, N-14, N-21 and N-22 (10 ballots);
- a.3. [Precinct No.] 503A/504A -- N-55 and N-56 (2 ballots);
- a.4. [Precinct No.] 504A-1/508A -- N-1 to N-3, N-4 & N-5, N-20, N-23, N-27, to N-29, N-51 & N-52 (12 ballots);
- a.5. [Precinct No.] 507A/507A-1 -- N-2 to N-5, N-8 to N-13 (10 ballots);
- a.6. [Precinct No.] 509A -- N-3 to N-5 (3 ballots);
- a.7. [Precinct No.] 510A -- N-27, N-28, N-35 to N-37 (5 ballots);
- a.8. [Precinct No.] 516A -- N-20 to N-22 (3 ballots);
- a.[9]. [Precinct No.] 517A -- N-29 & N-30 (2 ballots);
- a.[10]. [Precinct No.] 518A/518A-1 -- N-1 to N-6, N-11 to N-16, N-19 to N-23 (17 ballots);
- a.[11]. [Precinct No.] 519A/520A -- N-30 & N-31 (2 ballots);
- a.[12]. [Precinct No.] 521A/522A -- N-12 & N-13 (2 ballots).

b. FOUR (4) **INVALID** BALLOTS AS **MARKED BALLOTS (MB)**, IN THE FOLLOWING PRECINCT AND EXHIBIT [NUMBERS]:

- b.1. [Precinct No.] 510A-1/512A -- N-43 to N-45 and N-49 (4 ballots)[.]

c. TWO (2) BALLOTS ADJUDICATED BY [THE] TRIAL COURT AS VALID FOR CUNDANGAN, WHICH HOWEVER, VALIDATED AS CLAIMED BALLOTS FOR CHUA BY THE HONORABLE COMMISSION (FIRST DIVISION), IN THE FOLLOWING PRECINCTS AND EXHIBIT NUMBERS:

- c.1. [Precinct No.] 507A/507A-1 -- Exh. 44 (1 ballot); and
- c.2. [Precinct No.] 521A/522A -- C-30 (1 ballot).

#### IV.

THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF JURISDICTION WHEN IT **DID NOT SQUARELY RULE** ON THE SERIOUS ISSUE RAISED BY CUNDANGAN REGARDING THE EXISTENCE OF SPURIOUS AND FAKE BALLOTS THAT WERE FOUND DURING THE REVISION OF BALLOTS IN THE TRIAL COURT.<sup>[3]</sup>

Essentially, the issue is whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COMELEC *En Banc* when it affirmed the October 25, 2005 Resolution of the COMELEC First Division.

*Anent the first ground*, Cundangan contends that there is a difference between the number of uncontested ballots stated in the COMELEC *En Banc* Resolution and that stated in both the COMELEC First Division Resolution and the Decision of the trial court. But as correctly explained by Chua, there was no error in the number of uncontested ballots stated in the impugned COMELEC *En Banc* Resolution because it accounted for only 17 precincts, unlike in the COMELEC First Division Resolution and the trial court's Decision which accounted for 19 precincts. The COMELEC *En Banc* excluded from its count the ballots in two precincts, namely, 505A/506A<sup>[4]</sup> and 510A,<sup>[5]</sup> after it had determined that a number of ballots in said precincts were tampered.<sup>[6]</sup>

*As for the second ground*, Cundangan alleges that the COMELEC erred when it invalidated 87 ballots in his favor for being WBOP; 19 ballots in his favor for being WBTP; and 4 ballots in his favor for being marked ballots.

Cundangan argues that the aforementioned 87 ballots were not WBOP considering that each of them bears a distinctive handwriting and does not appear to be objectionable.<sup>[7]</sup> For his part, Chua insists that the said ballots were WBOP, pointing out that his revisors had been able to identify the said ballots to have been clearly written by only one hand during the revision proceedings.<sup>[8]</sup> *Citing Erni v. Commission on Elections*,<sup>[9]</sup> Chua likewise avers that evidence *aliunde* is not necessary for the COMELEC to determine whether the questioned ballots were written by one hand.<sup>[10]</sup>

Arguing that the aforesaid 19 ballots were not WBTP, Cundangan cites Section 211 (22)<sup>[11]</sup> of the Omnibus Election Code and *Ong v. Commission on Elections*,<sup>[12]</sup> in which we ruled that "the appearance of print and script writings in a single ballot does not necessarily imply that two persons wrote the ballot. The strokes of print and script handwriting would naturally differ but would not automatically mean that two persons prepared the same . . . . In the absence of any deliberate intention to put an identification mark, the ballots must not be rejected."<sup>[13]</sup>

Chua counters by saying that his revisors identified that the questioned ballots had been written by two persons during the revision proceedings.<sup>[14]</sup> He likewise cites Section 211 (23)<sup>[15]</sup> of the Omnibus Election Code and *Protacio v. De Leon*,<sup>[16]</sup> in which we invalidated a ballot for having been written by two hands, because the writing of the names of some of the candidates therein bore distinct and marked dissimilarities from the rest of the handwritings used.<sup>[17]</sup>

As to the four ballots<sup>[18]</sup> which were considered marked, Cundangan contends that the COMELEC's ruling below was erroneous.

PRECINCT NO.	EXHIBIT NO.	RULING
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