

EN BANC

[G.R. NO. 164439, January 23, 2006]

JEFFREY L. SANTOS, PETITIONER, VS. COMMISSION ON ELECTIONS AND MACARIO E. ASISTIO III, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Before this Court is a petition for *certiorari*^[1] assailing the Resolution^[2] of the Commission on Elections ("COMELEC") First Division in SPC No. 04-233 and Resolution No. 7257^[3] of the COMELEC En Banc. The COMELEC promulgated the two Resolutions on 29 June 2004.

The Antecedent Facts

Jeffrey L. Santos ("Santos") and Macario E. Asistio III ("Asistio") were candidates for the position of Councilor for the Second District of Caloocan City in the 10 May 2004 Elections. On 18 May 2004, the City Board of Canvassers proclaimed Asistio as councilor-elect for the Second District of Caloocan City. Based on the Canvass of Election Returns and the Statement of Votes, Asistio garnered 45,163 votes and secured the sixth and last slot for the position of Councilor while Santos placed seventh with 44,558 votes.

On 28 May 2004, Santos filed with the COMELEC a Petition, docketed SPC No. 04-233, for Annulment of Proclamation on the Basis of Erroneous Canvass/Tallies of Votes. Santos alleged that he was a victim of "*dagdag-bawas*" and that his votes were reduced in the Statement of Votes while Asistio's votes were increased. Santos further alleged that based on the certified true copies of the NAMFREL's^[4] election returns as well as the Certificates of Votes submitted by the poll watchers in the Second District of Caloocan City, he obtained 46,361 votes while Asistio garnered only 45,514 votes. Santos prayed for the nullification of the proclamation of Asistio and for his declaration as the duly elected Councilor of the Second District of Caloocan City.

The Ruling of the COMELEC First Division

In a Resolution promulgated on 29 June 2004, the COMELEC First Division dismissed SPC No. 04-233 for lack of merit.

The COMELEC First Division ruled that: (1) Santos' lack of watchers and counsel during the early stages of the canvassing proceedings is not a proper ground for the annulment of Asistio's proclamation; (2) the documents submitted by Santos, consisting of a compilation and tabulation of votes which he himself prepared, and

which he based on certified true copies of NAMFREL's election returns and the originals of various Certificates of Votes submitted by the poll watchers, are not admissible in evidence; and (3) Santos should have assailed the proceedings *via* a pre-proclamation controversy, or through an election protest within ten days after the proclamation of Asistio, instead of a petition for annulment of proclamation.

On 29 June 2004, or on the same date of the promulgation of the Resolution by the COMELEC First Division, the COMELEC En Banc promulgated Resolution No. 7257, as follows:

RESOLUTION NO. 7257
(OMNIBUS RESOLUTION ON PENDING CASES)

WHEREAS, in connection with the May 10, 2004 National and Local Elections, various petitions docketed as Special Actions, Special Cases and Special Proceeding Cases and other contentious cases were filed with the Office of the Clerk of the Commission;

WHEREAS, the second paragraph of Sec. 16, Republic Act No. 7166, provides:

"All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when appropriate order has been issued by the Supreme Court in a petition for certiorari."

WHEREAS, the Commission has disposed of the pre-proclamation and other cases brought before it for adjudication, except those whose disposition requires proceedings extending beyond 30 June 2001;

NOW, THEREFORE, by virtue of its powers under the Constitution, the Omnibus Election Code, Batas Pambansa Blg. 881, Republic Act Nos. 6646 and 7166, and other election laws, the Commission **RESOLVED**, as it hereby **RESOLVES**:

1. All cases which were filed by private parties without timely payment of the proper filing fee are hereby dismissed;
2. All cases which were filed beyond the reglementary period or not in the form prescribed under appropriate provisions of the Omnibus Election Code, Republic Act Nos. 6646 and 7166 are hereby likewise dismissed;
3. All other pre-proclamation cases which do not fall within the class of cases specified under paragraphs (1) and (2) immediately preceding shall be deemed terminated pursuant to Section 16, R.A.

7166 except those mentioned in paragraph (4). Hence, all the rulings of boards of canvassers concerned are deemed affirmed. Such boards of canvassers are directed to reconvene forthwith, continue their respective canvass and proclaim the winning candidates accordingly, if the proceedings were suspended by virtue of pending pre-proclamation cases;

4. All remaining pre-proclamation cases, which on the basis of the evidence thus far presented, appear meritorious and/or are subject of orders by the Supreme Court or this Commission in petitions for certiorari brought respectively to them shall likewise remain active cases, thereby requiring the proceedings therein to continue beyond 30 June 2004, until they are finally resolved; and
5. All petitions for disqualification, failure of elections or analogous cases, not being pre-proclamation controversies and, therefore, not governed by Sections 17, 18, 19, 20, 21, and particularly, by the second paragraph of Sec. 6, Republic Act No. 7166, shall remain active cases, the proceedings to continue beyond June 30, 2004, until the issues therein are finally resolved by the Commission;

ACCORDINGLY, it is hereby ordered that the proceedings in the cases appearing on the list annexed and made an integral part hereof, be continued to be heard and disposed of by the Commission.

This resolution shall take effect immediately.^[5]

Annexed to Resolution No. 7257 is a list of cases^[6] that shall remain active before the COMELEC until their final resolution. SPC No. 04-233 is not included in the list.

On 9 July 2004, Santos filed with the COMELEC En Banc a motion for the reconsideration assailing the COMELEC First Division's Resolution.

On 30 August 2004, Santos filed before this Court a petition for *certiorari* assailing the 29 June 2004 Resolution of the COMELEC First Division **and** Resolution No. 7257 of the COMELEC En Banc.

In his Comment on the petition, Asistio accused Santos of forum shopping. Asistio informed the Court that the COMELEC En Banc only disposed of Santos' motion for reconsideration in its Order of 15 September 2004 when it affirmed the 29 June 2004 Resolution of the COMELEC First Division. Hence, at the time of the filing of the petition for *certiorari* before this Court, Santos' motion for reconsideration was still pending before the COMELEC En Banc.

Santos, in his Reply to Asistio's Comment, maintains that he is not guilty of forum shopping because the petition before the Supreme Court only challenges Resolution No. 7257 and **not** the 29 June 2004 Resolution of the COMELEC First Division. Santos further argues that by excluding SPC No. 04-233 from the list of cases annexed to Resolution No. 7257, the COMELEC En Banc effectively terminated the case to its finality. Santos claims that he only learned on 22 July 2004 of the exclusion of SPC No. 04-233 from the list of cases, after the petition before this Court had been filed. However, he admits that Resolution No. 7257 was published in