

EN BANC

[G.R. NOS. 166388 AND 166652, January 23, 2006]

ALAN PETER S. CAYETANO, PETITIONER, VS. COMMISSION ON ELECTIONS, MA. SALVACION BUAC AND ANTONIO BAUTISTA, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us for resolution are two (2) petitions for *certiorari*:^[1]

1. G.R. No. 166388

The petition in this case, filed by Congressman Alan Peter S. Cayetano, representing the District of Taguig-Pateros, against the Commission on Elections (COMELEC), Ma. Salvacion Buac and Antonio Bautista, mainly assails the Resolution of the COMELEC en banc dated December 8, 2004 in EPC No. 98-102 declaring the ratification and approval, through a plebiscite, of the conversion of the Municipality of Taguig, Metro Manila, into a highly urbanized city. Private respondents are residents and duly registered voters of Taguig.

2. G.R. No. 166652

The petition here, filed by the same petitioner against the same respondents, questions the (a) COMELEC Resolution dated January 28, 2005 declaring the said Resolution of December 8, 2004 final and executory; and (b) the recording of the said Resolution in the COMELEC's Book of Entry of Judgments dated January 28, 2005.

The facts are:

On April 25, 1998, the COMELEC conducted a plebiscite in Taguig, Metro Manila on the conversion of this municipality into a highly urbanized city as mandated by Republic Act No. 8487.^[2] The residents of Taguig were asked this question: "*Do you approve the conversion of the Municipality of Taguig, Metro Manila into a highly urbanized city to be known as the City of Taguig, as provided for in Republic Act No. 8487?*"

On April 26, 1998, the Plebiscite Board of Canvassers (PBOC), without completing the canvass of sixty-four (64) other election returns, declared that the "No" votes won, indicating that the people rejected the conversion of Taguig into a city.

However, upon order of the COMELEC *en banc*, the PBOC reconvened and completed the canvass of the plebiscite returns, eventually proclaiming that the negative votes

still prevailed.

Alleging that *fraud and irregularities attended the casting and counting of votes*, private respondents, filed with the COMELEC a *petition seeking the annulment of the announced results of the plebiscite with a prayer for revision and recount of the ballots*. The COMELEC treated the petition as an election protest, docketed as EPC No. 98-102. It was raffled to the Second Division.

Petitioner intervened in the case. He then filed a motion to dismiss the petition on the ground that the COMELEC has no jurisdiction over an action involving the conduct of a plebiscite. He alleged that a plebiscite cannot be the subject of an election protest.

The COMELEC Second Division issued a Resolution granting petitioner's motion and dismissing the petition to annul the results of the Taguig plebiscite for lack of jurisdiction. The COMELEC *en banc* affirmed this Resolution.

Aggrieved, private respondents filed with this Court a petition for *certiorari* and *mandamus*, docketed as G.R. No. 155855, entitled *Ma. Salvacion Buac and Antonio Bautista vs. COMELEC and Alan Peter S. Cayetano*. On January 26, 2004, we rendered a Decision reversing the COMELEC's Resolution. We held that the controversy on the conduct of the Taguig plebiscite "is a matter that involves the *enforcement and administration of a law relative to a plebiscite*. It falls under the jurisdiction of the COMELEC under Section 2 (1), Article IX (C) of the Constitution authorizing it "to enforce and administer all laws and regulations relative to the conduct of an election, *plebiscite*, initiative, referendum, and recall." Thus, we directed the COMELEC "to reinstate the petition to annul the results of the 1998 Taguig plebiscite and to decide it without delay." Petitioner filed a motion for reconsideration but we denied the same in a Resolution dated February 24, 2004.

Accordingly, on April 19, 2004, the COMELEC Second Division issued an Order in EPC No. 98-102 constituting the committees for the revision/recount of the plebiscite ballots.

On April 28, 2004, the revision/recount proceedings commenced and upon its termination, the Committees on Revision submitted their complete and final reports.

Thereafter, the COMELEC Second Division set the case for hearing. As no witnesses were presented by petitioner, the parties were directed to submit their respective memoranda, which they did.

However, the COMELEC Second Division failed to render a decision as the required number of votes among its members could not be obtained. Consequently, pursuant to Section 5 (b),^[3] Rule 3 of the COMELEC Rules of Procedure, the case was elevated to the Commission *en banc* for resolution.^[4]

On November 24, 2004, the COMELEC *en banc* issued an Order considering the case submitted for resolution. On December 8, 2004, it issued the assailed Resolution declaring and confirming the ratification and approval of the conversion of the Municipality of Taguig into a highly urbanized city, thus:

"WHEREFORE, premises considered, the instant petition is hereby **GRANTED.**

"Considering that 21,105 affirmative votes represent the majority and the highest votes obtained during the 1998 Taguig Plebiscite, this Commission hereby **DECLARES** and **CONFIRMS** the **RATIFICATION** and **APPROVAL** of the conversion of the municipality of Taguig into a highly urbanized city.

"Let the Election Officer of Taguig and the Department of Interior and Local Government (DILG) implement this Resolution.

"SO ORDERED."

Hence, petitioner filed the instant petition for *certiorari* in **G.R. No. 166388**, alleging that in rendering the said Resolution, the COMELEC acted with grave abuse of discretion.

On January 28, 2005, the COMELEC *en banc*, upon motion of private respondents, issued an Order declaring its Resolution of December 8, 2004 final and executory as of January 9, 2005 in conformity with Section 13 (a),^[5] Rule 18 of the COMELEC Rules of Procedure. On the same date, the Resolution of December 8, 2004 was recorded in its Book of Entry of Judgments.

On January 31, 2005, petitioner again filed with this Court a petition for certiorari, docketed as **G.R. No. 166652**, challenging the COMELEC en banc Order of January 28, 2005 and the corresponding Entry of Judgment. Subsequently, we directed that the case be consolidated with G.R. No. 166388.^[6]

At the outset, petitioner himself makes it clear that "for the record, – as the representative of Taguig and Pateros – he is for the cityhood of Taguig. Conversion of a municipality into a highly urbanized city *per se* is not appalling; in fact, efforts towards its realization should be welcomed. But (he) firmly believes that Taguig must become a city **the right way**, by a **fair count of votes and not by twisting the electoral will.**"^[7]

Petitioner contends that "the revision of the plebiscite ballots cannot be relied upon for the determination of the will of the electorate" because "the revision is incomplete."^[8] He claims that:

"Based on the Final Report of the Committee on Revision for each of the eight (8) Revision Committees, the revision of ballots yielded a total of 15,802 votes for 'Yes' and a total of 12,602 votes for 'No.' The revision committee thus canvassed only a total of 28,404 ballots."^[9]

Besides, "many irregularities, frauds and anomalies attended the revision proceedings."^[10] He maintains that the COMELEC "acted with grave abuse of discretion amounting to lack or in excess of jurisdiction" in confirming the ratification and approval of the conversion of Taguig into a highly urbanized city.

In their respective comments, the Solicitor General, on behalf of the COMELEC, and