

EN BANC

[G.R. NO. 169393, April 07, 2006]

TONY L. BENWAREN, PETITIONER, VS. COMMISSION ON ELECTIONS AND EDWIN CRISOLOGO, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition for certiorari alleging that the Commission on Elections (COMELEC) *en banc* gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the Resolution of August 3, 2005, which denied the motion to reconsider the COMELEC's First Division Resolution dated February 18, 2005.

The COMELEC's First Division Resolution dated February 18, 2005 dismissed petitioner's Petition to Annul Proclamation or to Suspend the Effects Thereof and Petition to Declare Illegal [the] Proceedings of the New Board of Canvassers of Tineg, Abra.

The antecedents are as follows:

Petitioner Tony L. Benwaren and private respondent Edwin Crisologo were candidates for the position of Municipal Mayor of the Municipality of Tineg, Abra in the May 2004 elections. After the elections, the Municipal Board of Canvassers (MBC) of Tineg, Abra canvassed 14 out of 16 election returns from the 16 precincts that functioned on the day of the elections. The election returns from Precincts Nos. 8A and 16A were contested and became the subject of pre-proclamation controversies before the COMELEC.

During the canvass of the election return of Precinct No. 16A on May 15, 2004, counsel for petitioner objected to the inclusion of the election return on the ground that the same was allegedly prepared under duress, force or intimidation, or was prepared by persons other than the Board of Election Inspectors (BEI) concerned. He added that the other copies of the election return were likewise tampered with, altered, falsified, inauthentic or prepared under duress, threat, intimidation or coercion or by unauthorized persons.

On May 16, 2004, the MBC issued a Ruling excluding the election return of Precinct No. 16A of Tineg, Abra insofar as the mayoralty candidates were concerned on the following grounds:

x x x It is very apparent on the face of the election return that irregularities were attendant in its preparation and its submission to the Board. No names of BEI appeared in the ER, [the ER is] not signed and thumbmark[ed] and the copy for the ER inten[d]ed for national positions is missing. Likewise the BEIs cannot be located.

The MBC deferred the proclamation of the winning candidate for the position of Municipal Mayor because it contended that the contested election return from Precinct No. 16A would affect the result of the election for the position.

On May 19, 2004, Benwarem filed a petition^[1] before the COMELEC, docketed as COMELEC Case No. SPC 04-091, praying for the issuance of an order granting authority to re-open the ballot box from Precinct No. 16A and to recount its ballots.

On June 28, 2004, the COMELEC's First Division dismissed the petition. However, on July 21, 2004, it issued a Supplemental Resolution, the dispositive portion of which reads:

Thus, to finally and speedily settle and put an end to the controversy at hand following the procedure laid down in Section 235 of the Omnibus Election Code, this Commission (First Division) hereby **ORDERS** the Municipal Board of Canvassers of Tineg, Abra to:

1. Reconvene, upon prior notice to the parties, candidates, and persons concerned;
2. Retrieve the other authentic copies of subject election returns and if necessary, the copy inside the ballot box and canvass the same;
3. Retrieve, after giving notice to the candidates concerned, the ballot box containing the ballots in the subject precinct from the Municipal Treasurer should the other copies of the return [appear] likewise to be tampered with, altered or falsified, or otherwise not authentic, or [to have been] prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member[s] of the board of election inspectors;
4. Determine if the identity and integrity of the said ballot box and the ballots contained therein were not violated; and, proceed to recount the votes of the candidates affected and prepare a new election return for the said precinct; and then
5. Canvass the said return and proclaim the winning candidate/s; or
6. Proclaim the winning candidate/s based on the remaining uncontested returns, [if] the integrity of the ballot box and the ballots contained therein have not been preserved and are no longer intact.

For the above purpose, a new board of Canvassers is hereby constituted to be composed of Atty. Armando Velasco as chairman, and Atty. Jubil Surmieda and Atty. Ma. Norina Tangaro-Casingal, as Vice Chairman and Secretary, respectively, the same to convene at the Comelec Main Office, Manila.

SO ORDERED.^[2]

The New MBC issued notices to the concerned parties that it will convene on August 3, 2004 to canvass the contested election return from the ballot box of Precinct No.

16A, Barangay Lanec, Tineg, Abra.

On August 3, 2004, the New MBC convened and the counsels for both parties were present. Petitioner alleged that before the integrity of the ballot box of Precinct No. 16A and its contents was determined, his counsel moved that the officially canvassed returns must first be tabulated, including the election return from Precinct No. 8A, to determine the actual results. However, the New MBC denied the motion and ruled that Precinct No. 8A cannot be included in the canvass because of the pending pre-proclamation case entitled *In the Matter of the Petition to Exclude Election Returns of Precinct No. 8A, Municipality of Tineg, Abra, Edwin Crisologo, petitioner* (SPC 2004-216), and the results therein were recorded in a Temporary Statement of Votes.

After opening the ballot box of Precinct No. 16A, the New MBC issued a Ruling, thus:

Pursuant to the Resolution of the First Division in SPC No. 04-091 in re "IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO RE-OPEN BALLOT BOX AND RECOUNT BALLOTS FROM PRECINCT NO. 16-A OF THE MUNICIPALITY OF TINEG, ABRA, " the Board proceeded with the determination of the identity and integrity of the ballot box from precinct 16-A and the ballots contained therein x x x and found as follows:

1. The Board found the integrity of the ballot box to have been violated considering the fact and as borne out by the Minutes of the previous Board, [that] the ballot box of Precinct 16-A was left at the lobby of the Sangguniang Panlalawigan Building unattended, it was not delivered to the Municipal Trea[s]urer of Tineg, Abra, who is the proper custodian of the same as provided under the Omnibus Election Code;
2. The Board likewise found that the integrity of the ballots [was] no longer intact considering the fact that the said ballots were not placed in its proper envelope and neither was it sealed with the paper seal provided for by the Commission.

Considering the foregoing including the manifestations and counter manifestations of both parties, the Board rules as follows:

1. the board is left with no recourse but to proceed with the implementation of paragraph six (6) of the above stated Resolution, *"To proclaim the winning candidate/s based on the remaining uncontested returns, [if] the integrity of the ballot box and the ballots contained therein have not been preserved and are no longer intact."*;
2. the Motion of counsel for complainant Benwaren to have a physical count of the votes for petitioner and respondent as part of the inventory is hereby DENIED for lack of merit.^[3]

The New MBC proclaimed private respondent Crisologo as the duly elected mayor of Tineg, Abra based on the results of the remaining uncontested election returns.

On August 9, 2004, petitioner filed a Petition to Annul Proclamation or to Suspend