

## EN BANC

[ G.R. NO. 165491, March 31, 2005 ]

### ROBERT E. OLANOLAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND CELSO A. TIZON, RESPONDENTS.

#### D E C I S I O N

##### GARCIA, J.:

Coming to this Court via this verified petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court, with prayer for injunctive relief, petitioner Robert E. Olanolan urges us to nullify and set aside the *en banc* **Order<sup>[1]</sup> dated September 8, 2004 of respondent Commission on Elections (COMELEC) in EAC No. 61-2003** denying his motion for reconsideration of an earlier **Resolution<sup>[2]</sup> dated March 31, 2004** of the Commission's Second Division, the nullification of which, along with said Division's other incidental issuances, are likewise sought in this recourse.

The factual antecedents are, as follows:

Petitioner **Roberto E. Olanolan** (Olanolan) and private respondent **Celso A. Tizon (Tizon)** were among the candidates for the position of ***punong barangay*** of *Barangay 76-A, Bucana, Davao City* in the July 15, 2002 *barangay* elections.

After the voting exercise and canvass, Olanolan was proclaimed the winning candidate, having garnered a total of **4,278** votes as against the **4,268** votes for Tizon, the second placer, or a margin of **ten (10) votes**.

Tizon attributed his loss to anomalies allegedly perpetrated by, among others, the chairperson, poll clerks and members of the Board of Election Inspectors (BEI). Accordingly, on July 25, 2002, he filed before the Municipal Trial Court in Cities (MTCC), Davao City an election protest,<sup>[3]</sup> docketed as **Election Case No. 844-G-2002**, which was eventually raffled to Branch 7 of the court. In it, Tizon prayed for the revision of ballots cast in seventy (72) two precincts located at Bucana Elementary School and thereafter the nullification of Olanolan's proclamation and his (Tizon's) proclamation as the elected *punong barangay* of *Barangay 76-A, Bucana, Davao City*.

Inasmuch as Olanolan's answer with counter-protest was belatedly filed, the MTCC would, as stated in its decision, *infra*, enter a general denial for him.

Subsequent developments saw the constitution by the MTCC of a 3-man revision committee which, after conducting a revision and recounting of ballots in the contested precincts, submitted a Revision Committee Report dated September 19, 2002.<sup>[4]</sup>

During the protest proceedings, it was observed that the ballots used in two (2) of the contested precincts, *i.e.*, Precincts No. 598-A and 608-A, were without COMELEC watermarks and other security features. In fact, page 6<sup>[5]</sup> of the revision report contained the following entries:

"B) In precinct 598A with a total number of 56 votes for OLANOLAN and 29 for TIZON was excluded from the recounting on the following grounds:

- 1) That the color of the ballots is different from the ballots which were already recounted taken from the previous boxes;
- 2) That upon examination, the ballots in this precinct do not have security code shadow while in the other ballots which were already recounted from the previous ballot boxes have their security code shadow".

In the same proceedings, the BEI chairman of Precinct No. 598-A, Benigno Silvosa, admitted to receiving from the Davao City Treasurer's Office the election paraphernalia for that precinct the day before actual voting and then bringing home the same to his residence.<sup>[6]</sup>

On December 18, 2002, the MTCC rendered judgment<sup>[7]</sup> dismissing Tizon's election protest mainly on the strength of the following premises:

In the case of Marcelino Libanan vs. House of Representatives Electoral Tribunal and Jose Ramirez, G.R. No. 129783, December 22, 1997, the court affirmed the ruling of the Tribunal in . . . HRET Case No. 95-020 to the effect that a ballot without BEI chairman's signature at the back is valid and not spurious, provided that it bears any of these other authenticating marks, to wit: (a) the COMELEC watermark (b) in cases where the COMELEC watermarks are blurred or not readily apparent, the presence of blue and red fibers in the ballot.

In the instant action, petitioner [*i.e.*, Tizon] failed to show convincing proof that the absence of the COMELEC watermarks particularly on ballots belonging to Precinct 578-A [should have been Precinct 598-A] rendered the same invalid. Nonetheless, even if the COMELEC watermarks are not visible to the naked eye, the ballots under this precinct bore the initial of the BEI chairman at the back of the same. As held, it is only when none of these marks appears extant that the ballot can be considered spurious and subject to rejection.

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The allegation in the Petition . . . which refers to anomalous conduct of the Chairman of the BEI of Precinct 598-A . . . in the person of Ben Silvosa was unsubstantiated. The court is convinced the alleged anomaly did not exist. (Words in bracket added).

In time, Tizon appealed to the COMELEC whereat his recourse was docketed as **EAC No. 61-2003.**

On **March 31, 2004**, the Second Division of the COMELEC issued a **Resolution**,<sup>[8]</sup> setting aside the appealed decision of the MTCC and declaring Tizon, as protestant-appellant thereat, "*the duly elected Punong Barangay of Barangay 76-A, Bucana, Davao City in the July 15, 2002 barangay elections having obtained a total of 4,221 votes as against the protestee-appellee's 4,196 or a margin of 25 votes*". The Second Division ratiocinated:

On the other hand, a cursory reading of the questioned decision of the court *a quo* reveals flaws and/or shortcomings that militate against the validity of the findings and conclusions contained in said decision. Predicated therefrom, we find it necessary to disabuse the minds of the parties anent their contentious allegations by examining and appreciating the ballots and all election documents the results hereunder discussed.

Petitioner Olanolan received a copy of the resolution on **April 14, 2004**. Two days thereafter, **April 16**, he filed, via registered mail, a **Motion for Reconsideration**.<sup>[9]</sup> For his part, private respondent Tizon sought, in an earlier motion,<sup>[10]</sup> the execution of the aforementioned March 31, 2004 Resolution of the COMELEC's Second Division.

Pursuant to an Order of April 26, 2004,<sup>[11]</sup> the Second Division elevated Olanolan's Motion for Reconsideration (MR), together with the case records, to the COMELEC en banc, noting that "*only seven (7) sets of the said MR were filed and that no payment of the required motion fee was made by movant*." In the same Order, the Second Division likewise elevated to the en banc Tizon's motion for execution pending appeal.

Barely a week after, or on May 4, 2004, petitioner Olanolan submitted a manifestation<sup>[12]</sup> enclosing therewith a postal money order in the amount of P500.00 to cover the required legal fees for his Motion for Reconsideration.

In the herein assailed **Order dated September 8, 2004**,<sup>[13]</sup> the COMELEC en banc denied the desired reconsideration on account of Olanolan's, as movant therein, failure to pay the motion fee and to submit the required number of copies of his motion for reconsideration. In the same Order, the COMELEC en banc directed the Second Division's commission clerk to immediately issue an **Entry of Judgment** and the Chief of the Judicial Records Division to remand to the MTCC the records of the case, stating in this regard the following:

Considering that there is no valid motion [for reconsideration] to speak of, the provision of Section 13 (c), Rule 18 of the COMELEC Rules of Procedure applies, to wit:

'Sec. 13. Finality of Decisions or Resolution. – xxx

(c) **Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.'**

hence, the Resolution promulgated by this Commission (Second Division)