

EN BANC

[G.R. NO. 165677, June 08, 2005]

EDILWASIF T. BADDIRI, PETITIONER, VS. COMMISSION ON ELECTIONS, ALKADAR T. LOONG, NIJAR I. HASSAN AND THE PROVINCIAL BOARD OF CANVASSERS OF SULU, RESPONDENTS.

D E C I S I O N

AZCUNA, J.:

This is a petition for *certiorari* with prayer for the issuance of a temporary restraining order and writ of preliminary injunction to nullify the questioned Resolutions promulgated on July 8, 2004 and October 1, 2004 by the Commission on Elections (COMELEC), First Division, and COMELEC *en banc*, respectively. The COMELEC affirmed the Ruling of the Provincial Board of Canvassers of the Province of Sulu which granted the Petition for Correction of Manifest Error filed by respondent Loong, resulting in the exclusion of petitioner from the list of the four winning candidates for Board Member, Sangguniang Panlalawigan, First District of the Province of Sulu.

The factual antecedents^[1] are as follows:

Petitioner Baddiri, private respondents Alkhadar T. Loong and Nijar Hassan were candidates for Board Member, Sangguniang Panlalawigan, First District of the Province of Sulu in the May 10, 2004 elections.

On May 17, 2004, during the proceedings of the Provincial Board of Canvassers of Sulu, respondent Loong became aware of a manifest error of 2,000 excess votes in favor of petitioner Baddiri in the Certificate of Canvass of Votes for Local Positions for the Municipality of Patikul, Province of Sulu after tallying petitioner's votes based on the Statement of Votes. Baddiri was credited with 4,873 instead of 2,873 votes in said Certificate of Canvass.

To support Loong's stand, the Municipal Board of Canvassers of Patikul, Sulu, executed an Affidavit on May 17, 2004, which stated, among others:

3. That, in the preparation of Certificate of Canvass as supported by Statements of Votes per Precincts for the said municipality, the Board committed an honest ERROR in the total votes garnered by candidate Edil[wasif] Bad[d]iri for member of Sangguniang Panlalawigan of Sulu;
4. That, in the said Certificate of Canvass, the total votes indicated as garnered by said candidate is 4,783, but [in] the supporting five (5)-sheet Statements of Votes by Precincts, the total votes so garnered by said Edil[wasif] Bad[d]iri is only 2, 783.^[2]

On May 17, 2004, Loong filed a Petition for Correction of Manifest Error with the Provincial Board of Canvassers of Sulu. On May 18, 2004, Baddiri filed an Opposition.

On May 19, 2004, the Provincial Board of Canvassers of Sulu granted the Petition for Correction of Manifest Error in its Ruling, thus:

. . .

WE, the undersigned Chairman and Members of the Board of Canvassers of Sulu Province, after deliberating on the objection to the inclusion/exclusion of Correction of Manifest Error

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of the City/Municipality of _____ and admitting the supporting evidence consisting of:

EXHIBIT ____ Affidavit of the MBOC admitting that they erred in the addition of votes in the SOV where Edil Baddiri was given an additional votes of 2,000—Candidate E. Baddiri opposed the Petition alleging that the board [having] canvassed the COC for Patikul [the same] should no longer be reappreciated by the board.

The board rules to grant the petition to correct manifest error considering that there is no proclamation yet and that this is allowed by the rules.^[3]

On the basis of the corrected Certificate of Canvass from the Municipality of Patikul, Sulu, respondent Loong placed third with 20,660 votes; Nijar Hassan placed fourth with 20,558 votes; while petitioner Baddiri placed sixth with 19,578 votes and would not make it to the four-member Board of the Sangguniang Panlalawigan, First District of the Province of Sulu.

Petitioner filed an Appeal dated May 20, 2004 with the COMELEC docketed as SPC No. 04-159. To protect his interest as the candidate who placed fourth as Board Member, Nijan I. Hassan filed a Motion to Intervene before the COMELEC, which motion was granted.

In its Resolution promulgated on July 8, 2004, the COMELEC, First Division, dismissed petitioner's appeal for lack of merit. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the Commission [First Division] RESOLVED as it hereby RESOLVES to **DISMISS** the Appeal for lack of merit. Accordingly, the Ruling of the Provincial Board of Canvassers of the Province of Sulu, granting the petition for the correction of manifest errors filed by Appellee Loong is hereby **AFFIRMED** *in toto*.

The Provincial Board of Canvassers of Sulu is hereby directed:

1. To immediately **RECONVENE** with proper notice to the parties and;

2. to prepare a Certificate of Canvass and Proclamation for candidate Nijar I. Hassan, as the 4th winning Member, Sangguniang Panlalawigan, Province of Sulu, by including in the computation of votes the corrected Municipal Certificate of Canvass for the Municipality of Patikul, Sulu.

SO ORDERED.^[4]

Petitioner filed a motion for reconsideration, which was denied for lack of merit by the COMELEC *en banc* in its Resolution dated October 1, 2004. The dispositive portion of the Resolution states:

IN VIEW OF THE FOREGOING, the instant Motion for Reconsideration is hereby **DENIED** for **LACK OF MERIT**.

ACCORDINGLY, the 8 July 2004 Resolution of the First Division is hereby **AFFIRMED** in toto. The Provincial Board of Canvassers of Sulu is hereby **DIRECTED** to (i) **RECONVENE** after giving due notice to the concerned parties, (ii) **CORRECT** the error in the Certificate of Canvass of Patikul, Sulu as well as the Statement of Votes by City/Municipality with Serial No. 00003 with respect to the votes of Provincial Board candidate [Edilwasif] T. Baddiri, and thereafter proclaim the 4th winning candidate for the Sangguniang Panlalawigan of Sulu, First District.

Let the Provincial Board of Canvassers of Sulu implement this Resolution with dispatch.

FINALLY, this case is hereby referred to the Law Department for investigation of the alleged inadvertence of the Municipal Board of Canvassers of Patikul that resulted in the manifest error subject of this petition in order to determine if there is a possible violation of the Omnibus Election Code and other pertinent laws, rules and regulations.

SO ORDERED.^[5]

Hence, this petition wherein petitioner alleges, thus:

RESPONDENT COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO HAVING ACTED WITHOUT OR IN EXCESS OF JURISDICTION FOR PROMULGATING THE QUESTIONED RESOLUTIONS IN COMELEC CASE NO. SPC 04-159 BASED ON THE FOLLOWING GROUNDS:

(A) RESPONDENT COMELEC BLATANTLY DISREGARDED THE ESTABLISHED RULES ON JURISDICTION TO THE PREJUDICE OF PETITIONER AND THE ELECTORATE OF SULU;

(B) THERE WERE SIMPLY NO MANIFEST ERRORS TO SPEAK OF IN THIS CASE;

(C) RESPONDENT COMELEC PATENTLY IGNORED CLEAR EVIDENCE ADMITTED BY RESPONDENT PROVINCIAL BOARD OF CANVASSERS OF SULU IN FAVOR OF PETITIONER;

(D) THE BELATED OBJECTION OF RESPONDENT LOONG IS A CLEAR CASE OF INEXCUSABLE AND INCURABLE ESTOPPEL, NOT TO MENTION A PALPABLE DISOBEDIENCE OF ESTABLISHED COMELEC PROCEDURES;

(E) RESPONDENT PROVINCIAL BOARD OF CANVASSERS OF SULU ISSUED A RULING IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW.^[6]

The main issues in this case are the following: (1) Whether or not there was manifest error in the Certificate of Canvass of Votes from the Municipality of Patikul, Sulu; (2) whether or not the Provincial Board of Canvassers of Sulu had jurisdiction over the Petition for Correction of Manifest Error filed by respondent Loong; and (3) whether or not the COMELEC gravely abused its discretion in affirming the Ruling of the Provincial Board of Canvassers of Sulu.

First Issue: Whether or not there was manifest error in the Certificate

of Canvass of Votes from the Municipality of Patikul, Sulu

Petitioner argues that there were no manifest errors in the Certificate of Canvass of Votes from the Municipality of Patikul. He states that under Section 32 of COMELEC Resolution No. 6669,^[7] there is manifest error in the tabulation or tallying of the results during the canvassing where:

1. A copy of the election returns or certificate of canvass was tabulated more than once;
2. Two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately;
3. There was a mistake in the copying of the figures from the election returns to the statement of votes by precinct or from the municipal/city Certificate of Canvass to the Statement of Votes by Municipality; or from the Provincial/City Certificate of Canvass to the SOV by province/city;
4. Returns from non-existent precinct were included in the canvass; or
5. There was a mistake in the addition of the votes of any candidate.

Petitioner asserts that none of the above enumerated manifest errors appeared in the Certificate of Canvass of Votes from the Municipality of Patikul.

On the other hand, the COMELEC, First Division, held that it is clear that the manifest error committed in this case falls under subparagraph 5, Section 32 of COMELEC Resolution No. 6669. It found that there was manifest error in the addition of votes for Baddiri resulting in the addition of 2000 votes in his favor. The Certificate of Canvass of Votes from the Municipality of Patikul, Sulu, reflected 4,873 votes in favor of petitioner, but the supporting Statement of Votes by Precincts showed that the correct total votes garnered by him is only 2,873, as admitted by the members of the Municipal Board of Canvassers of the said municipality. The COMELEC held thus: