

## EN BANC

[ G.R. NO. 164922, October 11, 2005 ]

### RAYMOND P. ESPIDOL, PETITIONER, VS. COMMISSION ON ELECTIONS, WILFREDO TABAG & THE MUNICIPAL BOARD OF CANVASSERS OF RAMON, ISABELA, RESPONDENTS.

#### DECISION

##### CALLEJO, SR., J.:

Before the Court is the petition for *certiorari* and prohibition filed by Raymond P. Espidol seeking to nullify the Resolution<sup>[1]</sup> dated August 30, 2004 of the Commission on Elections (COMELEC) *en banc* in SPC No. 04-180. The said resolution affirmed the COMELEC Second Division Resolution<sup>[2]</sup> dated July 16, 2004 annulling the petitioner's proclamation as the duly-elected municipal mayor of Ramon, Isabela, during the May 10, 2004 elections.

##### The Antecedents

Petitioner Raymond P. Espidol and private respondent Wilfredo L. Tabag were rival candidates for Mayor of the Municipality of Ramon, Isabela, in the May 10, 2004 synchronized national and local elections.<sup>[3]</sup> Petitioner Espidol, a re-electionist, was the official candidate of the *Lakas ng Bansa (Lakas)*-Christian Muslim Democrats (CMD) coalition,<sup>[4]</sup> while private respondent Tabag was the official candidate of the *Partidong Demokratiko ng Pilipinas-Laban (PDP-Laban)*.<sup>[5]</sup> The municipality had a total of 117 precincts.<sup>[6]</sup>

At about 6:00 p.m. of May 10, 2004, the Municipal Board of Canvassers (MBC) of Ramon, consisting of Chairman Atty. Agripino A. De Guzman, Jr., Vice-Chairman Pedro L. Gueco and Member-Secretary Rosalinda B. Doroni, convened at the municipality's *Barangay* Training Center to commence the canvassing.<sup>[7]</sup> Actual canvassing started at around 3:00 a.m. of the following day or May 11, 2004, and formally adjourned at about 8:30 p.m., with the MBC scheduling the resumption of the canvass at 9:00 a.m. of the next day.<sup>[8]</sup>

However, no canvassing took place on May 12 and 13, 2004 because MBC Chairman De Guzman failed to report for work at the canvassing center.<sup>[9]</sup> In his "After-Incident-Report" Memorandum for Commissioner Mehol K. Sadain, Commissioner-in-Charge for Regions II and III, De Guzman reported that, in the evening of May 11, 2004, just after the adjournment of the canvassing proceedings, he and his group of tabulators were harassed and intimidated by allies and political supporters of petitioner Espidol. De Guzman further averred that on their way to Santiago City where they were temporarily billeted, their car was tailed by a vehicle belonging to petitioner Espidol's camp. Fearing for their safety, De Guzman immediately requested protection from the local police. This did not allay the fears of his staff

because the next day, his group of tabulators fled back to Manila.<sup>[10]</sup>

Together with the "After-Incident-Report," De Guzman submitted to Commissioner Sadain another Memorandum<sup>[11]</sup> requesting for a transfer of the canvassing venue to Manila citing as reason the volatile peace and order situation in Ramon, Isabela. On May 13, 2004, Commissioner Sadain denied De Guzman's request for a change of venue in view of the opposition of the other members of the MBC who refuted De Guzman's claims of intimidation and harassment.<sup>[12]</sup>

On May 14, 2004, the MBC reconvened and resumed the canvassing of the election returns. The canvassing continued until the evening of May 15, 2005. During the said proceedings, private respondent Tabag, through his lawyers, orally sought the exclusion of several election returns from the following precincts, namely: Precinct Nos. 2A, 4A/7A, 10A, 49A, 52A, 57A, 66A, 93A, 95/96A, 97A/98A, 103A, 112A, 15A, 24A, 47A&B, 63A, 88A, 92A/94, 50A, 56A, 60A/62A, 74A, 83A, 121A, 123A, 114A. Private respondent Tabag objected to the inclusion of these election returns on the following grounds: (1) that the security envelopes containing the election returns did not have the proper seals as required by Section 212 of the Omnibus Election Code (OEC); (2) that the election returns did not bear the signature of the chairman of the Board of Election Inspectors (BEI) as required by the same law; and (3) that the election returns did not have the thumbprints of the members of the BEI in the box provided for the purpose, and in some, the thumbprints and signatures of the BEI at the close of each entry or at the end of each tally/*taras* of each candidate were superimposed on the said tally/*taras*, thereby obscuring the number of votes obtained by each at the end of every entry.<sup>[13]</sup>

Despite these objections, and without any formal or written ruling thereon, the MBC included the contested election returns. The canvassing was concluded at about 9:30 p.m. of May 15, 2004.<sup>[14]</sup>

In the morning of May 16, 2004, private respondent Tabag, through counsel, filed a petition with the MBC vigorously opposing the impending proclamation on the ground that the proceedings of the board were irregular. De Guzman read the petition aloud. Nonetheless, at 9:00 a.m. of the same day, or barely twelve (12) hours after the conclusion of the canvassing of votes, the MBC proceeded to proclaim petitioner Espidol as the winning candidate for mayor, along with the vice-mayor and eight councilors.<sup>[15]</sup> Petitioner Espidol obtained 8,647 votes as against his closest rival, private respondent Tabag, who obtained 6,635 votes, or a margin of 2,012 votes.<sup>[16]</sup> Minutes after the proclamation, the counsel of private respondent Tabag submitted to the MBC his written objections to the inclusion in the canvass of the contested election returns. The MBC did not make a formal or written ruling thereon.<sup>[17]</sup>

On May 24, 2004, private respondent Tabag filed with the COMELEC a petition for annulment of proclamation.<sup>[18]</sup> Named respondents therein were MBC Chairman De Guzman, and petitioner Espidol. The petition was docketed as SPC 04-180 and raffled to the COMELEC Second Division.

In support of his petition, private respondent Tabag alleged that:

1. The MBOC acted in violation of RA 7166 and Comelec Resolution No. 2962 (6669) and with grave abuse of discretion amounting to lack of jurisdiction, in proclaiming private respondent (Espidol) as winner despite the pending and unresolved appeals before it, the railroading of petitions for exclusion without any hearing and written rulings thereon, and the petitions for exclusion which were not acted and ruled upon by it, considering that the contested returns will adversely affect the results of the election.

2. The proclamation by the board of private respondent as winner, is vitiated by duress, coercion, intimidation and threats and the mob rule, and the preparation of the election returns in certain *barangays* of the municipality is likewise vitiated by intimidation and threats resulting to falsified and materially defective returns and failure of elections and, therefore, not made freely and voluntarily as the true will of the electorate, considering that the contested returns will affect the results of the election.

3. The integrity, genuineness and sanctity of the contested election returns have been violated because the security envelopes containing the election returns do not have the proper seals provided by the commission for the purpose when prepared by the BEI until the same were subsequently transmitted to and canvassed by the MBOC, the election returns did not bear the signature of the chairman of the BEIs, the election returns do not have the thumbmarks/thumbprints of the members of the BEI in the boxes provided for the purpose, and in some, the thumbmarks and signatures of the BEI at the close of each entry or at the end of each tally/*taras* of each candidate were superimposed on the said tally/*taras* thereby obscuring the number of votes obtained by each at the end of every entry.

4. Discrepancy in the statement of votes by precinct of the MBOC where the sum total of the number of votes obtained by the three (3) mayoralty candidates is greater than the number of those who actually voted in all the 117 precincts of the municipality of Ramon, Isabela.<sup>[19]</sup>

On June 9, 2004, the COMELEC Second Division issued summonses with notice of hearing on June 17, 2004. During the said hearing, the parties made their respective manifestations. Subsequently, petitioner Espidol was given five (5) days to file his Answer-Memorandum, while private respondent Tabag and De Guzman were also given the same period to file their respective memoranda. On June 21, 2004, private respondent Tabag filed his Memorandum, while petitioner Espidol and De Guzman filed their respective Answer-Memoranda on June 22, 2004.<sup>[20]</sup>

In his Answer-Memorandum,<sup>[21]</sup> petitioner Espidol contended that the grounds raised by private respondent Tabag were not proper for a pre-proclamation controversy. Moreover, the latter did not raise his objections properly. Petitioner Espidol also refuted private respondent Tabag's allegations of massive vote buying, threats and intimidation.

For his part, MBC Chairman De Guzman, in his Answer-Memorandum,<sup>[22]</sup> admitted

that the board did not make any formal or written rulings on the objections raised by private respondent Tabag. De Guzman averred that there were persistent threats and intimidation which constrained him to hastily finish the canvassing. In fact, two of the tabulators with him (De Guzman) who were from Manila went home without finishing their task of tabulating because of fear for their safety. These tabulators from Manila, were replaced with local municipal employees.

Acting on the pleadings filed by the parties, the COMELEC Second Division issued the Order<sup>[23]</sup> dated June 23, 2004 suspending the effects of petitioner Espidol's proclamation:

Due to the seriousness of the allegation that the Board of Canvassers issued the proclamation even before questions involving the validity of returns which will affect the result of the election are resolved by the Commission, which is clearly in violation of the above mandated procedure, and, further, that the proclamation of private respondent [referring to Espidol] as the Mayor-elect of the Municipality of Ramon, Isabela was allegedly issued under duress, and with intimidation, coercion and threats, the Commission (Second Division) hereby orders that the effect of the proclamation of private respondent Raymond P. Espidol be suspended until the issues raised on the irregularities and alleged duress in the issuance of the proclamation be resolved on the merit.

WHEREFORE, premises considered, the Second Division of the Commission hereby SUSPENDS THE EFFECT OF THE PROCLAMATION of private respondent Raymond P. Espidol, with the note that the instant petition shall be resolved on the merit with dispatch.

SO ORDERED.<sup>[24]</sup>

In defiance of the said order, petitioner Espidol took his oath of office as Mayor of Ramon, Isabela on June 25, 2004.<sup>[25]</sup> Consequently, on June 26, 2004, private respondent Tabag filed with the COMELEC an urgent motion to annul the oath of petitioner Espidol and to restrain him from assuming the duties and functions of the Municipal Mayor of Ramon, Isabela. Private respondent Tabag also prayed that petitioner Espidol be cited for contempt for blatantly disregarding the June 23, 2004 Order.<sup>[26]</sup>

On June 29, 2004, the COMELEC Second Division, acting on the urgent motion, issued an Order, the *fallo* of which stated thus -

WHEREFORE, premises considered, respondent [referring to petitioner Espidol] is hereby directed to submit his comment to the above motion within five (5) days from notice. A stern warning is further directed upon respondent to refrain from committing acts which are in contravention of the Commission's June 23, 2004 Order and which tend to obstruct the proper resolution by the Commission of the present controversy, lest a severe sanction shall be imposed upon the same.

SO ORDERED.<sup>[27]</sup>

Notwithstanding the two orders, on June 30, 2004 - the beginning of the term of office of all elective officials - Espidol assumed office as Mayor of Ramon, Isabela and has since been discharging its functions and duties.

On July 16, 2004, the COMELEC Second Division promulgated the Resolution<sup>[28]</sup> declaring petitioner Espidol's proclamation illegal. It held that the MBC failed to give private respondent Tabag 24 hours from the time of his oral objections to submit his evidence in support thereof, in gross violation of Section 20 (c) of Republic Act (R.A.) No. 7166. Worse, the MBC acted without authority when it proclaimed petitioner Espidol as the duly elected Mayor of Ramon, Isabela, without making any written rulings on the objections raised by private respondent Tabag, in gross violation of paragraph (i) of the same provision. It further ruled that MBC was pressured, coerced, threatened and intimidated by petitioner Espidol in order to proclaim him. Further, the COMELEC Second Division opined that since the number of the votes cast for the mayoralty position exceeded the number of registered voters who actually voted by 858 as reflected in the Statement of Votes (SOV), there was enough basis to annul petitioner Espidol's proclamation. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Petition to Annul the Proclamation of Respondent Raymond P. Espidol, as Mayor of Ramon, Isabela, is hereby GRANTED; consequently, the proclamation of Respondent Raymond P. Espidol is hereby declared NULL and VOID. A Municipal Board of Canvassers shall be reconstituted to conduct a re-canvassing of the election returns strictly adhering to the prescribed procedures for canvassing and in handling contested election returns; meanwhile, the Vice-Mayor elect shall temporarily assume the mayoralty post as Acting Mayor, until further notice; furthermore, the Provincial Commanding Officer of the Philippine National Police in the Province of Isabela is hereby deputized, together with the Chief of Police of the Municipality of Ramon, Isabela, to assist the Election Officer of the same municipality, in ensuring that this resolution be immediately enforced. Let a copy of this resolution be furnished to the Department of Interior and Local Government for their information and guidance in implementing the provision on temporary succession in the local government as provided in the Local Government Code.

The charge of indirect contempt against respondent Raymond P. Espidol shall be treated as a separate case and subjected to a hearing in compliance with the requirements of due process. Petitioner is further advised that the appropriate complaint for election offense against the alleged offenders be filed with the Commission.

SO ORDERED.<sup>[29]</sup>

On July 21, 2004, petitioner Espidol filed a motion for reconsideration with the COMELEC Second Division.<sup>[30]</sup>

On August 30, 2004, the COMELEC *en banc* promulgated its Resolution<sup>[31]</sup> affirming *in toto* the COMELEC Second Division's Resolution of July 16, 2004. The dispositive portion of the COMELEC *en banc's* resolution reads: