

**EN BANC**

**[ G.R. No. 135468, May 31, 2000 ]**

**DIOSCORO O. ANGELIA, PETITIONER, VS. COMMISSION ON ELECTIONS AND FLORENTINO R. TAN, RESPONDENTS.**

**D E C I S I O N****MENDOZA, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Civil Procedure to set aside the resolution, dated August 18, 1998, of the Commission on Elections en banc annulling the proclamation of petitioner as member of the Sangguniang Bayan of Abuyog, Leyte and ordering the Municipal Board of Canvassers of said municipality to make the necessary corrections in the election returns of Precinct Nos. 84-A/84-A-1 and Precinct No. 23-A and, thereafter, proclaim the winning candidate or candidates for the Sangguniang Bayan.

The facts of the instant case are as follows:

Petitioner Dioscoro O. Angelia and private respondent Florentino R. Tan were candidates for the position of member of the Sangguniang Bayan of Abuyog, Leyte in the elections held on May 11, 1998. After the canvass of votes on May 13, 1998, the Municipal Board of Canvassers proclaimed the following as the duly elected members of the Sangguniang Bayan:<sup>[1]</sup>

<u>Winning Candidates</u>	<u>Votes Obtained</u>
1. Placido A. Deloy	9,681
2. Emmanuel L. Gacis	9,164
3. Edmundo P. Sano	8,720
4. Clementino Rudas	8,277
5. Francis Raymundo Realino	8,173
6. Carmelita P. Piscos	7,898
7. Marcelo G. Ganoza	7,835
8. Dioscoro O. Angelia	7,765

Private respondent, who received a total of 7,761 votes -- four votes less than those obtained by petitioner -- ranked ninth among the candidates.

On May 25, 1998, private respondent filed a petition for quo warranto with the Regional Trial Court, Abuyog, Leyte against petitioner, alleging that in Precinct Nos. 84-A/84-A-1, he was credited with only 82 votes, when he actually obtained 92, while in Precinct No. 23-A, petitioner was credited with 18 votes, when he actually garnered only 13 votes. According to private respondent, he actually received a total of 7,771 votes, while petitioner actually garnered 7,760 votes.

On June 12, 1998 petitioner took his oath and assumed office as member of the

## Sangguniang Bayan.

On June 23, 1998, private respondent filed a motion to withdraw his petition. Subsequently, he filed a petition for annulment of proclamation of petitioner with the COMELEC. He attached to the petition a copy of Election Return No. 3700088 from Precinct Nos. 84-A/84-A-1, which he claims showed a tally of 92 votes for him but indicated a corresponding total in words and figures of only 82 votes.<sup>[2]</sup> He also submitted a copy of Election Return No. 3700023, which allegedly showed a tally of only 13 votes for petitioner but indicated a corresponding total in words and figures of 18 votes.<sup>[3]</sup> He presented the affidavit<sup>[4]</sup> of Alma Duavis, the poll clerk of Precinct Nos. 84-A/84-A-1, stating that she inadvertently entered in Election Return No. 3700088 only 82 instead of 92 as the total number of votes received by private respondent, and the affidavit<sup>[5]</sup> of Chona Fernando, the poll clerk of Precinct No. 23-A, stating that through oversight, in Election Return No. 3700023, she indicated 18 instead of 13 as the total votes obtained by petitioner. In addition, private respondent submitted to the COMELEC the affidavit<sup>[6]</sup> of Susan Matugas, the chairperson of the Board of Election Inspectors of Precinct Nos. 84-A/84-A-1, corroborating the affidavit of Duavis.

In the resolution, dated August 18, 1998, the COMELEC annulled the proclamation of petitioner as member of the Sangguniang Bayan and ordered the Municipal Board of Canvassers to make the necessary corrections in the election returns from Precinct Nos. 84-A/ 84-A-1 and Precinct No. 23-A and, thereafter, to proclaim the winning candidate or candidates on the basis of the amended results. The resolution of the COMELEC reads:

On the basis of the documents thus presented and taking into consideration the admission of the Board of Election Inspectors of Precinct Nos. 84-A and 84-A-1, Barangay Dingle, as well as the Chairman of the BEI of Precinct No. 23, the Commission En Banc hereby RULES to GRANT the Petition. Petitioner had correctly availed of the procedure provided for under Section 5 Rule 27 of the COMELEC Rules which prescribes:

*"Pre-proclamation controversies which may be filed directly with the Commission - (a) The following pre-proclamation controversies may be filed directly with the Commission:*

xxx xxx xxx

*(2) When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as .... (3) there had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass .... and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made."*

Indeed, the error committed is manifest in that in Resolution No. 2962 (General Instructions for Municipal/City/Provincial and District Boards of

Canvassers in Connection with the May 11, 1998 Elections) it was clearly directed:

*"In case there exist discrepancies in the votes of any candidate in taras/tally as against the votes obtained in words/figures in the same returns/certificate, the votes in taras/tally shall prevail."*

Clearly, rectification of the error is called for, if We are to give life to the will of the electorate. Moreover, it is purely administrative and *"It does not involve any opening of the ballot box, examination and appreciation of ballots and/or election returns. As said error was discovered after proclamation, all that is required is to convene the board of canvassers to rectify the error it inadvertently committed in order that the true will of the voters will be effected."* (Tatlonghari vs. Commission on Elections, 199 SCRA 849)

WHEREFORE, premises considered, the Commission En Banc hereby ANNULS the proclamation of Dioscoro Angelia, the same being based on an erroneous tally and DIRECTS the Municipal Board of Canvassers of Abuyog, Leyte, to RECONVENE within five (5) days from receipt hereof and effect the corrections in the total number of votes received by the candidates in Precinct Nos. 84-A/84-A-1 (clustered) and Precinct No. 23-A and thereafter PROCLAIM the winning candidate/s for Municipal Kagawad based on the corrected results.

Accordingly, the Municipal Board of Canvassers reconvened on September 1, 1998 and, after making the necessary corrections in the election returns, proclaimed private respondent a member of the Sangguniang Bayan.

Petitioner filed a motion for reconsideration alleging that he was not given due notice and hearing. Then, without waiting for the resolution of his motion, he filed the instant petition for certiorari, alleging, as the sole assignment of error, the following:

WITH DUE RESPECT, PUBLIC RESPONDENT COMELEC GRAVELY ERRED AND VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN IT PASSED THE AUGUST 18, 1998 RESOLUTION ANNULING HIS PROCLAMATION AND RECONVENING THE MUNICIPAL BOARD OF CANVASSERS WITHOUT PRIOR NOTICE AND HEARING.

The petition has no merit and should be dismissed, but before we do so, certain preliminary questions raised by the parties must first be disposed of.

**First.** Respondents contend that the instant petition should be dismissed for being premature, because petitioner has a pending motion for reconsideration of the resolution, dated August 18, 1998, of the COMELEC.

We hold that petitioner acted correctly in filing the present petition because the resolution of the COMELEC in question is not subject to reconsideration and, therefore, any party who disagreed with it had only one recourse, and that was to file a petition for certiorari under Rule 65 of the Rules of Civil Procedure.<sup>[7]</sup> Rule 13, §1 of the COMELEC Rules of Procedure provides: