

## EN BANC

[ G.R. No. 132242, July 27, 1999 ]

**ROBERTO S. ALBERTO, PETITIONER, VS. COMMISSION ON ELECTIONS, HON. JUDGE ROSEMARIE ALONZO-LEGASTO, IN HER CAPACITY AS TRIAL JUDGE, METROPOLITAN TRIAL COURT BRANCH 41, QUEZON CITY AND ARNALDO A. CANDO, RESPONDENTS.**

### D E C I S I O N

**ROMERO, J.:**

Before us is a petition for *certiorari* and *mandamus* seeking the review and annulment of the Resolution<sup>[1]</sup> of the COMELEC dated January 20, 1998 which affirmed the Order<sup>[2]</sup> of the trial court dated June 26, 1997 in Election Case No. 97-697 entitled "Roberto S. Alberto, Sr. vs. Arnaldo A. Cando" denying herein petitioner's motion to photocopy the ballots.

Petitioner Roberto S. Alberto and private respondent Arnaldo A. Cando were candidates for Punong Barangay of Barangay Capri, Novaliches, Quezon City during the May 12, 1997 barangay elections. Cando won by a margin of forty six (46) votes and was proclaimed as the duly-elected Punong Barangay by the Board of Canvassers on May 16, 1997. On May 22, 1997, petitioner Alberto timely filed a verified Petition of Protest with the Metropolitan Trial Court of Quezon City alleging that in all the fourteen (14) precincts comprising Barangay Capri, massive fraud and illegal electoral practices were committed during the registration, the voting and the counting of the votes.

On June 18, 1997, petitioner filed an "Ex-Parte Urgent Motion to Photocopy Ballots,"<sup>[3]</sup> in order to aid his counsel in the preparation of his arguments and memorandum; private respondent Cando did not object to said motion verbally or in writing. On June 23, 1997, however, when the first ballot box was opened for the revision of ballots, public respondent judge orally denied the motion to photocopy the ballots. Later, on June 26, 1997, respondent judge issued the questioned order which read in part:

"xxx.

As regards the prayer to photocopy the ballots, the same is hereby denied considering the voluminous documents involved, sanctity of ballots and it will unduly delay the proceedings of the court.

SO ORDERED."

Aggrieved, petitioner Alberto filed a Petition for *Certiorari* and *Mandamus* with the COMELEC claiming that said order of the trial court was issued with grave abuse of

discretion amounting to lack of jurisdiction and in disregard of law and jurisprudence. The COMELEC denied the petition, holding that respondent judge did not commit any grave abuse of discretion in denying the motion to photocopy the ballots, *viz*:

"Not every error in the proceeding, or every erroneous conclusion of law or of fact, is abuse of discretion (Villa Rey Transit, Inc. vs. Bello, 7 SCRA 735). For abuse of discretion to be present it must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically or absolutely without reason/basis but by passion, prejudice or personal animosity. Ergo, the grant or denial of the motion of protestant to photocopy the ballots is a matter of discretion of the judge. In the instant case[,] there is no showing that the judge was not without reason or basis for denying the motion as she cited the "voluminous records, sanctity of ballots and the undue delay of the proceedings of the court." This may be or may not be erroneous[,] but as we said a petition for certiorari which is an extra-ordinary remedy are meant to cure errors of jurisdiction and not errors of judgment."<sup>[4]</sup>

Commissioner Teresita Dy-Liacco Flores dissented, stating that the grounds relied upon by the respondent judge were insufficient to justify the denial of the motion to photocopy the ballots. She reiterated the rule that laws and technical rules of evidence should be liberally applied especially so in election cases where public interest is involved.<sup>[5]</sup>

Hence, this petition.

We rule for the petitioner. As correctly pointed out by Alberto and dissenting Commissioner Dy-Liacco Flores, the reasons relied upon by the judge is denying his motion were erroneous or misplaced. First, that the documents to be photocopied were voluminous is not accurate because only fourteen (14) precincts with 3,402 ballots to be photocopied are involved in the instant case. Petitioner cited that, in another election case then pending before the COMELEC, Brillante vs. Binay (EPC No. 95-26), which involved the Office of the Mayor of Makati City, a total of 158,514 ballots from 1,712 precincts were allowed to be photocopied by the COMELEC. Indeed, as the dissenting Commissioner keenly observed, the number of ballots involved in the case at bar is too small compared to the number of ballots coming from entire provinces being revised and allowed to be photocopied by the Commission.

Second, as to the "sanctity of the ballots" relied upon by the lower court as another reason for denying the motion to photocopy the ballots, petitioner is correct in saying that there are adequate safeguards to preserve the sanctity of the ballots while the same are being photocopied. For one, the photocopying of the ballots will be done in public within court premises and in the presence of the revisor of private respondent Cando, the petitioner's representative as well as the representative of the court below. Moreover, the photocopying will be done simultaneous with the revision and recounting of the ballots; thus, the ballot boxes will be opened one at a time and after the ballots are revised, recounted, and photocopied, the same will be returned to the ballot to box which they belong and said box will remain in the custody of the lower court until the termination of the case. Likewise, photocopying the ballots will be a hedge against possible lost, destruction, or alteration since