

EN BANC

[G.R. No. 127311, June 19, 1997]

CONRADO LINDO, PETITIONER, VS. COMMISSION ON ELECTIONS, JUDGE NAPOLEON V. DILAG, IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF BRANCH XV, REGIONAL TRIAL COURT OF NAIC, CAVITE, AND ROSARIO VELASCO, RESPONDENTS.

D E C I S I O N

PUNO, J.:

In this petition for *certiorari* and prohibition, petitioner CONRADO LINDO seeks to annul the December 9, 1996 COMELEC Resolution lifting its injunction against the writ of execution pending appeal issued by Judge Napoleon Dilag, of the September 23, 1996 Decision declaring private respondent ROSARIO VELASCO as the duly-elected mayor of Ternate, Cavite and directing petitioner to vacate the Office of the Mayor.

The facts show that in the May 8, 1995 elections, petitioner CONRADO LINDO and private respondent ROSARIO VELASCO (incumbent mayor of Ternate, Cavite) were the main rivals for the position of Ternate mayor. On May 9, 1995, petitioner was declared by the board of canvassers as the duly elected mayor, garnering the highest number of votes at 2,711. Private respondent was second with 2,195 votes.

On May 19, 1996, private respondent, while still discharging her functions as Ternate mayor, filed an election protest with the RTC of Naic, Cavite, presided by Assisting Judge Emerito Agcaoili, contesting the results of the election in all the 19 precincts.

In June, 1995, prior to petitioner's assumption of the office of Ternate mayor, the ballot boxes of all the protested precincts were transferred from the office of the municipal treasurer to the office of the clerk of court, RTC Naic, for revision of the ballots. Only the ballots from 24 precincts were revised because private respondent abandoned her protest with respect to the other 15 precincts.

The revision showed a substantial variance between the number of votes as stated in the election returns and the number of votes as per physical count of the ballots in five (5) precincts,^[1] thus:

FOR PETITIONER LINDO

FOR RESPONDENT VELASCO

election	physical
returns	count

election	physical
returns	count

314 92

311 695

Thus, from the physical count of the votes, 222 votes were deducted from petitioner [314 - 222 = 92], while private respondent was credited with an additional 384 votes [311 + 384 = 695].

After the revision of the ballots by physical counting and appreciation of contested ballots, the results of voting^[2] in all precincts were as follows:

RESULTS OF:	LINDO	VELASCO
physical		
count	2,479	2,579
less:	less:	
appreciation 132 voided		32 voided
of ballots ^[3]	ballots	ballots
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TOTAL:	2,347 votes	2,547 votes

In view of the above findings, Assisting Judge Emerito M. Agcaoili, in his September 23, 1996 Decision, declared private respondent as the duly elected mayor of Ternate, Cavite.^[4] Petitioner was ordered to vacate the office of the Ternate mayor and turn it over to private respondent.

On September 27, 1996, petitioner filed a notice of appeal with the trial court and appealed the trial court's decision with the COMELEC. On the other hand, private respondent filed a motion for execution pending appeal. Its hearing was set on October 16, 1996.

At the hearing on the motion for execution, petitioner claimed that Judge Agcaoili only examined the photocopies of the ballots in deciding the case. Thereafter, respondent Judge Napoleon Dilag took over the protest case and on October 29, 1996 issued an Order^[5] granting the motion for execution pending appeal upon private respondent's filing of a P100,000.00 cash bond. On the same date, Judge Dilag issued the writ of execution^[6] directing the PNP Director of Cavite to implement the writ and install private respondent as mayor of Ternate, Cavite.

Petitioner filed a petition for certiorari and prohibition with the COMELEC,^[7] with prayer for the issuance of a preliminary injunction to prevent the implementation of the Order and writ of execution. Petitioner reiterated the factual claim that the trial judge did not examine the original ballots in deciding the protest case. On November 7, 1996, the COMELEC issued a preliminary injunction.^[8]

On December 9, 1996, COMELEC issued a Resolution,^[9] which denied the petition for certiorari and lifted the preliminary injunction. It ruled that the trial court did not commit grave abuse of discretion in granting the motion for execution pending appeal since on the basis alone of the physical count of ballots, private respondent would still be ahead of petitioner by 90 votes. It also held that the examination of original ballots shall be made at the appeal proper to dispose of all the issues relative to the merits of the case.

Hence this petition for certiorari and prohibition where petitioner contends that the COMELEC erred:

(1) in allowing the implementation of the writ of execution which was issued without payment by private respondent of the cash bond required in the Order;

(2) when it sustained the execution of the trial court's decision despite the COMELEC's finding that the decision was based only on the xerox copy of the contested ballots and that fake and spurious ballots may have been introduced in the ballot boxes to increase the votes of private respondent;

(3) when it refused to open the ballot boxes and examine the original ballots to determine whether there were spurious ballots used to increase private respondent's votes;

(4) when it ruled that the good reason for the execution of the decision pending appeal is that the result of the physical count alone shows that fraud was perpetrated, especially with the increase of votes of the proclaimed candidate.

(5) in applying Rule 39 of the Rules of Court.

We find no merit in the petition.

First. The records reveal that the writ of execution was issued on October 29, 1996 but was implemented only on October 30 after private respondent paid the P100,000.00 cash bond. It also appears that though the PNP Director of Cavite was deputized to implement the writ, it was the sheriff who actually executed the writ.

Second and Third. Petitioner claims that the COMELEC issued the preliminary injunction after finding that the trial court did not examine the original ballots, but relied only on the xerox copies in deciding the protest.^[10] Although subsequently COMELEC lifted the injunction, it still made a finding that fake and spurious ballots may have been introduced in the ballot boxes to increase the votes of private respondent.^[11] Thus, petitioner contends that the COMELEC should not have allowed the execution of the decision pending appeal and should have opened the ballot boxes to determine the authenticity of the ballots therein.

The contention has no merit.

COMELEC's statement that fake and spurious ballots may have been introduced to