

EN BANC

[G.R. NO. 175112, April 24, 2007]

DAVID K. SALAZAR, PETITIONER, VS. COMMISSION ON ELECTIONS AND MIGUELA M. DOLORIEL, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition^[1] for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order, *Status Quo Ante* Order and/or Writ of Preliminary Injunction assailing the Resolutions of the Commission on Elections (COMELEC), First Division, and the COMELEC *en banc* which were respectively issued on April 18, 2006 and October 16, 2006 in EAC No. 02-2004.

The facts^[2] are as follows:

Petitioner and private respondent were candidates for the position of Punong Barangay of Barangay Poblacion, Bislig City, Surigao del Sur in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan (SK) elections. Private respondent was proclaimed the winner after garnering 1,399 votes as against petitioner's 1,374 votes or a margin of 25 votes.

On July 22, 2002, petitioner filed an election protest before the Municipal Trial Court in Cities, Bislig City, Surigao del Sur where the case was docketed as Election Protest Case No. 03.

After the revision of ballots, petitioner obtained a total of 1,025 votes while private respondent's votes were reduced to 919.

Consequently, the lower court annulled and set aside the proclamation of private respondent as Punong Barangay and ordered the latter to vacate and relinquish her post in favor of petitioner.^[3]

On appeal, the COMELEC, First Division, found that private respondent won with a winning margin of 28 votes over petitioner. Thus, on April 18, 2006, it reversed and set aside the Decision of the lower court and declared private respondent as the duly elected Punong Barangay. The pertinent portions of the Resolution read:

The Commission (First Division) painstakingly examined every piece of evidence from the records and used the applicable rules on appreciation of ballots enumerated under Section 49 of Resolution No. 4846 (*Rules and Regulations on the Conduct of the July 15, 2002 Synchronized Barangay and SK Elections*) and other applicable jurisprudence....

The protestee-appellant DOLORIEL leads with a margin of 28 votes over the protestant-appellee SALAZAR.

WHEREFORE, premises considered, the Commission (First Division) RESOLVED as it hereby **RESOLVES** to **GRANT** the herein appeal. The decision of [the] Municipal Trial Court In Cities, Bislig City, Surigao del Sur, dated December 10, 2003 is hereby **REVERSED** and **SET ASIDE**.

Consequently, Protestant-Appellant **MIGUELA M. DOLORIEL** is hereby **DECLARED** the duly elected Barangay Chairman in Barangay Poblacion, Bislig City, Surigao del Sur, during the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan elections.

SO ORDERED.^[4]

On May 8, 2006, petitioner filed a motion for reconsideration, while on the next day or on May 9, 2006, private respondent filed a motion for execution pending appeal.

On May 22, 2006, pursuant to an Order of the COMELEC, First Division, the motion for reconsideration was elevated to the COMELEC *en banc*.

On October 16, 2006 the COMELEC *en banc* issued its Resolution, the pertinent portions read:

Based on the above findings[,] only six (6) ballots of the protestee contested by the protestant is invalidated, therefore the final tally is one thousand three hundred ninety eight (1398) votes for protestee-appellant Doloriel and one thousand three hundred seventy six (1376) votes for protestant-appellee Salazar. Protestee-appellant Doloriel leads with a margin of twenty two (22) votes over the protestant-appellee Salazar.

WHEREFORE, premises considered, the Commission's (First Division) Resolution promulgated in April 18, 2006 is hereby **AFFIRMED** with modification as to the final number of votes obtained by the parties.

SO ORDERED.^[5]

Hence, this petition based on the following grounds:

1. The COMELEC (First Division) committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Resolution dated April 18, 2006 in EAC No. 02-2004 reversing the December 10, 2003 Decision of the Municipal Trial Court in Cities, Bislig City, Surigao del Sur in Election Protest Case No. 03 and thereby validating several ballots in favor of Miguela M. Doloriel, said questioned Resolution not being supported by evidence on record and is not in accordance with law.
2. The COMELEC (en banc) committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned Resolution denying the herein petitioner David K. Salazar's Motion for Reconsideration and affirming with modification