

EN BANC

[G.R. NO. 170522, November 20, 2006]

CELSO LOPEZ OCATE, PETITIONER, VS. COMMISSION ON ELECTIONS AND ANGELITO M. LOPEZ, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This is a petition for certiorari^[1] assailing the Resolution dated 13 July 2005^[2] of the Second Division of the Commission on Elections (COMELEC) and the Resolution dated 12 November 2005^[3] of the COMELEC En Banc. The 12 November 2005 Resolution affirmed *en toto* the findings of the COMELEC Second Division. The COMELEC Second Division affirmed with modification the Decision dated 4 August 2004^[4] of Branch 23, Metropolitan Trial Court of Manila ("trial court").

The trial court proclaimed respondent Angelito M. Lopez ("respondent") the duly elected Punong Barangay of Barangay 308 of the third district of Manila and recalled the previous proclamation of petitioner Celso Lopez Ocate ("petitioner") by the Board of Election Tellers (BET).

The Facts

Petitioner and respondent ran for Punong Barangay of Barangay 308 of the third district of Manila in the 15 July 2002 synchronized elections for the Barangay and the Sangguniang Kabataan. Respondent obtained 369 votes while petitioner received 374 votes. The BET declared petitioner as the elected Punong Barangay by a plurality of five votes.

Respondent filed an election protest before the trial court on 26 July 2002. Docketed as EPC No. 001446, respondent questioned the election results in the clustered Precinct Nos. 1202A and 1203A, 1204A and 1207A, 1205A and 1208A, 1206A and 1209A, and Precinct Nos. 1210A and 1210A-1 on grounds of "irregularities, electoral fraud and anomalies in the casting, counting and canvassing of votes, substitution of voters, rampant violations of electoral laws, rules and regulations" committed by petitioner and his followers. On 6 August 2002, petitioner filed his answer with counterclaim and stated that the trial court had no jurisdiction to hear and decide the election protest as it was filed out of time. Respondent allegedly incurred a one-day delay in filing the election protest due to the suspension of work at the trial court because of typhoon *Kaka*. Petitioner also stated that respondent's claims are false and that respondent himself violated COMELEC rules.

On 3 September 2002, the trial court upheld its jurisdiction over the case and ordered the recount and revision of the ballots. Respondent promptly filed a petition

for certiorari and prohibition before the COMELEC on 9 September 2002. The trial court proceeded with the case until 18 November 2003, when it received a temporary restraining order from the COMELEC Second Division. The trial court thus set the continuation of the proceedings on 10 December 2002, which was moved to 7 January 2003 on motion of petitioner.

On 13 February 2003, the COMELEC Second Division issued a Resolution which dismissed respondent's petition because of lack of jurisdiction. However, on 25 November 2003, the COMELEC En Banc granted respondent's motion for reconsideration and reversed the 13 February 2003 resolution of the COMELEC Second Division. Petitioner then filed a petition for certiorari, docketed as G.R. No. 160865, before this Court. On 18 December 2003, this Court granted petitioner's prayer for a status quo ante order. However, we dismissed the petition in our Resolution dated 9 March 2004. We found that the COMELEC did not commit any grave abuse of discretion when it ruled that respondent's election protest was filed within the reglementary period. The application of technical rules had to yield to the determination of the true will of the electorate.

Undaunted, petitioner filed a motion for reconsideration and was granted a temporary restraining order by this Court on 19 April 2004. However, we denied with finality the motion on 27 April 2004.

Finally, the trial court proceeded with the revision of the ballots of Barangay 308. The Revision Committee finished revision on 6 May 2004 and submitted their report during the hearing on 25 June 2004.

The Ruling of the Trial Court

In its decision dated 10 August 2004, the trial court found that respondent established his cause as alleged in the election protest. The trial court's ruling on the parties' objections on alleged marked ballots, sets of ballots written by one person, ballots containing entries written by two persons, and ballots that bear no signature of the Board of Election Inspectors (BEI) reads thus:

A close examination of the contested ballots indeed showed that there were certain noticeable marks entered or written in some ballots, such as "X," circle, or line, but the court finds such marks as innocently made and are not hard and sufficient evidence to invalidate such ballots. At most, such marks shall be considered as signs of desistance from voting. (See Sec. 211 (21) Omnibus Election Code)

Moreover, as a rule, slight variations in writing are not sufficient to show that the ballot was prepared by two hands and where there is doubt as to whether the names were written by two persons, the doubt must be resolved in favor of the validity of the ballot. Minor and insignificant variations in handwriting must be perceived as indicia of genuineness rather than of falsity.

Lastly, as regards to [sic] the objection raised upon the set of ballots that bear NO signature of the Board of Election Inspector[s], the court wishes to invoke the ruling given by the Honorable Supreme Court in the [c]ase of Punzalan [v.] COMELEC, G.R. No. 126669, April 27, 1998[,] thus:

While Section 24 of Republic Act No. 7166, otherwise known as "An Act Providing For Synchronized National And Local Election[s] and For Electoral Reforms," requires the BEI Chairman to affix his signature at the back of the ballot, the mere failure to do so does not invalidate the same although it may constitute an election offense imputable to the BEI chairman. Nowhere in said provision does it state that the votes contained therein shall be nullified. It is a well-settled rule that the failure of the BEI chairman or any of the members of the board to comply with their mandated administrative responsibility, i.e., signing, authenticating and thumbmarking of ballots, should not penalize the voter with disenfranchisement, thereby frustrating the will of the people.

x x x x

Similarly, Section 211 of Batas Pambansa Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines" provides that in the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is a clear and good reason to justify its rejection. Certainly, the inefficiency of an election officer in failing to affix his signature at the back of the ballot does not constitute as a good and clear reason to justify the rejection of a ballot.^[5]

The trial court tallied the Revision Committee's findings as follows:

Precinct No.	Celso L. Ocate ([Petitioner])	Angelito M. Lopez ([Respondent])
1202A/1203A	26	51
1204A/1207A	64	74
1205A/1208A	74	77
1206A/1209A	75	85
1210A	57	48
1210A-1	72	43
Total	368	378 ^[6]

The dispositive portion of the trial court's decision reads thus:

WHEREFORE, judgment is hereby rendered declaring [respondent] Angelito M. Lopez as the true and duly elected winner for the position of Punong Barangay, Barangay 308, District III, City of Manila during the election held on July 15, 2002.

The proclamation made on [petitioner] Celso L. Ocate is ordered recalled and set aside.

SO ORDERED.^[7]

Respondent filed his notice of appeal and submitted his appeal brief to the COMELEC on 16 August 2004.

The Ruling of the COMELEC

The COMELEC Second Division visually scrutinized all the questioned ballots and changed the election results according to its findings. The COMELEC Second Division tallied its findings as follows:

	[Respondent] Lopez	[Petitioner] Ocate
Total Number of Votes Obtained per Ruling of the Court/Revision Reports	378	68
Plus: Total Number of Votes Validated and Credited by the Commission	4	7
Minus: Total Number of Votes Invalidated by the Commission	5	5
Equals: TOTAL NUMBER OF VOTES FROM ALL PRECINCTS	377	370 ^[8]

In a Resolution promulgated on 13 July 2005, the COMELEC Second Division affirmed with modification the decision of the trial court. The dispositive portion of the Resolution of the COMELEC Second Division reads thus:

CONSIDERING THEREFORE that Angelito M. Lopez garnered three hundred seventy seven (377) votes or a margin of seven (7) votes over the three hundred seventy (370) votes of Celso L. Ocate, the ^[10] August 2004 Decision of the Metropolitan Trial Court of Manila, Branch 23, in *Civil Case No. 001446-EC* is hereby AFFIRMED with modification insofar as the total number of votes of the parties are concerned.

ACCORDINGLY, the instant appeal is hereby DISMISSED for LACK OF MERIT.

SO ORDERED.^[9]

Petitioner filed his Motion for Reconsideration with the COMELEC En Banc on 19 July 2005. Petitioner questioned the COMELEC Second Division's rulings in Exhibits "D-75," "D-76," "F-63," "B-12," "B-13," "2-O," "3-G," "3-P," "3-Q," "3-T," "3-U," "3-FFF," "3-RRR," "3-SSS," "3-T," "3-U," "3-X," "3-AA," "3-DD," "3-HH," "3-JJ," "3-ZZ," "3-E," and "2-JJ." The COMELEC En Banc conducted a reappreciation of the questioned ballots and concluded that there is no reason to disturb the findings of the COMELEC Second Division. In a Resolution promulgated on 12 November 2005, the COMELEC En Banc ruled thus:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby denied for lack of merit. The assailed Resolution of this Commission (Second Division) is affirmed *en toto*. Upon finality of this