

## EN BANC

[ G.R. No. 184801, July 30, 2009 ]

### JONAS TAGUIAM, PETITIONER, VS. COMMISSION ON ELECTIONS AND ANTHONY C. TUDDAO, RESPONDENTS.

#### DECISION

##### YNARES-SANTIAGO, J.:

This petition for *certiorari* with prayer for issuance of a temporary restraining order and writ of preliminary injunction<sup>[1]</sup> assails the December 20, 2007 Resolution<sup>[2]</sup> of the Second Division of the Commission on Elections (COMELEC) in SPC No. 07-171 which granted private respondent Anthony C. Tuddao's Petition for Correction of Manifest Error and Annulment of Proclamation of petitioner Jonas Taguiam as the 12<sup>th</sup> winning candidate for the *Sangguniang Panglungsod* of Tuguegarao City, Cagayan. Also assailed is the October 9, 2008 Resolution<sup>[3]</sup> of the COMELEC *En Banc* denying petitioner's Motion for Reconsideration.<sup>[4]</sup>

Petitioner and private respondent were candidates for the position of *Sangguniang Panglungsod* of Tuguegarao City in Cagayan during the 2007 National and Local Elections. On May 19, 2007, petitioner was proclaimed by the City Board of Canvassers (CBOC) as the 12<sup>th</sup> ranking and winning candidate for the said position with 10,981 votes.<sup>[5]</sup> Private respondent obtained 10,971 votes<sup>[6]</sup> and was ranked no. 13.

On May 25, 2007, private respondent filed with the COMELEC a petition for correction of manifest errors in the Election Returns and Statement of Votes for 27 clustered precincts<sup>[7]</sup> and for the annulment of the proclamation of the affected winning candidate in Tuguegarao City. He alleged that he was credited with less votes in several Statements of Votes by Precincts (SOVP) as compared with the tally of his votes in the election returns (ERs), whereas petitioner was credited with more votes. Private respondent offered evidence in the following nine precincts: 0035A/0036A, 0061A/0063A, 69A/69B, 87A/87B, 192A/192B, 264A/265A, 324A/325B, 326A, and 328B.

Petitioner denied the allegations of private respondent and argued that the petition should be dismissed for having been filed late or six days after the proclamation of the winning candidates.<sup>[8]</sup> Meanwhile, the members of the CBOC of Tuguegarao City denied private respondent's allegations of manifest errors in the SOVP; maintained that petitioner garnered more votes than those obtained by private respondent; and that they have properly performed their duties and functions.<sup>[9]</sup>

On December 20, 2007, the Second Division of the COMELEC issued the assailed Resolution, to wit:

IN VIEW OF THE FOREGOING, the instant Petition filed by Anthony Tuddao for Correction of Manifest Error and Annulment of Proclamation of Jonas Taguam is hereby GRANTED.

ACCORDINGLY, the City Board of Canvassers of Tuguegarao, Cagayan is hereby DIRECTED to (i) RECONVENE after giving due notice to the concerned parties, (ii) CORRECT the errors in the Statement of Votes by Precinct (SOVP), and thereafter proclaim the 12<sup>th</sup> winning candidate for the Sangguniang Panlungsod of Tuguegarao, Cagayan.

Let the City Board of Canvassers of Tuguegarao, Cagayan implement this Resolution with dispatch.

SO ORDERED. <sup>[10]</sup>

The COMELEC held that the belated filing of private respondent's petition cannot deter its authority to ascertain the true will of the electorate and thereafter affirm such will. Thus, after due proceedings, the COMELEC found private respondent's allegations duly substantiated with material evidence and confirmed the following:

A. With regard to the votes of private respondent:

	Precinct No.	SOVP No.	ER No.	Votes in SOVP	Votes in ER	Votes Affected
1	69A/69B	15327	9602679	27	27	0
2	87A/87B	10543	9602699	13	13	0
3	192A/192B	10531	9602801	20	19	-1
4	326A	10532	9602921	43	53	+10
TOTAL						+9

B. With regard to the votes of petitioner:

	Precinct No.	SOVP No.	ER No.	Votes in SOVP	Votes in ER	Votes Affected
1	35A/36A	10543	9602647	40	33	-7
2	61A/63A	10539	9602672	55	50	-5
3	264A/265A	10528	9602871	39	29	-10
4	324A/325A	10533	9602920	62	61	-1
5	328B	10527	9602924	33	32	-1
TOTAL						-24

The COMELEC concluded that nine votes should be added to the total number of votes garnered by private respondent; while 24 votes should be deducted from the total number of votes obtained by petitioner. Thus, the total number of votes obtained by private respondent was 10,980, while the total number of votes received by petitioner was 10,957. As such, private respondent was rightfully the 12<sup>th</sup> winning candidate for the *Sangguniang Panglungsod* of Tuguegarao City,

Cagayan.

Petitioner filed a motion for reconsideration which was denied by the COMELEC *En Banc* on October 9, 2008.

Hence, this Petition for *Certiorari*<sup>[11]</sup> raising the issue of whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of private respondent's petition for correction of manifest errors in the Election Returns and Statement of Votes despite its late filing.

Petitioner avers that private respondent's petition for correction of manifest errors should have been dismissed outright for failure to show any justification for its late filing; that, if the petition had been properly dismissed, private respondent had other remedies available, such as an election protest.

Rule 27, Section 5 of the 1993 COMELEC Rules of Procedure expressly states that:

Pre-proclamation Controversies Which May Be Filed Directly with the Commission -

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

x x x x

2) When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, (3) there has been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass, or (4) so-called returns from non-existent precincts were included in the 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.

x x x x

If the petition is for correction, it must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby.

While the petition was indeed filed beyond the 5-day reglementary period, the COMELEC however has the discretion to suspend its rules of procedure or any portion thereof. Sections 3 and 4 of Rule 1 of the COMELEC Rules of Procedure