

## EN BANC

[ G.R. NO. 169513, February 26, 2007 ]

### ANWAR "ANO" S. MARABUR, PETITIONER, VS. COMMISSION ON ELECTIONS AND OMAR "BORNOK" MAHAMAD, JR., RESPONDENTS.

#### DECISION

**CARPIO, J.:**

##### The Case

This petition for certiorari<sup>[1]</sup> assails the Resolution dated 21 February 2005<sup>[2]</sup> of the Commission on Elections (COMELEC) Second Division<sup>[3]</sup> and the Resolution dated 6 September 2005<sup>[4]</sup> of the COMELEC *En Banc*<sup>[5]</sup> in SPC No. 04-204. The COMELEC annulled the proclamation of Anwar "Ano" S. Marabur (petitioner) as the 10<sup>th</sup> ranking and winning candidate for councilor of Marawi City, Lanao del Sur, and denied petitioner's motion for reconsideration.

##### The Facts

Petitioner and Omar "Bornok" Mahamad,<sup>[6]</sup> Jr. (respondent) were among the candidates for councilors of Marawi City, Lanao del Sur in the 10 May 2004 elections.

On 12 May 2004, the Marawi City Board of Canvassers (CBC) convened at the Library of the People's Park, Camp Amai, Pak-pak, Marawi City to canvass the election returns from more than 190 precincts in Marawi City.

On 16 May 2004, one of the mayoralty candidates objected to the inclusion of the election return from Precinct No. 108-A of Barangay Lomidong.

On 18 May 2004, the CBC ruled to include the election return from Precinct No. 108-A.

On 20 May 2004, the CBC proceeded to tally and tabulate all the election returns. When the CBC was about to tally and tabulate the election return from Precinct No. 108-A, respondent's counsel, Atty. Federico Miranda, verbally objected to the tabulation on the ground that the election return was tampered and altered. Thereafter, the CBC suspended its proceedings to accommodate the objection.

On 21 May 2004, the CBC resumed its proceedings. Respondent's other counsel, Atty. Bayan Balt, reiterated their objection to the tabulation of the results of the election return from Precinct No. 108-A. Respondent then submitted his Formal Offer of Evidence to the CBC. Among respondent's evidence was the joint affidavit

of the members of the Board of Election Inspectors in Precinct No. 108-A, which stated:

3. That after the counting of votes which was held at People's Park, Marawi City, we prepared the election returns based on the votes obtained by candidates for National and Local position.
4. That to the best of our own personal knowledge, candidates for Councilors Omar "Bornok" Mohamad, Jr. and Anwar "Ano" S. Marabur obtained the following votes corresponding to their names as follows:  
  
Omar "Bornok" Mohamad, Jr. - Forty-Eight votes (48 votes)  
  
Anwar "Ano" S. Marabur - Fifty votes (50 votes)
5. That it is not true that Anwar "Ano" S. Marabur received One Hundred Fifty votes (150 votes).
6. That we executed this Affidavit to attest to the veracity of the foregoing statements and to inform the Honorable Members of the City Board of Canvassers of Marawi City that Candidate for Councilor Anwar "Ano" S. Marabur did not received [sic] or obtained [sic] One Hundred Fifty votes (150 votes).<sup>[7]</sup>

Respondent also submitted an affidavit of one of his watchers claiming that respondent obtained 48 votes<sup>[8]</sup> while petitioner received 50 votes. The Certificate of Votes of Candidates,<sup>[9]</sup> which was signed and thumb marked by the Board of Election Inspectors, likewise showed that petitioner obtained only 50 votes in Precinct No. 108-A.

Respondent also argued that it was impossible for petitioner to obtain 150 votes from Precinct No. 108-A because based on the contested election return only 132 voters actually voted in Precinct No. 108-A.

With the respondent's objections and offer of evidence, the CBC initially deferred its canvass with the announcement that it could only proclaim the nine candidates for councilor who obtained the highest votes.

However, on 22 May 2004, despite the continuous objections from respondent's counsel and his manifestation of intent to appeal, the CBC still included in its canvass the contested election return. The CBC proclaimed all the winning candidates, including petitioner as the 10<sup>th</sup> ranking councilor of Marawi City. The CBC then issued its ruling, declaring that respondent did not comply with the mandatory requirement of simultaneous submission of the verbal and written objections and that respondent submitted his offer of evidence beyond the prescribed period. The CBC also ruled that there was no convincing proof of any superimposition done on the contested election return.

On 25 May 2004, respondent filed a petition with the COMELEC, praying that the proceedings of the CBC be declared illegal and void. The petition alleged that on 20 May 2004, the canvass of all but one of the 190 precincts of Marawi City, particularly

Precinct No. 108-A, showed respondent to be ahead of petitioner, with 10,070 votes as against 10,020 votes for petitioner.<sup>[10]</sup> However, the election return from Precinct No. 108-A was allegedly missing, prompting the CBC to defer the canvass.<sup>[11]</sup> However, at around 8:00 p.m. of 20 May 2004, the missing election return allegedly reappeared. The election return showed signs of tampering atop the thumb marks and signatures of the members of the Board of Election Inspectors, and affixed at the end of the *taras* corresponding to petitioner's name were additional *taras*.<sup>[12]</sup> Alterations in the number of votes for petitioner in words and figures allegedly made it appear that petitioner had 150 votes instead of only 50 votes.<sup>[13]</sup> The petition also alleged that the CBC disregarded respondent's objections and denied him of any chance to appeal its inclusion of the contested election return.

Meanwhile, petitioner took his Oath of Office as councilor of Marawi City on 4 June 2004.

### **The Ruling of the COMELEC**

In its Resolution of 21 February 2005, the COMELEC Second Division found that the CBC violated the prohibition in Section 20 of Republic Act No. 7166 (RA 7166)<sup>[14]</sup> on proclaiming any candidate as winner without authorization from the COMELEC after the COMELEC has ruled on the objections of the losing party. This prohibition is also found in the COMELEC rules. Since there was no such prior authorization from the COMELEC, the proclamation of petitioner as the 10<sup>th</sup> ranking councilor of Marawi City is void.

The COMELEC also found that the contested election return, "by sheer visual inspection," was clearly tampered. The 150 votes for petitioner were superimposed over the actual votes that he obtained - which were 50 votes. Excluding the contested election return, the total number of votes from all the precincts in Marawi City including the true votes in Precinct No. 108-A, would be:

Respondent	-	10, 118 votes
Petitioner	-	10, 070 votes

Therefore, the winning candidate as the 10<sup>th</sup> councilor of Marawi City was respondent, instead of petitioner.

The dispositive portion of the resolution reads:

**WHEREFORE**, under the foregoing premises, the instant Petition is hereby **GRANTED**. Consequently, the proclamation of private respondent Anwar "Ano" S. Marabur as the tenth (10<sup>th</sup>) ranking and winning candidate for city councilor of Marawi City, Lanao del Sur is hereby **ANNUL[L]ED**.

Upon finality of this Resolution, the City Board of Canvassers of Marawi City is hereby directed to re-convene and re-canvass the election return from Precinct No. 108-A of Barangay Lomidong, Marawi City and consistent with Our pronouncement herein. Thereafter, the said City

Board of Canvassers is hereby directed to proclaim the tenth ranking and lawfully elected councilor for Marawi City.

**SO ORDERED.**<sup>[15]</sup> (Emphasis in the original)

On 1 March 2005, petitioner moved for reconsideration of the resolution of the COMELEC Second Division. Thereafter, or on 20 May 2005, petitioner filed a motion to expunge the petition filed by respondent on the ground that respondent was not a legitimate registered voter of Barangay Marinaut East.

On 6 September 2005, the COMELEC *En Banc* denied petitioner's motion for reconsideration as well as the motion to expunge the petition. The COMELEC disposed of the motions, as follows:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION as well as the VERY URGENT MOTION TO DISMISS (WITH LEAVE) AND/OR EXPUNGE FROM THE RECORDS THE ABOVE-ENTITLED PETITION' filed by private respondent ANSWAR [sic] "ANO" S. MARABUR are hereby **DENIED**. The Resolution of this Commission (Second Division) promulgated last February 21, 2005 is **AFFIRMED** *en toto*.

SO ORDERED.<sup>[16]</sup> (Emphasis in the original)

Hence, this petition.

### **The Issue**

The lone issue for resolution is whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in annulling the proclamation of petitioner as the 10<sup>th</sup> ranking and winning candidate for councilor of Marawi City.

### **The Ruling of the Court**

The petition lacks merit.

In resolving the issue, we shall examine whether the procedure outlined in Section 20 of RA 7166<sup>[17]</sup> governing the disposition of contested election returns was observed in this case.

Section 20 of RA 7166 reads as follows:

*Section 20. Procedure in Disposition of Contested Election Returns. -*

(a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall

automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

The evidence attached to the objection or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each every page thereof.

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested return ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours, therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.