

EN BANC

[G.R. NO. 174010, February 08, 2007]

LAISAN T. PERMAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND LINO LANDONG IDDONG, RESPONDENTS.

DECISION

TINGA, J.:

Before this Court is a Special Civil Action for Certiorari under Rule 64 of the Rules of Court with Prayer for the issuance of Temporary Restraining Order (TRO), Writ of Preliminary Injunction and/or Status Quo Ante Order.

Petitioner Laisan T. Perman and private respondent Lino Landong Iddong were duly certified candidates for Punong Barangay of Barangay Tipo-Tipo Proper, Tipo-Tipo, Basilan in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections. Private respondent was proclaimed by the Barangay Board of Canvassers as the winning candidate by a margin of sixty-seven (67) votes.

Petitioner filed an election protest with the Municipal Circuit Trial Court (MCTC) of Lamitan, Tipo-Tipo-Tuburan, Lamitan, Basilan, docketed as Election Protest Case No. 11-02. After the revision of ballots, the trial court invalidated eighty-three (83) ballots in favor of private respondent for being marked and deducted the same from his total votes.

Consequently, on 9 July 2004, the MCTC rendered a decision,^[1] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court finds the Protestant, LAISAN T. PERMAN as having won over Protestee, LINO LANDONG IDDONG, with a majority of 13 votes during the Barangay Election[s] in Barangay Tipo-Tipo Proper, Municipality of Tipo-Tipo, Basilan Province held on July 15, 2002.

SO ORDERED.

Private respondent filed an appeal with the Commission on Elections (COMELEC).^[2] On 23 February 2005, the COMELEC First Division validated the ballots that were invalidated by the MCTC and consequently ruled in favor of private respondent who came out as the winning candidate by a margin of sixty-seven (67) votes.^[3]

Petitioner filed a Motion for Reconsideration of the 23 February 2005 resolution. On 31 July 2006, the COMELEC *En banc* denied the motion for reconsideration.^[4] Hence, this petition.

A perusal of the petition shows that there is actually only one issue to be resolved:

whether the COMELEC *En banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in its appreciation of the contested ballots, sixty-five (65) ballots for private respondent and two (2) ballots for petitioner.

The COMELEC *En banc* validated sixty-five (65) ballots in favor of private respondent and added the same to his total votes. Petitioner contends that said ballots should be invalidated for having been written by two persons.

As for the other two (2) ballots for petitioner, the COMELEC *En banc* invalidated them for being marked and accordingly deducted petitioner's total votes by two (2). Petitioner contends that the poll body should have credited the two (2) ballots to him consistent with its rulings on similarly situated ballots of private respondent and with the rules of appreciation of ballots which favor validity in case of doubt in order to uphold the will of the voters.

The petition is bereft of merit.

The applicable rule on appreciation of ballots, embodied in Rule 23 under Sec. 211 of the Omnibus Election Code (B.P. Blg. 881), provides:

23. Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.

The Court had occasion to explain this rule in *Trajano v. Inciso*.^[5] The rule of interpretation then in force was found in Sec. 149 (23) of Republic Act No. 180 (Revised Election Code), the text of which is exactly as that found in Sec. 211 (23) of the Omnibus Election Code quoted above. The Court in that case held:

The allowance or rejection of a ballot filled by more than one person depends on its condition before it was cast in the ballot box: **If at the time it was cast it was filled only by one person, but thereafter it was tampered and entries were made thereon by other persons, the ballot is valid. If, on the other hand, it already bore the fillings of two or more persons when cast, said ballots are deemed marked and thus void.** [Emphasis supplied.]

The presumption *juris tantum* is that a ballot found to be with the handwriting of two or more persons suffered this defect before it was cast.^[6] It is only a presumption *juris tantum*, rebuttable by evidence. x x x

The presumption that a ballot found to be in the handwriting of two or more persons suffered this defect before it was cast was overcome in *Trajano*. Similarly, in the case at bar, the COMELEC *En banc*, found that the presumption had indeed been overcome. Following *Columbres v. COMELEC*,^[7] the presumption was overcome by evidence that the ballots were tampered with after they had been deposited in the ballot box.

The COMELEC *En banc* arrived at the following findings:

1. In all the ballots coming from the three different precincts, **only one and the same person made the insertions** as can be