

EN BANC

[G.R. NO. 166105, March 22, 2007]

ATTY. GABRIEL B. OCTAVA, PETITIONER, VS. COMMISSION ON ELECTIONS, COMPOSED OF MANUEL A. BARCELONA, JR., COMMISSIONER PONENTE, BENJAMIN S. ABALOS, SR., CHAIRMAN, RUFINO S. B. JAVIER, COMMISSIONER, RESURRECCION Z. BORRA, COMMISSIONER, VIRGILIO O. GARCILLANO, COMMISSIONER, MEHOL K. SADAIN, COMMISSIONER, FLORENTINO A. TUASON, JR., COMMISSIONER, THE CITY BOARD OF CANVASSERS OF TRECE MARTIRES CITY, CAVITE, COMPOSED OF MYRNA S. UMANDAL, CHAIRMAN, RHODORA Y. ADVIENTO, VICE-CHAIRMAN, LODIVILLA P. SILAN, MEMBER-SECRETARY, AND JOSEFO BITONES LUBIGAN, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This petition for certiorari under Rule 65 in relation to Rule 64 of the Rules of Court seeks to reverse and set aside the Resolutions dated August 16, 2004^[1] and November 2, 2004^[2] of public respondent Commission on Elections (COMELEC) in SPC No. 04-230. The COMELEC had annulled and set aside the proclamation of herein petitioner Atty. Gabriel B. Octava as the 10th *Sangguniang Panlungsod* member of Trece Martires City, Cavite.

The facts as found by the COMELEC are as follows:

A petition was filed by private respondent Josefo B. Lubigan against the City Board of Canvassers (CBOC) of Trece Martires City, Cavite, and petitioner, in connection with the May 10, 2004 national and local elections. Petitioner and Lubigan were candidates for membership in the *Sangguniang Panlungsod* of Trece Martires City.

Lubigan sought (1) to correct the statements of votes (SOVs) by precinct prepared by the CBOC of Trece Martires City, and (2) to nullify and set aside the proclamation of petitioner as the 10th duly elected *Sangguniang Panlungsod* member. Lubigan alleged that during the canvass proceedings, the CBOC erred in the preparation of the SOVs with respect to the votes that he garnered. According to him, instead of counting 7,740 votes in his favor, he was merely credited with 7,540 votes. He claimed that had he been credited with the correct number of votes, he should have been the 10th *Sangguniang Panlungsod* member instead of petitioner. Instead, it was petitioner who was credited with 7,656 votes and was proclaimed by the CBOC.

In its answer to the COMELEC, the CBOC admitted that there was indeed an error in the tabulation of the total number of votes garnered by petitioner and Lubigan. It was only during the delivery of the ballot boxes containing the election returns and

upon double-checking that it discovered the discrepancy in the SOVs.^[3]

Petitioner, however, contended that the CBOC did not commit any error in the computation of votes, especially those pertaining to the votes of Lubigan. The records of the CBOC did not show manifest errors. If there were, these would have been noted in the minutes of the proceedings and ruled upon by the CBOC. Petitioner further alleged that since he was already proclaimed, any petition in the nature of a pre-proclamation controversy was no longer available. The appropriate remedy should either be an election protest or a *quo warranto* proceeding to be filed in the proper court having jurisdiction.^[4]

The COMELEC ruled:

WHEREFORE, in the light of the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the instant petition. The proclamation of private respondent Gabriel B. Octava as the 10th Sangguniang Panlungsod Member for Trece Martires City, Cavite is hereby **ANNULLED** and **SET ASIDE**.

ACCORDINGLY, the City Board of Canvassers of Trece Martires City, Cavite is hereby **DIRECTED** to **RECONVENE** and **EFFECT** the necessary corrections in the Statement of Votes and forthwith **PROCLAIM** the rightful winner for the 10th Sangguniang Panlungsod Member for Trece Martires City, Cavite during the May 10, 2004 National and Local Elections.

SO ORDERED.^[5]

The motion for reconsideration filed by petitioner was likewise denied by the COMELEC.^[6]

Hence, the instant petition.

The sole issue raised in the petitioner's Memorandum^[7] is:

WHETHER OR NOT RESPONDENT COMMISSION ON ELECTIONS HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ANNULING THE PROCLAMATION OF PETITIONER HEREIN AS THE 10TH SANGGUNIANG PANLUNGSOD MEMBER FOR TRECE MARTIRES CITY, CAVITE, AND IN DIRECTING THE CITY BOARD OF CANVASSERS OF TRECE MARTIRES CITY TO RECONVENE AND EFFECT THE NECESSARY CORRECTIONS IN THE STATEMENT OF VOTES AND FORTHWITH PROCLAIM RESPONDENT HEREIN JOSEFO BITONES LUBIGAN THE RIGHTFUL WINNER FOR THE 10TH SANGGUNIANG PANLUNGSOD MEMBER FOR TRECE MARTIRES CITY, CAVITE, DURING THE MAY 10, 2004 NATIONAL AND LOCAL [ELECTIONS].^[8]

Simply put, we must resolve whether there was grave abuse of discretion amounting to excess or lack of jurisdiction on the part of COMELEC in its assailed Resolutions.

Petitioner states that he was denied due process when he was not furnished a copy