

EN BANC

[G.R. NO. 167137, March 14, 2007]

ANTENOR A. ARBONIDA, PETITIONER, COMMISSION ON ELECTIONS AND ROMEO C. CARINGAL, RESPONDENTS.

QUISUMBING, J.:

This special civil action for certiorari filed by petitioner Antenor A. Arbonida assails the Resolution^[1] dated November 18, 2004 of the Commission on Elections (COMELEC) in SPC No. 04-274. In its resolution, the COMELEC had annulled the proclamation of Arbonida as municipal councilor of Tanza, Cavite and instead, ordered the proclamation of private respondent Romeo C. Caringal as the duly elected eighth municipal councilor.

The Resolution was later affirmed by the COMELEC *en banc* in another Resolution^[2] dated February 23, 2005, also herein assailed.

Arbonida prays that the questioned COMELEC resolutions be reversed and set aside, and that the COMELEC be directed to (1) annul the proclamation of Caringal and order him to vacate the post of councilor, and (2) issue a new resolution affirming the election of Arbonida and reinstating him to his position as councilor of Tanza, Cavite.

The antecedent facts are as follows:

Arbonida and Caringal were candidates for the *Sangguniang Bayan* of Tanza, Cavite during the May 10, 2004 synchronized national and local elections. After the canvassing of votes on May 12, 2004, the Municipal Board of Canvassers of Tanza (MBOC) proclaimed Arbonida the eighth winning candidate with 14,620 votes as against the 14,552 votes of Caringal.^[3] On June 16, 2004, Caringal filed a petition with the COMELEC seeking to annul Arbonida's proclamation on the ground of manifest errors in the statement of votes by precinct (SOVP). Caringal alleged that the MBOC committed mistakes in the copying of figures from the election returns to the SOVPs. Arbonida filed a motion to dismiss^[4] arguing that the COMELEC had no jurisdiction to take cognizance of the petition since *dagdag-bawas* did not constitute manifest error but rather a ground for an election protest. He also claimed that a pre-proclamation controversy was no longer viable after the proclamation of the winning candidate.

After an examination and comparison of the subject election returns and SOVPs, the COMELEC found that there indeed existed discrepancies in the number of votes sufficient to have an effect on the last place for municipal councilor being contested. Consequently, the COMELEC First Division annulled the proclamation of Arbonida and instead proclaimed Caringal as the duly elected eighth municipal councilor of Tanza, Cavite, as follows:

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GRANT the instant petition finding it imbued with merit.

The proclamation of ANTENOR A. ARBONIDA as the eighth (8th) Municipal Councilor of Tanza, Cavite in the May 10, 2004 Synchronized National and Local Elections is hereby ANNULLED and he is ORDERED to CEASE AND DESIST from exercising the powers and duties of the aforesaid office and to VACATE the same.

ACCORDINGLY, the Municipal Board of Canvassers of Tanza, Cavite are (sic) hereby DIRECTED to RECONVENE, make the proper corrections and PROCLAIM petitioner ROMEO C. CARINGAL as the duly elected eighth (8th) Municipal Council of Tanza, Cavite in the May 10, 2004 Synchronized National and Local Elections.^[5]

On appeal, the COMELEC en banc denied the motion for reconsideration:

IN VIEW OF THE FOREGOING PREMISES, the instant Motion for Reconsideration is hereby DENIED for LACK OF MERIT.

Accordingly, the status quo ante order issued by this Commission on 14 December 2004 is hereby lifted. The Municipal Board of Canvassers of Tanza, Cavite is therefore directed to (i) reconvene after due notice to all concerned parties, (ii) correct the errors in the Statement of Votes by Precinct based on the figures appearing on the election returns of the subject precincts, (iii) prepare a new Certificate of Canvass of Votes and Proclamation and thereafter, (iv) proclaim Romeo C. Caringal as the 8th winning candidate for Sangguniang Bayan of Tanza, Cavite, during the May 10, 2004 National and Local Elections.

x x x x^[6]

Petitioner now raises the following issues for this Court's consideration:

I.

WHETHER OR NOT, CONSIDERING THE ALLEGATIONS CONTAINED THEREIN, SPC NO. 04-274 IS A PRE-PROCLAMATION CASE, AND EVEN IF IT WERE, WHETHER OR NOT IT COULD BE FILED BEYOND FIVE (5) DAYS FROM PROCLAMATION;

II.

WHETHER OR NOT CARINGAL COULD CHANGE HIS CAUSE OF ACTION TO ONE FOR DECLARATION OF NULLITY OF PROCLAMATION WHICH COULD BE BEYOND FIVE DAYS FROM PROCLAMATION - (35 days from proclamation)[;]

III.

AND ASSUMING COMELEC HAS JURISDICTION OVER SPC NO. 04-274 WHETHER OR NOT IT COULD BE RESOLVED BY THE DIVISION OF THE

COMMISSION;

IV.

WHETHER OR NOT GIVEN THE FACTS OF THIS CASE, A MOTION TO DISMISS COULD BE VALIDLY FILED[;]

V.

WHETHER OR NOT THE COMELEC COULD VALIDLY SUSPEND THE RULES IN THE CASE AT BAR WHERE IT HAS NO JURISDICTION OVER THE MAIN CASE AND WHETHER OR NOT THE COMELEC COULD VALIDLY SUSPEND THE RULES IN THE CASE AT BAR TO JUSTIFY ITS ASSUMPTION OF JURISDICTION;

VI.

WHETHER OR NOT THE RESOLUTION OF FEBRUARY 23, 2005...AND OF NOVEMBER 18, 2004...SHOULD BE NULLIFIED FOR WANT OF JURISDICTION ON THE PART OF COMELEC.[7]

Simply stated, the issues for our resolution are (1) whether the petition filed is a proper subject of a pre-proclamation controversy; (2) if so, whether the COMELEC has jurisdiction to entertain a petition filed beyond the period provided by law and the rules; and (3) whether the COMELEC First Division is without jurisdiction to issue the November 18, 2004 resolution.

Arbonida claims that the allegation of *dagdag-bawas* which was the ground upon which Caringal anchored his petition before the COMELEC, was not a proper subject of a pre-proclamation case.[8] He stated that *dagdag-bawas* is cheating,[9] and hence, properly threshed out in a regular election protest. He also avers that when Caringal was confronted with a motion to dismiss, he changed the nature of his petition from a pre-proclamation case to a petition for annulment of proclamation, in order to confer jurisdiction on the COMELEC and escape the requirement of filing within a five-day reglementary period.[10]

Caringal argues that the rule on the five-day filing period presupposes a valid proclamation. Thus, when the proclamation appears to be a nullity, a pre-proclamation case may still be given due course.[11]

The findings of the COMELEC First Division are as follows:

An examination and comparison of the subject Election Returns and the Statement of Votes by Precincts clearly reveals that there were indeed discrepancies in the number of votes reflected between the two documents. The discrepancies stand thus:

INCREASE FOR THE PRIVATE RESPONDENT [ARBONIDA]

PRECINCT NO.	VOTES AS PER	VOTES IN STATEMENT OF
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