

## EN BANC

[ G.R. NO. 167101, January 31, 2006 ]

**MANUEL A. ALEJANDRO, PETITIONER, VS. COMMISSION ON ELECTIONS, DAMIAN L. CO, AND THE MUNICIPAL BOARD OF CANVASSERS OF ALICIA, ISABELA, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is the petition for *certiorari*, prohibition and mandamus with prayer for temporary restraining order filed by Manuel A. Alejandro seeking to set aside the Resolution <sup>[1]</sup> dated February 22, 2005 of the Commission on Elections (COMELEC) en banc in SPC No. 04-195. The assailed resolution affirmed the Resolution <sup>[2]</sup> dated November 23, 2004 of the COMELEC Second Division directing the Election Officer of Alicia, Isabela to reconvene the Municipal Board of Canvassers for the purpose of correcting the errors committed in tallying the votes for the Vice-Mayoralty race in the said municipality and to proclaim the rightful winner therein.

The factual antecedents are as follows:

Petitioner Manuel A. Alejandro and private respondent Damian L. Co were rival candidates for Vice-Mayor of the Municipality of Alicia, Isabela during the May 10, 2004 national and local elections. After the canvass of votes, the petitioner was proclaimed as the duly elected vice-mayor by the Municipal Board of Canvassers (MBC) on May 13, 2004.

On May 24, 2004, private respondent Co filed a Petition <sup>[3]</sup> to annul the proclamation of petitioner Alejandro on the ground that it was the result of manifest errors committed by the MBC in the canvassing of the election returns from the 156 precincts comprising the said municipality.

Private respondent Co alleged that the MBC erroneously proclaimed petitioner Alejandro as the vice-mayor-elect. The Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices prepared by the MBC showed that the petitioner obtained a total of 11,866 votes. However, based on the *taras*, words and figures stated in all the election returns, petitioner Alejandro only obtained a total of 11,152 votes while private respondent Co received a total of 11,401 votes, thereby making him the rightful winner of the disputed office with the winning margin of 249 votes. The total, showing the victory of private respondent Co, allegedly resulted from the correct addition of the votes received by each of said candidates based on the election returns from all the 156 precincts of the said municipality.

Private respondent Co asserted that he was the victim of "vote-padding and vote-shaving," more commonly known as "*dagdag-bawas*," committed by the MBC or its

tabulators, as clearly shown by a comparison of the election returns from the precincts concerned vis-à-vis the statement of votes per precinct and certificate of canvass.

In her Answer, Election Officer Teresita B. Angangan, Chairperson of the MBC, admitted that manifest errors were committed in the preparation of the statement of votes but denied for lack of sufficient knowledge the allegation of "*dagdag-bawas*." She submitted a table comparing the figures in the election returns and in the statement of votes in all 156 clustered precincts and pointed out that based on the election returns, private respondent Co should have won the elections after garnering 11,401 votes as against the 11,152 votes for petitioner Alejandro. She prayed that the COMELEC issue an order to reconvene the MBC to correct the errors made in the Certificate of Canvass and Statement of Votes by Precincts.

For his part, petitioner Alejandro prayed in his Comment that the petition to annul his proclamation be denied for being filed out of time. He alleged that the petition was actually one for correction of manifest errors and, therefore, should have been filed as a pre-proclamation controversy. And that even if the errors were discovered after proclamation, it should have been filed within five days after proclamation [4] or, in this case, not later than May 18, 2004.

Petitioner Alejandro further argued that even assuming that the petition was one for declaration of nullity of proclamation, the petition should have been filed not later than 10 days from proclamation following several decisions of the Court. [5] Since he was proclaimed on May 13, 2004, the petition to annul his proclamation should have been filed by private respondent Co on May 23, 2004. Even if the said date was a Sunday, petitioner Alejandro insisted that the same was a working day; hence, there was no reason why private respondent Co could not have complied with the 10-day reglementary period.

Petitioner Alejandro stressed that 11 days had passed between his proclamation on May 13, 2004 and the filing of private respondent Co's petition. No matter how the petition was treated – whether as a pre-proclamation controversy or a petition for annulment of proclamation – the period for filing thereof had lapsed.

On the merits, petitioner Alejandro contended that he was the duly-elected vice-mayor as based on his own computation, he garnered a total of 11,412 votes as against private respondent Co's 11,347 or a difference of 65 votes in favor of the former.

After consideration of the pleadings filed by the parties, the COMELEC Second Division promulgated the Resolution dated November 23, 2004, the *fallo* of which reads:

**WHEREFORE**, premises considered, the petition to declare the nullity of the proclamation of Manuel Alejandro is granted in part. The Election Officer of Alicia, Isabela is hereby ordered to reconvene the Municipal Board of Canvassers with the purpose of correcting the errors committed in tallying the votes for the Vice Mayoralty race in Alicia, Isabela.

**SO ORDERED.** [6]

Petitioner Alejandro sought reconsideration of the said resolution and prayed for the deferment of the reconvening of the MBC. The said motion likewise prayed for the dismissal of the petition for having been filed out of time and for utter lack of merit.

Pursuant to the November 23, 2004 COMELEC Second Division Resolution, Election Officer Angangan ordered the MBC to reconvene on December 8, 2004. In compliance therewith, the MBC reconvened on the said date and after re-canvassing the election returns, proclaimed private respondent Co as the duly-elected vice-mayor.

Meanwhile, the COMELEC Second Division issued the Order <sup>[7]</sup> dated December 8, 2004, elevating to the COMELEC *en banc* petitioner Alejandro's motion for reconsideration. The pertinent portion of the Order reads:

It appears that the foregoing motion for reconsideration is not accompanied by a filing fee in the amount of Five Hundred Pesos (P500.00).

In view of the foregoing, the motion is hereby elevated to the Commission **en banc** for proper disposition.

The "Opposition to Respondent's Supposed Motion for Reconsideration and Urgent Prayer for Deferment" is hereby **noted**.

**SO ORDERED.** <sup>[8]</sup>

Private respondent Co filed an Opposition/Comment stating that the COMELEC *en banc* had not acquired jurisdiction to hear and decide petitioner Alejandro's motion for reconsideration due to his failure to pay the required docket fee on time.

On February 22, 2005, the COMELEC *en banc* issued a Resolution <sup>[9]</sup> dismissing for lack of merit petitioner Alejandro's motion for reconsideration. The dispositive part of the resolution reads:

**WHEREFORE**, in the light of the foregoing, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **DENY** the instant Motion for Reconsideration for lack of merit.

**ACCORDINGLY**, the Resolution of the Commission (Second Division) dated November 23, 2004 directing EO Teresita Angangan to 1) reconvene the Municipal Board of Canvassers of Alicia, Isabela for the purpose of correcting the errors committed in the tallying of votes for the Vice-Mayoralty race in Alicia, Isabela; and 2) determine and proclaim the rightful winner, is hereby **AFFIRMED**.

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

Hence, the recourse to this Court by petitioner Alejandro alleging that:

THE COMELEC ACTED WITH GRAVE ABUSE OF ITS DISCRETION AND DENIED PETITIONER HIS RIGHT TO DUE PROCESS WHEN IT:

- A. DETERMINED THAT THE PETITION OF DAMIAN CO WAS TIMELY FILED.
- B. FAILED TO ORDER THE CONDUCT OF HEARINGS FOR THE EXAMINATION OF THE DISPUTED ELECTION DOCUMENTS.
- C. DID NOT IDENTIFY WHERE THE ERRORS THAT MUST BE CORRECTED LIE.
- D. ASSUMED THAT THERE WERE MANIFEST ERRORS TO CORRECT DESPITE THE LACK OF ANY COMPETENT PROOF OF EXISTENCE OF MANIFEST ERRORS, THE BEST EVIDENCE BEING THE ELECTION RETURNS AND STATEMENT OF VOTES THEMSELVES.
  - D.1 THE BASIS FOR THE CORRECTION WAS THE ANSWER OF THE FORMER ELECTION OFFICER, NOT THE ELECTION RETURNS.
  - D.2 THE FORMER ELECTION OFFICER WAS NOT EVEN AUTHORIZED TO REPRESENT THE MUNICIPAL BOARD OF CANVASSERS.
  - D.3 THE FORMER ELECTION OFFICER WAS NOT EVEN PRESENTED AS WITNESS.
  - D.4 THE EVIDENCE OFFERED BY THE FORMER ELECTION OFFICER WAS ILLEGALLY PROCURED.
- E. DID NOT NULLIFY THE PROCEEDINGS OF THE BOARD OF CANVASSERS ASSUMING THAT THERE WERE MANIFEST ERRORS.
  - E.1 THE BOARD OF CANVASSERS PROCEEDED WITH THE CANVASSING DESPITE THE TIMELY FILING OF A MOTION FOR RECONSIDERATION AND IT DID NOT ACT, CONSIDER OR RULE ON THE MOTIONS TO NULLIFY THE EXECUTION OF THE RESOLUTION OF THE SECOND DIVISION.
- F. AFFIRMED A NON-EXISTENT RESOLUTION.<sup>[11]</sup>

On March 29, 2005, the petitioner filed a Manifestation with Urgent Motion for Issuance of Temporary Restraining Order or *Status Quo Ante* Order. Without waiting for the action of this Court, the COMELEC *en banc* <sup>[12]</sup> issued a Writ of Execution <sup>[13]</sup> on March 30, 2005, ordering the petitioner to vacate the position of the Vice-Mayor of Alicia, Isabela, and to cease and desist from performing the functions thereof.

On April 5, 2005, the Court issued a Resolution <sup>[14]</sup> requiring the parties to observe the status quo prevailing before the issuance of the assailed COMELEC resolutions.

The issues to be resolved are whether respondent COMELEC committed grave abuse of discretion in: (1) ruling that private respondent Co's petition to annul petitioner Alejandro's proclamation was timely filed; (2) admitting and considering the answer filed by Election Officer Angangan, the Chairperson of the MBC; (3) not conducting a

hearing for the examination of the disputed election documents thereby depriving the petitioner of due process; and (4) ordering the MBC to reconvene to rectify its errors and to proclaim the winner in the Vice-Mayoralty race in Alicia, Isabela.

The Court rules in the negative.

*First Issue: Whether the COMELEC committed grave abuse of discretion in holding that private respondent Co's petition to annul the proclamation was timely filed*

Petitioner Alejandro characterizes private respondent Co's petition filed with COMELEC as a "dual-purpose" petition because it expressly prayed for both the correction of manifest errors and the declaration of nullity of the petitioner's proclamation. This tack was allegedly adopted by private respondent Co to circumvent the mandatory five-day period to file a petition to correct manifest errors. Even if the petition was one for the annulment of his proclamation, it was still allegedly filed out of time since it was filed more than 10 days following the date of proclamation.

The petitioner points out that he was proclaimed as the winning vice-mayoralty candidate on May 13, 2004; hence, private respondent Co only had until May 23, 2004 to file the petition to nullify the proclamation. Since private respondent Co's petition was filed on May 24, 2004, or 11 days after the proclamation, then the same was filed out of time. Even if May 23, 2004 fell on a Sunday, the petitioner asserts that COMELEC Resolution No. 6624 specifically declared all Saturdays, Sundays, and holidays from October 2003 until June 30, 2004 as working days in the COMELEC.

The COMELEC Second Division treated the petition as one for the annulment of petitioner Alejandro's proclamation as it held that:

The petition to declare the nullity of a proclamation should be within a reasonable period. Again, private respondent [herein petitioner] is correct when he said that the Supreme Court has declared that ten days is a reasonable period.

Considering however, that the tenth day after Alejandro's proclamation fell on a Sunday, the rule is that the petition may be filed on the next working day. Although it is again true that the Commission allowed its employees to render overtime work on May 23, 2004, it would not automatically mean that those intending to file their petitions should do so on a Sunday. The rule moving a deadline to the next working day if it falls on a Sunday is an acknowledgment that majority of our people consider Sunday a day of rest. <sup>[15]</sup>

The COMELEC *en banc* affirmed the foregoing ruling.

We hold that the COMELEC correctly ruled that the petition for annulment was filed well within the reglementary period to file the same. Resolution No. 6624, which declared all Saturdays, Sundays, and holidays from October 2003 until June 30,