

EN BANC

[G.R. NO. 166046, March 23, 2006]

**MARGARITO C. SULIGUIN, PETITIONER, VS. THE COMMISSION
ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF
NAGCARLAN, LAGUNA, AND PROMULGATED: ECELSON C.
SUMAGUE, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court seeking to reverse the Resolution ^[1] of the Commission on Elections (Comelec) *En Banc* in SPC No. 04-209 dated November 18, 2004 which denied petitioner Margarito Suliguin's motion for reconsideration of the July 21, 2004 Resolution ^[2] of the Comelec's First Division. The Comelec nullified his proclamation as the 8th Sangguniang Bayan member of Nagcarlan, Laguna.

The antecedents are as follows:

Petitioner Margarito Suliguin was one of the candidates for the Sangguniang Bayan of Nagcarlan, Laguna during the May 10, 2004 elections. At around 6:00 p.m. on said date, respondent Municipal Board of Canvassers (MBOC) convened to canvass the votes for all the candidates. Petitioner received 6,605 votes while respondent Ecelson Sumague received 6,647 votes. However, in the Statement of Votes (SOV) covering Precincts 1A to 19A, Sumague appears to have received only 644 votes when, in fact, he received 844 votes. The MBOC failed to notice the discrepancy and proclaimed the winning candidates at around 7:00 p.m. of May 13, 2004. Petitioner was proclaimed as the 8th Sangguniang Bayan member of Nagcarlan, Laguna, garnering a total of 6,605 votes. ^[3]

Thereafter, Sumague requested for a recomputation of the votes received by him and Suliguin in a Letter ^[4] dated May 15, 2004, it appearing that there was a mistake in adding the figures in the Certificate of Canvass of votes. He pointed out that he officially garnered 6,647 votes, as against petitioner's 6,605 votes.

The MBOC summoned petitioner and respondent Sumague to a conference. Upon review, the MBOC discovered that it had, indeed, failed to credit respondent Sumague his 200 votes from Precincts 1A to 19A, and that with his 6,647 votes, he should have been proclaimed as the 8th Sangguniang Bayan member of Nagcarlan, Laguna, instead of petitioner Suliguin.

On May 26, 2004, the MBOC filed before the Comelec a "Petition to Correct Entries Made in the Statement of Votes" for Councilor. The error was attributed to extreme physical and mental fatigue which the members of the board experienced during the election and the canvassing of votes.

In the meantime, on June 9, 2004, petitioner took his oath of office before Judge Renato B. Bercades. [5]

On July 21, 2004, the Comelec (First Division) issued a Resolution [6] granting the petition of the MBOC. The Commission nullified the proclamation of petitioner Suliguin as the 8th Sangguniang Bayan member of Nagcarlan, Laguna during the May 10, 2004 National and Local Elections "for being based on an erroneous computation of votes." It then ordered the MBOC of Nagcarlan, Laguna to reconvene and effect the necessary corrections in the SOV, and forthwith proclaim Sumague as the 8th duly elected Sangguniang Bayan member of Nagcarlan, Laguna. [7]

Petitioner moved for the reconsideration of the resolution but the Comelec *En Banc* denied the motion on November 18, 2004; hence, this petition. Petitioner alleges that respondent Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling against him. In support of his petition, he alleges that:

4.1 THE "PETITION TO CORRECT ENTRIES MADE IN THE STATEMENT OF VOTES FOR COUNCILOR, NAGCARLAN, LAGUNA" WAS UNDISPUTEDLY FILED OUT OF TIME, and

4.2 "THE PETITION TO CORRECT ENTRIES MADE IN THE STATEMENT OF VOTES FOR COUNCILOR, NAGCARLAN, LAGUNA" WAS FILED BY THE MUNICIPAL BOARD OF CANVASSERS IN DEFIANCE OF EXISTING COMELEC RULES AND REGULATIONS AND WAS OBVIOUSLY BIAS IN FAVOR OF PRIVATE RESPONDENT CANDIDATE ECELSON C. SUMAGUE. [8]

Petitioner argues that pursuant to Sections 35, [9] 36(c) and (f) [10] of Comelec Resolution No. 6669 (General Instructions for Municipal/City/Provincial and District Boards of Canvassers in Connection with the May 10, 2004 Elections), the MBOC should not have entertained the letter-request of respondent Sumague as it was filed only on May 17, 2004, or four (4) days after the canvassing of votes was terminated and after he (petitioner) was proclaimed winner as the 8th Sangguniang Bayan member of Nagcarlan, Laguna. Furthermore, respondent Sumague never entered any objection during the proceedings of the canvassing of votes. The MBOC itself filed the "Petition to Correct Entries Made in the Statement of Votes" before the Comelec only on May 26, 2004, 13 days after the canvassing of votes was terminated. Petitioner maintains that the Comelec should have denied the petition, since according to the Revised Comelec Rules, it should have been filed not later than five (5) days following the date of the proclamation.

Petitioner likewise questions the personality of the MBOC itself to file the petition before the Comelec. He further argues that upon the proclamation of the winning candidates in the election, the MBOC adjourns *sine die* and becomes *functus officio*.

The issue is whether or not respondent Comelec erred in granting the petition of the MBOC to nullify petitioner's proclamation as the 8th member of the Sangguniang Bayan in Nagcarlan, Laguna.

The petition is bereft of merit.

In an election case, the Comelec is mandated to ascertain by all means within its command who the real candidate elected by the electorate is. The Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results. [11] In the case at bar, the simple mathematical procedure of adding the total number of votes garnered by respondent Sumague as appearing in the Statement of Votes submitted to the Comelec would readily reveal the result that he has forty-two (42) votes more than petitioner. Such result would, in effect, dislodge petitioner from said post, and entitle respondent Sumague to occupy the eighth and last seat of the Sangguniang Bayan of Nagcarlan, Laguna. Petitioner himself never disputed the discrepancy in the total number of votes garnered by respondent Sumague, and instead questioned the personality of the MBOC to file the petition and insisted that such petition was not filed on time.

Sections 3 [12] and 4 [13] of Rule 1 of the Comelec Rules of Procedure explicitly provide that such rules may be "liberally construed" in the interest of justice. Indeed, the Comelec has the discretion to liberally construe its rules and, at the same time, suspend the rules or any portion thereof in the interest of justice. [14] Disputes in the outcome of elections involve public interest; as such, technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. [15]

What is involved in the present petition is the correction of a manifest error in reflecting the actual total number of votes for a particular candidate. Section 32, subparagraph 5 of Comelec Resolution No. 6669 includes mistake in the addition of the votes of any candidate as a manifest error. [16] As correctly cited by the Comelec, [17] a manifest clerical error is "one that is visible to the eye or obvious to the understanding and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have been committed."

The MBOC sought relief from the Comelec to reflect the true winner elected by the voting public, to occupy the eighth position as member of the Sangguniang Bayan of Nagcarlan, Laguna. In *Carlos v. Angeles*, [18] the Court had the occasion to declare:

In this jurisdiction, an election means "the choice or selection of candidates to public office by popular vote" through the use of the ballot, and the elected officials of which are determined through the will of the electorate. "An election is the embodiment of the popular will, the expression of the sovereign power of the people." "Specifically, the term 'election,' in the context of the Constitution, may refer to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of votes." The winner is the candidate who has obtained a majority or plurality of valid votes cast in the election. "Sound policy dictates that public elective offices are filled by those who receive the highest number of votes cast in the election for

that office. For, in all republican forms of government the basic idea is that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election." [19]

We quote, with approval, the ruling of the Comelec (First Division) granting the petition of the MBOC:

A careful perusal of the records show that there was, indeed, an honest error committed by petitioner MBOC in the computation of votes for candidate Ecelson Sumague which resulted in the erroneous proclamation of respondent as one of the winners for the said office.

"A manifest clerical error is one that is visible to the eye or obvious to the understanding and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have been committed."

The contention of respondent that the instant petition should be dismissed for being filed out of time cannot be given merit because his proclamation was flawed. It must be stressed that "a proclamation based on faulty tabulation of votes is flawed, and a petition to correct errors in tabulation under Section 7, Rule 27 of the COMELEC Rules of Procedure, even if filed out of time, may be considered, so as not to thwart the proper determination and resolution of the case on substantial grounds and to prevent a stamp of validity on a palpably void proclamation based on an erroneous tabulation of votes."

Furthermore, "where the proclamation is flawed because it was based on a clerical error or mathematical mistake in the addition of votes and not through the legitimate will of the electorate, there can be no valid proclamation to speak of and the same can be challenged even after the candidate has assumed office."

There is no showing that petitioner MBOC acted with manifest bias and committed a grave abuse of discretion. "Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." Petitioner MBOC is merely doing its function that is mandated by law — to canvass votes in the election returns submitted to it in due form, adding or compiling the votes cast for each candidate as shown in the face of such returns and eventually proclaim the winning candidates. Respondent miserably failed to prove that petitioner exhibited manifest bias thereby thwarting his chances of winning the last slot for Sangguniang Bayan Member. "Absent a strong showing to the contrary, the court must accept the presumption of regularity in the performance of official duty and strong evidence is necessary to rebut this presumption."

Likewise, it cannot be said that petitioner MBOC violated the sanctity of the ballots. Unlike the Board of Election Inspectors which counts the votes from the precinct levels, the MBOC computes the votes as appeared in the election returns.

Finally, a subsequent annulment of the proclamation of the respondent does not constitute a clear violation of his right. In the first place, there is no valid proclamation to speak of. He was not elected by a majority or plurality of voters. His alleged right was based on an erroneous proclamation. By any mathematical formulation, the respondent cannot be construed to have obtained such plurality of votes; otherwise, it would be sheer absurdity to proclaim a repudiated candidate as the choice of the voters. "Where a proclamation is null and void, the proclamation is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to make such declaration a nullity." Respondent also cannot claim that he was denied of his right to due process of law since he was given the opportunity to be heard. He was duly notified by petitioner MBOC of the erroneous computation which resulted in his proclamation and was afforded the opportunity to be heard by this Commission.

"The COMELEC exercises immediate supervision and control over the members of the Boards of Election Inspectors and Canvassers. Its statutory power of supervision and control includes the power to revise, reverse or set aside the action of the boards, as well as to do what boards should have done, even if questions relative thereto have not been elevated to it by an aggrieved party, for such power includes the authority to initiate *motu proprio* or by itself steps or actions that may be required pursuant to law."^[20]

Petitioner posits that the Comelec's reliance in the ruling of this Court in *Bince, Jr. v. Commission on Elections* ^[21] is misplaced since, unlike the present petition, petitioner therein was an affected candidate who filed his petition on time.

The argument of petitioner does not persuade. The Court, in *Bince, Jr. v. Commission on Elections*,^[22] declared that:

Assuming for the sake of argument that the petition was filed out of time, this incident alone will not thwart the proper determination and resolution of the instant case on substantial grounds. Adherence to a technicality that would put a stamp of validity on a palpably void proclamation, with the inevitable result of frustrating the people's will cannot be countenanced. In *Benito v. COMELEC*, we categorically declared that:

x x x Adjudication of cases on substantive merits and not on technicalities has been consistently observed by this Court. In the case of *Juliano vs. Court of Appeals* (20 SCRA 808) cited in *Duremdes v. Commission on Elections* (178 SCRA 746), this Court had the occasion to declare that: