

EN BANC

[G.R. NO. 164225, April 19, 2006]

JUHARY A. GALO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF LUMBA-BAYABAO, LANA DEL SUR, AND MINDA DAGALANGIT, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us for resolution is the Petition^[1] for *Certiorari*,^[2] assailing the Resolution^[3] dated July 2, 2004 of the Commission on Elections (COMELEC) En Banc in SPA No. 04-348.

Juhary A. Galo, petitioner, and Minda P. Dagalangit, private respondent, were among the five candidates for mayor in the Municipality of Lumba-Bayabao, Lanao del Sur in the May 10, 2004 national and local elections.

On May 10, 2004, however, there was a failure of election in Lumba-Bayabao due to serious disagreements among the various local candidates involving the clustering of precincts, the distribution of election paraphernalia, and the appointment of the members of the various Boards of Election Inspectors. As a consequence, the COMELEC scheduled and held a special election on May 12, 2004.

On May 19, 2004, petitioner Galo filed with the COMELEC *En Banc* a petition^[4] **to declare a failure of election and to annul the results of the May 12, 2004 special election involving six precincts located in six Barangays of Lumba-Bayabao**, namely: Precinct Nos. 1A (Barangay Maribu), 34A (Barangay Sunggod), 29B (Barangay Rumayas), 22A (Barangay Lubo Basara), 31A (Barangay Salaman), and 36A (Barangay Tamlang). Galo's petition, docketed as SPA No. 04-348, is based on his claim that there were **"serious and massive irregularities committed by the supporters of Dagalangit, in conspiracy with members of the Board of Election Inspectors."** Specifically, petitioner alleged that respondent Dagalangit's supporters succeeded in placing fake ballots inside a ballot box in Precinct No. 1A (Barangay Maribu); that in Precinct No. 34A (Barangay Sunggod), the voting was irregular because the election inspectors hid a ballot box allegedly to protect it from being forcibly taken; that during the counting of votes, fake ballots were found in the ballot boxes in Precinct Nos. 22A (Barangay Lubo Basara), 29B (Barangay Rumayas), 31A (Barangay Salaman), 34A (Barangay Sunggod), and 36A (Barangay Tamlang); that the election inspectors in the said precincts refused to enter in the minutes their valid objections; that **all the election returns accomplished based on the fake ballots do not reflect the true will of the electorate**; and that the said irregularities justify the annulment of the election held. Petitioner thus prayed that the COMELEC issue a temporary restraining order (TRO) directing the Board of Canvassers to desist from canvassing the election returns from the said precincts.

Petitioner further prayed that **after due hearing, the results of the election be annulled**; and that an immediate investigation of the anomalies committed during the election be conducted.

On May 21, 2004, the COMELEC *En Banc* issued a TRO directing the Municipal Board of Canvassers of Lumba-Bayabao to **SUSPEND its proceedings, particularly the proclamation of the winning candidates, until further orders.**

In her Answer dated May 24, 2004, respondent Dagalangit denied petitioner's allegations of the existence of fake ballots in the specified precincts. She averred that during the May 12, 2004 special election, all the 39 precincts of Lumba-Bayabao functioned in an orderly and peaceful manner; that the ballots have been properly appreciated, counted and entered in the election returns duly accomplished by the Board of Election Inspectors under the close scrutiny of the candidates' watchers; and that the use of fake ballots is not a valid ground for nullifying the elections. She then prayed that SPA No. 04-348 be dismissed.

During the May 27, 2004 hearing, petitioner did not appear before the COMELEC *En Banc*. Instead, he filed an "Urgent Ex-Parte Motion/Manifestation"^[5] stating that he was already proclaimed as the winning candidate on May 20, 2004, thereby rendering his petition "moot and academic;" and that he "has lost interest in the prosecution of the same." He prayed that his petition be considered withdrawn.

Thereafter, pursuant to the order of the COMELEC *En Banc*, the contending parties filed their respective memoranda.

On July 2, 2004, the COMELEC *En Banc* issued the assailed Resolution (1) dismissing the petition for lack of merit; (2) annulling petitioner's proclamation on May 20, 1994 for having been "made surreptitiously and in contravention of the May 21, 2004 Order of the Commission;" and (3) ordering the Municipal Board of Canvassers of Lumba-Bayabao "to immediately convene, complete the canvass, and proclaim the winning candidates." The COMELEC *En Banc* held that pursuant to the Omnibus Election Code, the alleged use of fake ballots in the questioned precincts is not one of the grounds for nullifying the election results. In fact, all the 39 precincts of Lumba-Bayabao functioned during the May 12, 2004 special elections.

On July 4, 2004, the Municipal Board of Canvassers of Lumba-Bayabao completed its canvass proceedings and proclaimed respondent Dagalangit as the winning candidate for mayor of that municipality.^[6]

Petitioner now comes to this Court through the instant Petition for *Certiorari* alleging that the COMELEC, in issuing the challenged Resolution, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondents, in their respective Comments, vehemently opposed the petition and prayed that the same be dismissed for being utterly unmeritorious.

The petition is bereft of merit.

We cannot sustain petitioner's contention that the COMELEC *En Banc* gravely abused its discretion in dismissing his petition for a declaration of a failure of elections and