

EN BANC

[G.R. NO. 166542, July 25, 2006]

**NILO L. DOJILLO, PETITIONER, VS. COMMISSION ON ELECTIONS
AND RODRIGO N. VIDAL, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This is a petition for certiorari^[1] of the Order dated 29 April 2003^[2] and the Resolution dated 3 January 2005^[3] of the Commission on Elections *En Banc* ("COMELEC *En Banc*"). The 3 January 2005 Resolution affirmed with modification the findings of the Commission on Elections' Second Division ("COMELEC Second Division"). The COMELEC Second Division reversed the Decision dated 8 August 2002^[4] of the 4th Municipal Circuit Trial Court of San Fabian, San Jacinto, Pangasinan ("trial court").

The trial court proclaimed petitioner Nilo L. Dojillo ("petitioner") the duly elected Punong Barangay of Barangay Nibaliw Vidal, San Fabian, Pangasinan and nullified the previous proclamation of respondent Rodrigo N. Vidal ("respondent") by the Board of Election Tellers (BET) of Nibaliw Vidal. The COMELEC *En Banc's* 29 April 2003 Order was a status quo ante order directing the restoration of conditions that prevailed before the issuance of the trial court's decision. The 29 April 2003 Order reinstated respondent to the position of Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan.

The Facts

Petitioner and respondent were two of three candidates for Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan in the 15 July 2002 synchronized elections for the Barangay and the Sangguniang Kabataan. Respondent obtained 374 votes while petitioner received 371 votes. The BET declared respondent as the elected Punong Barangay by a plurality of three votes.

Petitioner filed an election protest before the trial court on 19 July 2002. Docketed as Election Protest No. 012 (SF-02), petitioner questioned the election results in Precinct Nos. 84-A, 86-A1, and 87-A1 on grounds of misappreciation of ballots and incorrect tallying of votes. On 24 July 2002, respondent filed his answer with counter-protest on grounds of misappreciation of ballots, padding of votes, and presence of flying voters. On 3 August 2002, the trial court issued an order dismissing the counter-protest due to respondent's failure to pay the required filing fee within the period of filing his answer. Respondent promptly filed a notice of appeal. However, the Regional Trial Court denied respondent's appeal for lack of jurisdiction, apart from the order being merely interlocutory.

In his election protest, petitioner objected to 26 ballots^[5] as marked ballots for respondent and claimed two ballots^[6] as votes. For his part, respondent objected to 36 ballots^[7] as marked ballots for petitioner and claimed five ballots^[8] as votes.

The Ruling of the Trial Court

In its decision dated 8 August 2002, the trial court found that one ballot previously regarded as a stray vote should be counted in favor of petitioner and that 11 ballots previously counted in favor of respondent should be declared as marked ballots. The trial court tallied its findings as follows:

In Precinct 84-A:

Votes for [Petitioner] $48+1 = 49$ votes

Votes for [Respondent] $54-3 = 51$ votes

In Precinct 87A-1:

Votes for [Petitioner] = 28 votes

Votes for [Respondent] $77-3 = 74$ votes

In Precinct 86A-1:

Votes for [Petitioner] = 48 votes

Votes for [Respondent] $63-5 = 58$ votes

Thus the total votes garnered by each of the parties are as follows:

For [Petitioner] $371+1 = 372$ total votes

For [Respondent] $374-11 = 363$ total votes^[9]

The dispositive portion of the trial court's decision reads thus:

WHEREFORE, a Decision is hereby rendered declaring the protestant NILO L. DOJILLO, winner by nine (9) votes over protestee as Chairman or Punong Barangay of Nibaliw Vidal, San Fabian, Pangasinan and hereby proclaims the said NILO L. DOJILLO the duly elected Chairman/Punong Barangay of Barangay Nibaliw, Vidal, San Fabian, Pangasinan, and hereby declares the previous proclamation of protestee Rodrigo N. Vidal as the duly elected Chairman/Punong Barangay made by the Board of Election Tellers of Nibaliw Vidal nullified and of no effect.

Let [a] copy of this Decision be furnished:

The Comelec, the Department of [Interior and] Local Government and the Commission on Audit.

SO ORDERED.^[10]

Respondent filed his notice of appeal on 14 August 2002 and submitted his appeal brief to the COMELEC Second Division.

The Ruling of the COMELEC

The COMELEC Second Division visually scrutinized all the questioned ballots and changed the election results according to its findings. The COMELEC Second Division tallied its findings as follows:

	DOJILLO	VIDAL
Total votes per	371	374
Election Returns		<u>3</u>
Add valid claims	<u>1</u>	
Total	372	377
Less invalid votes		<u>2</u>
	<u>2</u>	
Total valid votes	<u>370</u>	<u>375</u> ^[11]

In a Resolution dated 20 March 2003, the COMELEC Second Division reversed the decision of the trial court. The dispositive portion of the Resolution of the COMELEC Second Division reads thus:

WHEREFORE, the decision of the 4th Municipal Circuit Trial Court of San Fabian, San Jacinto, Pangasinan rendered on August 3, 2002 in Election Protest No. 012 (SF-02) entitled "Nilo N. [sic] Dojillo, Protestant versus Rodrigo N. Nival [sic], Protestee" is hereby **REVERSED** and **SET ASIDE**. Protestee-Appellant Rodrigo N. Vidal is hereby declared as the duly elected Punong Barangay of Barangay Nibaliw Vidal, San Fabian, Pangasinan.

No costs.

SO ORDERED.^[12]

Petitioner filed his Motion for Reconsideration with the COMELEC *En Banc* on 25 March 2003. On 29 April 2003, the COMELEC *En Banc*, through Chairman Benjamin S. Abalos, issued a Status Quo Ante Order the pertinent portions of which read:

In the meantime, pending resolution of the instant motion, after due deliberation, and finding that there was no writ of execution of decision pending appeal issued by the lower court, this Commission hereby issues a **STATUS QUO ANTE** ORDER, which is the condition prevailing before the promulgation of the questioned decision of the court a quo dated August 8, 2002 in EP No. 012(SF-02) entitled Dojillo vs. Vidal, reinstating protestee-appellant Rodrigo N. Vidal to his position as Punong Barangay of Nibaliw [Vidal], Pangasinan, effective immediately and continuing until further orders from this Commission.

SO ORDERED.^[13]

Respondent filed an Urgent Ex Parte Motion to have the Status Quo Ante Order personally served by an officer of the COMELEC. This motion was granted in an Order dated 30 April 2003. On 5 May 2003, petitioner filed an Extremely Urgent Motion for Partial Reconsideration to Lift Status Quo Ante Order. Petitioner alleged that the Status Quo Ante Order is procedurally misplaced because he did not include it in the prayer in his appeal. Moreover, the Status Quo Ante Order is without factual

and legal basis. Petitioner asserted that the incumbent occupied the position of Punong Barangay before the trial court promulgated its decision. Respondent never occupied the position of Punong Barangay and thus the COMELEC cannot reinstate him to that position. On 13 May 2003, petitioner filed his Memorandum with the COMELEC. He also filed an Urgent Motion for Early Resolution of Motion for Partial Reconsideration to Lift Status Quo Ante Order on the same day.

Without discussing the question raised by its issuance of the Status Quo Ante Order, the COMELEC *En Banc* denied petitioner's motion for reconsideration in a Resolution dated 3 January 2005. The COMELEC *En Banc* also modified the COMELEC Second Division's findings as follows:

	DOJILLO	VIDAL
Total votes per Election Returns	371	374
Add valid claims	<u>1</u>	<u>3</u>
Total	372	377
Less invalid votes	<u>1</u>	<u>3</u>
Total	371	374
Add valid votes	1	0
Total valid votes	<u>372</u>	<u>374</u> ^[14]

The dispositive portion of the COMELEC *En Banc*'s Resolution reads as follows:

WHEREFORE, premises considered, the summary of findings of the Second Division is AFFIRMED with MODIFICATION. The Motion for Reconsideration is hereby DENIED.

SO ORDERED.^[15]

The Issues

Petitioner alleged that as the COMELEC's Resolutions are not supported by substantial evidence and are contrary to law and settled jurisprudence, COMELEC committed grave abuse of discretion amounting to lack of or excess of jurisdiction. Petitioner raised the following issues before this Court:

1. THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND/OR IN EXCESS OF ITS JURISDICTION IN ITS **APPRECIATION OF BALLOTS** PARTICULARLY IN EXHIBITS "**1-J**", "**A-5**", "**B-1**", "**B-2**", "**3-8**", "**C**", "**C-1**", "**C-3**" TO "**C-5**", WHICH **SHOULD NOT BE COUNTED FOR VIDAL**.
2. THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND/OR IN EXCESS OF ITS JURISDICTION IN ADDING THE **DECLARED STRAY BALLOTS OF VIDAL** PARTICULARLY **EXHIBITS "2-F", "A", "A-1", "A-3", "B-3" "3-8" AND "C-10"**, TO HIS VOTES WHERE IT SHOULD HAVE BEEN DEDUCTED FROM HIS VOTES.
3. THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND/OR IN EXCESS OF ITS

JURISDICTION WHEN THE COMELEC THROUGH ITS CHAIRMAN BENJAMIN ABALOS ARBITRARILY AND CAPRICIOUSLY ISSUED THE 29 APRIL 2003 *STATUS QUO ANTE ORDER "REINSTATING OR REINSTALLING"* VIDAL TO THE POSITION HE NEVER OCCUPIED OR ASSUMED (Emphasis in the original).^[16]

The Ruling of the Court

The petition has partial merit.

The main issue in this appeal is whether respondent is the duly elected Punong Barangay of Barangay Nibaliw Vidal, San Fabian, Pangasinan. A discussion on the issues of appreciation of ballots and of the propriety of the issuance of the Status Quo Ante Order is necessary to resolve the main issue.

Appreciation of Ballots

A ballot indicates the voter's will. There is no requirement that the entries in the ballot be written nicely or that the name of the candidate be spelled accurately.^[17] In the reading and appreciation of ballots, every ballot is presumed valid unless there is a clear reason to justify its rejection. The object in the appreciation of ballots is to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty.^[18]

Petitioner separates his question on appreciation of ballots into two. First is the appreciation of ballots which petitioner previously objected to as marked ballots and which the COMELEC should not have counted in favor of respondent. Second is the appreciation of ballots which are stray votes and which the COMELEC should not have counted in favor of respondent.

Petitioner appeals the COMELEC's ruling on the following ballots for being marked ballots: Exhibits "1-J", "A-5", "B-1", "B-2", "3-8", "C", "C-1", "C-3" to "C-5."^[19]

We relied on the descriptions of the ballots given by the parties, the trial court, and the COMELEC, and weighed their assertions. Based on jurisprudence, Section 211 of Batas Pambansa Blg. 881, as amended ("Omnibus Election Code"), and Section 49 of COMELEC Resolution No. 4846 ("Resolution 4846"), which enumerate the rules on appreciation of ballots, we find that we have no reason to overturn the COMELEC's decision. We shall refer to the pertinent rulings of the trial court and of the COMELEC Second Division and COMELEC *En Banc* accordingly.

Respondent objected to Exhibit "1-J" as a marked ballot for petitioner. The trial court ruled that this is a valid vote for petitioner. The COMELEC Second Division reversed the trial court and stated that Exhibit "1-J" is indeed a marked ballot: "The distinctive use of, and several impositions with blue ink on the name of Dojillo with the rest of the votes written in black ink, indicates no other intention than to identify the ballot." The COMELEC *En Banc* affirmed the COMELEC Second Division's finding. In affirming the ruling against the validity of Exhibit "1-J", we apply paragraph 22 of Section 211 of the Omnibus Election Code, the pertinent portion of which reads: "Unless it should clearly appear that they have been deliberately put by the voter as identification marks, xxx the use of two or more kinds of writing shall not invalidate