

## FIRST DIVISION

[ G.R. NO. 158139, August 12, 2005 ]

**NELSON P. PATULOT, PETITIONER, VS. JOSE L. UMALI, THE BOARD OF ELECTION TELLERS OF SAN SEBASTIAN, LIPA CITY AND THE ELECTION OFFICER OF LIPA CITY, RESPONDENTS.**

### D E C I S I O N

**AZCUNA, J.:**

Petitioner Nelson P. Patulot and respondent Jose L. Umali were contending candidates for Barangay Chairman in the barangay elections of July 15, 2002.

Patulot's certificate of candidacy was ordered cancelled, for non-residence, by the Commission on Elections (Comelec).

Patulot filed a petition for *mandamus* in the Regional Trial Court (RTC) of Lipa City, Branch 85. The RTC decided in his favor and ordered the board of canvassers to reconvene and include the votes cast in his favor.

Umali filed a petition for *certiorari* in the Court of Appeals (CA). The CA set aside the RTC's decision. It held that Patulot should have filed a motion for reconsideration in the Comelec, not go to the RTC, and that the Board of Canvassers cannot be faulted for not counting his votes since Comelec cancelled his certificate of candidacy.

Petitioner (Patulot) thereupon appealed to this Court under Rule 45 of the Rules of Court.

Petitioner claims Umali went to the CA on Rule 65 of the Rules of Court and that he should have appealed from the RTC decision. Also, petitioner asserts that the Comelec cancelled his certificate without notice to him, *motu proprio* - so his remedy is not to file a motion for reconsideration with the Comelec, and the RTC had jurisdiction over his *mandamus* petition.

Petitioner's contention that he was not notified of COMELEC Resolution No. 5038, which cancelled his certificate of candidacy and disqualified him, is not correct. At 5:30 o'clock in the afternoon and at 7:30 o'clock in the evening of July 15, 2002, the day of the election, petitioner was notified of COMELEC Resolution No. 5038. Yet, he did not act to seek a reconsideration of the Resolution of the COMELEC, rendering said COMELEC Resolution No. 5038 final and executory.

During the *ex-parte* hearing of the petition for *mandamus* before the Regional Trial Court of Lipa City, petitioner testified:

"Q After you [ ] unofficially won the election according to the watchers you designated, was there anything unusual that happened?