

EN BANC

[G.R. No. 159713, March 31, 2004]

ARIEL G. DE GUZMAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND NESTOR B. PULIDO, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for certiorari under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Resolution, dated September 11, 2003 of the Commission on Elections (COMELEC) *en banc*^[1] in EPC No. 2001-11 which affirmed the Resolution, dated April 2, 2003, of the COMELEC First Division^[2] declaring respondent Nestor B. Pulido as the duly elected Number 2 Provincial Board Member of the First District of Pangasinan.

The facts are as follows:

On May 19, 2001, petitioner Ariel G. De Guzman was proclaimed winner of the second of two Provincial Board seats allocated for the First District of Pangasinan with 40,441 votes. Respondent Nestor B. Pulido, a candidate for the same position, garnered 40,383 votes or 58 votes less than De Guzman.^[3]

On May 28, 2001, Pulido filed with the COMELEC an election protest against De Guzman, docketed as EPC No. 2001-11.^[4] He alleged that:

7. In the Municipality of Mabini, Province of Pangasinan, where the PROTESTEE is the incumbent Mayor, more than one thousand (1,000) votes were padded in his favor. On the other hand, more than one hundred (100) votes of the PROTESTANT were deliberately not read and counted;
8. The PROTESTEE obviously orchestrated the tempo in the canvassing of votes in the Municipality of Mabini, Province of Pangasinan. He has the power and clout to do so being the immediate past third term Mayor of that town. It must be told with regrets that the Municipal Board of Canvassers of Mabini, Pangasinan, without justifiable reasons, deliberately suspended the canvassing of votes for more than eight hours, from five o'clock in the afternoon of May 15, 2001 to 2:00 o'clock in the early morning of May 16, 2001, without proper notice to the watchers and to the public. The idea behind the suspension of canvassing for more than eight hours was to give the PROTESTEE enough time to know the results of the elections in the other municipalities and in case he loses in the quick count, he would still have time to pad his votes. Indeed, when he knew he was losing, the PROTESTEE padded more than one

thousand votes to his name in order to win;

9. Thus, a recount of the votes cast in the various^[5] precincts in the Municipality of Mabini, Province of Pangasinan, is necessary to ascertain the number of votes the PROTESTEE and the PROTESTANT actually garnered.^[6]

The following day, Pulido amended his protest by also claiming that in the town of Mabini 500 ballots cast in his favor were misappreciated in favor of De Guzman.^[7]

On June 18, 2001, De Guzman filed his Amended Answer with Counter Protest denying Pulido's allegations.^[8] As counter-protest, he alleged misappreciation of ballots cast in all the precincts in the town of Anda.^[9] In addition, he alleged that:

13. In precinct 10A1 in Barangay Gais-Guipe, Dasol, Pangasinan, in CE Form No. 9 Sheet No. 67180016, the PROTESTEE garnered seventy (70) votes; that apparently when the result was transferred in CE Form No. 20-A, Sheet No. 2113885, the PROTESTEE was credited with only seventeen (17) votes, thus depriving the PROTESTEE of fifty three (53) votes. A photocopy from the copy for the Majority Party each of CE Form No. 9 Sheet 67180016 and CE Form No. 20-A, Sheet No. 2113885 are hereto attached as Annexes "A" and "B" respectively, and made parts hereof; A recount of the votes in said precinct No. 10A1 of Barangay Gais-Guipe, Dasol, Pangasinan is therefore, necessary to ascertain the correct numbers of votes of the PROTESTANT and PROTESTEE in said precinct;
14. In precinct No. 27A1 and 27A2, Barangay Bued, Alaminos, Pangasinan, it is made to appear in CE Form 9, Sheet 67030051, that the PROTESTANT obtained twenty four (24) votes when per the tally he received only nineteen (19) votes thereby adding five (5) votes for the PROTESTANT which should be deducted from his total votes. A copy of CE Form 9, Sheet 67030051 is hereto attached as Annex "C" and made a part hereto. A recount of the votes in said precincts 27A1 and 27A2 is therefore, necessary to ascertain the correct number of votes of the PROTESTANT and the PROTESTEE in said precincts;
15. In precinct No. 22A2 of Bamban, Infanta, Pangasinan, it is made to appear in CE Form No. 9, Sheet No. 67190050, that the PROTESTEE obtained twenty eight (28) votes when per tally he received thirty three (33) votes thus five (5) votes should be added to the total votes of the PROTESTEE. A photocopy of CE Form No. 9, Sheet No. 67190050 is hereto attached as Annex "D" and made a part hereof;
16. In the Statement of Votes By Precinct, CE Form 20A, Sheet Nos. 2113889, 2113890 and 2113891 there is an error in the addition of the number of votes for the PROTESTEE, more particularly in Sheet No. 2113891 where it is made to appear in the sub-total that the PROTESTEE received three hundred forty two (342) votes instead of the correct one which is three hundred eighty nine (389) thus from

this erroneous addition he was deprived of 47 votes. This 47 votes should be added to the PROTESTEE's total votes in Infanta, Pangasinan. A copy each of the Statement of Votes By Precinct, CE Form No. 20-A, Sheet Nos. 2113889, 2113890 and 2113891 are hereto attached as Annexes "E", "F" and "G" respectively, and made parts hereof.^[10]

On July 31, 2001, the COMELEC First Division directed the parties to deposit money to defray the expenses to be incurred in the revision of the ballots.

On September 10, 2001, the revision of the contested ballots commenced. Thereafter, both parties presented their evidence. After both parties formally offered their respective evidence, the case was submitted for decision.

Meanwhile, on March 20, 2002, the COMELEC *en banc* received three letter-petitions separately filed by the Municipal Board of Canvassers of the towns of Infanta and Dasol and the Board of Election Inspectors of Precincts 27A1 and 27A2 of Alaminos City. The letter-petitions, docketed as SPC Nos. 02-001, 02-002 and 02-003, requested authority to correct mistakes or errors in tabulation reflected in the Election Returns and Statement of Votes by Precinct which were also the subject of De Guzman's counter-protest.

On September 19, 2002, the COMELEC *en banc* jointly dismissed the letter-petitions in SPC Nos. 02-002 and 02-003 of the Municipal Board of Canvassers of Infanta and the Board of Election Inspectors of Precincts 27A1 and 27A2 of Alaminos City.^[11] The COMELEC *en banc* reasoned:

xxx [A]ll the matters raised in the letters-petitions are included in the issues to be resolved in EPC No. 2001-11 pending before the First Division which was initiated more than 9 months before the instant petitions. The election protest case is more extensive and appropriate in closely looking into the parties' allegations and supporting documents. Such proceedings are in fact consistent with Mr. De Guzman's call for a recount of votes in the subject clustered precincts, which we cannot undertake in a petition for correction of mistake. Hence, the First Division is in a better position to rule upon the issues and make the necessary conclusions especially on the allegations of fact that we find insufficient herein.^[12]

Subsequently, on April 2, 2003, the COMELEC First Division issued a Resolution in EPC No. 2001-11 annulling the proclamation of De Guzman. It declared Pulido as the duly elected Number 2 Provincial Board Member of the First District of Pangasinan having garnered a total of 40,336 votes as against De Guzman who obtained 40,263 votes or a plurality of 73 votes.^[13]

Dissatisfied, De Guzman sought reconsideration with the COMELEC *en banc*.^[14]

De Guzman alleged that the base figures adopted by the COMELEC First Division, that is, 40,441 votes cast for De Guzman and 40,383 votes cast for Pulido, are the original figures as provided in the original canvass or statements of votes. He assailed that the use thereof as base figures, before imputing the rejected and admitted votes on appreciation, is erroneous because the manifest errors of

tabulation complained of by De Guzman in his counter-protest were not considered. He claimed that the original statement of total votes for the candidates should have been first rectified to reflect the manifest errors of computation or tabulation, citing that the COMELEC en banc itself declared that the alleged errors in tabulation, which were also subject of the letter-petitions in SPC Nos. 02-002 and 02-003, are best reviewed in the election protest proper. De Guzman argued further that the COMELEC First Division misappreciated 7 ballots for De Guzman as written-by-one in Precinct 47A, Mabini, with recorded data and evidence of assistory voting and 37 more ballots for De Guzman as marked ballots with noted pattern marks.

Following hearing on the motion for reconsideration^[15] and submission of memoranda,^[16] the COMELEC *en banc*^[17] issued a Resolution dated September 11, 2003 denying De Guzman's motion for reconsideration. The COMELEC *en banc* ratiocinated:

Admittedly, however, the First Division has not addressed the subject in its 02 April 2003 Resolution. Thus it is now incumbent upon us to pass upon the same to finally settle the matter.

Even a cursory reading of De Guzman's counter-protest reveals that **only photocopies of the involved election returns and Statements of Votes by Precinct were submitted in evidence**, with the exception of the Statement of Votes to support the mistake in addition of De Guzman's total number of Votes in Infanta, Pangasinan, which was a certified true copy. **Being mere photocopies, the same does not have any probative value.** These would not warrant a recount of the votes in precinct numbers 101A of Brgy. Gais-Gaipe, Dasol, 27A1 and 27A2 of Brgy. Bued, Alaminos and 22A2 of Brgy. Bamban, Infanta, all in the province of Pangasinan.

. . .

Moreover, the photocopy of the Statement of Votes by Precinct from Brgy. Gais-Gaipe, Dasol does not clearly show that only seventeen (17) votes, instead of seventy, were credited to protestee De Guzman, thereby depriving him of fifty three (53) votes. Aside from the fact that the figures in said photocopy did not clearly show the votes credited, **the entries under the column for sub/grand total votes received were not legible at all.**

During the pendency of this case, protestee had every opportunity to offer competent evidence to support his contentions. He, however, failed to do the same.

Though a certified true copy of the Statement of Votes for Infanta, Pangasinan was submitted in evidence, such, on its own, is not sufficient to effect a correction. Protestee De Guzman did not even offer in evidence the election returns for the votes reflected in the Statement of Votes where error in addition has been alleged. Not even after careful perusal of the subject Statement of Votes by Precinct can this Commission ascertain the individual entries therein. Naturally, the Commission can, and should, only consider the documents formally

offered in evidence pursuant to Section 34 of the Rules of Court, finding suppletory application in this case.

. . .

With respect to the alleged misappreciation of ballots, the First Division already painstakingly examined the ballots and ruled upon their validity. Guided by pertinent rules and Supreme Court doctrines, the Division found that protestant Nestor Pulido won over protestee Ariel De Guzman with a margin of seventy (73) votes. Such finding by the First Division must be accorded great weight in the absence of substantial showing that it was made from an erroneous estimation of the evidence presented. (Emphasis supplied)^[18]

On September 18, 2003, De Guzman filed the present petition with prayer for the issuance of a temporary restraining and/or writ of preliminary injunction.^[19] The present petition is anchored on the following grounds:

THE COMELEC EN BANC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT FAILED AND REFUSED TO CORRECT THE PLAIN AND MANIFEST ERRORS OF TABULATION, DULY PROVEN BY COMPETENT EVIDENCE AND CONFIRMED ON (SIC) PHYSICAL COUNT, AND, CONSEQUENTLY FAILED AND REFUSED TO CORRECT THE WRONG BASE FIGURES USED IN THE COMPUTATION OF THE FINAL VOTES. THE COMELEC'S JUDGMENT UNSEATING DE GUZMAN WAS THE DIRECT AND NECESSARY CONSEQUENCE OF THE PATENTLY ERRONEOUS FIGURES IN THE FIRST DIVISION'S RESOLUTION.

THE COMELEC EN BANC LIKEWISE ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT SUSTAINED IN TOTO THE FIRST DIVISION'S APPRECIATION FINDINGS WITHOUT RECTIFYING OR REVERSING THE MANIFESTLY ERRONEOUS INVALIDATION OF 7 BALLOTS FOR DE GUZMAN AS WRITTEN-BY-ONE IN PREC. 47A, MABINI, WITH RECORDED DATA AND EVIDENCE OF ASSISTORY VOTING AND 37 MORE BALLOTS FOR DE GUZMAN AS MARKED BALLOTS WITH NOTED PATTERN MARKS SANS ANY EVIDENCE *ALIUNDE* OF THE VOTER'S DESIGN TO MARK.^[20]

De Guzman claims that the COMELEC en banc gravely abused its discretion when it sustained the factual findings of the First Division notwithstanding that the base figures adopted by the latter was erroneous because it did not consider the manifest errors of tabulation challenged in his counter-protest. He submits that the COMELEC *en banc* erred grievously when it declared that "only photocopies of the involved Election Returns and Statements of Votes by Precinct were submitted in evidence" since he formally offered in evidence certified true copies of the documents involved.

As regards the appreciation of ballots, De Guzman claims the patent failure of the COMELEC *en banc* to consider the existence of assistory voting and the absence of evidence on the alleged pattern marking constitutes grave abuse of discretion.

On September 30, 2003, this Court required the COMELEC and Pulido to comment on the petition and, upon the posting of a bond by De Guzman in the amount of P25,000.00, issued a temporary restraining order enjoining the COMELEC from