

EN BANC

[G.R. No. 159369, March 03, 2004]

NANCY SORIANO BANDALA, PETITIONER, VS. COMMISSION ON ELECTIONS, NEW BOARD OF CANVASSERS FOR OROQUIETA CITY AND ALEJANDRO G. BERENGUEL, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Election cases involve not only the adjudication of the private interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to whom shall discharge the prerogatives of the offices within their gift.

[1]

*Thus, election cases are imbued with public interest. Laws governing election contests 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.*** [2]

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution^[3] dated August 14, 2003 rendered by the Commission on Elections *En Banc* in SPC No. 01-277, entitled "Alejandro G. Berenguel, Candidate for City Mayor, Oroquieta City vs. Board of Canvassers, Oroquieta City and Nancy Soriano Bandala, Candidate for City Mayor, Oroquieta City."

The antecedents of the present petition are as follows:

Nancy Soriano Bandala, herein petitioner, and Alejandro G. Berenguel, herein respondent, were mayoralty candidates in Oroquieta City, Misamis Occidental during the May 14, 2001 national and local elections.

During the canvass of the election returns conducted by the City Board of Canvassers of Oroquieta City, respondent objected to the inclusion of **eighty (80) election returns** on the following grounds: (1) that seventy-one (71) election returns were not secured with inner paper seals; (2) that seven (7) election returns do not indicate the party affiliation of the watchers-signatories; and (3) that two (2) election returns have missing pages which contain the list of the local city candidates.

In an Omnibus Ruling dated May 19, 2001, the City Board of Canvassers overturned the objection of respondent and included in its canvass the contested election returns.

On June 30, 2001, petitioner was proclaimed the duly elected mayor of Oroquieta City.

Upon appeal, the Second Division of the Commission on Elections (COMELEC) issued a Resolution dated September 5, 2002 affirming the Omnibus Ruling of the City Board of Canvassers, holding that:

Lack of inner seal of an election return does not necessarily mean that the same is spurious and/or was tampered with. Such tampering, or its being spurious must appear on the face of the election return itself. It is the ministerial function of the board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities. [Cf. Balindong vs. Commission on Elections, 27 SCRA 567]

In the canvassing of election returns, the Board of Canvassers, which is an *ad hoc* body, need not look beyond or behind the returns or do an act which would necessitate the piercing of the returns and the presentation of evidence *aliunde*. [Cf. Usman vs. Commission on Elections, 42 SCRA 667]

Significantly, we observe that what the petitioner has presented were just affidavits mostly executed by his supporters, the nature of which has been ruled by the Supreme Court as self-serving. [Casimiro vs. COMELEC, 170 SCRA 627] We cannot just rely on this kind of evidence because what is at stake is the paramount interest of the electorate.

Finally, our General Instructions for the Board of Election Inspectors (BEI) [COMELEC Resolution No. 3742] does not require the indication by the poll watchers of their respective political party/candidate being represented. What the rule instructs is this:

"SEC. 45. Preparation of election returns and tally board. – The boards shall prepare in their own handwriting the election returns and tally board simultaneously with the counting of votes in their respective polling places. The election returns shall be prepared in seven (7) copies. x x x

After all the ballots have been read:

a) x x x

d) The watchers if any, shall affix their signatures and imprint their thumb marks on the right hand portion of the election returns and the tally board; and

x x x"

Clearly, nothing in the afore-quoted rule requires the poll watcher to indicate the party/candidate he represents.^[4]

Respondent then filed with the COMELEC *en banc* a motion for reconsideration.

On August 14, 2003, the COMELEC *en banc* promulgated a Resolution reversing and setting aside the Second Division's Resolution. The dispositive portion of which reads:

"ACCORDINGLY, the Commission *en banc* hereby renders judgment to:

1. EXCLUDE the one hundred one (101) election returns found without the inner paper seals enumerated in the Canvassing Report of the City Board of Canvassers of Oroquieta City dated 24 May 2001, from the canvass;
2. NULLIFY the proclamation of Oppositor Nancy Soriano Bandala made on 30 June 2001;
3. CONSTITUTE a New City Board of Canvassers for Oroquieta City composed of Atty. Nelia Aureus as Chairman; Atty. Allen Francis Abaya as Vice-Chairman; and, Atty. Norina Tangaro as member-Secretary;
4. DIRECT the City Election Officer of Oroquieta City to BRING to the Commission at Manila all the election returns and other election documents subject of and pertaining to the canvass made by the Board and TURN-OVER the same under receipt to the New City Board of Canvassers for Oroquieta City; and,
5. DIRECT the New City Board of Canvassers for Oroquieta City to CONVENE with notice to the parties, upon finality of this Resolution, CANVASS the election returns and, thereafter, PROCLAIM the winning candidate for Mayor of Oroquieta City.
6. The aforementioned BEIs, with the exception of the BEI of Precinct No. 134A of Barangay Dolipos Alto, composed of Catalina J. Bajade as Chairman, Emma J. Aganos as Poll Clerk, and Rosenda P. Baloncio as Third Member and the Chairperson, Margie B. Lamparas of the BEI of Precinct No. 145A1 of Barangay Upper Lamac, are recommended to be charged administratively before the Department of Education.
7. Atty. Francisco G. Pobe is hereby suspended from Office with forfeiture of salary from the promulgation of this resolution until after the elections of 10 May 2004 with stern warning that repetition of the same or similar offense will be dealt with more severely.
8. The Law Department, this Commission, is hereby DIRECTED to file the appertaining information for violation of Section Z (15) and (21), and Section 212, both of the Omnibus Election Code (Batas Pambansa Blg. 881) against these BEIs and Mr. Filoteo C. Alngohuro, Chairman of the City Board of Canvassers of Oroquieta City, there being strong *prima facie* case against them.

SO ORDERED."