

EN BANC

[G.R. No. 162035, November 26, 2004]

GILBERTO CANTORIA, PETITIONER, VS. HON. COMMISSION ON ELECTIONS AND CIRIACO P. LOMBOY, RESPONDENTS.

DECISION

QUISUMBING, J.:

This special civil action for certiorari with prayer for a Temporary Restraining Order and/or Preliminary Injunction seeks to annul the **Resolution**,^[1] dated January 29, 2004, of the Commission on Elections (COMELEC) in EAC No. 33-2002, which affirmed the **Decision**,^[2] dated September 5, 2002, of the Municipal Trial Court of Santa Maria, Pangasinan in Election Case No. 314.

The antecedent facts and proceedings are as follows:

In the July 15, 2002 election for *Barangay* Captain in Poblacion East, Sta. Maria, Pangasinan, petitioner Gilberto Cantoria and private respondent Ciriaco Lomboy were the only competing candidates.

In the statement of votes, petitioner garnered two hundred thirty-three (233) votes, while private respondent got two hundred thirty-one (231) votes. Hence, petitioner was proclaimed as the duly elected *Barangay* Captain.

On July 19, 2002, private respondent filed an election protest docketed as Election Case No. 314 with the Municipal Trial Court (MTC) of Santa Maria, Pangasinan.

Upon agreement of the parties, the MTC ordered a revision of the ballots by a Revision Committee. The Revision Committee found that the votes actually cast for petitioner was two hundred twenty-eight (228), and for private respondent, two hundred thirty-one (231).

Thus, in its **Decision**,^[3] dated September 5, 2002, the trial judge decreed as follows:

WHEREFORE, the Court hereby renders judgment declaring the protestant CIRIACO LOMBOY as the duly elected Punong Barangay of Poblacion East, Sta. Maria, Pangasinan.

SO ORDERED.^[4]

Petitioner appealed the said Decision to public respondent Commission on Elections (COMELEC) asserting that the trial court erred in ruling certain ballots as marked ballots. Private respondent in his Appellee's Brief prayed for the dismissal of the appeal for lack of merit.

In its Second Division **Resolution**, dated January 29, 2004, COMELEC dismissed the appeal for lack of merit, to wit:

WHEREFORE, premises considered, the instant appeal is DISMISSED for LACK OF MERIT.

Accordingly, the 5 September 2002 Decision of the Municipal Trial Court of Santa Maria, Pangasinan in Election Case No. 314 is hereby AFFIRMED.

SO ORDERED.^[5]

Without filing a Motion for Reconsideration, petitioner elevated the case to this Court *via* a special civil action for certiorari with prayer for a Temporary Restraining Order and/or Preliminary Injunction. Petitioner assigns to the COMELEC, the following errors:

i

PUBLIC RESPONDENT, WITH DUE RESPECT, GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE ASSAILED DECISION OF THE MTC DESPITE THE CLEAR AND APPARENT LACK OF FACTUAL AND LEGAL BASIS TO SUPPORT THE SAME.

ii

PUBLIC RESPONDENT, WITH DUE RESPECT, GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE DECISION OF THE MTC.^[6]

Petitioner contends that: (1) ballots containing the nickname "Boyet Cantoria" or "Boy Boyet" clearly written on them should be respected and credited to him as these nicknames are indicated in his Certificate of Candidacy; (2) ballots with the words "Cristo Eleiser Lomboy" and "Adong Lomboy" written on the space for *Punong Barangay* were counted in favor of private respondent, allegedly in violation of election rules and regulations; (3) ballots with the word "Acong" written on the space for *Punong Barangay* was credited in favor of private respondent despite the fact that the same was not his registered name or nickname; and (4) a ballot wherein the space line for *Punong Barangay* is blank and the full name of private respondent was written in the first space line for *Kagawad Sangguniang Barangay* was credited in favor of private respondent, which should not be the case as said vote is a stray vote.

For his part, private respondent counters that the assailed Resolution of public respondent is already final and executory for petitioner's failure to file a Motion for Reconsideration within the reglementary period. Accordingly, private respondent points out, the assailed Resolution of public respondent was recorded in the Book of Entries of Judgments on March 2, 2004.^[7] Private respondent argues that a restraining order may no longer be issued against public respondent as the latter has already lost jurisdiction over the case. At any rate, private respondent avers that the present petition concerns errors of appreciation of facts, not grave abuse of discretion tantamount to whimsical exercise of judicial prerogative.