

EN BANC

[G.R. No. 135084, August 25, 1999]

MANUEL V. OLONDRIZ, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND MARITES G. FRAGATA, RESPONDENTS.

R E S O L U T I O N

KAPUNAN, J.:

The records disclose that petitioner Manuel V. Olondriz, Jr. and private respondent Marites G. Fragata were among the contenders for the mayoralty of Juban, Sorsogon in the May 11, 1998 elections.

During the canvass of the votes cast for the candidate in said municipality, Bernabe A. Hufana, a watcher for private respondent, noted a discrepancy between the words and figures in the number of votes for petitioner in the election return from Precinct No. 22-A. On the face of said return, the votes cast for petitioner was sixty-six (66) written in figures and fifty-six (56) written in words. When the same was brought to the attention of the Municipal Board of Canvassers (MBC), the MBC decided to credit the petitioner with the sixty-six (66) votes written in figures. As a consequence thereof, petitioner garnered a total of 4,500 votes while private respondent got a total of 4,498 votes, with only a margin of 2 votes. Private respondent's objection, through her watcher, was ignored by the MBC.

After the canvass of the votes, private respondent filed with the MBC a petition to suspend the proclamation on the ground that a discrepancy appears on the election return from Precinct No. 22-A. The MBC denied the petition ratiocinating that the tally of the votes for petitioner appearing on the election return showed that the latter received a total of sixty-six (66) votes.

On May 16, 1998, private respondent filed a notice of appeal with the MBC stating that she was appealing the ruling to the Commission on Elections (COMELEC). On the same date, the MBC denied the notice of appeal and then issued a "Certificate of Canvass of Votes and Proclamation of the Winning Candidates for the Municipal Offices" wherein it proclaimed petitioner as the winner in the elections.

On May 20, 1998, private respondent filed with the COMELEC a petition to annul the certificate of canvass and the proclamation of herein petitioner. The case was docketed as SPC NO. 98-099.

On May 27, 1998, the Second Division of the COMELEC issued a resolution, the decretal portion of which reads:

WHEREFORE, premises considered, the proclamation of private respondent Manuel Olondriz, Jr., as the duly elected mayor of Juban, Sorsogon is DECLARED NULL AND VOID.

Consequently, the Municipal Board of Canvassers of Juban, Sorsogon is hereby ORDERED to RECONVENE, OPEN the ballot box in Precinct No. 22-A, following strictly section 236 of the Omnibus Election Code and include the tally thereof to the result of all the election returns previously canvassed; PREPARE a new Certificate of Canvass and Proclamation of Winning Candidates [C.E. Form No. 25] and, thereafter PROCLAIM the winning candidate for mayor.

SO ORDERED.^[1]

Petitioner moved to reconsider the said resolution.

During the pendency of said motion for reconsideration, the MBC reconvened pursuant to the COMELEC Second Division's resolution. The ballot box from Precinct No. 22-A was opened and the election return kept therein was examined but no recount of the votes was conducted despite vigorous motions from private respondent's counsel. The MBC found that:

xxx The election return was examined by the Board, together with the legal counsels and watchers of both parties and it did not show any sign of tampering. This election return showed that Candidate Manuel Olondriz obtained 56 votes, written both in words and figure. They also verified that the taras as counted for the first 100 votes was 29 but the written figure was blurred. On the next line the taras counted was 37 and the figure was also blurred. So the board decided that by adding 29 taras and 37 taras, Candidate Olondriz got 66 votes and this was reflected in the election returns. xxx^[2]

Consequently, on June 3, 1998, the MBC proclaimed petitioner as the duly elected mayor of Juban, Sorsogon. Petitioner took his oath of office on June 29, 1998.

On August 28, 1998, the COMELEC *en banc* issued an order denying petitioner's motion for reconsideration. The order reads:

It appearing that no new issues were raised by private respondent in his Motion for Reconsideration, this Commission [EN BANC] RESOLVED, as It hereby RESOLVES to DENY this instant motion for reconsideration for lack of merit. The Resolution of the Second Division dated 27 May 1998 ANNULING the pre-mature (sic) proclamation of private respondent Manuel Olondriz, Jr. as the duly elected mayor of Juban, Sorsogon, is hereby AFFIRMED.

Accordingly, the Municipal Board of Canvassers of Juban, Sorsogon is hereby DIRECTED to:

a. RECONVENE after due notices are sent to the affected parties/candidates;

b. SUMMON the members of the Board of Election Inspectors of Precinct No. 22-A who will after following strictly the guidelines/procedures laid down in Section 236 of the Omnibus Election Code, REOPEN the ballot box in the concerned precinct, RECOUNT (PHYSICAL COUNT ONLY) the ballots with votes for private respondent Manuel Olondriz only and