

## EN BANC

**[ G.R. No. 129096, November 19, 1999 ]**

### **MARIVIC ZARATE, PETITIONER, VS. COMMISSION ON ELECTIONS AND JULIAN LALLAVE, JR., RESPONDENTS.**

## **D E C I S I O N**

#### **PURISIMA, J.:**

Before the Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court ascribing grave abuse of discretion to the Commission on Elections in issuing its Resolution, dated April 24, 1997, annulling and setting aside the decision of the Municipal Trial Court of Malasiqui, Pangasinan, and declaring the private respondent, Julian Lallave, Jr., the duly elected Sangguniang Kabataan (SK) Chairman of Barangay Ican, Malasiqui, Pangasinan.

The antecedent facts are as follows:

During the 1996 Sangguniang Kabataan elections, respondent Julian Lallave, Jr. won over the petitioner, Marivic Zarate, by a single vote. The former garnered a total of forty-six (46) votes as against the latter's forty-five (45) votes. Accordingly, the Barangay Board of Canvassers proclaimed respondent Lallave, Jr. the duly elected SK Chairman.

On May 16, 1996, petitioner lodged his election protest before the Municipal Trial Court of Malasiqui, Pangasinan, docketed as SK Election Protest No. 04; alleging *inter alia*:

"5. That during the counting, tallying and canvassing of votes for each of the candidates, respondent-members of the Board of Election Tellers counted, credited and/or declared valid three (3) or more votes that read "JL" in favor of respondent Julian Lallave, Jr., when they should have voided the same or excluded as valid votes. Thus, the result of the counting is 46 for protestee and 45 for the protestant;

6. That the votes bearing "JL" are stray votes and are therefore null and void. They are marked ballots because the votes (sic) can identify the vote as his. More importantly, there is no candidate with a name or nickname "JL". Law and jurisprudence declare such type of votes irregular, anomalous and void;

7. That had the three (3) or more ballots/votes bearing "JL" been voided or excluded among the valid votes cast, the votes should be :

45- for Marivic A. Zarate

46- for Julian Lallave, Jr.

(This is on the assumption that there are only three (3) "JL" votes).

and protestant should have been proclaimed as the SK Chairman of Brgy. Ican, Malasiqui, Pangasinan."

On September 9, 1996, the Municipal Trial Court a quo rendered a decision annulling and setting aside the proclamation of the private respondent Julian Lallave, Jr. Eight of the original forty-six ballots of the latter were declared marked, thereby reducing his number of votes to thirty-eight (38). On the other hand, of petitioner's forty-five (45) votes, one was invalidated. Petitioner Zarate was therefore, adjudged winner with forty-four (44) votes as against the thirty-eight (38) of Lallave, Jr. The dispositive portion of the decision below ruled:

"WHEREFORE, the proclamation of protestee Julian Lallave, Jr. is hereby annulled/ set aside. Protestant, Marivic Zarate, is hereby declared/proclaimed as the duly elected SK Chairman of Brgy. Ican, Malasiqui, Pangasinan.

No pronouncement as to costs.

SO ORDERED."

Dissatisfied with the aforesaid disposition by the trial court, the private respondent appealed to the Commission on Elections, theorizing that subject five ballots marked Exhibits "A", "B", "C", "D", and "E", bearing the initials "JL", should have been credited in his favor considering that such initials sufficiently identify him as the candidate intended to be voted for as he was the only one of the three candidates with the initials "JL". He also contended that the ballots marked Exhibits "F", "G" and "H" were not marked ballots as the names written thereon, "Julian, Jr. de Real", "I Notno Lallave" and "Nono de Real", sufficiently identify him, the same being his nickname and middle name, respectively, "de Real" being his middle name (his mother's surname) and he is known in their locality as "Nono."

On the other hand, petitioner maintained that the Trial Court of origin was correct in invalidating the said ballots in question, pursuant to paragraph 14, Section 211 of the Omnibus Election Code (Batas Pambansa Blg. 881, as amended).<sup>[1]</sup>

The respondent Commission was not convinced, however. It did not uphold the findings and conclusion arrived at by the Municipal Trial Court. On April 24, 1997, the COMELEC *En Banc* came out with its assailed Resolution, annulling and setting aside the decision *a quo* and declaring the private respondent, Julian Lallave, Jr., as the duly elected SK Chairman. The respondent COMELEC ratiocinated and disposed as follows:

"After a careful and thorough review of the assailed decision, we find the ballots marked as Exhibits `A', `B', `C', `D', and `E' containing JL initials valid for the petitioner. Section 211, par. 14 of the Omnibus Election Code