

HADJI NOR BASHER L. HASSAN, PETITIONER, VS. COMMISSION ON ELECTIONS, MANGONDAYA P. HASSAN BUATAN; COMELEC MONITORING AND SUPERVISING TEAM, REGION XII; MADALUM ELECTION OFFICER; ...*G.R. No. 124089. November 13, 1996*

Ponente: KAPUNAN, J.

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Petitioner, Hadji Nor Basher L. Hassan, and private respondent, Mangondaya P. Hassan Buatan were candidates for the Office of the Vice-Mayor while the other private respondents were candidates for councilors in Madalum, Lanao del Sur in the last regular local elections of May 8, 1995. However, due to threats of violence and terrorism in the area there was failure of elections in six out of twenty-four precincts in Madalum.

The ballot boxes were burned and there were threats by unidentified persons in Precinct No. 7-A. In Precinct Nos. 9, 9-A, 10, 13, and 14, elections did not take place because the members of the Board of Election Inspectors (BEI) failed to report to their respective polling places.

Thus, the Monitoring Supervising Team (COMELEC Team) headed by Regional Election Director Virgilio O. Garcillano recommended to the COMELEC the holding of special elections in said precincts. The special elections were thereby set on May 27, 1995. On said date, however, the members of the BEI again failed to report for duty in their respective polling places.

In an Order dated May 28, 1995, the COMELEC Team re-scheduled the elections in these precincts for May 29, 1995 at Liangan Elementary (Arabic) School, which is 15 kilometers away from the designated polling places.

On May 29, 1995, the members of the Board did not again report for duty. Hence, the COMELEC Team was constrained to appoint police/military personnel to act as substitute members so as to push through with the elections.

In the May 8 elections, the results for the Office of the Vice-Mayor were as follows:

1. MANGONDAYA HASSAN - 884
2. OSOP KIRAM - 816
3. PETITIONER HASSAN - 801
4. ESRA S. ANGNI - 340
5. IBRAHIM ALAWI - 185

In the May 29 special elections held in Precinct Nos. 9, 9-A, 10, 13 and 14 the following votes were obtained.

1. M. HASSAN - 214
2. OSOP KIRAM - 17
3. N. HASSAN - 78
4. ANGNI ESRA - 1

5. IBRAHIM ALAWI - 0

Hence the final results are as follows:

1. MANGONDAYA HASSAN - 1,098
2. PETITIONER NOR HASSAN - 879
3. OSOP KIRAM - 833
4. ANGNI ESRA - 341
5. IBRAHIM ALAWI - 185[1]

On June 10, 1995, petitioner Hadji Nor Basher L. Hassan filed a petition with the COMELEC docketed as SPA 95-283 assailing the validity of the May 29 re-scheduled special elections on the following grounds:

- a) The voting which started at 10:00 A.M. was forcibly ended at around 2:00 p.m. because of exchanges of rapid gunfire and grenade launching between unknown elements and the Army or PNP soldiers;
- b) The voting was moved to Liangan Elementary (Arabic) School, located about 15 kilometers away from the respective polling places;
- c) Notices in the transfer of venue of the voting was sent only on the "night" of May 28, 1995 and only to a "few" but not to all concerned;
- d) Only 328 out of the 1,645 registered voters of said 5 precincts were able to vote constituting only about 21.1%^[2] and disenfranchising 78% of the registered voters thereof; and
- e) The regular members of the BEI did not report for duty and were substituted by military personnel.^[3]

At the same time, private respondent Mangondaya P. Hassan Buatan also filed a petition with the COMELEC (docketed as SPA 95-286) assailing the inaction of the Municipal Board of Canvassers of Madalum on his petition to be proclaimed the winning vice-mayorality candidate.

On February 21, 1996 the COMELEC en banc issued a resolution denying the petition for a declaration of failure of elections and to call special elections in Precinct Nos. 7-A (Abaga), 9, 9-A, 10, 13 and 14, in Madalum, Lanao del Sur. It disposed of the consolidated petitions (SPA 95-283 and SPA 95-286) by directing "the Regional Election Director of Region XII in consultation with the Commissioner-in-Charge of Region XII to reconstitute the Municipal Board of Canvassers of Madalum, Lanao del Sur, of which shall convene forthwith and complete the canvass by proclaiming the winning vice-mayorality candidate, Mangondaya P. Hassan Buatan, and eight winning candidates for member, Sangguniang Bayan of that municipality."^[4]

Thus, petitioner went up to this Court assailing the aforesaid resolution with a prayer for Temporary Restraining Order (TRO) to enjoin the proclamation of the winning candidates.

On March 26, 1996, the Court issued a Temporary Restraining Order as prayed for pending the resolution of the issue as to whether or not the COMELEC erred in not declaring a failure of elections on May 29, 1995 in Madalum, Lanao del Sur.

In its Resolution dated February 21, 1996, the COMELEC ruled that the petition to declare a failure of elections in Madalum has no valid grounds since the outcome of the special elections in the said precincts would nonetheless not change the final results of the elections in petitioner's favor.

The difference between the first and second place is only 219 votes. The only precinct left which was not counted since the ballot box was burned was Precinct 7-A and Precinct 7-A has 219 voters. The COMELEC opined that it would be quite impossible for all 219 voters to have voted for petitioner. Hence, whether or not a special election

would be held, Mangondaya P. Hassan Buatan would in all probability still come out the winner.

The authority of the COMELEC to declare a failure of election is provided by Section 6 of the Omnibus Election Code, which reads:

SEC. 6. Failure of election." If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect. (Sec. 7, 1978 EC)

In several cases,[5] the Court has ruled that the pre-conditions for declaring a failure of election are: (1) that no voting has been held in any precinct or precincts because of force majeure, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections. The concurrence of these two (2) circumstances are required to justify the calling of a special election.

Mindful of these two (2) requirements, we rule in favor of the petitioner.

The COMELEC explained that:

Jurisprudence holds that terrorism may not as a rule be invoked to declare a failure of elections and to disenfranchise the greater number of the electorate through the misdeeds of only a relative few. Otherwise elections will never be carried out with the resultant disenfranchisement of the innocent voters, for the losers will always cry fraud and terrorism. It has been ruled that annulment of election results and consequent disenfranchisement of voters is a very stringent one. The power to annul an election should be exercised with the greatest care and circumspection and only in extreme cases and under circumstances which demonstrate beyond doubt and to the fullest degree of fundamental and wanton disregard of the law. (Grand Alliance for Democracy [GAD] vs. Comelec, 150 SCRA 665; Reyes vs. Mamba, HRET Case No. 92-022, September 14, 1994).[6]

While we are aware of the aforesaid rule, the COMELEC can not turn a blind eye to the fact that terrorism was so prevalent in the area, sufficient enough to declare that no voting actually occurred on May 29, 1995 in the areas concerned.

It must be recalled that elections had to be set for the third time because no members of the Board of Election Inspectors (BEI) reported for duty due to impending threats of violence in the area. This then prompted COMELEC to deploy military men to act as substitute members just so elections could be held; and to thwart these threats of violence, the COMELEC Team, moreover, decided to transfer the polling places to Liangan Elementary School which was 15 kilometers away from the polling place. Nonetheless, voting on May 29 had to be suspended before the hour fixed by law for the closing of the voting because of threats of violence, grenade launching and gunfires. The Memorandum and Offer of Evidence submitted by the petitioner are quite revealing, among which are the following:

(1) EXH. "A" - Memorandum of the respondent Comelec Team, dated June 4, 1995, recommending the holding of special election in Pct. 7-A, because the ballot box with ballots were set on fire by unknown men amounting to failure of election also;

(2) EXH "B" - Certification by the Madalum Acting Election Officer on the appointment of substitute members, who are military personnel, in the 5 precincts involved in this case, because of failure of the regular members thereof to report for duty in the May 29, 1995 special election;

(3) EXH. "C" - Minutes of Voting for Pct. 9, showing that 59 of the 418 registered voters voted; voting started at 11:40 a.m. and ended at 2:25 p.m.; only 58 valid ballots were found inside the ballot box; and the reported violence and terrorism, which reads:

UNTOWARD INCIDENTS HAPPENED.

AT ABOUT 2: 15 PM MAY 29, 1995, WHILE THE VOTING IS BEING CONDUCTED, AN M-79 OR M203 GRENADE LAUNCHER WAS FIRED BEHIND THE WOODEN SCHOOL BUILDING WHERE PRECINCT NO. 9, 9-A, AND 13, 14 WERE LOCATED. THIS WAS FOLLOWED BY RAPID FIRE FROM THE UNIDENTIFIED GROUP. WE PUT ALL THE ELECTION PARAPHERNALIA AND FORMS INSIDE THE BALLOT BOX AND PADLOCKED THE SAME. THERE WERE ABOUT 5 GRENADE LAUNCHERS WERE FIRED AT THE SCHOOL, THE MILITARY SECURITY EXCHANGED FIRE TO THE GROUP. IT LASTED FOR ABOUT 30 MINUTES. WE LEFT THE SCHOOL (LIANGAN ARABIC SCHOOL) AT ABOUT 2:45 PM AND PROCEEDED TO MUNICIPAL HALL OF MADALUM. WE LEFT MADALUM AT 3:15 PM AND ARRIVED AT MARAWI CITY AT ABOUT 5:00 PM (p. 4)

x x x

(8) EXH. "H" - Joint Affidavit of Hassan's watchers, dated June 11, 1995, corroborating that:

4. That at about 2:00 p.m. unidentified gunmen began indiscriminately fired their guns around the polling place which provoked the military serving the precincts to close the ballot boxes and the other military men guarding the polling place reacted and also fired their guns which caused panic to the voters around;

That to our evaluation at the closing of the voting at 2:00 p.m. only more or less 20 percent of the registered voters in each of the five precincts have casted their votes;.[7]

The peculiar situation of Madalum can not be overstated. Notwithstanding, the notice given on the afternoon of May 28 resetting the special elections to May 29 and transferring the venue of the elections 15 kilometers away from the farthest barangay/school was too short resulting to the disenfranchisement of voters. Out of the 1,546 registered voters in the five (5) precincts only 328 actually voted. The COMELEC justified this short notice in this light:

x x x. Viewed from ordinary human experience and the election culture obtaining in the locality, there can be no doubt that, the date on which special elections were to be held after one that previously failed, was high in the agenda of concerns and interests of the constituents involved. In *Sabeniano, et al. vs. Comelec*, 101 SCRA 289, 301 and *Quilala vs. Comelec*, 188 SCRA 502, the Supreme Court, referring to election processes and incidents as matters directly affecting the political fortunes of a candidate, held that it is a matter of judicial notice that the candidates, their representatives and watchers station or deploy themselves among the various voting and canvassing centers to watch the proceedings from the first hour of voting until the completion of the canvassing. In instant case, the May 27 special elections failed and were reset for May 29, 1995. Petitioner Hassan cannot claim that the later notice was not good enough for him. He was aware and ready for the May 27 special elections. He was just as alert and prepared for the May 29 special elections as these are "matters directly affecting his political fortunes." [8]

We cannot agree with the COMELEC that petitioner, his followers or the constituents must be charged with notice of the special elections to be held because of the failure of the two (2) previous elections. To require the voters to come to the polls on such short notice was highly impracticable. In a place marred by violence, it was necessary for the voters to be given sufficient time to be notified of the changes and prepare themselves for the

eventuality.

It is essential to the validity of the election that the voters have notice in some form, either actual or constructive of the time, place and purpose thereof.[9] The time for holding it must be authoritatively designated in advance. The requirement of notice even becomes stricter in cases of special elections where it was called by some authority after the happening of a condition precedent, or at least there must be a substantial compliance therewith so that it may fairly and reasonably be said that the purpose of the statute has been carried into effect.[10] The sufficiency of notice is determined on whether the voters generally have knowledge of the time, place and purpose of the elections so as to give them full opportunity to attend the polls and express their will or on the other hand, whether the omission resulted in depriving a sufficient number of the qualified electors of the opportunity of exercising their franchise so as to change the result of the election.[11]

From the foregoing, it is not difficult for us to rule that there was insufficiency of notice given as to the time and transfer of the polling places. The low turnout of voters is more than sufficient proof that the elections conducted on that day was vitiated. A less than a day's notice of time and transfer of polling places 15 kilometers away from the original polls certainly deprived the electors the opportunity to participate in the elections.

Respondents argue that since voting actually occurred on May 29, the substantial requirement of notice was complied with, which should not necessarily invalidate the elections; more so, if the votes not cast therein suffice to affect the results of the elections.

We disagree. It was quite sweeping and illogical for the COMELEC to state that the votes uncast would not have in any way affected the results of the elections. While the difference between the two candidates is only 219 out of the votes actually cast, the COMELEC totally ignored the fact that there were more than a thousand registered voters who failed to vote. Aside from Precinct 7-A where the ballot box had been burned and which had 219 voters, the COMELEC failed to consider the disenfranchisement of about 78% of the registered voters in the five (5) precincts of Madalum. Out of the 1,546 registered voters, only 328 actually voted because of the insufficient and ineffectual notice given of the time and place of elections. Whether or not another special election would turn the tide in petitioner's favor is of no moment because what is more important is that the electors should not have been deprived of their right to vote which was rather apparent in the case at bar.

Finally, in *Lucero v. COMELEC*,^[12] we stated that:

In fixing the date of the special election, the COMELEC should see to it that: (1) it should be not later than thirty days after the cessation of the cause of the postponement or suspension of the election or the failure to elect, and (2) it should be reasonably close to the date of the election not held, suspended, or which resulted in failure to elect. The first involves questions of fact. The second must be determined in the light of the peculiar circumstances of a case.

The re-scheduling of the special elections from May 27 to May 29, was done in uncommon haste and unreasonably too close for all voters to be notified of the changes, not only as to the date but as to the designated polling place. We must agree with the dissenting opinion that even in highly urbanized areas, the dissemination of notices poses to be a problem. In the absence of proof that actual notice of the special elections has reached a great number of voters, we are constrained to consider the May 29 elections as invalid. If only to ascertain the will of the people and to prevent that will from being muted, it is necessary that a special election be held in view of the failure of elections in Madalum, Lanao del Sur.

WHEREFORE, the petition is GRANTED.

(1) The COMELEC is hereby enjoined from proclaiming the winners for the Office of Vice-Mayor and

Councilors respectively; and

(2) The COMELEC is ORDERED to conduct special elections in Madalum, Lanao del Sur as soon as possible.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Rollo, pp. 67-68.

[2] The Comelec figure in the Resolution is 328 out of 1,546 registered voters constituting about 21.2% of the voting populace in Madalum.

[3] Rollo, p. 7.

[4] Id., at 80.

[5] *Usman v. COMELEC*, 42 SCRA 667 (1971); *Sardea v. COMELEC*, 225 SCRA 374 (1993); *Lucero v. COMELEC*, 234 SCRA 280 (1994); *Gov. Tupy T. Loong v. COMELEC*, G.R. Nos. 107814-107815, G.R. No. 120826, G.R. No. 122137, G.R. No. 122396, May 16, 1996.

[6] Rollo, pp. 79-80.

[7] Id., at 9-10.

[8] Id., at 78-79.

[9] *Furste v. Gray*, 240 Ky 604, 42 SW 2d 889; *State ex. rel. Stipp v. Colliver* (MO) 243 SW 2d 344.

[10] *State ex. rel. Stipp v. Colliver*, supra.

[11] *Housing Authority of County of Kings v. Peden*, 212 Cal App 2d 276, 28 Cal Rptr 11; *Weisgerber v. Nez Perce County*, 33 Idaho 670, 197 P 562, *Phillips v. City of Rock Hill*, 188 SC 140, 198 SE 604, 119 ALR 656.

[12] 234 SCRA 280 (1994).

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