

SADIKUL SAHALI, PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC) AND HADJA JUBAIDA H. MATBA, RESPONDENTS.

G.R. No. 134169. February 02, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner Sadikul Sahali and respondent Hadja Jubaida H. Matba were two of the contending gubernatorial candidates in Tawi-Tawi in the elections of May 11, 1998. On May 13, 1998, the Provincial Board of Canvassers proclaimed petitioner as the duly elected governor of Tawi-Tawi.

The counting of votes, canvassing of returns and consolidation of results of the elections were conducted using the Automated Election System, authorized under Republic Act No. 8436.

Before petitioner could assume office on June 30, 1998, the COMELEC promulgated Minute Resolution No. 98-1959 dated June 29, 1998, the pertinent part of which reads:

RESOLVED, consistent with the resolutions of the Commission in Sulu and Maguindanao cases, to direct the immediate manual recounting of ballots in the province of Tawi-Tawi; and in the meantime, to suspend the effects of the proclamation as a logical consequence of the manual counting and that all pleadings filed relative to SPA No. 98-349 be made to survive even beyond the June 30, 1998 deadline.[1]

It appears that the COMELEC passed the above Minute Resolution in connection with a petition filed by respondent Matba and Ismael B. Abubakar, Jr. On May 22, 1998 and docketed as SPA No. 98-349, praying for the immediate manual counting of ballots in the Province of Tawi-Tawi, on the allegation that the automated counting machines utilized in said province suffered massive and total systems breakdown resulting in the following problems:

- Inability of the machines to read the ballots properly;
- Inability of the ballots to reject spurious and excess ballots;
- Material discrepancies of figures appearing in various election documents, such as the election returns, municipal certificates of canvass, statement of votes per precinct and municipality, and the provincial certificate of canvass. Needless to say, these material discrepancies resulted in the proclamation of losing candidates. A case in point is the election contest in the Municipality of South Ubian;
- Cases of several candidates not obtaining any vote in the precinct where they are registered and where they voted;
- Absence of any entry in the statements of votes in some forty (40) precincts of Tawi-Tawi involving the position of president down to municipal councilors.[2]

On July 3, 1998, petitioner brought this special civil action for certiorari seeking the annulment of COMELEC Minute Resolution No. 98-1959. Petitioner likewise prayed for the issuance of a temporary restraining order and

writ of preliminary injunction to restrain the COMELEC from implementing or executing the assailed Resolution.

Petitioner contends that he was not notified of the filing of SPA No. 98-349. Consequently, he was not afforded an opportunity to answer the petition, and was thereby denied his constitutional right to due process. He alleges that he was also not officially notified of the promulgation by the COMELEC of Minute Resolution No. 98-1959; that he only learned of it from newspaper reports after which his counsel went to the COMELEC office in Manila to verify. Petitioner maintains that his right to assume the office of governor of Tawi-Tawi constitutes property right within the meaning of the due process clause of the Constitution. The Minute Resolution, he argues, is also void ab initio inasmuch as no pre-proclamation controversy was filed during the canvassing, and there can be no suspension of the effects of a proclamation or a recounting of ballots where there is no pre-proclamation controversy. Petitioner further states that the COMELEC erred when it granted respondent's prayer that the petition in SPA No. 98-349 be extended beyond June 30, 1998 on the strength of Section 16 of the Synchronized Elections Law of 1991,[3] saying that the said provision is inapplicable in the case at bar since no pre-proclamation case was filed. Consequently, petitioner submits that the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner subsequently filed a "Very Urgent Motion Reiterating the Prayer for the Issuance of a Temporary Restraining Order." [4] Thus, on July 14, 1998, this Court issued a Resolution directing the parties "to maintain the status quo ante prevailing at the time of the filing of the petition." [5]

In the meantime, the Office of the Solicitor General filed on October 9, 1998 a "Manifestation in Lieu of Comment," [6] wherein it opined that the COMELEC should have conducted a summary hearing before issuing Minute Resolution No. 98-1959 and should not have taken the allegations concerning systems failure in the automated counting system as gospel truth. Hence, the Solicitor General argues that the questioned resolution was issued in violation of petitioner's constitutional right to due process, citing the case of *Bince, Jr. v. Commission on Elections*, [7] where this Court held that the right to public office is a right protected by the due process clause, and the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing. [8]

On October 15, 1998, the Philippine National Bank (PNB) filed in this case a "Motion with Leave to Allow the Undersigned to Seek Clarification," [9] asking the Court whom --- between Mr. Sulay H. Halipa, who had been designated by ARMM Governor Nur P. Misuari as Officer-in-Charge of the Office of the Governor of Tawi-Tawi, and petitioner Sadikul Sahali --- it should recognize as authorized to transact business with the bank on behalf of the Province of Tawi-Tawi.

Acting on the above motion, this Court issued a Resolution on October 20, 1998. [10] It found that the COMELEC issued on July 14, 1998 a resolution holding in abeyance the implementation of the assailed Minute Resolution of June 29, 1998. On this basis, the Court ruled that, under its status quo ante order in this case, official business with the governor of Tawi-Tawi should be dealt through petitioner Sadikul Sahali, inasmuch as he was the one proclaimed as such by the COMELEC prior to the filing of this petition. In its Resolution, this Court also noted the Manifestation filed by the Office of the Solicitor General and required the COMELEC to comment on the petition.

On December 7, 1998, public respondent COMELEC submitted its Comment. [11] It countered that its findings in the assailed Minute Resolution No. 98-1959 was supported by the following documents, to wit:

- Narrative Report of Idlana Mangona, Acting Provincial Election Supervisor of Tawi-Tawi, recommending that the petition for manual recounting and revision of the official ballots be considered, due to discrepancies found in the Election Reporting System (ERS) computer; [12]

- Letter of Brigadier General Edgardo V. Espinosa, Commanding General, Headquarters Marine Forces, Southern Philippines, to then COMELEC Chairman Bernardo P. Pardo, recommending the manual counting and re-counting of votes to minimize post-election related incidents and to satisfy complaints against the use of automated counting machines which resulted in some technical and unexplained defects and errors;[13]
- Joint letter of respondent Hadja Jubalda Matba and Ismael Abubakar, Jr. to the COMELEC alleging massive systems breakdown of the automated counting machines in Tawi-Tawi.[14]

The COMELEC further stressed that the instant petition was premature because it was filed before the assailed Minute Resolution No. 98-1959 became final. The petition was subsequently rendered moot and academic when the COMELEC issued Minute Resolution No. 98-2145 on July 14, 1998, which held in abeyance the implementation of Minute Resolution No. 98-1959.[15] These events were explained further by the COMELEC when it promulgated Minute Resolution No. 98-2828 on October 15, 1998,[16] which pertinently reads:

x x x. This means that the Commission in issuing Min. Res. 98-2145 corrected itself, thus Minute Resolution 98-1959 and Min. Res. 98-2106 were never implemented and therefore at the time the status quo ante order was issued by the Supreme Court, the prevailing situation was that Sadikul Sahali was the duly proclaimed winning candidate for Governor in Tawi-Tawi as well as other proclaimed local candidates as of May 13, 1998.

RESOLVED, to clarify that Sadikul Sahali and other proclaimed local candidates are duly elected officials of Tawi-Tawi at the time referred to in the status quo ante order by the Supreme Court.

Petitioner thereafter filed his Reply,[17] reiterating the substantial arguments in his Petition and amplifying those contained in the Manifestation of the Solicitor General.

On April 29, 1999, respondent Matba filed a "Manifestation & Motion", wherein he invoked the Resolution of this Court dated March 15, 1999 dismissing the petition in G.R. No. 134188 entitled "Nur G. Jaafar, Petitioner versus The Commission on Elections, Radja Jubaida H. Matba, Ismael B. Abubakar, Jr., Habid Gulam Hadjirul, Sauragal Dayan, Hadja Monera Managula, Hadji Ladjakawasa Tabarasa, Abdurahman Nawali and Laurel Tahil, Respondents", which petition likewise sought the annulment of COMELEC Minute Resolution No. 98-1959. Accordingly, respondent Matba prayed that the instant petition be likewise dismissed for being moot and academic.

This Court agrees with respondents. Indeed, it can be gleaned from the records that shortly after the promulgation of Minute Resolution No. 98-1959, Hon. Nur G. Jaafar, Congressman, Lone District of Tawi-Tawi, wrote a letter to the COMELEC on July 3, 1998 contending that the Commission was misinformed and misled into promulgating the assailed Minute Resolution. Congressman Jaafar alleges the following to be the correct facts:

- That, the May 11, 1998 elections in Tawi-Tawi were generally clean, honest and peaceful. The votes were casted (sic), machine counted and canvassed. The winning candidates were duly proclaimed and have taken their respective oath of office prior to the promulgation of said questionable Resolution;
- That, the counting of votes were done through the automated counting machine which was pre-tested a few days before the election by Comelec technicians and conducted in the presence of representatives of all political parties. The same machine were used (sic) in the counting of votes by municipalities also in the presence of the Military, Police, Namfrel, Comelec and representative of all parties concerned which eventually led to the proclamation of the winning candidates for various positions;
- That, the recommendation of Mr. Idlana Mangona to conduct a manual recount because of system failure and/or total breakdown of the machine should not be used solely as a basis in promulgating said Resolution because Mr. Mangona was not the Comelec-In-Charge of the province during the elections, neither is he in the

position to technically attest to the defectiveness of the counting machine. Atty. Alloden Dalaig of the Comelec Central Offices was the one assigned as Chairman of the Provincial Board of Canvassers (PBC) and designated Comelec-In-Charge for the entire Province of Tawi-Tawi.

Also, neither can Bgen. Espinosa equate the situation in Sulu and Maguindanao to that of Tawi-Tawi as it was an entirely different situation, besides the General was not physically present on the ground. On the contrary, the post-election report of Col. Nelson Allaga CO 8MBLT who was the overall-in-charge of securing the last elections in the province show otherwise; (Attached letter of Col. Allaga to Honorable Chairman Pardo);

- That, the questioned Resolution triggered by the unsworn letter request of Hadja Jubaida Matba and Ismael Abubakar, defeated gubernatorial and congressional candidates, respectively, should not have been given due course considering that the same was not even calendared much more part of the agenda of the Commission of June 29, 1998; and

- Lastly and more important of all, the undersigned and other wining candidates were not given due notice and allowed to present their side thereby depriving them of their right to be heard by the Commission, a clear violation of their Constitutional right to due process.[18]

On July 10, 1998, COMELEC Executive Director Resurreccion Z. Borra issued a Memorandum inquiring and seeking clarification as to whether the COMELEC En Banc will order the Executive Director to implement Minute Resolution No. 98-2106, which resolved to direct the immediate implementation of the assailed Minute Resolution No. 98-1959, considering that there was still pending a petition for certiorari filed by Congressman Jaafar before the Supreme Court to annul Minute Resolution No. 98-1959.

It was on the basis of the foregoing that the COMELEC passed Minute Resolution No. 98-2145 which states:

RESOLVED, to hold in abeyance Min. Resolution No. 98-1959 dated 29 June 1998 and Min. Resolution No. 98-2106 dated 07 July 1998, for further study/review by the Commission.

Let the Executive Director implement this resolution.

Later, after this Court issued the status quo ante order of July 14, 1998, the COMELEC promulgated another resolution, namely, Minute Resolution No. 98-2828, which provides:

x x x. This means that the Commission in issuing Min. Res. 98-2145 corrected itself, thus Minute Resolution 98-1959 and Min. Res. 98-2106 were never implemented and therefore at the time the status quo ante order was issued by the Supreme Court, the prevailing situation was that Sadikul Sahali was the duly proclaimed winning candidate for Governor in Tawi-Tawi as well as other proclaimed local candidates as of May 13, 1998.

RESOLVED, to clarify that Sadikul Sahali and other proclaimed local candidates are duly elected officials of Tawi-Tawi at the time referred to in the status quo ante order by the Supreme Court.

Clearly, the COMELEC, *motu proprio*, reconsidered its earlier Minute Resolution No. 98-1959, as it was within its power to do, before it became final and executory. As argued by the COMELEC, it has the inherent power to amend and control its process and order. Within the thirty-day period from its promulgation,[19] therefore, the questioned Minute Resolution No. 98-1959 was still under the control of the COMELEC and may thus be recalled or set aside. Necessarily, the subsequent passage by the COMELEC of Minute Resolution No. 98-2145 on July 14, 1998, wherein it corrected its earlier Minute Resolution No. 98-1959, rendered the instant petition moot and academic.

Verily, this very same issue has already been resolved by this Court en banc in *Jaafar v. Commission on Elections, et al.*, [20] which held:

We agree with respondent COMELEC that this petition should be dismissed. The pleadings and their annexes show that shortly after this petition for certiorari to annul Minute Resolution No. 98-1959 dated 29 June 1998, was filed the COMELEC motu proprio issued M.R. No. 98-2145 on July 14, 1998 which held in abeyance the implementation of the questioned resolution and that of Minute Resolution No. 98-2106 dated July 7, 1998 for further study/review by the Commission. Hence, Resolution No. 98-1959 never became final and executory and is still subject to either recall or modification by the Commission.

The Court notes that COMELEC Resolution No. 98-2828 issued on October 15, 1998 clarified that all the winning candidates for local government positions have been proclaimed and that no declaration of failure of elections in the island province of Tawi-Tawi was made by the Commission. Sadikul Sahali (who was proclaimed governor of Tawi-Tawi) and all other local candidates who were proclaimed winners as of May 13, 1998 are the duly elected officials of Tawi-Tawi as of July 14, 1998, when the status quo ante order was issued by the Supreme Court. Accordingly, the subsequent promulgation of COMELEC Resolution Nos. 98-2145 and 9828 (sic) show that the questioned Minute Resolution No. 98-1959 of the respondent tribunal suspending the effects of the proclamation of the petitioner and other local candidates has been effectively withdrawn, or at least held in abeyance for further study and review. The subsequent issuance of COMELEC M.R. Nos. 98-2145 and 98-2828 has mooted the instant petition.

The court should refrain from expressing its opinion in a case in which no practical relief may be granted in view of a supervening event. It is a rule almost unanimously observed that courts of justice will take cognizance only of justiciable controversies wherein actual and not merely hypothetical issues are involved. Where the issue has become moot and academic there is no justiciable controversy, an adjudication thereon would be of no practical use or value.[21]

The present petition for certiorari, therefore, must be dismissed. It is grounded on alleged grave abuse of discretion and lack of jurisdiction. In the recent case of *Perla Garcia, et al. v. HRET, et al.*, [22] this Court had occasion to rule:

Certiorari as a special civil action can be availed of only if there is concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and (b) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding. There must be a capricious, arbitrary and whimsical exercise of power for it to prosper.[23]

To question the jurisdiction of the lower court or the agency exercising judicial or quasi-judicial functions, the remedy is a special civil action for certiorari under Rule 65 of the Rules of Court. The petitioner in such cases must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."

"It has been held, however, that no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of facts and evidence. A writ of certiorari may not be used to correct a lower tribunal's evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.

"In fine, certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by special civil action for certiorari." [24]

In this case, petitioner miserably failed to show that the promulgation by respondent COMELEC of the assailed Minute Resolution No. 98-1959 amounted to a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, or that its act was exercised in an arbitrary and despotic manner by reason of passion or personal hostility towards petitioner. On the contrary, the COMELEC, perhaps realizing the precipitousness of the issuance of Minute Resolution No. 98-1959, lost no time in recalling the same and promulgating Minute Resolution No. 98-2145 in its stead. To be sure, this negates any indication of grave abuse of discretion on the part of the COMELEC.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Davide, Jr., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Panganiban, J., in the result. The Comelec has already withdrawn the assailed Resolution; hence, this case is now moot.

Pardo, J., took no part.

[1] Annex "A"; Rollo, p. 20.

[2] Ibid.; Rollo, p. 19.

[3] Republic Act No. 7166, Section 16, to wit:

Pre-proclamation Cases Involving Provincial, City and Municipal offices. --- Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the board of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari (*italics ours*)

[4] Rollo, pp. 24-27.

[5] Rollo, p. 28.

[6] Rollo, pp. 40-44.

[7] 218 SCRA 782 (1993)

[8] Supra., at 793, citing *Fariñas v. Commission on Elections* (G.R. No. 81763, March 3, 1988), *Reyes v. Commission on Elections* (G.R. No. 81856, March 3, 1988), and *Gallardo v. Commission on Elections* (G.R. No. 85974, May 2, 1989)

[9] Rollo, pp. 47-50.

[10] Rollo, p. 68.

[11] Rollo, pp. 79-97.

[12] Annex "1"; Rollo, pp. 98-99.

[13] Annex "2"; Rollo, p. 100.

[14] Annex "3"; Rollo, pp. 101-102.

[15] Annex "4"; Rollo, pp. 103-105.

[16] Annex "5"; Rollo, pp. 106-107.

[17] Rollo, pp. 112-116.

[18] Rollo, pp. 103-104; emphasis copied.

[19] See CONSTITUTION, Article IX-A, Section 7, viz:

x x x. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

[20] G.R. No. 134188, March 15, 1999.

[21] Citations omitted.

[22] G.R. No. 134792, August 12, 1999.

[23] *Supra.*, citing *Suntay v. Cojuangco-Suntay*, G.R. No. 132524, December 29, 1998.

[24] *Supra.*, citing *People of the Philippines v. Court of Appeals*, G.R. No. 128986, June 21, 1999.

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