

SULTAN USMAN SARANGANI, SORAIDA M. SARANGANI AND HADJI NOR HASSAN, PETITIONERS, VS. COMMISSION ON ELECTIONS AND HADJI ABOLAIS R. OMAR, MANAN OSOP AND ATTY. NASIB D. YASSIN, RESP...*G.R. No. 135927. June 26, 2000*

Ponente: BUENA, J.

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Way back in the 1950's and during the martial law era, it has been said that even the dead, the birds and the bees voted in Lanao. This petition for certiorari under Rule 65 of the Rules of Court which seeks to nullify the Order issued by the Commission on Elections [COMELEC, for brevity] dated June 29, 1998, finding Padian Torogan in Madalum, Lanao Del Sur as "ghost precinct," is an illustrative case.

The facts are as follows:

On September 15, 1997, a petition for annulment of several precincts and annulment of book of voters in Madalum, Lanao Del Sur was filed with the COMELEC by, among others, Hadji Oblais R. Omar thru counsel Atty. Nasib D. Yasin, herein private respondents. Among the precincts sought to be annulled was Padian Torogan, subject matter of the present petition for certiorari.[1]

On September 18, 1997, the COMELEC, thru the Clerk of the Commission sent telegrams to the respective Board of Election Inspectors (BEI) of the questioned precincts in Madalum, Lanao Del Sur, including Padian Torogan, to file their answer to the petition for abolition of precincts and annulment of book of voters.[2]

On October 31, 1997, the incumbent mayor of Madalum, Lanao Del Sur, Usman T. Sarangani, herein petitioner, together with other oppositors who were allegedly barangay chairmen of the twenty- three (23) barangays the "Books of Voters" and precincts of which were sought to be annulled and abolished, respectively, filed an "Answer in Opposition"[3] which included the affidavits of the barangay chairmen of the affected precincts attesting to the fact that the move to annul the book of voters and abolish the questioned election precincts were for the purpose of diminishing the bailiwicks of the incumbent mayor of Madalum, Lanao del Sur.[4]

After hearing and submission of formal offer of exhibits and memoranda by the parties, the COMELEC issued an Order[5] dated February 11, 1998, referring the case to its Law Department for appropriate investigation. The COMELEC - Law Department conformably issued a memorandum dated April 29, 1998 directing Atty. Muslemin Tahir, the Provincial Election Supervisor of Marawi City, Lanao del Sur "to conduct a rigorous incisive investigation on the alleged ghost precincts and thereafter submit a report on the investigation conducted." [6] Consequently, Atty. Tahir created a TASK FORCE INVESTIGATION TEAM by virtue of a memorandum dated June 13, 1998 directing Election Officers Casan Macadato, Sacrain Guro and Anuar Datudacula "to conduct ocular inspection on the alleged twelve (12) ghost barangays in the Municipality of Madalum, Lanao Del Sur." [7]

On June 18, 1998, an ocular inspection was conducted on the alleged ghost precincts yielding the following

results -

"At 12:10 pm, the Task Force Investigation Team from the COMELEC accompanied by traditional leaders, political leaders, many concerned residents of this town, a representative from the Lanao del Sur Provincial Statistics Office, Mr. Lacson Abdullah, and a Team from the DILG-ARMM, Lanao del Sur, arrived in the area supposedly Barangay Padian Torogan with these comments and observations:

"It appears that in this area there are only two structures: One is a concrete house with no roof, and the other is a wooden structure without walls and roof. This obviously mean that no single human being could possibly reside in these two structures.

"Also, it came out that the name Padian-Torogan means a cemetery not a residential place. So this contradicts the records being brought by the COMELEC Team from the Census saying that the area has 45 households with a total population of 285. (Ref. Municipal census Report as of September 1, 1995).

"Besides, no less than the Chairman of the COMELEC Investigating Team asked the people around who among them is a resident or a registered voter in the so-called Barangay Padian-Torogan, and no one answered affirmatively.

"Then at 12:50 PM, the COMELEC Investigating Team still with the people mentioned above are in Barangay Lumbac to look for the other supposed Barangay named Rakutan, and found this observations.

x x x.....x x x.....x x x

"By the way, unfortunately, at the peak of this ocular inspection, the Madalum Municipal Chief of Police Mahdi Mindalano, armed with UZI pistolized Machine Gun, arrived at the scene at exactly 12:55 pm boarding an orange Mitsubishi car with four armed bodyguards, the (sic) confronted the Team Leader of the COMELEC Investigating Group and angrily insisted to stop the ocular inspection.

"This STACOM Mindalano, in warning a photographer not to take a shot on him, pointed his pistolized Rifle to this man when the photographer positioned his camera to take a picture of him while he is arguing with the investigating leader, Mr. CASAN MACADATO.

"Moving camera film and several pictures are added hereto for further information and as exhibits. Also attached hereof are the names and signatures of among the more-or-less one hundred people who observed the conduct of this ocular inspection.

(NOTE: This writer, Mr. Khalil Y. Alawi, is a member of the five (5) man Committee from the DILG-ARMM, Lanao del Sur created in respect to the Memo/Invitation from the COMELEC Provincial Office of Lanao del Sur dated June 15, 1998 signed by Mr. CASAN MACADATO, EO II, Chief Investigation Team. Mr. Macadato designated verbally and in public Mr. ALAWI to be his Secretary during this investigation, and of course, the (sic) with the consent of the DILG Team).

"I hereby certify that the foregoing are true and correct to the best of my knowledge.

Prepared by: (sgd) Khalil Y. Alawi

Member, DILG Team

Submitted by: (sgd) Casan Macadato

Election Officer II

Chairman, Task Force Investigation Team" [8]

On the basis of the foregoing, Election Officer Casan Macadato submitted to the Provincial Election Supervisor of

COMELEC in Marawi City its 1st Indorsement dated June 19, 1998 reporting the results of the ocular inspection that Padian Torogan and Rakutan were uninhabited.[9]

On June 29, 1998, the COMELEC issued the assailed Order finding "Padian Torogan as ghost precinct." The dispositive portion of the COMELEC Order reads:

"ACCORDINGLY, the Commission En Banc:

(1) resolves to GRANT the request and hereby:

(a) DIRECTS the Task Force Investigating Team created pursuant to the Order of the Commission en banc dated February 11, 1998, to continue the conduct of ocular inspection and investigation as contained in the original directive of the Law Department dated April 29, 1998;

(b) RECOMMENDS to the PNP Director and the Regional Director of the Philippine National police, (1) to immediately relieve and transfer Chief of Police Mahdi Mindalano of Madalum, Lanao del Sur and transfer him to an area where it will be extremely difficult for him to return to Mandalum and do further damage to effort of the Commission to investigate ghost precincts in said area considering the urgency of said investigation. (2) to look into the possibility of involvement of other policemen (sic) in Madalum in the aforestated criminal mischief of the Police Station Commander or their possible partisanship.

(c) RECOMMENDS to AFP Regional Command, Armed Forces of the Philippines, to immediately assign sufficient number of men to maintain peace and order in the Municipality of Madalum, Lanao del Sur, and to escort and secure the safety of the COMELEC Investigating Team during the conduct of ocular inspections and investigations.

(2) finds Padian Torogan as ghost precinct and shall be excluded from the special election to be conducted in Madalum.

(3) Order the Investigating Team, thru Macadatu, to immediately resume the investigation, the remaining ghost precincts in Madalum and to submit its findings to the Commission with dispatch, allowing it to submit partial findings if necessary.

The Law Department of this Commission is hereby directed to implement this order.

SO ORDERED." (emphasis supplied)[10]

On November 3, 1998, Sultan Usman Sarangani, Soraida M. Sarangani and Hadji Nor Hassan, in their respective capacity as former Municipal Mayor, incumbent Mayor and Vice-Mayor of Madalum filed the instant petition for certiorari and mandamus urging us to nullify the Order issued by the COMELEC, for having been issued with grave abuse of discretion. Likewise, petitioners moved to consolidate this case with G.R. No. 134456 entitled "Sultan Sarangani, et. al vs. COMELEC, et. al" alleging that G.R. No. 134456 also involves a COMELEC decision declaring the precinct corresponding to eight (8) barangays in Madalum, Lanao del Sur as ghosts precincts.

In a resolution[11] issued by this Court on January 19, 1999, we denied the motion to consolidate, considering that G.R. No. 134456 had already been dismissed in our resolutions of August 4, 1998 and August 18, 1998.

The basic issue to be resolved in this petition is whether or not the respondent COMELEC committed grave abuse of discretion in declaring Padian-Torogan as ghost precinct.[12]

On a preliminary matter, though not clear, it appears from the records that Padian Torogan is a barangay in Madalum, Lanao del Sur and it was erroneous for the COMELEC to consider Padian-Torogan as a ghost precinct. In any case, the court is not tasked to determine whether the so-called Padian Torogan is a barangay or a mere

election precinct. The petition states that precinct No. 27A located in Barangay Padian Torogan was the one declared as a ghost precinct by the COMELEC although the assailed Order did not mention any specific precinct but simply declared "Padian Torogan as ghost precinct." To be clear, what was necessarily contemplated by the assailed Order would be the election precinct in the said place.

It must be noted that under the Omnibus Election Code, there should be at least one precinct per barangay.[13] In designating election precincts, the COMELEC usually refers to them by number. Nevertheless, the determination of whether a certain election precinct actually exists or not and whether the voters registered in said precinct are real voters is a factual matter. On such issue, it is a time-honored precept that factual findings of the COMELEC based on its own assessments and duly supported by evidence, are conclusive upon this Court, more so, in the absence of a substantiated attack on the validity of the same.[14] Upon review of the records, the Court finds that the COMELEC had exerted efforts to investigate the facts and verified that there were no public or private buildings in the said place, hence its conclusion that there were no inhabitants. If there were no inhabitants, a fortiori, there can be no registered voters, or the registered voters may have left the place. It is not impossible for a certain barangay not to actually have inhabitants considering that people migrate. A barangay may officially exist on record and the fact that nobody resides in the place does not result in its automatic cessation as a unit of local government. Under the Local Government Code of 1991, the abolition of a local government unit (LGU) may be done by Congress in the case of a province, city, municipality, or any other political subdivision.[15] In the case of a barangay, except in Metropolitan Manila area and in cultural communities, it may be done by the Sangguniang Panlalawigan or Sangguniang Panglungsod concerned subject to the mandatory requirement of a plebiscite[16] conducted for the purpose in the political units affected.

The findings of the administrative agency cannot be reversed on appeal or certiorari particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have substantially affected the outcome of the case. The COMELEC has broad powers to ascertain the true results of an election by means available to it.[17] The assailed order having been issued pursuant to COMELEC's administrative powers and in the absence of any finding of grave abuse of discretion in declaring a precinct as non-existent, said order shall stand. Judicial interference is unnecessary and uncalled for.[18] No voter is disenfranchised because no such voter exist. The sacred right of suffrage guaranteed by the Constitution[19] is not tampered when a list of fictitious voters is excluded from an electoral exercise. Suffrage is conferred by the Constitution only on citizens who are qualified to vote and are not otherwise disqualified by law. On the contrary, such exclusion of non-existent voters all the more protects the validity and credibility of the electoral process as well as the right of suffrage because the "electoral will" would not be rendered nugatory by the inclusion of some ghost votes. Election laws should give effect to, rather than frustrate the will of the people.[20]

WHEREFORE, the petition is hereby DISMISSED, and the assailed Order dated June 29, 1998 of the Commission on Elections is UPHOLD. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Vitug, J., official business.

Pardo, J., no part, was Comelec chairman at the time.

[1] Records, Folder I, SPA 97-279, pp. 1-9.

[2] Ibid., pp. 18-41; Padian Torogan at p. 38.

[3] Ibid., 44-50.

[4] Ibid., pp. 52-55.

[5] Ibid., pp. 179-180.

[6] Records of SPA 98-412, pp. 9-10.

[7] Records, Folder II SPA 97- 279 and SPA 97-279- A, p. 23.

[8] Ibid., Minutes of the ocular inspection, pp. 17-22; Records of SPA 98-412, pp. 61-65.

[9] Records, Folder II SPA 97-279 and SPA 97-279-A, p. 16.

[10] Rollo, pp. 21 to 24, at p. 23

[11] Rollo, p. 38.

[12] Quoted herein are the issues submitted by petitioners -

"I

RESPONDENT COMELEC GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED ORDER DATED 29 JUNE 1998 DECLARING PRECINCT NO 27A OF BARANGAY PADIAN TOROGAN AS GHOST PRECINCT BASED ON HALF-HAZARD AND PARTIAL INVESTIGATION REPORT.

II

RESPONDENT COMELEC GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED ORDER DATED 29 JUNE 1998 DECLARING PRECINCT NO. 27A OF BARANGAY PADIAN TOROGAN AS GHOST PRECINCT WHICH, IN EFFECT, ANNULLED THE BOOK OF VOTERS (AFFECTING ALLUDED BARANGAY) TWENTY-SIX (26) DAYS BEFORE THE SCHEDULED SPECIAL ELECTION ON JULY 25, 1998 IN EVIDENT VIOLATION OF SECTION 145 OF THE OMNIBUS ELECTION CODE...

III

RESPONDENT COMELEC GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED ORDER DATED 29 JUNE 1998 DECLARING PRECINCT NO. 27 A OF BARANGAY PADIAN TOROGAN AS GHOST PRECINCT WHICH, IN EFFECT, DEPRIVED ALLUDED BARANGAY OF ITS ENTITLEMENT TO AT LEAST ONE (1) PRECINCT IN ACCORDANCE WITH SECTION 150 OF BATAS PAMBANSA BLG. 881 (OTHERWISE KNOWN AS THE OMNIBUS ELECTION CODE).

IV

RESPONDENT COMELEC GRAVELY ABUSED ITS DISCRETION IN ISSUING THE ASSAILED ORDER DATED 29 JULY 1998 DECLARING PRECINCT NO. 27A OF BARANGAY PADIAN TOROGAN AS GHOST PRECINCT WHICH, IN EFFECT, PRECIPITOUSLY DISENFRANCHISED THE QUALIFIED VOTERS OF ALLUDED BARANGAY DURING THE SPECIAL ELECTION HELD ON 25 JULY 1998 AND, IF NOT RECTIFIED, IN FUTURE ELECTIONS OR POLITICAL EXERCISES IN VIOLATION OF THEIR CONSTITUTIONAL RIGHT OF SUFFRAGE." (Petition, pp. 7-8; Rollo, pp. 9-10)

[13] Section 149 of Batas Pambansa Blg. 881 otherwise known as the Omnibus Election Code of the Philippines provides -

The unit of territory for the purpose of voting is the election precinct, and every barangay as of the approval of this Act shall have at least one such precinct.

The Commission shall establish all election precincts.

The precincts actually established in the preceding regular elections shall be maintained, but the Commission may introduce such adjustments, changes or new divisions or abolish them, if necessary; Provided, however, That the territory comprising an election precinct shall not be altered or a new precinct established within forty-five days before a regular election and thirty days before a special election or a referendum plebiscite.

[14] *Hadji Hussein Mohammad vs. COMELEC and Abdulajid Estino*, G.R. No. 136384, December 8, 1999. Citing *Malonzo vs. COMELEC*, 269 SCRA 380.

[15] Section 9, Republic Act No. 7160.

Section 9. Abolition of Local Government Units. A local government unit may be abolished when its income, population or land area has been irreversibly reduced to less than the minimum standards prescribed for its creation under Book III of this Code, as certified by the national agencies mentioned in Section 7 hereof to Congress or the sanggunian concerned, as the case may be.

The law or ordinance abolishing a local government unit shall specify the province, city, municipality, or barangay with which the local government unit sought to be abolished will be incorporated or merged.

[16] Section 10, R. A. 7160.

Section 10. Plebiscite Requirement. No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Election (COMELEC) within one hundred twenty(120) days from the date effectivity of the law or ordinance affecting such action unless said law or ordinance fixes another date.

[17] *Mastura v. COMELEC*, 285 SCRA 493.

[18] *Ibid.*

[19] Article V, Section 1, 1987 Constitution.

Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

[20] *Bautista v. COMELEC*, 298 SCRA 480.

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