

HADJI RASUL BATADOR BASHER, PETITIONER, VS. COMMISSION ON ELECTIONS AND ABULKAIR AMPATUA, RESPONDENTS.

G.R. No. 139028. April 12, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

An election must be held at the place, date and time prescribed by law. Likewise, its suspension or postponement must comply with legal requirements. Otherwise, it is irregular and void.

The Case

Petitioner[1] assails before us the June 8, 1999 Resolution of the Commission on Elections (Comelec)[2] in SPA Case No. 97-276 which dismissed a Petition to Declare a Failure of Election and to Call Special Election in Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur. The assailed Resolution disposed as follows:

"In view of the foregoing considerations, We he[re] by hold that the special elections in Barangay Maidan, Tugaya, Lanao del Sur on August 30, 1997 did not fail. The result thereof must therefore be accorded respect.

"WHEREFORE, premises considered, the Commission En Banc RESOLVES to DISMISS the petition for lack of merit."[3]

The Facts

Petitioner Hadji Rasul Batador Basher and Private Respondent Abulkair Ampatua were both candidates for the position of Punong Barangay in Barangay Maidan, Tugaya, Lanao del Sur during the May 12, 1997 barangay election. The election was declared a failure and a special one was set for June 12, 1997. Again, the election failed and was reset to August 30, 1997.

According to the Comelec, the voting started only around 9:00 p.m. on August 30, 1997 because of the prevailing tension in the said locality. Election Officer Diana Datu–Imam reported that she was allegedly advised by some religious leaders not to proceed with the election because "it might trigger bloodshed." She also claimed that the town mayor, "being too hysterical, yelled and threatened me to declare [a] failure of election in Maidan." Subsequently, the armed followers of the mayor pointed their guns at her and her military escorts, who responded in like manner towards the former. The parties were then pacified at the PNP headquarters. With the arrival of additional troops, the election officer proceeded to Maidan to conduct the election starting at 9:00 p.m. until the early morning of the following day. The holding of the election at that particular time was allegedly announced "over the mosque." [4]

The tally sheet for the said "election" showed the following results: private respondent – 250 votes; petitioner – 15 votes; and Baulo Abdul Razul, a third candidate – 10 votes.[5] Private respondent was proclaimed winner.

Petitioner then filed a Petition before the Comelec praying that the election be declared a failure. Alleging that no election was conducted in the place and at the time prescribed by law, petitioner narrated that there was a dispute that day (August 30, 1997) among the candidates regarding the venue of the election in the lone voting precinct of

the barangay. In order to avoid bloodshed, they ultimately agreed that no election would be conducted. Accordingly, the election officer turned over for safekeeping the ballot box containing election paraphernalia to the acting station commander (OIC) of the Philippine National Police (PNP). The following day, petitioner and the third candidate were surprised to learn that the election officer had directed the Board of Election Tellers to conduct the election and to fill up the election returns and certificates of canvass on the night of August 30, 1997 at the residence of the former mayor. Petitioner also stated that no announcement to hold the election at the former mayor's house that night was ever made.[6]

As earlier stated, the Comelec dismissed the Petition. Hence, this recourse to this Court.[7]

Ruling of the Comelec

The Comelec ruled against a failure of election because the two conditions laid down in *Mitmug v. Comelec*[8] were not established. It held that the "election was conducted on the scheduled date. The precinct functioned. Actual voting took place, and it resulted not in a failure to elect." [9]

In justifying the balloting at the dead of night, the poll body cited Section 22, Article IV of Comelec Resolution 2971, which provided in part that "[i]f at three o'clock, there are still voters within thirty meters in front of the polling place who have not cast their votes, the voting shall continue to allow said voters to cast their votes without interruption. x x x" The Comelec then went on to state that "experience had shown that even when there is a long delay in the commencement of the voting, voters continue to stay within the area of the polling place." [10]

Issue

Petitioner submits the following questions for the consideration of the Court:

"1. Whether or not the election held at around 10:00 o'clock in the evening of August 30, 1997 after the Acting Election Officer had verbally declared or announced a failure of election in Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur is contrary to law, rule and jurisprudence;

"2. Whether or not the election held at the residence of an Ex-mayor far from the designated Polling Place of Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur is legal or valid;

"3. Whether or not the proclamation of the private respondent as the duly elected Punong Barangay of Barangay Maidan and the seven (7) Barangay Kagawads is illegal, null and void ab initio." [11]

In the main, the crucial question that needs to be addressed is whether the "election" held on the date, at the time and in the place other than those officially designated by the law and by the Comelec was valid.

The Court's Ruling

The Petition is meritorious.

Main Issue:

Validity of the Special Election

Citing *Mitmug v. Comelec*, [12] the Comelec points out that a failure of election requires the concurrence of two conditions, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election. It ruled that these requirements were not met.

We do not agree. The peculiar set of facts in the present case show not merely a failure of election but the absence of a valid electoral exercise. Otherwise stated, the disputed "election" was illegal, irregular and void.

Election Situs Was Illegal

First, the place where the voting was conducted was illegal. Section 42 of the Omnibus Election Code provides that "[t]he chairman of the board of election tellers shall designate the public school or any other public building within the barangay to be used as polling place in case the barangay has one election precinct x x x." Petitioner, citing an Affidavit^[13] supposedly executed by the members of the Board of Election Tellers (BET) for Barangay Maidan, alleges that the election of officials for said barangay was held at the residence of former Mayor Alang Sagusara Pukunun, which is located at Barangay Pandarianao, instead of the officially designated polling precinct at Cagayan Elementary School. If this allegation were true, such "election" cannot be valid, as it was not held within the barangay of the officials who were being elected. On the other hand, it is admitted that there was a public school or building in Barangay Maidan -- the Cagayan Elementary School, which was the earlier validly designated voting center.

While the BET members later repudiated their Affidavit, they could only claim that the election was held "in Barangay Maidan."^[14] They, however, failed to specify the exact venue. In fact, to this date, even the respondents have failed to disclose where exactly the voting was conducted. This glaring omission definitely raises serious questions on whether the election was indeed held in a place allowed by law.

Voting Time Was Likewise Irregular

Second, as to the time for voting, the law provides that "[t]he casting of votes shall start at seven o'clock in the morning and shall end at three o'clock in the afternoon, except when there are voters present within thirty meters in front of the polling place who have not yet cast their votes, in which case the voting shall continue but only to allow said voters to cast their votes without interruption."^[15] Section 22, Article IV of Comelec Resolution No. 2971 also specifies that the voting hours shall start promptly at 7:00 a.m. and end at 3:00 p.m. of the same day.

However, the "election" for Barangay Maidan officials was supposed to have been held after 9:00 p.m. of August 30, 1997 until the wee hours of the following day. Certainly, such schedule was not in accordance with law or the Comelec Rules. The Comelec erred in relying on the second sentence of Section 22, Article IV of Comelec Resolution 2971, which states that "[i]f at three o'clock [in the afternoon], there are still voters within thirty meters in front of the polling place who have not cast their votes, the voting shall continue to allow said voters to cast their votes without interruption." This sentence presupposes that the election commenced during the official time and is simply continued beyond 3:00 p.m. in order to accommodate voters who are within thirty meters of the polling place, already waiting for their turn to cast their votes. This is clearly the meaning and intent of the word continue -- "to go on in a specified course of action or condition."^[16] The action or condition already subsists and is allowed to go on. Otherwise, the law should have stated instead that "the voting may also start even beyond 3:00 p.m. if there are voters within thirty meters in front of the polling place."

The strained interpretation espoused by the Comelec encourages the conduct of clandestine "elections," for it virtually authorizes the holding of elections beyond normal hours, even at midnight when circumstances could be more threatening and conducive to unlawful activities. On a doctrinal basis, such nocturnal electoral practice discourages the people's exercise of their fundamental right of suffrage, by exposing them to the dangers concomitant to the dead of night, especially in far-flung barangays constantly threatened with rebel and military gunfires.

Election Date Was Invalid

Third, the Comelec scheduled the special election on August 30, 1997. Any suspension or postponement of an election is governed by Section 2 of RA 6679,^[17] which states that "[w]hen for any serious cause such as rebellion, insurrection, violence, terrorism, loss or destruction of election paraphernalia, and any analogous causes of such nature that the holding of a free, orderly and honest election should become impossible in any barangay,

the Commission on Election motu proprio or upon sworn petition of ten (10) registered voters of a barangay, after summary proceedings of the existence of such grounds, shall suspend or postpone the election therein to a date reasonably close to the date of the election that is not held or is suspended or postponed, or which resulted in a failure to elect, but not later than thirty (30) days after the cessation of the cause for such suspension or postponement of the election or failure to elect, and in all cases not later than ninety (90) days from the date of the original election."

Election Officer Diana Datu-Imam of Tugaya, Lanao del Sur practically postponed the election in Barangay Maidan from the official original schedule of 7:00 a.m. to 3:00 p.m. of August 30, 1997 to 10:00 p.m. of August 30, 1997 until the early morning of August 31, 1997. She attempted to justify her postponement of the election by citing threats of violence and bloodshed in the said barangay. Allegedly because of the tension created by armed escorts of the municipal mayor and the military, Datu-Imam declared a failure of election in order "to ease their aggression." However, as election officer, she has no authority to declare a failure of election. Indeed, only the Comelec itself has legal authority to exercise such awesome power. An election officer alone, or even with the agreement of the candidates, cannot validly postpone or suspend the elections.

Election Postponement Was Invalid

Fourth, Datu-Imam did not follow the procedure laid down by law for election postponement or suspension or the declaration of a failure of election. She narrated the circumstances surrounding her declaration as follows:[18]

"When I returned to [as] certain the situation in Maidan, the Mayor, being too hysterical, yelled and threatened me to declare [a] failure of elections in Maidan. When I insisted to personally confirm the probable cause of bloodshed (at Maidan), his armed followers/escorts pointed their guns to me and my escorts. Likewise my military escorts pointed their guns to the mayor and his men 'Man to Man'. The Datus and religious leaders pacified us at the PNP Headquarters.

"After a couple of hours, the military officers and I agreed to adapt another strategy just to pursue with the elections in Maidan [by] hook or by crook. Considering that they forcibly took away from us the ballot box containing paraphernalia of Maidan, I didn't have any recourse but give them. I turned-over the ballot box to the Acting Chief of Police, Malik Bantuas with proper receipt, taking away from the box the CEF 2 & 2-A, declaring verbally a failure of elections in Maidan just to ease their aggression and so that we could pull-out of the place freely."

It clearly appears from the very report of Datu-Imam to the Comelec that she did not conduct any proceeding, summary or otherwise, to find out whether any of the legal grounds for the suspension or postponement or the declaration of failure of the election actually existed in the barangay concerned.

Notice Was Irregular

Finally and very significantly, the electorate was not given ample notice of the exact schedule and venue of the election. The election officer herself relates:[19]

"When the tension was slightly alleviated, I directed the military personnel to pull-out of the Municipio and withdrew to a nearby Barangay (for safety) where some of the militaries (sic) were deployed. After planning and coordinating with the Batallion (sic) Commander, we waited for the additional troupes (sic) that arrived at around 8:30 in the evening. At the stroke of 9:00 o'clock, we started for Maidan via the national Highway thru the Municipality of Balindong and others thru a short-cut way (sic) eastward of Tugaya. Utilizing the election paraphernalia earlier shipped by the Commission as I have requested (sic) and a ballot box from the PES, we went on with the election (after announcing it over the mosque) peacefully and orderly despite the tiredness (sic) and exhaustion felt by the people the whole day waiting/expecting for the election as I have assured them earlier (sic). x x x"

As can be gleaned easily from the above report, the electorate of Barangay Maidan was not given due notice that the election would push through after 9:00 p.m. that same day. Apparently, the election officer's decision to hold the election on the night of August 30, 1997 was precipitate. Only after additional military troops had arrived at their site in a nearby barangay about 8:30 p.m. did the election officers proceed to Barangay Maidan. Arriving at Maidan, they allegedly proceeded to conduct the election "after announcing it over the mosque."

Such abbreviated announcement "over the mosque" at such late hour did NOT constitute sufficient notice to the electorate. Consequently, not the entire electorate or even a respectable number could have known of the activity and actually participated therein or voluntarily and discerningly chosen not to have done so.

Indeed, the Court in *Hassan v. Comelec*[20] held that the notice given on the afternoon of the election day resetting the election to the following day and transferring its venue was "too short." We said that "[t]o require the voters to come to the polls on such short notice was highly impracticable. x x x 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.[21] The time for holding it must be authoritatively designated in advance." [22]

In the case at bar, the announcement was made only minutes before the supposed voting. If one-day notice was held to be insufficient in *Hassan*, the much shorter notice in the present case should all the more be declared wanting. It should in fact be equated with "no notice."

In sum, the "election" supposedly held for officials of Barangay Maidan cannot be clothed with any form of validity. It was clearly unauthorized and invalid. It had no legal leg to stand on. Not only did the suspension/postponement not comply with the procedure laid down by law and the Comelec Rules, neither was there sufficient notice of the time and date when and the place where it would actually be conducted. It was thus as if no election was held at all. Hence, its results could not determine the winning punong barangay.

WHEREFORE, the Petition is hereby GRANTED and the assailed Resolution SET ASIDE. The proclamation of private respondent as punong barangay is hereby declared VOID. Respondent Comelec is ORDERED to conduct a special election for punong barangay of Maidan, Tugaya, Lanao del Sur as soon as possible. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Bellosillo, J., no part, did not take part in deliberation.

Vitug, J., on official business abroad.

Purisima, J., joins the dissent of J. De Leon, Jr.

De Leon, Jr., JJ., see dissent.

[1] Petitioner describes the present recourse as a "Petition for Review on Certiorari." The Court, however, resolved to consider it as a Petition for Certiorari under Rule 65 of the Rules of Court because it is grounded on grave abuse of discretion on the part of the Comelec.

[2] The Resolution was signed by Comelec Chairman Harriet O. Demetriou, Commissioners Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liaco Flores, Japal M. Guiani, Luzviminda G. Tancangco and Abdul Gani Marohombsar Al Hadj.

- [3] Assailed Resolution, p. 8; rollo, p. 20.
- [4] Narrative Report of Election Officer Diana T. Datu-Imam, cited in the assailed Resolution, pp. 4-5; rollo, pp. 16-17.
- [5] Annex "K," Petition; rollo, p. 38.
- [6] Petition to Declare a Failure of Election, pp. 2-3; rollo, pp. 23-24.
- [7] The Court deemed the case submitted for decision upon the filing of Respondent Comelec's Comment on October 29, 1999. Private respondent's Comment was received on July 23, 1999. This case, however, was assigned to the undersigned ponente for the writing of the Court's Decision during the deliberations of the Court on April 11, 2000 when his erstwhile Dissent was voted as the majority opinion.
- [8] 230 SCRA 54, February 10, 1994.
- [9] Assailed Resolution, p. 8; rollo, p. 20.
- [10] Ibid., p. 6; rollo, p. 18.
- [11] Petition, p. 4; rollo, p. 6.
- [12] 230 SCRA 54, February 10, 1994. See also §6, Omnibus Election Code.
- [13] Rollo, p. 34.
- [14] See Assailed Comelec Resolution, p. 4.
- [15][§190, OEC, as amended.
- [16] Webster's New World Dictionary, 2nd College ed. (1974). (Emphasis supplied.)
- [17] Otherwise known as the Barangay Election Law, which amended parts of the OEC.
- [18] Narrative Report dated August 31, 1997 of Election Officer Diana T. Datu-Imam, p. 2; rollo, pp. 57-58.
- [19] Narrative Report, supra.
- [20] 264 SCRA 125, November 13, 1996, per Kapunan, J.
- [21] Citing *Furste v. Gray*, 240 Ky 604, 42 SW 2d 889; and *State ex rel Stipp v. Colliver*, (MO) 243 SW 2d 344.
- [22] Hassan, supra, p. 134.

DISSENTING OPINION

DE LEON, JR., J.:

With due respect, I dissent from the majority decision or ponencia of Mr. Justice Artemio V. Panganiban which grants the petition in the case at bench.

Before us is a special civil action for certiorari under Rule 65 which seeks to set aside the Resolution^[1] dated June 8, 1999 of the Commission on Elections (COMELEC) en banc in SPA Case No. 97-276, denying petitioner's petition to declare a failure of election in Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur and to annul the proclamation of private respondent and seven (7) others as winners of the August 30, 1997 barangay special election.

The petitioner captioned and erroneously stated that the nature of this petition is a "petition for review on certiorari." However, in this verified petition, the petitioner alleges that respondent COMELEC "acted without or in excess of jurisdiction and/or grave abuse of discretion:" (a) in dismissing the petition in SPA No. 97-276 for alleged lack of merit; (b) in not declaring a failure of election on August 30, 1997 and not calling for a special election in Precinct No. 12, Barangay Maidan, tugaya, Lanao Del Sur; and (c) in not declaring as illegal, null and void ab initio the proclamation on August 30, 1997 of private respondent as the duly elected Punong Barangay of Barangay Maidan. Petitioner then prays that COMELEC's assailed Resolution be reversed, the proclamation of private respondent as Punong Barangay be annulled and that COMELEC be ordered to set a special election in the same precinct or barangay. Considering the well-settled rule that what determines the nature of action are the

allegations of the complaint or petition, and the character of the relief sought,[2] and considering the interest of justice, we accordingly treat this petition as a special civil action for certiorari under Rule 65.

During the May 12, 1997 barangay election, petitioner Hadji Rasul Batabor Basher, the incumbent punong barangay, and private respondent Abulkair Ampatua were candidates for the position of punong barangay. However, there was a failure of election in Precinct No. 12, the lone precinct of Barangay Maidan, prompting the COMELEC to reset the election to June 11, 1997. Unfortunately, there was again a failure of election. Election was reset to August 30, 1997.

Reports submitted to the COMELEC indicated that election was held as re-scheduled, and that private respondent along with Monatao Ebrahim, Lontowa Pokaan, Baser Abdala, Saadia Gonteng, Kodos Mangebarat, Bonsa Mabatao and Kamilo Hadji Rasul were proclaimed as duly elected punong barangay and barangay kagawads, respectively, of Barangay Maidan, Tugaya, Lanao del Sur.

In his letters dated September 2, 1997[3] and September 5, 1997[4] to the COMELEC, petitioner requested that a failure of election be declared in Precinct No. 12. Petitioner claimed:

"x x x

"That in the early morning of August 30, 1997, I together with other candidates for Barangay Officials and registered voters of Precinct No. 12, Barangay Maidan, and several others including local officials and some candidates of other barangays, were in the Municipal Hall of Tugaya, Lanao del Sur to observe and witness the releases (sic) of Ballot boxes and other election paraphernalias (sic) intended for the eight (8) barangays where special elections will be conducted including barangay Maidan;

"That the ballot boxes and other election paraphernalia for the seven (7) barangays were released to the Board of Election tellers and the special elections therein have (sic) functioned but in Barangay Maidan, Tugaya, Lanao del Sur, there was again a failure of election thereat (sic) because of the disagreement among candidates and watchers on (sic) the venue of the voting on account of the presence of an estimated number (sic) of two hundred (200) heavily armed persons in the nearby premises of the Polling Place (sic) of Precinct No. 12, Barangay Maidan at Cayagan Elementary School who were determined to commit violence or disrupt and/or disturb the election therein to ensure the victories of their beloved candidates;

"That on account of said serious disagreement and the intercession of local officials, civic and religious not to conduct the special election in Barangay Maidan to avoid bloodshed and loss of lives and damage to properties, it was agreed that no election will be held and so the Acting Election Officer, Mrs. Diana T. Datu Imam, delivered and turn (sic) over the ballot box containing all election paraphernalia intended for Barangay Maidan, Tugaya, Lanao del Sur to Malic Bantuas, OIC Satition (sic) Commander or Chief of Police of said Municipality as evidenced by an acknowledgement Receipt signed by said OIC Station Commander xerox copy of which is hereto attached marked as Annex "A" and formed integral part hereof;

"That after turning over and delivery of said ballot box to the aforesaid OIC Station Commander, the Acting Election Officer left and never returned to the Municipal Hall where I and other candidates had been waiting for further advice from the same Election Officer;

"x x x

"That to my great surprise with other candidates for barangay officials in our barangay and the electors thereat (sic), we learned on the following morning of August 31, 1997, that Acting Election Officer and her alleged designated Board of Election Tellers conducted an election in an unknown place at around 2:00 A.M. of August 31, 1997, without any notice to me and other candidates and the electors themselves (sic) and then allegedly proclaimed some candidates for Punong Barangay and Barangay Kagawads as winners;[5]

x x x."

In her un rebutted report to COMELEC Commissioner Manolo B. Gorospe, Election, Officer Mrs. Diana T. Datu Imam recounted the events that took place on August 30, 1997 as follows:

"x x x

"Prior to the Election, on August 29, 1997, I coordinated with the Battalion Commander, Col. Luciano Campos of Malanang, Lanao del Sur and discussed the prevailing peace, and order condition of (sic) Tugaya. Later, I proceeded to the Municipality of Pualas to personally confer with the my (sic) Military In-Charge regarding probable causes of failure of elections that might be imposed (sic) by the people who doesn't (sic) want an election. At 1:30 in the afternoon, the military personnel were deployed in Tugaya on that same day (sic).

"On Election Day, as I was approaching the PNP Headquarters, some religious leaders advised me not to pursue with the election because an election in Tugaya will cause trouble and might trigger bloodshed. The Mayor invited me for a short conference and furnished me a copy of then spurious resolution to bar the holding of election. In return, I gave him a copy of the Memo of Atty. Pio Jose S. Joson and proceeded immediately to distribute the Election Paraphernalia to the respective Military BETs.

"Without further ado, I personally escorted the BETs to their respective polling places westward (sic) of Tugaya at the same time directing the Military to go eastward for Brgy. Maidan, so that I will be going back (sic) to personally supervise their election after delivering the 7 Barangays (sic).

"When I returned to certain (sic) the situation in Maidan, the Mayor, being too hysterical, yelled and threatened me to declare failure of elections in Maidan. When I insisted to personally confirm the probable cause of bloodshed (at Maidan), his armed followers/escorts pointed their guns to me (sic) and my escorts. Likewise, my military escorts pointed their guns to (sic) the mayor and his men men (sic) "Man to Man." The Datus and religious leaders pacified us at the PNP Headquarters.

"After a couple of hours, the military officer and I agreed to adapt (sic) another strategy just to pursue with the elections in Maidan hook or by crook. Considering that they forcibly took away from us the ballot box containing paraphernalia of Maidan, I didn't have any recourse but give them (sic). I turned-over the ballot box to the Acting Chief of Police, Malik Bantuas with proper receipt, taking away from the box the CEF 2 & 2-A, declaring verbally a failure of elections in Maidan just to ease their aggression and so that we could pull-out of the place freely (sic).

"When the tension was slightly alleviated, I directed the military personnel to pull-out of the Municipio and withdrew to a nearby Barangay (for safety) where some of the militaries (sic) were deployed. After planning and coordinating with the Batallion (sic) Commander, we waited for the additional troops (sic) that arrived at around 8:30 in the evening. At the stroke of 9:00 O'clock, we started for Maidan via the national Highway thru the Municipality of Balindong and others thru a short-cut way (sic) eastward of Tugaya. Utilizing the election paraphernalia earlier shipped by the Commission as I have requested (sic) and a ballot box from the PES, we went on with the election (after announcing it over the mosque) peacefully and orderly despite the tiredness (sic) and exhaustion felt by the people the whole day waiting/expecting for the election as I have assured them earlier (sic). The people were very thankful and relieved because the alleged report of creating bloodshed were brazen lie and merely tricks (sic).

"The Special Elections in Tugaya was finished at 3 O'clock a in the morning. All of the 8 Barangays functioned."[6]

Petitioner then filed a petition with the COMELEC, docketed as SPA Case No. 97-276, praying that the barangay special election in Precinct No. 12 be declared a failure and that the proclamation of private respondent and the other kagawads be declared null and void. The COMELEC dismissed the petition and found that the barangay

special election was held in fact in Barangay Maidan and that it started only at 9:00 o'clock p.m. due to the presence of the Mayor's armed followers who earlier in the day confiscated the original ballot box and pointed their guns at Election Officer Datu Imam and her military escorts. Hence, COMELEC held that the said election is valid inasmuch as Section 22, Article IV of COMELEC Resolution No. 2971 permits the casting of ballots even after 3:00 o'clock p.m. if there are voters within thirty (30) meters from the polling place who have not cast their votes. The COMELEC also considered the importance attached to barangay elections by the barangay electorate as evidenced by the fact that voters of the said Precinct No. 12, which significantly is the lone precinct in Barangay Maidan, continued to stay within the vicinity of the polling place obviously to be able to vote even when the commencement of voting has long been delayed. The COMELEC stressed that this was precisely the case in Barangay Maidan, considering that the barangay election therein has already been postponed twice. The COMELEC pointed out that the two (2) conditions for declaring a failure of election cited in *Mitmug v. COMELEC*,^[7] namely (1) no voting has taken place in the precinct or precincts on the date fixed bylaw or, even if there was voting, the election nevertheless results in failure to elect, and (2) the votes not cast would affect the result of the election, are not present in this case.

Dissatisfied, petitioner filed the instant petition.

The petition is not meritorious.

Petitioner assails the validity of the August 30, 1997 barangay special election on two (2) grounds: first, as to the time when it was conducted, and second, as to the place where it was held. It is not disputed that the said barangay special election in Barangay Maidan was finally conducted from 9:00 o'clock p.m. on August 30, 1997 until 3:00 o'clock a.m. of the following day in view of the presence of the Mayor's armed followers who earlier in the day pointed their guns at Election Officer Datu Imam and her military escorts. It cannot be denied that the COMELEC has the power to declare a failure of election.^[8]

Petitioner, alleges that candidates and voters were not given prior notice that the said barangay special election would take place in the evening of August 30, 1997; that the designated time for the special election was contrary to Section 22, Article IV of COMELEC Resolution No. 2971, which specifies that voting hours shall promptly start at 7:00 o'clock a.m. and shall end at 3:00 o'clock p.m.; and that the barangay election was held at the residence of a former mayor, allegedly in an area far from the designated polling place, and that only one or a few individuals allegedly accomplished the ballots. As a consequence thereof, petitioner, his running mates for barangay kagawad and their respective supporters were allegedly unable to cast their votes thereby warranting a declaration by the COMELEC that there was a failure of election.

The time during which the election in Barangay Maidan was conducted on August 30, 1997 was somewhat unusual due to the extraordinary circumstances. However, that it was allegedly contrary to COMELEC Resolution No. 2971 and Section 190 of the Omnibus Election Code was not actually so. We bear in mind our disquisition in *Hassan v. COMELEC*^[9] that:

"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. 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 it may fairly and reasonably be said that the purpose of the statute has been carried out. 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 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."^[10]

In Hassan which involves a municipal election, we held that notice given in the afternoon of May 28, 1995, resetting the special election to May 29, was insufficient. However, in the case at bench which involves a barangay special election in Precinct No. 12 which is the sole precinct in Barangay Maidan, the announcement was made in the mosque a few hours before voting actually commenced. Unlike Hassan, the circumstances of the case at bench, impel us to arrive at a different conclusion. In Hassan, we found that only 328 out of the 1,546 registered voters in five (5) precincts of Madalum, Lanao del Sur were able to cast their votes. In the case at bench, the records are bereft of any evidence that the said announcement or notice made in the mosque of Barangay Maidan whose populace is predominantly Muslim living in the small territorial jurisdiction of said barangay, resulted in the disenfranchisement of a substantial number of voters and that the votes not cast would materially affect the results of the election. Petitioner merely alleges that private respondent, who is one of his opponents for the position of punong barangay, garnered 250 votes whereas he (petitioner) was credited with only 15 votes. Petitioner disputes the probability of these results in view of the fact that he was the incumbent punong barangay with several relatives, friends and supporters in Barangay Maidan. Apart from his bare assertions, there was no indication in the subject petition, much less evidence, as to the total number of registered voters in Barangay Maidan and the number of voters who were allegedly unable to exercise their right of suffrage in the said barangay special election.

With respect to petitioner's allegation that the barangay election in Barangay Maidan was held at the house of former Mayor Alang S. Fukunum in Pandiaranao, Tugaya, Lanao del Sur, we find the same unworthy of credence. In support of his allegation, petitioner presented the affidavits of Cpl. Conrado Doroy, Cpl. Ale Garcia and Pfc. Ferdinand Bangayan. However, as found by the COMELEC, the said affiants testified before the Provincial Election Supervisor of Lanao del Sur that voting was actually held in Barangay Maidan. More importantly, the said affiants executed another affidavit[11] disclaiming the contents of their first affidavit on the ground that they were "ready made" and that they had no knowledge of its contents as their first affidavit was not translated to them in the vernacular. In his petition before this Court, petitioner alleges that the barangay election was held at the house of the former mayor while in his affidavit,[12] which was executed three (3) days after the barangay special election, he states that the election was allegedly held at an unknown place. Those conflicting allegations cast doubt on the petitioner's credibility. On the other hand, this Court, not being a trier of facts, has to give due weight and credence to the findings of facts of COMELEC, and more particularly to the un rebutted Report[13] of Election Officer Datu Imam that the subject barangay special election, was in fact held in Barangay Maidan, Tugaya, Lanao del Sur, and that the registered voters of said barangay were sufficiently notified as to the place and time of said barangay special election which was in fact a neighborhood election. The notification or announcement was made in the mosque in that barangay because the voters of Barangay Maidan are predominantly Muslim. Sc

The power to declare a failure of election and to set aside the results thereof is an extraordinary remedy. As early as *Mandac v. Samonte*,[14] we held that courts should be slow in nullifying elections, exercising the power only when it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which in fact defeat the true expression of the will of the electorate.[15] As a rule, therefore, the following conditions must be satisfied before the COMELEC can favorably act upon a petition to declare a failure of election: (1) that no voting has taken place in the precinct or precincts on the date fixed by law or, even if there was voting, the elections nevertheless result in a failure to elect; and (2) the votes not cast would affect the result of the election.[16] In the light of the facts as borne in the records, these two conditions do not obtain in the case at bench. Consequently, in *Balindong v. COMELEC*[17] and *Co v. COMELEC*,[18] we refused to declare a failure of election despite alleged irregularities in the conduct of elections in the absence of evidence that the right of suffrage of a substantial portion of the electorate was prejudiced thereby. We find no compelling reason to

deviate from these jurisprudential rulings of this Court. In the case at bar, there is certainly absence of evidence that the right of suffrage of a substantial portion of the electorate of Barangay Maidan was allegedly prejudiced in the said barangay special election in Precinct No. 12 which is the only precinct of the said barangay. On the other hand, to grant the Petition, in the light of the unique circumstances in this case, means to declare a failure of the barangay special election for the third time, and thereby unwittingly frustrate the will of the majority of the barangay electorate to elect the private respondent as Punong Barangay and to reject the petitioner who resorted to legal technicalities and relied on the presence of the threatening armed followers of the Mayor who is obviously sympathetic to the petitioner. Is that just and equitable?

IN VIEW OF ALL THE FOREGOING, I vote to deny the Petition. It is my considered opinion that respondent COMELEC, in rendering its subject Resolution dated June 8, 1999 in SP Case No. 97-276, did not act with grave abuse of discretion. The Petition in the case at bench should be as it is hereby DISMISSED.

[1] Annex "A" of the Petition, Rollo, pp. 13-21; Concurred in by Chairman Harriet O. Demetriou and Commissioners Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liacco Flores, Japal M. Guiani, Luzviminda G. Tancangco and Abdul Gani Marohombsar Al Hadj.

[2] *Union Bank of the Philippines v. Court of Appeals*, 290 SCRA 198 (1998).

[3] Addressed to Commissioner Manolo B. Gorospe as Commissioner-in-Charge of Region IX, XII and the ARMM; Records, p. 6.

[4] Addressed to Atty. Muslemen P. Tahir, Provincial Election Supervisor of Lanao del Sur; Records, p. 7.

[5] Records, p. 14-15.

[6] Records, p. 89-90.

[7] 230 SCRA 54 (1994).

[8] Republic Act No. 7166, Section 4.

[9] 264 SCRA 125 (1996).

[10] *Id.*, p. 134.

[11] Records, p. 110.

[12] *Supra*, note 4.

[13] Records, pp. 89-90.

[14] 49 Phil. 284 (1926).

[15] *Id.*, p. 299.

[16] *Supra* note 6; *Sardea v. COMELEC*, 225 SCRA 275 (1993); *Usman v. COMELEC*, 42 SCRA 667 (1971).

[17] 260 SCRA 494 (1996).

[18] Unsigned Resolution, G.R. No. 78820, May 17, 1988.

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