

MAIMONA H. N. M. S. DIANGKA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ATTY. ALI M. BALINDONG, RESPONDENTS.*G.R. No. 139545. January 28, 2000*

Ponente: GONZAGA-REYES, J.

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Challenged in this petition for certiorari with a prayer for the issuance of a temporary restraining order and/or preliminary injunction are the Resolution of September 2, 1998[1] of the Second Division of the Commission on Elections (COMELEC), declaring petitioner Maimona H.N.M.S. Diangka (DIANGKA) disqualified as candidate for Mayor of Ganassi, Lanao del Sur in the May 11, 1998 elections, and the Resolution of August 24, 1999[2] of the COMELEC en banc denying DIANGKA's motion for reconsideration.

Briefly, the antecedents as gathered from the records are:

A special action for disqualification was commenced by private respondent Ali M. Balindong (BALINDONG), a rival mayoralty candidate of DIANGKA, before the COMELEC on May 27, 1998.[3] BALINDONG sought to disqualify DIANGKA from continuing to run as candidate for Mayor in the May 11, 1998 elections in the municipality of Ganassi, Lanao del Sur, on the ground that the latter and her husband, then incumbent mayor of said municipality, committed acts of terrorism in order to accord DIANGKA an undue advantage at the polls. BALINDONG alleged, among others, that DIANGKA, directly or indirectly through her husband, committed serious acts of terrorism in violation of the Omnibus Election Code as follows:

- First Act of Terrorism – that of having compelled the Watchers of other candidates through force, threat and intimidation to leave the ballot box and election paraphernalia for Precinct No. 2-A thereby giving respondent and her followers free hands in the filling-up of the official ballots in favor of the respondent and thereby enhanced her candidacy.[4]

- Second Act of Terrorism – that of having swooped down and assaulted the Poblacion of Ganassi, Lanao del Sur, creating tumultuous commotion or disturbances therein scaring away and preventing voters from casting their votes, snatching ballot boxes and other election paraphernalia including the official ballots and thereafter stuffing the ballot boxes with spurious ballots favoring and enhancing the candidacy of the respondent.[5]

As regards the first act of terrorism, it was alleged that DIANGKA together with the Barangay Chairman of Barangay Bagoaingud, Lombayan Dubar and several others, loaded and transported the ballots, ballot boxes and other election paraphernalia intended for Precinct No. 2A at the Gadongan Elementary School in an ambulance car of the municipality. Instead of transporting the ballots, ballot boxes and other election paraphernalia directly to the aforesaid precinct, the ambulance stopped in Barangay Bagoaingud where the watchers of DIANGKA's rivals were forced to alight from the ambulance amidst threats and intimidation.[6] As regards the second act of terrorism, it was alleged that on election day, the husband of DIANGKA, Mayor Omra Maning Diangka, accompanied by several armed men including the Chief of Police went to the Ganassi Central Elementary School where several precincts were clustered and created commotion by firing their firearms in the air.[7]

In her Answer[8] filed on July 2, 1998, DIANGKA did not traverse the allegations contained in the petition but merely made a general denial and attacked the sworn statements attached to the petition as hearsay, self-serving, biased, fabricated and designed to eliminate her from the mayoralty race in the municipality.

On July 14, 1998, the COMELEC en banc issued an Omnibus Order declaring a partial failure of election in nine (9) out of the fifty-eight (58) precincts in Ganassi, Lanao del Sur, and, accordingly scheduled special elections on July 27, 1998 in the nine (9) precincts. The results of the special elections were consolidated with the results of the May 11, 1998 elections, and DIANGKA emerged as the winner. Based on the COMELEC's preliminary determination that the evidence against DIANGKA in the petition for disqualification is strong, the former ordered the Municipal Board of Canvassers to cease and desist from proclaiming her. Nevertheless, DIANGKA's proclamation as mayor of the municipality proceeded on July 27, 1998 since the Municipal Board of Canvassers received the order an hour after the proclamation.[9]

On the date of the hearing of the petition for disqualification on August 13, 1998, only BALINDONG and his counsel appeared. BALINDONG's counsel marked and offered in evidence the affidavits of BALINDONG's witnesses to support the petition and thereafter asked the COMELEC for a period of five (5) days to file his memorandum. After BALINDONG and his counsel left, the counsel of DIANGKA arrived and was informed of what had transpired. Upon his request, DIANGKA's counsel was allowed to file a memorandum with the affidavits of her witnesses.

On September 2, 1998, the COMELEC 2nd Division issued a Resolution disqualifying DIANGKA as candidate for Mayor of Ganassi, Lanao del Sur, on the basis of the following findings:

"x x x. Respondent is the wife of then incumbent Ganassi Mayor Omra Maning Diangka who is disqualified from seeking another term as Mayor. As a gesture of tradition in Philippine politics, if the husband is disqualified to run by reason of his having already served three (3) consecutive terms, it is the wife who is fielded as candidate in her husband's stead. While we find credibility and consistency in the testimonies of petitioner's witnesses which all point to the perpetration of terrorism during the election, respondent cannot escape liability by the mere expedient of stating that she is not privy nor a participant to the said acts of terrorism. In our considered view, such terrorism and violation of election laws were perpetrated to enhance her candidacy and are attributable to her, she being the wife of the incumbent Mayor and widely acknowledged to be fielded by her husband to run for the mayoralty seat in Ganassi, Lanao del Sur.

After a careful and thorough examination of the evidences, we find that the same possess the degree of persuasiveness that could warrant the disqualification of respondent from running as mayoralty candidate of Ganassi, Lanao del Sur. The alleged acts of terrorism and violation of election laws are sufficiently established by the documentary evidence submitted by petitioner Balindong."[10]

On September 9, 1998, DIANGKA filed a motion for reconsideration.[11] In a Resolution dated August 24, 1999, the COMELEC en banc denied the motion for reconsideration and affirmed the resolution of the COMELEC Second Division.[12]

In the meantime, however, and during the pendency of the instant petition, Baguio A. Macapodi, duly elected Municipal Vice-Mayor of Ganassi, Lanao del Sur took his oath of office on August 30, 1999 as Municipal Mayor of Ganassi, Lanao del Sur and has assumed the duties and responsibilities thereof as the lawful successor in accordance with the Local Government Code.[13]

Hence, the present petition for certiorari on the following grounds:

- THE PETITIONER COULD NOT BE DISQUALIFIED ON THE BASIS OF THE ALLEGED TERRORISM SUPPOSEDLY PERPETRATED BY HER HUSBAND AT THE GANASSI CENTRAL

ELEMENTARY SCHOOL AT 2:00 P.M., MAY 11, 1998. THE COMELEC VIOLATED THE RULE OF RES INTER ALIUS ACTA. IT IS NOT EVEN CLAIMED THAT THE PETITIONER CONSPIRED WITH HER HUSBAND IN THE ALLEGED CRIMINAL ACTS COMMITTED. THERE IS EVEN NO EVIDENCE SUBMITTED THAT THE PETITIONER WAS WITH HER HUSBAND WHEN THE ALLEGED CRIMINAL ACTS WERE COMMITTED;

- WITH RESPECT TO PRECINCT 2A, THE COMELEC DISQUALIFIED THE PETITIONER CITING AS SOLE BASIS THE AFFIDAVITS OF TWO (2) WATCHERS OF THE PRIVATE RESPONDENT WHO ARE OBVIOUSLY BIASED WITNESSES. ONLY ONE WITNESS AFFIRMED HIS AFFIDAVIT BEFORE THE COMELEC. THE OTHER DID NOT;

- THE COMELEC DID NOT EVEN DISCUSS OR CONSIDER THE TESTIMONY OF THE ELECTION OFFICER OF GANASSI; THE MEMBERS OF THE BOARD OF ELECTION INSPECTORS OF THE ADJOINING PRECINCTS; THE TESTIMONY OF THE PNP CHIEF OF POLICE WHO ALL DENIED THE ALLEGATIONS OF THE TWO (2) WATCHERS OF THE PRIVATE RESPONDENT. "Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented." [Ang Tibay vs. Court of Industrial Relations, 69 Phil. 635] THERE IS VIOLATION OF DUE PROCESS OF LAW.

- THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT MERELY RELIED ON THE AFFIDAVITS OF THE WITNESSES OF THE PRIVATE RESPONDENT WITHOUT CONDUCTING CLARIFICATORY QUESTIONING AND/OR CROSS-EXAMINATION OF THE WITNESSES. THE PROCEEDINGS ON AUGUST 13, 1998 BEING EX-PARTE, THE COMELEC SECOND DIVISION SHOULD HAVE CONDUCTED CLARIFICATORY QUESTIONS AND/OR CROSS-EXAMINATION OF THE WITNESSES OF PRIVATE RESPONDENT. IT SHOULD NOT HAVE RELIED ON THE MERE SAY SO OF THE WITNESSES."[14]

At the outset, it must be stressed that we cannot depart from the settled norm of reviewing decisions of the COMELEC, i.e., "this Court cannot review the factual findings of the COMELEC absent a grave abuse of discretion and a showing of arbitrariness in its decision, order or resolution." [15] The arguments of petitioner DIANGKA do not convince this Court that the COMELEC gravely abused its discretion in ordering her disqualification.

A perusal of the issues raised by DIANGKA readily shows that there is an attempt to discredit the factual findings of the COMELEC that DIANGKA, directly or indirectly through her husband, who was then incumbent mayor of the municipality, committed acts of terrorism which is a ground for disqualification under Section 68 of the Omnibus Election Code. The said section enumerates the instances where a candidate can be disqualified by the COMELEC, to wit:

SEC. 68. – Disqualifications. - Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Section 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant of a foreign country shall not be qualified to run for any elective office under this code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Sec. 25, 1971 EC)." (emphasis supplied)

The following are excerpts from the Resolution dated August 24, 1999 of the COMELEC en banc affirming the

Resolution dated September 2, 1998 of the COMELEC (Second Division):

"There is enough evidence to support the findings of the Commission (Second division) that the alleged acts of terrorism and violation of election laws, which transpired in her presence, are sufficiently established by the evidence submitted by the Petitioner and that the same were perpetrated to enhance her candidacy and are attributable to her.

It is not denied by respondent that then incumbent Mayor of Ganassi is Omra Maning Diangka, her husband. A preponderance of evidence shows that it was an ambulance car that was used in the distribution of ballots and other election paraphernalia. In fact, in her affidavit, respondent explicitly stated that it was an ambulance that was used. She had not denied that the same is under the control of and being used by Omra Maning Diangka and his family. No specific denial of this fact can be found in her Answer. And as shown by the evidence, the respondent was in that ambulance, at the front seat beside the driver where she can easily give directions for the latter to follow during the time material to the petition.

Petitioner's witness, Hadji Naif Amerol, a watcher of mayoral candidate Salahudin Amerol, stated in his affidavit the following:

- At about 12:00 noon of May 11, 1998 we boarded the ambulance car of Ganassi, Lanao del Sur to keep watch over the election paraphernalia, official ballots and ballot box intended for Precinct No. 2A of Barangay Bagoainged loaded in the said car. On board the car were certain Mansawi, the BEI Chairman of the said precinct, Mr. Mamosaca Marangit, an elementary Grades teacher and brother-in-law of mayoral candidate Maimona Diangka; one (1) armed man whom I have identified later on as LOMBAYAN DUBAR, Barangay Chairman of Barangay Bagoainged, Ganassi, Lanao del Sur; mayoral Maimona Diangka;

- The ambulance vehicle took off from Pindulunan and was driven straight to Barangay Bagoainged. The election paraphernalia, official ballots and other election supplies intended for Precinct No. 2A were not brought to the officially designated polling place at Gadungan Elementary School at Gadungan, Ganassi, Lanao del Sur but to a private house at Bagoainged, Ganassi, Lanao del Sur. We protested but to no avail in that we were threatened to be killed with high-powered firearms of several men led by Barangay Lombayan Dubar if we insist on watching them or do not leave the place;

The Commission (En Banc) finds it significant that Respondent has not successfully refuted the allegations of Petitioner. Nowhere in all her pleadings submitted before this Commission has Respondent presented any evidence sufficient to rebut Petitioner's allegations. It was only in her affidavit attached to her motion for reconsideration that Respondent denied these allegations. Quite late for her.

In Respondent's belatedly submitted affidavit, she stated as follows:

- I did not participate nor did I have any previous knowledge nor consented to the alleged terrorism supposedly committed by my husband, Mayor Maning Diangka described by Mamolawan B. Balindong in her supposed affidavit submitted to the Commission on Elections xxx. I was in my house at Bagoaingud when the purported incident allegedly transpired 'past 1:00 o'clock' and 'about past 2:00 o'clock in the same afternoon;

xxx xxx xxx

- My opponent, Atty. Ali M. Balindong, did his best to delay the distribution and delivery of the ballot boxes of the three precincts of Barangay Bagoaingud. It was only about noontime of May 11, 1998 that the clustered precincts of Precinct Nos. 2A1 and 2A2 of Barangay Bagoaingud were given to the Board of Election Inspectors. Thereafter, the members of the BEI of said precincts, watchers of candidates, PNP policemen, and I boarded the ambulance vehicle together with the ballot boxes and election documents of Precinct 2A, and the clustered precincts of 2A1 and 2A2. I was seated in front of the vehicle beside the driver;

- Since it was already past noon when we reached the junction going to the Gadungan Elementary School, I

asked the driver to first bring me to my residence which was about 500 meters away from the junction. xxx Accordingly, the driver brought me to my house where alighted. xxx[.]

Petitioner notes in his Comment/Opposition to the motion for reconsideration, that the foregoing denials were in fact admissions that the Respondent had control over the driver of the ambulance vehicle, bolstering Petitioner's allegation against respondent. Moreover, it further shows that the said ambulance vehicle, a property that belongs to the municipality, is under the control of respondent's husband and was being used at the same time by respondent during election day. Respondent's admission that she was a passenger in the ambulance vehicle on election day already speaks volumes. More so, when respondent admitted that the driver, at her request, dropped her off at her house. Hence, respondent was not a mere passenger of the ambulance but one who controls its driver. And she was there not as an ordinary person but as a candidate whose interest should not be served through the use of government assets, even if they are under the control of her husband, the incumbent Mayor of the Municipality of Ganassi. She cannot now deny that her use thereof on election day was facilitated by the incumbent mayor who has control over the ambulance. Much less can she deny the fact that she was an active participant in the commission of the offense.

On the second act of terrorism complained of, the description of the incident by the BEI Chairman Almairan Aguam (Annex C Petition) vividly show that it was incumbent Mayor Omra Maning Diangka who disrupted the voting process by violence and forcefully took the ballot box in the precinct. The incumbent mayor could not have done it just for the heck of it. Rather, it is clear that said terrorist acts were done to favor not just any of the candidates but were calculated to ensure the victory in the polls of a specific candidate, his wife. It cannot be said that the terrorism of Mayor Diangka was a blind one. Also, neither can it be said that respondent was unaware of this nor was she unaware that arms were being used on election day to further the ends of her candidacy. The incident in Bagoaingud shows clearly that she was using arms through her husband, his men and her supporters to achieve her political ends."

We uphold the foregoing factual findings, as well as the conclusions reached by the COMELEC. Factual findings of the COMELEC based on its own assessments and duly supported by gathered evidence, are conclusive upon the court, more so, in the absence of a substantiated attack on the validity of the same,[16] as is the case in the instant petition.

In support of the first ground, DIANGKA argues that her disqualification was simply based on relationship, she being the wife of the alleged terrorist; that there is no evidence that she conspired with her husband in the perpetration of the acts of terrorism; and that there is a violation of the rule that "the rights of a party cannot be prejudiced by an act, declaration, or omission of another." [17]

Contrary to DIANGKA'S claim, the COMELEC found evidence of her direct participation in the first act of terrorism. She was on board the ambulance used to transport the ballots, ballot boxes and other election paraphernalia intended for Precinct 2A at the Gadongan Elementary School. Instead of proceeding directly to said place, the ambulance went to Barangay Bagoaingud where the watchers of DIANGKA's rivals were forced off the ambulance at gunpoint by barangay chairman Lombayan Dubar and their cohorts. DIANGKA could not feign ignorance as to what had transpired as the COMELEC had found, based on her own admission and the testimonies of witnesses, that DIANGKA was a passenger in the ambulance; that she had control over the driver of the ambulance, who upon her request, dropped her off at her house; and that the ambulance belongs to the municipality under the control of her mayor husband. Evidently, the application of the rule on *res inter alios acta* is unavailing on account of these circumstances which show her participation or at the very least her acquiescence to the incident.

Neither could DIANGKA escape responsibility on the ground that there is no proof that she and her husband conspired to commit the acts of terrorism. Inasmuch as her husband along with his cohorts fired their

high-powered firearms in the air during election day in a place where several voting precincts were clustered has been duly established, DIANGKA could only argue that she cannot be held liable for the actuations of her husband.

The fact that DIANGKA was not at the scene when the aforesaid event happened does not necessarily exculpate her. First of all, it could not be expected that DIANGKA herself would have swooped down on the voting precincts in Ganassi Elementary School and fired the high-powered firearms in the air. Secondly, she has not successfully presented any evidence which tends to disprove that she was actually a lay figure or alter ego of her husband and fielded by the latter to run, as he was no longer qualified to run for another term as mayor pursuant to the Local Government Code which limits the tenure of local elective officials to three (3) consecutive terms. Third, her participation in the first act of terrorism taken together with what happened at the Ganassi Central Elementary School ultimately points to a common purpose and community of interest between the mayor husband and his candidate wife, that is, to accord the latter undue advantage at the polls. Hence, she cannot be held blameless for the acts perpetrated by her husband.

As regards the second, third and fourth grounds, DIANGKA would have this Court analyze and weigh all over again the evidence already considered in the proceedings before the COMELEC on the ground that she was denied due process.

We find that DIANGKA was not denied due process. DIANGKA was given all the opportunity to prove that the evidence on her disqualification based on the commission of acts of terrorism was not strong. On July 21, 1998, she filed her Answer to the petition to disqualify her. On August 24, 1998 she submitted her memorandum. The COMELEC Second Division considered the evidence of the parties and their arguments and thereafter affirmed his disqualification. As stated by this Court in *Nolasco vs. Commission on Elections*,^[18] "[t]he hoary rule is that due process does not mean prior hearing but only an opportunity to be heard." The COMELEC gave DIANGKA all the opportunity to be heard.

DIANGKA cannot also fault the COMELEC for not conducting clarificatory questioning and/or cross-examination of the witnesses; or that witness Hadji Naif Amerol did not appear nor affirm his affidavit during the hearing before the COMELEC. Again, our ingrained jurisprudence is that technical rules of evidence should not be rigorously applied in administrative proceedings specially where the law calls for the proceeding to be summary in character.^[19] Pursuant to Section 4, Rule 25 of the 1993 COMELEC Rules of Procedure, petitions for disqualifications are subject to summary hearings.^[20] In relation thereto, Section 3, Rule 17^[21] of the said Rules provides that it remains in the sound discretion of the COMELEC whether clarificatory questions are to be asked the witnesses-affiants, and whether the adverse party is to be granted opportunity to cross-examine said witnesses-affiants. Furthermore, when the COMELEC en banc reviews and evaluates a party's petition, or as in the case at bar, a party's answer and the supporting papers attached thereto, the same is tantamount to a fair "hearing" of his case.^[22]

In fine, there is no showing that the COMELEC gravely abused its discretion in issuing the Resolutions subject of the instant petition.

WHEREFORE, the instant petition is hereby DISMISSED. The Resolution of the COMELEC (Second Division) dated September 2, 1998 and Resolution of the COMELEC en banc dated August 24, 1999 are hereby AFFIRMED.

SO ORDERED.

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

Pardo, J., no part.

[1] Annex "A" of petition, Rollo, pp. 31-39. Per Commissioners Julio F. Desamito and Japal M. Guiani.

[2] Annex "C" of petition, Rollo, pp. 57-65.

[3] Annex "D" of petition, Rollo, pp. 66-69.

[4] Ibid., p. 67.

[5] Ibid., p. 68.

[6] Ibid., p. 67.

[7] Ibid., p. 68.

[8] Annex "E" of petition, Rollo, pp. 75-82.

[9] Rollo, p. 127.

[10] Rollo, pp. 38-39.

[11] Rollo, p. 40.

[12] Rollo, p. 57.

[13] Chapter 2, SEC. 44. Permanent Vacancies in the Office of the Governor, Vice Governor, Mayor and Vice Mayor. – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the office of the governor, vice governor, mayor, or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

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[14] Rollo, pp. 17-18.

[15] *Lozano vs. Yorac*, 203 SCRA 256 (1991)

[16] *Malonzo vs. COMELEC*, 269 SCRA 380.

[17] Section 28, Rule 130 of the Revised Rules of Evidence.

[18] 275 SCRA 762 (1997)

[19] *Nolasco vs. Comelec*, 275 SCRA 762 (1997)

[20] Rule 25, SEC. 4. Summary Proceeding. – The petition shall be heard summarily after due notice.

[21] Rule 17, SEC. 3. Oral Testimony Dispensed with Where Proceedings are Summary. – When the proceedings

are authorized to be summary, in lieu of oral testimony, the parties may, after due notice, be required to submit their position paper together with affidavits, counter-affidavits and other documentary evidence; and then there is a need for clarification of certain matters, at the discretion of the Commission or the Division, the parties may be allowed to cross-examine the affiants. xxx xxx xxx.

[22] Borja, Jr. vs. Commission on Elections, 260 SCRA 604 (1996)

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