

**NILO D. SOLIVA, ROGELIO B. DOCE, HERNANITA M. BACQUIAL,
ULYSSES B. SUCATRE, ANTONIO D. DURON, EDUARDO HINUNANGAN,
MONICA P. LASALA, CARLOS E. MARTINEZ, AND ROSIANA L.
POPADERA, ...**

G.R. No. 141723. April 20, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before us is a petition for certiorari and prohibition under Rule 65 of the Rules of Court with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order to nullify and set aside the resolution of public respondent Commission on Elections (COMELEC) dated February 11, 2000 in Comelec SPA No. 98-324, declaring a failure of election in the entire municipality of Remedios T. Romualdez (RTR), Agusan del Norte and nullifying the proclamation of herein petitioners as the winning candidates in the May 11, 1998 local election. The petition also seeks to enjoin and prohibit respondent COMELEC from enforcing and implementing the aforesaid resolution.

The factual antecedents from which the present petition proceeds are as follows:

Herein petitioners and private respondents vied for the local posts in RTR during the local elections of May 11, 1998. Petitioners belonged to the Lakas-NUCD party while private respondents ran under the Laban ng Makabayan Masang Pilipino (LAMMP) banner.[1]

On May 12, 1998, all the LAKAS candidates (herein petitioners) were proclaimed as the winning candidates. Six days after, or on May 18, 1998, respondent Alexander Bacquial filed a petition to declare a failure of election due to alleged "massive fraud, terrorism, ballot switching, stuffing of ballots in the ballot boxes, delivery of ballot boxes by respondent Soliva, his wife and men from several precincts to the supposed canvassing area, failure of the counting of votes in the precincts or polling places upon instructions of respondent Soliva and other anomalies or irregularities, not to mention the alleged attempt of one of Soliva's men later on identified as Eliseo Baludio to assassinate Mr. Bacquial when he was about to cast his vote in Precinct 17-A in San Antonio, RTR in the early morning of May 11, 1998." [2] The petition was later amended to include the other co-candidates of respondent Bacquial in the LAMMP party.

In support of their allegations, herein private respondents (petitioners before the COMELEC) presented the sworn statements of witnesses Nestor Fuentes, Faustino Abatayo, Eddie Roa, Max C. Ponce, Danilo Taculayan, Alejandro Martinez, Enecito Salas and the joint affidavit of Alejandro Martinez, Eddie Roa, Max Ponce, Danilo Taculayan, Rudy Alima, Warlito Mandag and Apolinario Pesitas who all attested to particular incidents involving alleged irregularities in certain polling precincts.

Private respondents also submitted in evidence the Order of the Provincial Election Supervisor, Atty. Roland Edayan, dated May 12, 1998, directing Col. Felix P. Ayaay, the Provincial Director of the Philippine National

Police, to investigate reports of grave threats, intimidation and coercion directed against the supporters of mayoralty candidate respondent Bacquial. Copies of several election returns which did not bear the signatures of the LAMMP pollwatchers were likewise presented to prove that such watchers were not allowed inside the municipal gymnasium where the canvassing of votes was conducted.

Petitioners, on the other hand, denied that violence, terrorism, fraud and other similar causes attended the conduct of the election. To disprove private respondents' allegations, they appended photocopies of the Minutes of Voting and Counting of Votes in Precinct Nos. 17-A and 16-A. They insisted that the LAMMP pollwatchers signed the election returns; that the Board of Election Inspectors (BEI) announced the results of the counting and accomplished the election returns in their respective precincts; and that these elections returns were thereafter submitted to the Municipal Board of Canvassers (MBC).

Petitioners also alleged that at six o'clock in the evening of May 11, 1998, the MBC convened and around one-thirty in the morning of May 12, 1998, the canvass of election returns started. After all election returns from the thirty-three (33) electoral precincts had been canvassed, the MBC proclaimed the winners.

Mr. Tago M. Mangontra, who was impleaded before the COMELEC in his capacity as Chairman of the MBC, maintained that a public counting was had in all the thirty-three (33) precincts although the venue of the counting was transferred to the multi-purpose gymnasium of the municipality. He admitted having received a letter-protest calling for the suspension of the canvassing due to failure of election but claimed that there was no evidence to substantiate the allegations; and that the grounds alleged in the letter-protest were proper in a pre-proclamation controversy and, therefore, not within the competence and jurisdiction of the MBC. Mangontra denied having told a certain Ms. Faith Tanguilan that the canvassing of votes for the local posts were finished ahead of those for the national candidates. He likewise averred that all the candidates and their respective representatives were duly notified of the canvassing and that the proclamation was concluded without any objection from the parties' representatives.

After the arguments were heard on June 16, 1998, the parties agreed to submit the case for resolution five (5) days thereafter, with or without their respective memoranda.

On February 11, 2000, the COMELEC rendered the assailed resolution declaring a failure of election in the municipality of RTR, holding thus:

WHEREFORE, premises considered, this petition is GRANTED. A failure of election is hereby declared in the Municipality of Remedios T. Romualdez, Agusan del Norte and the proclamation of the private respondents as the winning candidates during the May 11, 1998 elections is declared null and void.

Consequently, let a special election be held thereat on a date fixed by the Commission en banc thru a separate resolution as soon as the funds for the purpose shall have been released.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government and the Governor of Agusan del Norte.

Meanwhile, let the Law Department investigate the alleged irregularities herein and determine the extent of the culpability of each of the respondents and file the appropriate charge or charges against them as the evidence so warrants.

SO ORDERED.[3]

Hence, the present petition, attributing grave abuse of discretion amounting to lack of, or in excess of, jurisdiction to respondent COMELEC for the following reasons:

5.1

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK, OR IN EXCESS, OF JURISDICTION WHEN, WITHOUT ANY FORMAL PROCEEDINGS AND ABSENT ANY FORMAL PRESENTATION OF EVIDENCE AND WITNESSES, IT DECLARED A FAILURE OF ELECTION IN REMEDIOS T. ROMUALDEZ ONLY ON FEBRUARY 11, 2000, OVER ONE (1) YEAR AND EIGHT (8) MONTHS AFTER THE MAY 11, 1998 ELECTIONS.

5.2

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN, CONTRARY TO RULE 26, SECTIONS 4 AND 6 OF THE COMELEC RULES OF PROCEDURE, IT DECLARED A FAILURE OF ELECTION IN REMEDIOS T. ROMUALDEZ ONLY ON FEBRUARY 11, 2000 AND AFTER OVER TWENTY (20) LONG MONTHS FROM THE MAY 11, 1998 ELECTIONS AND THE FILING OF THE PETITION.

5.3

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF, OR IN EXCESS OF JURISDICTION WHEN IT DECLARED A FAILURE OF ELECTION ON FEBRUARY 11, 2000 IN REMEDIOS T. ROMUALDEZ, NOTWITHSTANDING THE ABSENCE OF LEGITIMATE AND LAWFUL GROUNDS OR CAUSES, AND AFTER OVER ONE (1) YEAR AND EIGHT (8) MONTHS AFTER THE MAY 11, 1998 ELECTIONS.

5.4

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN, NOTWITHSTANDING THE OVERWHELMING EVIDENCE OF THE REGULAR VOTING, NORMAL COUNTING OF VOTES AND THE CANVASSING OF ELECTION RESULTS, IT STILL DECLARED A FAILURE OF ELECTION IN REMEDIOS T. ROMUALDEZ ON THE BASIS OF ALLEGED EVIDENCE CONSISTING OF AFFIDAVITS WHICH IDENTIFIED ONLY THREE (3) SPECIFIC PRECINCTS OF THE THIRTY THREE (33) FOR THE ENTIRE MUNICIPALITY, AND THE DECLARATION WAS MADE ONLY ON FEBRUARY 11, 2000 AND OVER TWENTY (20) LONG MONTHS AFTER THE MAY 11, 1998 ELECTION.[4]

In sum, the issue posed for resolution by this Court is whether or not the COMELEC erred in declaring a failure of election in the entire municipality of RTR.

The Solicitor General, on his part, maintains that the declaration of a failure of election was proper under the circumstances because (1) the counting of ballots and the canvass of the returns were fraught with fraud as the transfer of counting from the polling precincts to the multi-purpose gymnasium was irregular and without authority of the COMELEC and the conformity of the private respondents or their representatives; (2) the proclamation of petitioners was irregular as the Certificate of Proclamation was signed by the MBC on May 12, 1998 while the tabulation of the votes, verification and preparation of the Statement of Votes, Certificate of Canvass and the proclamation of the winning candidates for President down to the local officials were finished only on May 14, 1998; and (3) the election was marred by threats, violence, intimidation, coercion, and harassment as attested to in the sworn statements attached to the memorandum of private respondents.

We dismiss the petition.

The 1987 Constitution vested upon the COMELEC the broad power to enforce all the laws and regulations relative to the conduct of elections as well as the plenary authority to decide all questions affecting elections except the question as to the right to vote.[5] Section 4 of Republic Act 7166, or the Synchronized Elections Law

of 1991, states:

Sec. 4. Postponement, Failure of Elections and Special Elections. - The postponement, declaration of failure of elections and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. xxx

Section 6 of the Omnibus Election Code also provides:

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

In *Mitmug v. Commission on Elections*,^[6] we held that before the COMELEC can act on a verified petition for the declaration of a failure of election, two conditions must first concur: (1) that no voting has taken place on the date fixed by law or even if there was, the election results in a failure to elect, and (2) the votes not cast would affect the result of the election.

Section 6 of the Omnibus Election Code contemplates three instances when the COMELEC may declare a failure of election and call for the holding of a special election. First, when the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud or other analogous cases. Second, when the election in any polling place had been suspended before the hour fixed by law for the closing of the voting. And third, after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect.^[7]

We agree with the findings of the COMELEC that there was a failure of election in the municipality of RTR, as the counting of the votes and the canvassing of the election returns was clearly attended by fraud, intimidation, terrorism and harassment. Findings of fact of administrative bodies charged with a specific field of expertise are afforded great weight and respect by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive and should not be disturbed. The COMELEC, as the administrative agency and specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, has more than enough expertise in its field that its findings and conclusions are generally respected and even given finality.^[8]

It is not controverted by the petitioners that the counting of the votes was transferred from the polling places to the multi-purpose gymnasium without the knowledge and permission of herein private respondents or their representatives and that the counting of the votes and the canvassing of the election returns were done without the latter's presence. Thus, the COMELEC was correct in finding that:

The counting by the BEI and the canvassing by the MBC were done without the accredited watchers or duly authorized representatives of the petitioners thus making the election returns and the statements of votes not worthy of faith and credit and not reliable documents to gauge the fair and true expression of the popular will.

The rights of watchers as embodied in our election laws are not ineffectual rights. They are part and parcel of the measures to protect the sanctity of the sovereign will.

To cite a few of these rights:

1. witness and inform themselves of the proceedings of the board;
2. take note of what they may see or hear;
3. take photographs of the proceedings and incidents, if any, during the counting of votes, as well as the election returns, tally board and ballot boxes;
4. file a protest against any irregularity or violation of law which they believe have been committed by the board or by any of its members or by any person;
5. obtain from the board a certificate as to the filing of such protest and/or of the resolution thereon;
6. read the ballots after it shall have been read by the chairman, as well as the election returns after it shall have been completed and signed by the members of the board without touching said election documents; and
7. be furnished, upon request, with a certificate of votes casts for the candidates, duly signed and thumbmarked by the chairman and all members of the board.[9]

It is likewise not denied that the transfer of the counting from the polling places to the multi-purpose gymnasium was without the authority of the COMELEC as required by law. The irregularity of the transfer of venue was highlighted by the fact that the same was not recorded by the Board of Election Inspectors (BEI). The COMELEC learned of said transfer only from the answer of Mr. Mangontra to the petition[10] filed with the COMELEC by the herein private respondents. Truth to tell, the Commission's authority was never sought to effect the transfer of venue. Thus, we accord respect its finding on this matter:

Apparently, when the venue for the counting was transferred without notice to or conforme by the petitioners or their duly authorized representatives or accredited watchers and more so, when the counting by the Board of Election Inspectors and the canvassing by the Municipal Board of Canvassers were both conducted without their presence, their aforesaid rights were violated. This therefore put the integrity of the ballots to serious doubt. It is not surprising therefore when, as pointed out by both public and private respondents, not one of the election returns was objected to during the canvassing. Experience taught us that more often than not, representatives of parties, specially those for the losing candidates, have the inclination to object to the conclusion of election returns during the canvassing. This is an admitted reality in this jurisdiction. With the scenario being painted to us by the respondents, we are constrained to conclude that the same was a result of the absence of the petitioners or their representatives during the canvassing for as alleged by the petitioners, they were forcibly barred from witnessing the proceedings. And the Minutes of Voting and Counting of Votes which private respondents attached as annexes "1" and "2" to their answer to the amended petition bolster our findings. Where not one of the LAMMP poll watchers signed in the space provided therefor in Precinct 17-A while the two watchers for precinct 16-A, namely, Homer Sajulan and Apolinario Pecitas, although they had purportedly affixed their names and signatures therein, the same appear to have been prepared by one and the same person only as can be inferred from the handwriting or penmanship which interestingly, is also similar to the penmanship of and the pen used by the one who wrote the names of those illiterate and/or physically disabled voters in the space likewise provided therefor. Besides, only these two watchers left at 10:00 while there is no indication that the others also left at the same time.

What is more glaring is the absence of the signature and thumbmark of the petitioners' assigned poll watchers on the election returns from the different precincts which they submitted as their Exhs. "M" to "M-14", inclusive. As shown thereon, not one of the names listed in Annex "2" of private respondents' memorandum which is the list of the official poll watchers of the LAMMP Party was present during the time that the same was prepared.[11]

Sections 39 and 40 of the COMELEC Resolution No. 2971, entitled "The General Instructions of the Board of

Election Inspectors on the Casting and Counting of Votes for the May 11, 1998 Elections" were clearly violated and they read as follows:

SEC. 39. Counting of votes to be public and without interruption. - After the voting is finished, the board shall count the votes cast and ascertain the results in the polling place. Unless otherwise ordered by the Commission, the board shall not adjourn, postpone or delay the counting.

SEC. 40. Transfer of counting of votes to safer place. - If on account of imminent danger of violence, terrorism, disorder or similar causes, it becomes necessary to transfer the counting of votes to a safer place, the Board may effect such transfer to the nearest safe barangay or school building within the municipality by unanimous approval of the board and concurred by the majority of the watchers present. This fact shall be recorded in the Minutes of Voting and Counting of Votes, and all the members of the board and the watchers shall manifest their approval and concurrence by affixing their signatures therein.

In effecting the transfer, the board shall ensure the safety and integrity of all election documents and paraphernalia. The PNP and/or the AFP in the area in consultation with the election officer shall provide adequate security and transport facilities to the members of the board and the election documents and paraphernalia during the transfer and counting of votes.

The preceding provisions are related to, and are in consonance with, Section 18 of R.A. No. 6646, The Electoral Reforms Law of 1989, which reads:

Section 18. Transfer of Counting of Votes to Safer Place. - If on account of imminent danger of violence, terrorism, disorder or similar causes it becomes necessary to transfer the counting of votes to a safer place, the board of inspectors may effect such transfer by unanimous approval of the board and concurrence by the majority of the watchers present. This fact shall be recorded in the minutes of the voting and the members of the board and the watchers shall manifest their approval or concurrence by affixing their signatures therein. The Commission shall issue rules and guidelines on the matter to secure the safety of the members of the board, the watchers, and all election documents and paraphernalia.

All these provisions emphasize the need to safeguard the popular will, hence, the counting of votes must be done openly and publicly with all the parties represented therein.

Also, petitioners were irregularly proclaimed winners on May 12, 1998 as shown in the Certificate of Proclamation which was signed by the members of the MBC on the same day. The Minutes of Canvass reveal that the MBC finished reading the election returns only on May 13, 1998 at eight o'clock in the evening after which their proceedings were terminated on May 14, 1998.

The pertinent portions of the Minutes of Canvass reveal the following:

xxx

At the Sangguniang Bayan Session Hall of Remedios R. Romualdez, Agusan del Norte on May 11, 1998 at 6:00 o'clock in the evening the Municipal Board of Canvassers was called for order by the Chairman, Mrs. Charlita B. Furinas was requested to lead the opening prayer. It was followed by an oath-taking by all the members of the Board and their support Staff.

There being no election return to canvass, the Chairman declared a recess and to resume at 10:00 P.M. or at any time the Board will receive an election return to canvass.

At 1:30 A.M. of May 12, 1998 the first election return in Precinct No. 2-A-1 was received and the Chairman immediately called for the resumption of the Canvass.

xxx xxx xxx

The reading of election returns was exactly finished at 8:00 P.M. of May 13, 1998. The Board and the supporting staff proceed with the tabulation of results and the typing of the Certificate of Canvass and the Proclamation of the winning candidates.

After the typing, the Board with the assistance of the support Staff took through the review of the tallies [and] the totals of the votes obtained by each candidates (sic) from President down to the Local Positions. Verification was made until the Board signed and thumbmarked all the documents particularly the Statements of Votes, the Certificate of Canvass, the Certificate of Proclamation of winning candidates, paper seal, etc.

The Municipal Board of Canvassers finished the works at exactly 2:00 A.M. of May 14, 1998. The Vice-Chairman moved for the adjournment of the meeting and it was duly seconded and approved by the Chairman.

xxx[12]

The irregular proclamation of the petitioners on May 12, 1998 was made more apparent by the answer of Mr. Mangontra to the petition filed with the COMELEC by the private respondents, thus:

Herein respondent likewise ADMITS the allegations in said paragraph 6 of the petition that a certain MS. FAITH TRANQUILAN appeared before him in the evening of May 13, 1998, but with the qualification that undersigned respondent did not inform her that the canvassing for local candidates was made ahead and was already finished, for the Board never canvassed the election returns for local and national candidates separately but at one time in immediate succession in the following order, viz: first, the votes for candidates for national positions; second, the votes for the party-list, and; third, the votes for candidates for local positions. Candidates and representatives of political parties having been duly notified, the Board proceeded with the canvass and proclamation, as no election returns had been contested or objected to during the canvass.[13]

How then could there have been a valid proclamation on May 12, 1998 when the reading of the votes was finished only on May 13, 1998?

To be sure, the sworn statements[14] attached to the Memorandum of private respondents which attest to the fact that the May 11, 1998 election in RTR was marred with intimidation, terrorism and harassment was corroborated by the Order dated May 12, 1998 issued by Provincial Election Supervisor Atty. Roland G. Edayan addressed to Col. Felix P. Ayaay, PNP Provincial Director which reads:

ORDER

xxx xxx xxx xxx

There are reports reaching my office that in yesterday's elections many people, especially the supporters of mayoralty candidate Alexander C. Bacquial, were prevented from voting in several barangays of the municipality of Remedios T. Romualdez allegedly because of grave threats, intimidations, and coercions coming from armed men belonging to the political opponents of mayoralty candidate Bacquial.

In this connection, you are hereby ordered to conduct the necessary investigation of said incident and to submit to me your findings and recommendations thereon as early as possible.

Compliance herewith is hereby enjoined.[15]

Significantly, herein petitioners did not submit any counter affidavits to rebut the sworn statements submitted by the witnesses for private respondents.

In sum, the election held at RTR on May 11, 1998 cannot be accorded regularity and validity as the massive and pervasive acts of fraud, terrorism, intimidation and harassment were committed on such day. While it may be true

that election did take place, the irregularities that marred the counting of votes and the canvassing of the election returns resulted in a failure to elect. And when there is a failure of election, the COMELEC is empowered to annul the election and to call a special election.[16] Thus, we find that the COMELEC did not commit grave abuse of discretion in issuing the assailed resolution.

WHREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED and the status quo ante order issued by this Court lifted.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Pardo, J., no part.

[1] The specific positions for which the respective parties contended are as follows:

For LAKAS-NUCD

Mayor - Nilo D. Soliva

Vice-Mayor - Rogelio B. Doce

Members of the Sangguniang Bayan:

Prudencio J. Aguadera

Hernanita M. Bacquial

Ulysses B. Sucatre

Antonio D. Duron

Eduardo P. Hinunangan

Monica P. Lasala

Carlos E. Martinez

Rosiana L. Popadera

For LAMMP

Mayor - Alexander C. Bacquial

Vice-Mayor - Ismael O. Tito

Members of the Sangguniang Bayan:

Faustino A. Abatayo

David P. Alejo

Mamerto L. Bacon

Cesar C. Osa

Prudencio L. Pabillore

Armando S. Pangadlin

Eniceto U. Salas

Quintin A. Say-ao

[2] Rollo, p. 65

[3] Id., at 90-91.

[4] Id., at 23-24.

[5] Article IX-C, Section 2 (3), 1987 Constitution.

[6] 230 SCRA 54 (1994).

[7] *Typoco, Jr. v. Comelec*, 319 SCRA 498, 505-506 (1999); *Canicosa v. Comelec*, 282 SCRA 512 (1997).

[8] *Ocampo v. COMELEC*, G.R. No. 136282 and *Ocampo v. Salalila*, G.R. No. 137470, February 15, 2000.

[9] Rollo, pp. 78-80. Emphasis ours.

[10] See p. 5, this Decision.

[11] Rollo, pp. 80-81.

[12] Rollo, pp. 302-312.

[13] Id., at 85. Emphasis ours.

[14] See pp. 3-4, this Decision.

[15] Id., at 87-88.

[16] In view, however, of the proximity of the regular elections, the holding of a special election to fill the vacancies in the local posts in the Municipality of RTR would not be feasible and practical at this time.

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