

**SANGCAD S. BAO, PETITIONER, VS. COMMISSION ON ELECTIONS,
ATTY. RAY SUMALIPAO, COL. FELIX CASTRO, JR., MUNICIPAL
BOARD OF CANVASSERS OF BUTIG, LANA DEL SUR, DIMNATANG L.
PANSAR,...**

G.R. No. 149666. December 19, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Sangcad S. Bao sought re-election as mayor of Butig, Lanao del Sur in the May 14, 2001 elections.

Aside from petitioner, the other candidates for mayor were Gorigao Langco (Langco), Dimnatang L. Pansar (Pansar), and Rasmia U. Salic Romato (Romato).

On May 25, 2001, petitioner filed before the COMELEC a "Very Urgent Petition for Suspension of Counting of Votes by [the] B[oard of] E[lection] I[n]spectors], Canvass of Election Returns and Proclamation of Winners by [the Municipal Board of Canvassers], and Declaration of Failure of Election in Butig, Lanao del Sur,"[1] naming Pansar, COMELEC Provincial Election Supervisor Atty. Ray Sumalipao, and "COMELEC Deputy" Col. Felix Castro, Jr. as respondents. The petition, which was docketed as SPA Case No. 01-336, alleged that:

- he requested Acting Election Officer Taha Casidar (Casidar) to adopt the Project of Precincts with six (6) clustered voting centers which he (petitioner) recommended, after consultation with political parties, but over his (petitioner's) vehement opposition, "Military COMELEC Deputy" Col. Felix Castro, Jr. disregarded the plan without consulting both parties and the voters concerned;
- in Precincts 1A-13A, Philippine National Police personnel bearing high-powered firearms were seen escorting persons who are not voters therein;
- in Precincts 9A-10A, ballot boxes were missing during the period of casting of votes;
- in Precincts 14A-15A, the wife of vice-mayorality candidate Pundaracab Ander forcibly took possession of the Book of Voters and acted as Board of Election Inspectors and conducted the voting by herself;
- in Precincts 20A-27A and 46A-49A, the casting of votes was stopped early because non-registrants and flying voters insisted on voting, thus causing fighting and shooting among voters;
- in Precincts 28A-29A, all the registered voters were not able to cast their votes because the ballot boxes were brought to the second floor of the school building and when the boxes were brought down, the ballots and the Book of Voters were already filled up and thumbmarked by non-voters;
- in Precincts 1A-21A and 42A-43A, voting was closed at 3:30 p.m., but was illegally reopened; and
- in Precincts 64A-65A, official ballots issued to voters were forcibly filled up by one person.

Petitioner later filed on May 29, 2001 an "Additional Submission"[2] containing Casidar's "Narrative Report on the Conduct of [the] May 14, 2001 National and Local Elections in the Municipality of Butig, Lanao del Sur"[3] reading verbatim:

X X X

- Per my instruction, the BEIs immediately started the election.
- while the election was going on, at around 2 pm, several bombings occurred almost in the area where the election was held which caused commotion.
- due to the incident and fear, the BEIs assigned in some other precincts locked their ballot boxes and brought them to the Municipal Hall while others continued the casting of votes [until] the last hour.
- . . . the electors and some other candidates were forcing and/or convincing me to open the ballot boxes brought to the Municipal Hall to continue the election which I refused as it was already too late.
- . . . due to intimidation and force shown or displayed by some of the supporters and candidates themselves, I failed to decide on time as it will endanger my life and other civilians in the area.

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On June 4, 2001, petitioner filed a "Very Urgent Motion to Defer Canvass of Election Returns and Suspend Proclamation,"[4] reiterating the arguments in his previous petition.

On June 8, 2001, Langco (petitioner-intervenor), filed a petition-in-intervention[5] adopting the allegations of petitioner and further alleging the occurrence of other irregularities during the conduct of the elections, to wit:

- watchers were not allowed to escort the ballot boxes and witness the distribution of ballots;
- a member of the Philippine Army was putting inside the ballot box official ballots already filled up;
- around 11:20 a.m., there were simultaneous explosions causing the voters to scamper away which resulted to low voter turn-out;
- the casting of votes was stopped at 1:30 p.m.;
- the clustering made by the COMELEC based on the convenience and safety of the voters was not followed;
- the casting of votes was done in public as there were no voting booths;
- there was illegal transfer of polling places;
- there was massive substitution of voters;
- there was no justification for the military to serve in the election;
- the casting of votes in Precincts 1A-17A, 28A-32A and 59A-69A was closed around 2:30 p.m. but was again reopened until around 6:00 p.m.; and
- the counting of votes was manned by Philippine Army soldiers known to favor mayoralty candidate Pansar.

The COMELEC En Banc, without giving due course to the petition and the petition-in-intervention, resolved on June 14, 2001:

- to admit the Petition-in-Intervention filed by Langco on June 8, 2001;
- to direct the Municipal Board of Canvassers of Butig to hold in abeyance the proclamation of the respondent

until lifted by the Commission;

- to direct the Clerk of the Commission to issue summons requiring the respondents to file their answers to the petition and petition-in-intervention and to set for hearing the instant case immediately in order to hear from the parties and determine whether the suspension will stay or has to be lifted; and
- to direct the Deputy Executive Director for Operations to implement this order with dispatch.[6]

The COMELEC En Banc conducted a hearing on June 28, 2001 during which all the parties were represented by counsels, after which it issued the following order, quoted verbatim:

At today's hearing parties were respectively represented by counsels.

Counsel for intervenor-oppositor Rashmina Salic [Ro]mat[o] manifested that they filed a petition in intervention in this case as his client was not impleaded although was proclaimed also as mayor.

Counsel for respondent Dimnatang L. Pansar manifested that his client the impleaded respondent who was also proclaimed did not receive any summons in this case.

Considering the foregoing, the motion to intervene is granted. Respondents are hereby given three (3) days from today to file answer, after which this case shall be deemed submitted for resolution.[7]

As noted in the above-quoted June 28, 2001 Resolution of the COMELEC En Banc, Romato who had in the meantime been proclaimed (on June 10, 2001)[8] as mayor, as was Pansar (on June 16, 2001),[9] manifested that he filed a petition-in-intervention.

By the questioned Resolution of August 13, 2001, the COMELEC En Banc dismissed the petition and Langco's petition-in-intervention, the dispositive portion of which reads:

WHEREFORE, premises considered, the Very Urgent Petition and Petition in Intervention are DISMISSED for LACK OF MERIT.

The Very Urgent Motion to Defer Canvass of Election Returns and Suspend Proclamation is likewise DENIED for the same reason.

Hence, the present petition for certiorari under Rule 64 of the 1997 Revised Rules of Court raising the issue of:

WHETHER OR NOT RESPONDENT COMMISSION ON ELECTIONS ILLEGALLY OR ARBITRARILY RESOLVED TO DENY THE PETITION OF BAO AND INTERVENOR LANGCO AND ROMATO, THAT THEIR 'ALLEGATIONS' AND 'EVIDENCES' ATTACHED TO THEIR PLEADINGS ARE INSUFFICIENT TO DECLARE FAILURE OF ELECTION.[10] (Underscoring omitted)

Petitioner contends that SPA No. 01-336 being a contentious case, the COMELEC acts as a quasi-judicial tribunal and thus falls under the term "court"; that the questioned resolution failed to express clearly and distinctly the facts and the law on which it is based in contravention of Article VII of the 1987 Constitution;[11] that contrary to the findings of the COMELEC, the two (2) conditions set forth in *Mitmug v. COMELEC* [12] to declare a failure of election was present in the instant case; and that the serious and massive election irregularities in thirty out of forty precincts in Butig were more than sufficient to affect the election results as they disenfranchised more than 70% of the registered voters.[13]

Petitioner further contends that even if there was voting, the election nevertheless resulted in failure to elect;[14] that the COMELEC erred in not giving credence to the official Narrative Report of Casidar which contained facts affecting the validity of the elections;[15] and that in failing to conduct summary hearing for the reception of evidence, the COMELEC violated the Omnibus Election Code and its own rules.[16]

The issue in the main is whether the COMELEC committed grave abuse of discretion in not declaring a failure of election.

This Court holds in the negative.

Section 6 of the Omnibus Election Code provides:

Section 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 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 on a date reasonably close to the date 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. COMELEC*,^[17] this Court held that before the COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precinct or precincts on the date fixed by law or, even if there was voting, the election nevertheless results in failure to elect; and second, the votes not cast would affect the result of the election.

And in *Typoco v. COMELEC*,^[18] this Court held:

Clearly then, there are only three instances where a failure of election may be declared, namely: (a) 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 causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes. In all instances there must have been a failure to elect; this is obvious in the first scenario, where the election was not held and second where the election was suspended. As to the third scenario, the preparation and transmission of election returns which give rise to the consequence of failure to elect must as aforesaid be literally interpreted to mean that nobody emerged as winner.

In the present case, the allegations-bases of both the petition and Langco's petition-in-intervention before the COMELEC are mostly grounds for an election contest, not for a declaration of failure of election. While there are allegations which may be grounds for failure of election, they are supported by mere affidavits and the narrative report of the election officer. That petitioner and petitioner-intervenor were not able to present substantial evidence in support of their allegations should not be blamed on the COMELEC, for during the June 28, 2001 hearing, Atty. Jose Ventura Aspiras, collaborating counsel for petitioner, on being informed that respondent Pansar had not yet received the summons to necessitate the resetting of the hearing, made a "request," which was granted, that said respondent should just file "an answer or memorandum to abbreviate the proceedings," and did not object to the COMELEC's pronouncement to consider the petition submitted for resolution after the filing of the answer or memorandum.

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Comm. Javier

In the meantime, we will have to reset this case because it appears that the service of summons has not been

done into the respondent, so, it would appear that this Commission would not have any jurisdiction yet because you appeared here already, your appearance, you are submitting to the jurisdiction of the Commission, so, in that case, we will request the petitioner to submit a copy to the respondent and give him time to answer, three (3) days to answer, okay.

Atty. Aspiras

May we just request that what we (sic) file would be an answer/ memorandum to abbreviate the proceedings.

Comm. Javier

Okay, answer together with memorandum in three (3) days, you have to submit simultaneous memorandum.

Atty. Aspiras

Yes, your Honor.

Comm. Javier

Three (3) days from today, we will consider this submitted for resolution.

Atty. Aspiras

Yes, your Honor, we will furnish already after this hearing, copy of the amended petition to the respondent your Honor.

Comm. Javier

Okay, next case.

xxx[19] (Emphasis and underscoring supplied)

Under the circumstances, petitioner and petitioner-intervenor are deemed to have waived their right to present further evidence to substantiate their petition.

Since, as the following portion of the assailed COMELEC resolution states, both petitioner and petitioner-intervenor failed to discharge the burden of proving their allegations, the COMELEC did not commit grave abuse of discretion:

Thus, there can be no other recourse for this Commission than to deny the petition. General allegations, without sufficient evidentiary support, do not warrant a declaration of a failure of elections. Election results are the expression of the will of the people whose welfare and interests must immediately be served by those upon whom the people have placed their trust. Peripherally but not trivially, elections need be consummated with dispatch because the losers or even those just lagging behind in the counting, more often than not, file all kinds of protests and complaints and objections that delay the election process and threaten to deny the people their representation in government.[20]

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Rollo at 48-57.

[2] Id. at 83-86.

[3] Id. at 87-88.

[4] Id. at 34-39.

[5] Id. at 95-101.

[6] COMELEC Records at 76-77,

[7] Id. at 93-94.

[8] Motion for Leave to Intervene, COMELEC Records at 121-123.

[9] Answer, id. at 107-115.

[10] Rollo at 21.

[11] Id at 21.

[12] 230 SCRA 54 (1994).

[13] Rollo at 26.

[14] Id. at 26.

[15] Id. at 28.

[16] Id. at 33-34.

[17] Supra.

[18] 319 SCRA 498 (1999) citing *Canicosa v. COMELEC*, 282 SCRA 512 (1997); Vide *Banaga v. COMELEC*, 336 SCRA 701 (2000) and *Pasandalan v. COMELEC*, G.R. No. 150312, July 18, 2002.

[19] Transcript of Stenographic Notes, June 28, 2001 at 9-10.

[20] Rollo at 179 citing *Loong v. COMELEC*, 257 SCRA 2 (1996).

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