

POLALA SAMBARANI, JAMAL MIRAATO, SAMERA ABUBACAR AND MACABIGUNG MASCARA, PETITIONERS, VS. COMMISSION ON ELECTIONS AND EO ESMAEL MAULAY, ACTING ELECTION OFFICER, TAMPARAN, LANA O ...

G.R. No. 160427. September 15, 2004

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-160427/>

CARPIO, J.:

The Case

Challenged in this petition for certiorari^[1] with prayer for temporary restraining order and preliminary injunction is the Resolution of the Commission on Elections en banc (“COMELEC”)^[2] dated 8 October 2003. The COMELEC declared a failure of election but refused to conduct another special election.

The Facts

In the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections (“elections”), Polala Sambarani (“Sambarani”), Jamal Miraato (“Miraato”), Samera Abubacar (“Abubacar”), Macabigung Mascara (“Mascara”) and Aliasgar Dayondong (“Dayondong”) ran for re-election as punong barangay in their respective barangays, namely: Occidental Linuk, Pindolonan Moriatao Sarip, Talub, New Lumbacaingud, and Tatayawan South (“five barangays”), all in Tamparan, Lanao del Sur.

Due to a failure of elections in eleven barangays in Lanao del Sur, the COMELEC issued Resolution No. 5479 setting special elections on 13 August 2002 in the affected barangays in Lanao del Sur including the five barangays. On 14 August 2002, Acting Election Officer Esmael Maulay (“EO Maulay”) issued a certification that there were no special elections held on 13 August 2002.

Consequently, Sambarani, Miraato, Abubacar, Mascara and Dayondong (“joint-petitioners”) filed a Joint Petition seeking to declare a failure of elections in the five barangays and the holding of another special election. The Joint Petition attributed the failure of the special elections to EO Maulay’s non-compliance with COMELEC Commissioner Mehol K. Sadain’s (“Commissioner Sadain”) directive. Commissioner Sadain had directed EO Maulay to use the Autonomous Region of Muslim Mindanao (“ARMM”) 2001 computerized Voter’s List and the Voter’s Registration Records of the Provincial Election Officer during the December 2001 registration of new voters.

The parties did not attend the hearing scheduled on 11 September 2002 despite due notice. In the 1 October 2002 hearing, counsel for joint-petitioners as well as EO Maulay and his counsel appeared. The COMELEC ordered the parties to submit their memoranda within 20 days. The COMELEC also directed EO Maulay to explain in writing why he should not be administratively charged for failing to comply with Commissioner Sadain’s directive. The joint-petitioners filed their Memorandum on 25 October 2002. EO Maulay did not file a memorandum or a written explanation as directed. The COMELEC considered the case submitted for resolution.

On 8 October 2003, the COMELEC issued the assailed Resolution, disposing as follows:

ACCORDINGLY, the Department of Interior and Local Government is hereby DIRECTED to proceed with the appointment of Barangay Captains and Barangay Kagawads as well as SK Chairmen and SK Kagawads in Barangays Occidental Linuk, Pindolonan Moriatao Sarip, Talub, Tatayawan South, and New Lumbacaingud, all of Tamparan, Lanao del Sur, in accordance with the pertinent provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and other related laws on the matter.

Let a copy of this Resolution be furnished to the Department of Interior and Local Government, the Municipality of Tamparan, Lanao [d]el Sur, and the respective Sangguniang Barangays of Barangays Occidental Linuk, Pindolonan Moriatao Sarip, Talub, Tatayawan South and New Lumbacaingud, of Tamparan.

Finally, let a copy of this Resolution be furnished to the Law Department for Preliminary Investigation of Respondent ESMAEL MAULAY for possible commission of election offense/s, and consequently, the filing of administrative charges against him if warranted.

SO ORDERED.[3]

Sambarani, Miraato, Abubacar and Mascara (“petitioners”) filed the instant petition.[4]

The COMELEC’s Ruling

The COMELEC agreed with petitioners that the special elections held on 13 August 2002 in the five barangays failed. The COMELEC, however, ruled that to hold another special election in these barangays as prayed for by petitioners is untenable. The COMELEC explained that it is no longer in a position to call for another special election since Section 6 of the Omnibus Election Code provides that “special elections shall be held on a date reasonably close to the date of the election not held, but not later than thirty days after cessation of the cause of such postponement.” The COMELEC noted that more than thirty days had elapsed since the failed election.

The COMELEC also pointed out that to hold another special election in these barangays will not only be tedious and cumbersome, but a waste of its precious resources. The COMELEC left to the Department of Interior and Local Government (“DILG”) the process of appointing the Barangay Captains and Barangay Kagawads as well as the Sangguniang Kabataan (“SK”) Chairmen and SK Kagawads in these barangays “in accordance with the Local Government Code of 1991 and other related laws on the matter.”[5]

The Issues

Petitioners contend that the COMELEC acted with grave abuse of discretion amounting to lack of jurisdiction in –

- Denying the prayer to call for another special election in barangays Occidental Linuk, Pindolonan Moriatao Sarip, Talub, New Lumbacaingud (“subject barangays”);
- Directing the DILG to proceed with the appointment of the barangay captains, barangay kagawads, SK chairmen and SK kagawads in the subject barangays;
- Not declaring the petitioners as the rightful incumbent barangay chairmen of their office until their successors have been elected and qualified.

The Court’s Ruling

The petition is meritorious.

First Issue: Whether To Call Another Special Election

Petitioners fault the COMELEC for not holding another special election after the failed 13 August 2002 special

election. Petitioners insist that the special barangay and SK elections in the subject barangays failed because EO Maulay did not use the voter's list used during the 2001 ARMM elections. Neither did Maulay segregate and exclude those voters whose Voter's Registration Records ("VRRs") were not among those 500 VRRs bearing serial numbers 00097501 to 0009800 allocated and released to Tamparan. Finally, Maulay did not delete from the certified list of candidates the name of disqualified candidate Candidato Manding. Petitioners contend that COMELEC's refusal to call another special election conflicts with established jurisprudence, specifically the ruling in *Basher v. Commission on Elections*.^[6]

The Solicitor General supports the COMELEC's stance that a special election can be held only within thirty days after the cause of postponement or failure of election has ceased. The Solicitor General also maintains that the DILG has the power to appoint and fill vacancies in the concerned elective barangay and SK offices.

Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." Indisputably, the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve its primordial objective of holding free, orderly, honest, peaceful and credible elections.^[7]

The functions of the COMELEC under the Constitution are essentially executive and administrative in nature. It is elementary in administrative law that "courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies."^[8] The authority given to COMELEC to declare a failure of elections and to call for special elections falls under its administrative function.^[9]

The marked trend in our laws has been to grant the COMELEC ample latitude so it can more effectively perform its duty in safeguarding the sanctity of our elections. But what if, as in this case, the COMELEC refuses to hold elections due to operational, logistical and financial problems? Did the COMELEC gravely abuse its discretion in refusing to conduct a second special Barangay and SK elections in the subject barangays?

Neither the candidates nor the voters of the affected barangays caused the failure of the special elections. The COMELEC's own acting election officer, EO Maulay, readily admitted that there were no special elections in these barangays. The COMELEC also found that the Provincial Election Supervisor of Lanao del Sur and the Regional Election Director of Region XII did not contest the fact that there were no special elections in these barangays.

An election is the embodiment of the popular will, the expression of the sovereign power of the people.^[10] It involves the choice or selection of candidates to public office by popular vote.^[11] The right of suffrage is enshrined in the Constitution because through suffrage the people exercise their sovereign authority to choose their representatives in the governance of the State. The fact that the elections involved in this case pertain to the lowest level of our political organization is not a justification to disenfranchise voters.

COMELEC anchored its refusal to call another special election on the last portion of Section 6 of the Omnibus Election Code ("Section 6") which reads:

SEC. 6. Failure of election. – If, on account of force majeure, violence, terrorism, fraud, or other analogous cases 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 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. (Emphasis supplied)

The Court construed Section 6 in *Pangandaman v. COMELEC*,^[12] as follows –

In fixing the date for special elections the COMELEC should see to it that: 1.] it should not be later than thirty (30) days after the cessation of the cause of the postponement or suspension of the election or the failure to elect; and, 2.] it should be reasonably close to the date of the election not held, suspended or which resulted in the failure to elect. The first involves a question of fact. The second must be determined in the light of the peculiar circumstances of a case. Thus, the holding of elections within the next few months from the cessation of the cause of the postponement, suspension or failure to elect may still be considered “reasonably close to the date of the election not held.” (Emphasis supplied)

The prohibition on conducting special elections after thirty days from the cessation of the cause of the failure of elections is not absolute. It is directory, not mandatory, and the COMELEC possesses residual power to conduct special elections even beyond the deadline prescribed by law. The deadline in Section 6 cannot defeat the right of suffrage of the people as guaranteed by the Constitution. The COMELEC erroneously perceived that the deadline in Section 6 is absolute. The COMELEC has broad power or authority to fix other dates for special elections to enable the people to exercise their right of suffrage. The COMELEC may fix other dates for the conduct of special elections when the same cannot be reasonably held within the period prescribed by law.

More in point is Section 45 of the Omnibus Election Code (“Section 45”) which specifically deals with the election of barangay officials. Section 45 provides:

SEC. 45. Postponement or failure of election. – When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure, and other analogous causes of such nature that the holding of a free, orderly and honest election should become impossible in any barangay, the Commission, upon a verified petition of an interested party and after due notice and hearing at which the interested parties are given equal opportunity to be heard, shall postpone the election therein for such time as it may deem necessary.

If, on account of force majeure, violence, terrorism, fraud or other analogous causes, the election in any barangay has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting therein and such failure or suspension of election would affect the result of the election, the Commission, on the basis of a verified petition of an interested party, and after due notice and hearing, at which the interested parties are given equal opportunity to be heard shall call for the holding or continuation of the election within thirty days after it shall have verified and found that the cause or causes for which the election has been postponed or suspended have ceased to exist or upon petition of at least thirty percent of the registered voters in the barangay concerned.

When the conditions in these areas warrant, upon verification by the Commission, or upon petition of at least thirty percent of the registered voters in the barangay concerned, it shall order the holding of the barangay election which was postponed or suspended. (Emphasis supplied)

Unlike Section 6, Section 45 does not state that special elections should be held on a date reasonably close to the date of the election not held. Instead, Section 45 states that special elections should be held within thirty days from the cessation of the causes for postponement. Logically, special elections could be held anytime, provided the date of the special elections is within thirty days from the time the cause of postponement has ceased.

Thus, in *Basher*^[13] the COMELEC declared the 27 May 1997 barangay elections a failure and set special

elections on 12 June 1997 which also failed. The COMELEC set another special election on 30 August 1997 which this Court declared irregular and void. On 12 April 2000, this Court ordered the COMELEC “to conduct a special election for punong barangay of Maidan, Tugaya, Lanao del Sur as soon as possible.” This despite the provision in Section 2[14] of Republic Act No. 6679 (“RA 6679”)[15] stating that the special barangay election should be held “in all cases not later than ninety (90) days from the date of all the original election.”

Had the COMELEC resolved to hold special elections in its Resolution dated 8 October 2003, it would not be as pressed for time as it is now. The operational, logistical and financial problems which COMELEC claims it will encounter with the holding of a second special election can be solved with proper planning, coordination and cooperation among its personnel and other deputized agencies of the government. A special election will require extraordinary efforts, but it is not impossible. In applying election laws, it would be better to err in favor of popular sovereignty than to be right in complex but little understood legalisms.[16] In any event, this Court had already held that special elections under Section 6 would entail minimal costs because it covers only the precincts in the affected barangays.[17]

In this case, the cause of postponement after the second failure of elections was COMELEC’s refusal to hold a special election because of (1) its erroneous interpretation of the law, and (2) its perceived logistical, operational and financial problems. We rule that COMELEC’s reasons for refusing to hold another special election are void.

Second and Third Issues: Whether the DILG may Appoint the Barangay and SK Officials

Petitioners contend that the COMELEC gravely abused its discretion in directing the DILG to proceed with the appointment of Barangay Captains and Barangay Kagawads as well as SK chairmen and SK Kagawads in the four barangays. Petitioners argue that as the incumbent elective punong barangays in the four barangays,[18] they should remain in office in a hold-over capacity until their successors have been elected and qualified. Section 5 of Republic Act No. 9164 (“RA 9164”) [19] provides:

Sec. 5. Hold Over. – All incumbent barangay officials and sangguniang kabataan officials shall remain in office unless sooner removed or suspended for cause until their successors shall have been elected and qualified. The provisions of the Omnibus Election Code relative to failure of elections and special elections are hereby reiterated in this Act.

RA 9164 is now the law that fixes the date of barangay and SK elections, prescribes the term of office of barangay and SK officials, and provides for the qualifications of candidates and voters for the SK elections.

As the law now stands, the language of Section 5 of RA 9164 is clear. It is the duty of this Court to apply the plain meaning of the language of Section 5. Since there was a failure of elections in the 15 July 2002 regular elections and in the 13 August 2002 special elections, petitioners can legally remain in office as barangay chairmen of their respective barangays in a hold-over capacity. They shall continue to discharge their powers and duties as punong barangay, and enjoy the rights and privileges pertaining to the office. True, Section 43(c) of the Local Government Code limits the term of elective barangay officials to three years. However, Section 5 of RA 9164 explicitly provides that incumbent barangay officials may continue in office in a hold over capacity until their successors are elected and qualified.

Section 5 of RA 9164 reiterates Section 4 of RA 6679 which provides that “[A]ll incumbent barangay officials xxx shall remain in office unless sooner removed or suspended for cause xxx until their successors shall have been elected and qualified.” Section 8 of the same RA 6679 also states that incumbent elective barangay officials running for the same office “shall continue to hold office until their successors shall have been elected and qualified.”

The application of the hold-over principle preserves continuity in the transaction of official business and prevents a hiatus in government pending the assumption of a successor into office.[20] As held in *Topacio Nueno v. Angeles*,[21] cases of extreme necessity justify the application of the hold-over principle.

WHEREFORE, we GRANT the instant petition. The Resolution of the Commission on Elections dated 8 October 2003 is declared VOID except insofar as it directs its Law Department to conduct a preliminary investigation of Esmael Maulay for possible commission of election offenses. Petitioners have the right to remain in office as barangay chairmen in a hold-over capacity until their successors shall have been elected and qualified. The Commission on Elections is ordered to conduct special Barangay elections in Barangays Occidental Linuk, Pindolonan Moriatao Sarip, Talub, New Lumbacaingud, all in Tamparan, Lanao del Sur within thirty (30) days from finality of this decision.

SO ORDERED.

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

Carpio-Morales, J., on official leave.

Chico-Nazario, J., on leave.

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Composed of Benjamin S. Abalos, Sr. as Chairman, with Commissioners Luzviminda G. Tancangco, Rufino SB. Javier, Ralph C. Lantion, Mehol K. Sadain, Resurreccion Z. Borra and Florentino A. Tuason, Jr.

[3] Rollo, p. 29.

[4] Dayondong of Barangay Tatayawan South did not join the instant petition.

[5] Rollo, p. 28.

[6] 386 Phil. 954 (2000).

[7] *Pangandaman v. COMELEC*, 377 Phil. 297 (1999).

[8] *Province of Zamboanga del Norte v. Court of Appeals*, G.R. No. 109583, 11 October 2000, 342 SCRA 549.

[9] *Ampatuan v. COMELEC*, 426 Phil. 201 (2002).

[10] *Taule v. Santos*, G.R. No. 90336, 12 August 1991, 200 SCRA 512.

[11] *Ibid.*

[12] *Supra* note 7.

[13] *Supra* note 6.

[14] Section 2 of RA 6679 provides:

SEC. 2. When 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 Elections *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 all the original election.

[15] AN ACT TO AMEND REPUBLIC ACT NO. 6653 TO POSTPONE THE BARANGAY ELECTIONS TO MARCH 28, 1989, PRESCRIBING ADDITIONAL RULES GOVERNING THE CONDUCT OF BARANGAY ELECTIONS AND FOR OTHER PURPOSES.

[16] *Malabaguio v. Commission on Elections*, G.R. No. 142507, 1 December 2000, 346 SCRA 699; *Maruhom v. Comelec*, 387 Phil. 491 (2000).

[17] *Lucero v. Commission on Elections*, G.R. Nos. 113107 and 113509, 20 July 1994, 234 SCRA 280.

[18] Now only four, since Dayondong of Tatayawan South no longer joined this petition.

[19] AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT. NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES.

[20] *State ex rel. Coe v. Lee*, 147 Fla 464; *Burnett v. Brown*, 194 Va. 103.

[21] 76 Phil. 12 (1946).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.