

HADJI RASUL BATABOR, PETITIONER, VS. COMISSION ON ELECTIONS, BARANGAY BOARD OF CANVASSERS, BOARD OF ELECTION INSPECTORS OF PRECINCTS NOS. 3A, 4A AND 5A, BARANGAY MAIDAN, TUGAYA,...*G.R. No. 160428. July 21, 2004*

Ponente: SANDOVAL-GUTIERREZ, J.

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The power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever; or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise. There is failure of elections only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected.[1]

Before us is a petition for certiorari[2] with application for a temporary restraining order and writ of preliminary injunction, assailing the Commission on Elections (COMELEC) En Banc's Resolution dated October 9, 2003 in SPA No. 02-295 (Brgy.). In this Resolution, the COMELEC denied Hadji Rasul Batabor's petition seeking: (a) the declaration of failure of election in Precincts 3A, 4A and 5A of Barangay Maidan, Tugaya, Lanao del Sur; (b) the annulment of the proclamation that Mocasin Abangon Batondiang is the duly elected Punong Barangay of Barangay Maidan; and (c) the holding of a special election in the questioned precincts.

In the synchronized July 15, 2002 Barangay and Sangguniang Kabataan Elections, Hadji Rasul Batabor, petitioner, and Mocasin Abangon Batondiang, private respondent, ran as opposing candidates for the position of Punong Barangay in Barangay Maidan, Tugaya, Lanao del Sur. It was petitioner's re-election bid being then the incumbent Punong Barangay.

The result of the election shows that private respondent won as Punong Barangay, garnering 123 votes, as against petitioner's 94 votes, or a difference of 29 votes.

In due time, private respondent was proclaimed the duly elected Punong Barangay of Barangay Maidan.

Bewailing the outcome of the election, petitioner filed with the COMELEC a petition to declare a failure of election in Precincts 3A, 4A and 5A of Barangay Maidan, docketed as SPA No. 02-295 (Brgy.). The petition alleges that during the election, the voting started at around 8:30 o'clock in the morning. It was temporarily suspended during the lunch break and was to resume at 1:00 o'clock in the afternoon of that day. But after lunch, the Chairwoman of the Board of Election Inspectors (BEI) of Precincts 3A, 4A and 5A suddenly tore all the unused official ballots. Thus, the voting was not continued. The BEI then padlocked the ballot boxes. At that time, petitioner was not present. Despite the note of Election Officer Taha Casidar directing the BEI to resume the

voting, the latter did not allow the remaining voters to vote. Thus, petitioner's relatives and followers, numbering more than 100, were not able to cast their votes.

In his comment, private respondent averred that petitioner's allegations are not supported by substantial evidence. It was petitioner who padlocked the ballot boxes as shown by the affidavit of Comini Manalastas. During the counting of votes, petitioner's wife, daughter and son actually witnessed the same. Besides, petitioner's allegations can be properly ventilated in an election protest because the issues raised are not grounds for declaration of a failure of election.

On October 9, 2003, the COMELEC En Banc issued the assailed Resolution[3] denying the petition.

Petitioner now contends in his petition for certiorari before us that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his petition in SPA No. 02-295 (BRGY.). He reiterates his allegations in his petition filed with the COMELEC showing there was failure of election.

The Solicitor General, in his comment on the instant petition, vehemently disputes petitioner's allegations and prays that the petition be dismissed for lack of merit.

We dismiss the petition.

The power to declare a failure of election is vested exclusively upon the COMELEC.[4] Section 6 of the Omnibus Election Code[5] 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 a failure to elect, and in any 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."

Explaining the above provisions, we held in *Benito vs. Commission on Elections*[6] that these two (2) conditions must exist before a failure of election may be declared: (1) no voting has been held in any precinct or precincts due to fraud, force majeure, violence or terrorism; and (2) the votes not cast therein are sufficient to affect the results of the election. The cause of such failure may arise before or after the casting of votes or on the day of the election.

The familiar rule, as applied to this case, is that grave abuse of discretion exists when the questioned act of the COMELEC was exercised capriciously and whimsically as is equivalent to lack or in excess of jurisdiction. Such exercise of judgment must be done in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[7] It is not sufficient that the COMELEC, in the exercise of its power, abused its discretion; such abuse must be grave.[8]

We find that the COMELEC did not commit any grave abuse of discretion in dismissing petitioner's petition alleging a failure of election. While the alleged 100 votes of petitioner's relatives and supporters, if cast during the election, are sufficient to affect its result, however, he failed to prove that the voting did not take place in precincts 3A, 4A and 5A. As found by the COMELEC, the Statement of Votes and the Certificate of Canvass of

Votes show that out of the 316 registered voters in the questioned precincts, at least 220 actually voted. This simply shows that there was no failure of election in the subject precincts. Moreover, petitioner's allegation that the voting was not resumed after lunch break, preventing 100 of his relatives and followers to vote, is better ventilated in an election contest. The COMELEC, in its assailed Resolution, held:

"In the first place, the petitioner failed to show with certainty that the voting did not push through in the questioned precincts. In fact, the Statement of Votes by Precincts show that out of the three hundred sixteen (316) registered voters in the questioned precincts, two hundred twenty (220) or 69.62% of the registered voters actually voted. This high turnout in the number of registered voters who actually voted is clearly not an indication of a failure of elections.

"We cannot also help but notice that the instant petition seeks to declare a failure of elections and to annul solely the proclamation of respondent Batondiang, the elected punong barangay. The prayer for annulment of proclamation does not extend to all the elected and proclaimed candidates in Barangay Maidan, Tugaya, Lanao del Sur. The Commission may not, on the ground of failure of elections, annul the proclamation of one candidate only, and thereafter call a special election therefor, because failure of elections necessarily affects all the elective positions in the place where there has been a failure of elections. To hold otherwise will be discriminatory and violative of the equal protection of the laws (See *Loong vs. COMELEC*, 305 SCRA 832 [1999]).

"As pronounced by the Supreme Court in *Mitmug vs. Commission on Elections* (230 SCRA 54 [1994]), allegations of fraud and other election irregularities are better ventilated in an election contest:

'x x x, the question of whether there have been terrorism and other irregularities is better ventilated in an election contest. These irregularities may not as a rule be invoked to declare a failure of election and to disenfranchise the electorate through the misdeeds of a relative few. Otherwise, elections will never be carried out with the resultant disenfranchisement of innocent voters as losers will always cry fraud and terrorism.

'There can be failure of election in a political unit only if the will of the majority has been defiled and cannot be ascertained. But, if it can be determined, it must be accorded respect. After all, there is no provision in our election laws which requires that a majority of registered voters must cast their votes. All the law requires is that a winning candidate must be elected by a plurality of valid votes, regardless of the actual number of ballots cast. Thus, even if less than 25% of the electorate in the questioned precincts cast their votes, the same must still be respected. There is prima facie showing that private respondent was elected through a plurality of valid votes of a valid constituency.'"[9]

We reiterate our ruling in *Benito vs. COMELEC*[10] that there is failure of elections only when the will of the electorate has been muted and cannot be ascertained. In the case at bar, this incident is not present.

In sum, we find no reason to disturb the assailed Resolution of the COMELEC.

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

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Chico-Nazario, JJ., concur.
Corona, J., on leave.

[1] *Benito vs. Commission on Elections*, G.R. No. 134913, January 19, 2001, 349 SCRA 705, citing *Sardea vs. Commission on Elections*, G.R. No. 106164, August 17, 1993, 225 SCRA 374.

[2] Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[3] Rollo at 30-35.

[4] Benito vs. Commission on Elections, *supra*, citing Section 4 of Republic Act No. 7166.

[5] *Id.*, citing Batas Pambansa Blg. 881.

[6] *Supra*, citing Hassan vs. Commission on Elections, 264 SCRA 125, 131 (1996); Banaga, Jr. vs. COMELEC, 336 SCRA 701 (2000).

[7] Benito vs. Commission on Elections, *supra*, citing Cuison vs. Court of Appeals, 289 SCRA 159 (1998); Carlos vs. Angeles, 346 SCRA 571 (2000).

[8] *Id.*, citing Tañada vs. Angara, 272 SCRA 18 (1997); Republic vs. Villarama, 278 SCRA 736 (1997).

[9] Rollo at 34-35.

[10] *Supra*.

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