

HAJI FAISAL D. ADAP, MOHAAMMADALI G. PANGCOGA, ALLAN AMPUAN, CADER CARIM, HADJI YUSOPH BOHARY AMPUAN, DATHAMAN M. ABBAN, LOMALA SARIP CADER, BONDIONG COMILING, HADJI OMAIR SARIP...

G.R. NO. 161984. February 21, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Certiorari and Prohibition seeking to set aside the Resolution[1] of public respondent Commission on Elections, En Banc (COMELEC En Banc) dated January 27, 2004.

Petitioners were the proclaimed winning candidates for the position of Punong Barangay in their respective barangays in the municipality of Pagayawan, Lanao del Sur in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections (2002 Elections). Individual respondents were candidates for the position of barangay chairmen in said 2002 elections, some of whom are Punong-Barangays proclaimed in the barangay elections previous to the 2002 elections.

On August 19, 2002, after learning that a Certificate of Canvass of Votes and Proclamation of winning candidates for Punong Barangay and Kagawad ng Sangguniang Barangay, proclaiming petitioners as winning candidates had been submitted to the COMELEC, respondents filed a petition for declaration of failure of elections and the holding of special elections in the whole municipality of Pagayawan, Lanao del Sur and to annul for being void ab initio the proclamation of petitioners.[2]

Respondents alleged that the 2002 Elections have not been conducted in thirteen (13) barangays of Pagayawan on July 15, 2002 for the reason that the official ballots, election forms and paraphernalia, including CEF No. 25, intended for Pagayawan have not been issued or distributed to the Board of Election Tellers (BET) by Acting Treasurer Pangalian Alawi.[3]

After trial, the COMELEC En Banc promulgated the herein assailed Decision on January 27, 2004, finding that there was, indeed, failure of elections in the barangays of Pagayawan, Lanao del Sur. The dispositive portion of the Resolution in question reads as follows:

WHEREFORE, premises considered, the Commission en banc RESOLVED as it hereby RESOLVES to ANNUL and SET ASIDE the 15 July 2002 proclamation of the above named Respondents (now petitioners) Punong Barangay respectively in the subject Barangays of the municipality of Pagayawan, Lanao del Sur.

ACCORDINGLY, the Commission en banc hereby ORDERS:

a) The herein Respondents (now petitioners) namely: Hadji Faisal D. Adap, Mohammadali G. Pangcoga, Allan Ampuan, Cader Carim, Hadji Yusoph Bohary Ampuan, Dathman M. Abbas, Lomala Sarip Cader, Bondiong Comiling, Hadji Omair Sarip Marohom, Ampuan Casim, Pendatun B. Orangot, Aminollah D. Ampuan and Pangcoga Saripoden TO VACATE the Office of the Punong Barangay of Ngingir Bubong, Ilian, Padas,

Pinalangca, Diampaca, Linindingan, Mapantao, Biala-an, Ayong, Reboken-Kamalig (Rubokan), Lumbak (Lumbac), Badaraingud and Madang, Pagayawan, Lanao del Sur, TO CEASE and DESIST from performing the functions of said office.

b) The Petitioners-Punong Barangay (now respondents) who have been duly elected and proclaimed in the barangay elections previous to the 15 July 2002 barangay elections in the subject barangay of the municipality of Pagayawan, Lanao del Sur, to continue as such Punong Barangay in a hold-over capacity until the holding of a Special Barangay Elections in the Municipality of Pagayawan, Lanao del Sur.

c) The Office of the Deputy Executive Director for Operation to implement this resolution re the guidelines in the holding of the Special Barangay and SK Elections in the municipality of Pagayawan, Lanao del Sur.

d) The Law Department to conduct the appertaining investigation to determine the administrative and criminal liability of the above named Respondents (now petitioners) and of Election Officer Taha C. Ali. (Italization ours).

e) The Clerk of the Commission to furnish a copy thereof to the Office of the President of the Philippines, the Secretary of the Department of Interior and Local Government, the Office of the Governor, Lanao del Sur, and to the Office of the Secretary of the local Sangguniang Bayan and Sangguniang Barangay, Pagayawan, Lanao del Sur.

No pronouncement as to costs.[4]

Aggrieved by the foregoing Resolution, petitioners come to this Court, claiming that it was grave abuse of discretion amounting to lack of jurisdiction on the part of the COMELEC En Banc in (1) declaring failure of elections in barangays not subject of the petition filed before it; (2) not examining and viewing the election paraphernalia inside the ballot boxes of the questioned precincts of subject barangays; and (3) ordering herein individual respondents, who have been duly proclaimed in the barangay elections previous to the 2002 Elections, to continue as Punong Barangays in a hold-over capacity until the holding of special elections.[5]

The Court reiterates and emphasizes the oft-repeated rule stated in *Pangandaman v. Comelec*,[6] to wit:

x x x the propriety of declaring whether or not there has been a total failure of elections x x x is a factual issue which this Court will not delve into considering that the COMELEC, through its deputized officials in the field, is in the best position to assess the actual conditions prevailing in that area. Absent any showing of grave abuse of discretion, the findings of fact of the COMELEC or any administrative agency exercising particular expertise in its field of endeavor, are binding on the Court. x x x [7] (Emphasis supplied)

The petition is without merit. There is no cogent reason to deviate from the findings of the COMELEC En Banc. It did not commit any grave abuse of discretion. It acted well within its jurisdiction when it issued the Resolution of January 27, 2004.

First of all, petitioners' allegation that the COMELEC En Banc declared failure of elections in barangays not covered by the respondents' petition is highly inaccurate. It is not even specified in the Petition which barangays were not covered by respondents' Petition filed with the COMELEC. Moreover, the COMELEC En Banc, in the Resolution dated January 27, 2004, held that there was failure of elections in the thirteen (13) barangays subject of respondents' petition, namely: Ngingir Bubong, Ilian, Padas, Pinalangca, Diampaca, Linindingan, Mapantao, Biala-an, Ayong, Reboken-Kamalig (Rubokan), Lumbak (Lumbac), Badaraingud and Madang, and nullified the proclamation of petitioners as punong barangays of the subject thirteen barangays.

Secondly, it was not necessary for the COMELEC En Banc to examine and view the election paraphernalia inside the ballot boxes of the questioned precincts of subject barangays, considering that there is substantial evidence on

record to convince said body that no elections had actually been conducted.

To refute the claim of failure of elections in subject barangays of Pagayawan, Lanao del Sur, herein petitioners (respondents below) formally offered the following documents as evidence, to wit:

Exhibit 1. Certification from the Chief of Police of Pagayawan (SPO1 Amerodin T. Baraguer) stating, among other things, that the elections on July 15, 2002 are peaceful and orderly. To prove that no incident of failure of election was reported to the PNP and Military deputized to safeguard the conduct [of] the aforesaid election.

Exhibit 2. Certification from the Acting Municipal Treasurer Pangalalan Alawi stating, among other things, that the election paraphernalia were properly distributed to the Board of Election Tellers for the eighteen (18) Barangays on July 15, 2002. To prove that there were indeed elections in Pagayawan as wrongfully pictured by petitioners.

Exhibit 3. Certification from Minonting Macatumpag, DECS District Supervisor, Municipality of Pagayawan, stating among other things, that the members of the Board of Tellers of the 18 Barangays were recommended and appointed as such. To prove that there were teachers from the Department of Education and Culture who conducted the election on July 15, 2002 in accordance with Resolution No. 4846 of this Honorable Commission.

Exhibit 4. Communication dated July 25, 2002 of the Acting Municipal Administrator of Pagayawan Oloden D. Balt refuting the failure of election thereof. To prove that the report of failure of election in Pagayawan has no factual basis.

Exhibit 5. Communication dated July 25, 2002 of Mustapha Sarip, Management Officer of Pagayawan, refuting the false report on failure of election. To prove further that there were indeed elections for barangay and Sangguniang Kabataan in Pagayawan on July 15, 2002.

Exhibit 6. [Enumeration of submarkings omitted]. Acknowledgement receipt of Official Ballots, election returns and other forms and supplies by the Board of Election Tellers (CE Form No. 14). To prove that the designated Election Tellers have received the election paraphernalia allotted for Municipality of Pagayawan on July 15, 2002, and subsequently, conducted the election for barangay and Sangguniang Kabataan (SK) in accordance with Resolution No. 4846 of this Honorable Commission.

Exhibit 7. [Enumeration of submarkings omitted]. Joint Affidavit of the designated Board of Tellers for the 18 Barangays in Pagayawan. To prove the conduct of election on July 15, 2002 in Pagayawan and refute the distorted report of failure by Election Officer Alican Kapampangan and the petitioners.[8]

The COMELEC En Banc, however, found the foregoing evidence insufficient to overcome respondents' evidence, to wit:

Although, the Respondents [herein petitioners] have submitted various certifications, its contents appear to be diametrically opposed to what have actually transpired as indubitably established by the following documentary evidence which overcome [sic] and impeached the evidence thus presented by Respondents, to wit:

- The Acknowledgement Receipt executed by Acting Treasurer Pangalalan Alawi dated 19 July 2002 effectively destroys the integrity and the evidentiary value of the Certificates of Proclamation of the Respondents which were all dated 15 July 2002. Thus, supporting the conclusion that the alleged Certificates of Proclamation were spurious and manufactured.
- The transmittal of the results of the election in Pagayawan by TAHA C. ALI, who is not the Election Officer of Pagayawan, Lanao del Sur is in itself questionable because it should be Election Officer of the municipality, Alican Kamampangan, who has the duty to do so. Taha C. Ali, in his memorandum dated 13 January 2002 to

Commissioner Mehol K. Sadain, therein admits that there was no reassignment of station that happened. How could then he served (sic) as Acting EO of Pagayawan.

- The Consolidated List of Candidates for the 15 July 2002 Synchronized Barangay and SK Elections of Pagayawan CONFIRMED that certain non-candidates were proclaimed illegally, for the simple reason that they were not candidates for the positions. x x x

x x x x x x x x

- In their ANSWER WITH MOTION TO DISMISS, Respondents alleged that EO KAPAMPANGAN assisted Acting Treasurer Pangalian Alawi in distributing the election forms, documents and other paraphernalia.

However, in their memorandum, Respondents contradict themselves by alleging that EO Alican Kapampangan abandoned his duty to supervise the aforesaid elections and was no where to be found after the receipt of the election paraphernalia allocated to Pagayawan on 14 July 2002 by Acting Municipal Treasurer Pangalian Alawi from the Office of the Provincial Treasurer at Marawi City. That EO Kapampangan only re-appeared after the election on 15 July 2002, that was on 19 July 2002, when the Board of Election Tellers of the eighteen (18) barangays have already proclaimed the winners.

x x x x x x x x [9]

It should be borne in mind that for this Court to uphold the factual findings of the COMELEC, it only needs to be shown that the same is supported by substantial evidence.[10] Substantial evidence is “that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”[11] In this case, the Court is convinced that the finding of fact made by the COMELEC En Banc, that there was no actual casting of votes in subject barangays of Pagayawan, Lanao del Sur, is supported by substantial evidence, as discussed in the assailed Resolution dated January 27, 2004.

Lastly, petitioners' contention that it was grave abuse of discretion for the COMELEC En Banc to order herein private respondents to continue as Punong Barangays in a hold-over capacity until the holding of special elections, is likewise devoid of merit. In *Sambarani v. Comelec*, [12] the Court already explained, thus:

x x x Section 5 of Republic Act No. 9164 (“RA 9164”) 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. As held in *Topacio Nueno v. Angeles*, cases of extreme necessity justify the application of the hold-over principle.[13]

Clearly therefrom, the COMELEC En Banc did not commit grave abuse of discretion in ordering those who have been elected and proclaimed in the barangay elections prior to the 2002 elections to continue as Punong Barangays in a hold-over capacity until the holding of special barangay elections.

IN VIEW OF THE FOREGOING, the petition is DISMISSED for lack of merit.

Costs against petitioners.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr. and Nachura, JJ., concur.

[*] ABBAS in Comelec En Banc Resolution dated January 27, 2004.

[**] MAROHOM in Comelec En Banc Resolution dated January 27, 2004.

[1] Penned by Commissioner Luzviminda G. Tancangco.

[2] COMELEC En Banc Resolution promulgated on July 27, 2004, rollo, p. 144.

[3] Ibid.; Petition to Declare Failure of Elections, rollo, p. 107.

[4] Rollo, pp. 152-153.

[5] Id. at 11-12.

[6] 377 Phil. 297 (1999).

[7] Id. at 315.

[8] Formal Offer of Exhibits, rollo, pp. 137-138.

[9] Rollo, pp. 151-152.

[10] *Baddiri v. Comelec*, G.R. No. 165677. June 8, 2005, 459 SCRA 808, 814.

[11] Rules of Court, Rule 133, Sec. 5.

[12] G.R. No. 160427, September 15, 2004, 438 SCRA 319.

[13] Id. at 332-333.

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