JUHARY A. GALO, PETITIONER, VS.THE COMMISSION ON ELECTIONS, THE MUNICIPAL BOARD OF CANVASSERS OF LUMBA-BAYABAO, LANAO DEL SUR, AND MINDA DAGALANGIT, RESPONDENTS.

G.R. NO. 164225. April 19, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us for resolution is the Petition[1] for Certiorari,[2] assailing the Resolution[3] dated July 2, 2004 of the Commission on Elections (COMELEC) En Banc in SPA No. 04-348.

Juhary A. Galo, petitioner, and Minda P. Dagalangit, private respondent, were among the five candidates for mayor in the Municipality of Lumba-Bayabao, Lanao del Sur in the May 10, 2004 national and local elections.

On May 10, 2004, however, there was a failure of election in Lumba-Bayabao due to serious disagreements among the various local candidates involving the clustering of precincts, the distribution of election paraphernalia, and the appointment of the members of the various Boards of Election Inspectors. As a consequence, the COMELEC scheduled and held a special election on May 12, 2004.

On May 19, 2004, petitioner Galo filed with the COMELEC En Banc a petition[4] to declare a failure of election and to annul the results of the May 12, 2004 special election involving six precincts located in six Barangays of Lumba-Bayabao, namely: Precinct Nos. 1A (Barangay Maribu), 34A (Barangay Sunggod), 29B (Barangay Rumayas), 22A (Barangay Lubo Basara), 31A (Barangay Salaman), and 36A (Barangay Tamlang). Galo's petition, docketed as SPA No. 04-348, is based on his claim that there were "serious and massive irregularities committed by the supporters of Dagalangit, in conspiracy with members of the Board of Election Inspectors." Specifically, petitioner alleged that respondent Dagalangit's supporters succeeded in placing fake ballots inside a ballot box in Precinct No. 1A (Barangay Maribo); that in Precinct No. 34A (Barangay Sunggod), the voting was irregular because the election inspectors hid a ballot box allegedly to protect it from being forcibly taken; that during the counting of votes, fake ballots were found in the ballot boxes in Precinct Nos. 22A (Barangay Lubo Basara), 29B (Barangay Rumayas), 31A (Barangay Salaman), 34A (Barangay Sunggod), and 36A (Barangay Tamlang); that the election inspectors in the said precincts refused to enter in the minutes their valid objections; that all the election returns accomplished based on the fake ballots do not reflect the true will of the electorate; and that the said irregularities justify the annulment of the election held. Petitioner thus prayed that the COMELEC issue a temporary restraining order (TRO) directing the Board of Canvassers to desist from canvassing the election returns from the said precincts. Petitioner further prayed that after due hearing, the results of the election be annulled; and that an immediate investigation of the anomalies committed during the election be conducted.

On May 21, 2004, the COMELEC En Banc issued a TRO directing the Municipal Board of Canvassers of Lumba-Bayabao to SUSPEND its proceedings, particularly the proclamation of the winning candidates, until

further orders.

In her Answer dated May 24, 2004, respondent Dagalangit denied petitioner's allegations of the existence of fake ballots in the specified precincts. She averred that during the May 12, 2004 special election, all the 39 precincts of Lumba-Bayabao functioned in an orderly and peaceful manner; that the ballots have been properly appreciated, counted and entered in the election returns duly accomplished by the Board of Election Inspectors under the close scrutiny of the candidates' watchers; and that the use of fake ballots is not a valid ground for nullifying the elections. She then prayed that SPA No. 04-348 be dismissed.

During the May 27, 2004 hearing, petitioner did not appear before the COMELEC En Banc. Instead, he filed an "Urgent Ex-Parte Motion/Manifestation"[5] stating that he was already proclaimed as the winning candidate on May 20, 2004, thereby rendering his petition "moot and academic;" and that he "has lost interest in the prosecution of the same." He prayed that his petition be considered withdrawn.

Thereafter, pursuant to the order of the COMELEC En Banc, the contending parties filed their respective memoranda.

On July 2, 2004, the COMELEC En Banc issued the assailed Resolution (1) dismissing the petition for lack of merit; (2) annulling petitioner's proclamation on May 20, 1994 for having been "made surreptitiously and in contravention of the May 21, 2004 Order of the Commission;" and (3) ordering the Municipal Board of Canvassers of Lumba-Bayabao "to immediately convene, complete the canvass, and proclaim the winning candidates." The COMELEC En Banc held that pursuant to the Omnibus Election Code, the alleged use of fake ballots in the questioned precincts is not one of the grounds for nullifying the election results. In fact, all the 39 precincts of Lumba-Bayabao functioned during the May 12, 2004 special elections.

On July 4, 2004, the Municipal Board of Canvassers of Lumba-Bayabao completed its canvass proceedings and proclaimed respondent Dagalangit as the winning candidate for mayor of that municipality.[6]

Petitioner now comes to this Court through the instant Petition for Certiorari alleging that the COMELEC, in issuing the challenged Resolution, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondents, in their respective Comments, vehemently opposed the petition and prayed that the same be dismissed for being utterly unmeritorious.

The petition is bereft of merit.

We cannot sustain petitioner's contention that the COMELEC En Banc gravely abused its discretion in dismissing his petition for a declaration of a failure of elections and for the annulment of the election results. Section 6 of the Omnibus Election Code prescribes the conditions for such a declaration, thus:

> 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 closing of the voting, or after the voting and during the preparation and the transmission of the 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 the 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. (Underscoring supplied)

In Tan v. COMELEC,[7] we held that the above provisions lay down three instances where a failure of election

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may be declared, namely: (1) 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; (2) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of any of such causes; or (3) after the voting and during the preparation, transmission, custody or canvass of the election returns, the election results in a failure to elect on account of any of said aforementioned causes. In all instances, there must have been a failure to elect. This is obvious in the first two scenarios, where the election was not held and where the election was suspended. As to the third scenario, the circumstances attending the preparation, transmission, custody or canvass of the election returns cause a failure to elect. The term failure to elect means "nobody emerges as a winner."[8]

The established rule is that the nature of an action and the jurisdiction of the tribunal are determined by the law and the allegations in the petition regardless of whether or not the petitioner is entitled to the relief sought.[9] Here, it is not disputed that all the 39 precincts in Lumba-Bayabao functioned in the May 12, 2004 special elections. And as correctly observed by respondent COMELEC En Banc, petitioner himself failed to allege in his petition that no election was conducted; and that the use of fake ballots is not a ground to declare a failure of elections.

In Mitmug v. Commission on Elections,[10] we further held that before the COMELEC can act on a verified petition seeking to declare a failure of election, two 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 a failure to elect; and, second, the votes cast would affect the result of the election. In the case at bar, both conditions are not present.

Petitioner himself admits in his petition that during the special election, voting took place in the questioned precincts. He also failed to show that the votes cast would affect the results of the election.

Petitioner also questions the COMELEC's nullification of his proclamation on May 20, 2004 by the Municipal Board of Canvassers. We sustain the COMELEC En Banc's action. As shown by the records, petitioner was proclaimed as mayor on the basis of the results of "the elections held on May 10, 2004."[11] As stated earlier, no election was held on that day.

In fine, the COMELEC, in issuing the assailed Resolution, did not act with grave abuse of discretion.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

Puno, J., On leave.
Quisumbing, J., No part.

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[*] On leave[1] Petitioner re-filed the instant petition on July 16, 2004 after his similar petition filed on July 12, 2004, docketed as G.R. No. 164116, was dismissed in our Resolution dated July 13, 2004 for lack of proper verification (see Rollo of G.R. No. 164116, p. 234).

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

[3] Rollo of G.R. No. 164225, pp. 54-60.

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[4] Entitled "In Re Urgent Petition to Nullify Results, Annul Elections in Precinct Nos. 1-A, Barangay Maribu, 34A Barangay Sunggod, 29B, Barangay Rumayas, 22A, Barangay Lubo Basara, 31A Barangay Salaman, 36A, Barangay Tamlang, Municipality of Lumba-Bayabao, Lanao del Sur During the Special Election of May 12, 2004, with a Prayer for a Restraining Order; Juhary A. Galo, Petitioner, versus The Municipal Board of Canvassers of Lumba-Bayabao, Lanao del Sur, and Minda Dagalangit," Rollo, pp. 61-66.

[5] Annex "G," Petition, Rollo, pp. 124-127.

[6] Par. 11, public respondent's Comment, Rollo, pp. 733, 738.

[7] G.R. Nos. 148575-76 and 152882-83, December 10, 2003, 417 SCRA 532.

[8] Typoco, Jr. v. Commission on Elections, G.R. No. 136191, November 29, 1999, 319 SCRA 498.

[9] Tan v. COMELEC, supra.

[10] G.R. Nos. 106270-73, February 10, 1994, 230 SCRA 54.

[11] See Annex "F" (Certificate of Canvass of Votes and Proclamation of the Winning Candidates for Municipal Offices), Petition, Rollo, p. 123.

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