

ALIZAMAN S. SANGCOPAN, Petitioner, vs. COMMISSION ON ELECTIONS (referred to as the COMMISSION), GREENSTAR BOCAY MANGAN-DINGAN, NAIFA BUCAY MANGANDINGAN, AGAKHAN GUINAL MACALUPAN...

G.R. No. 170216. March 12, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari, prohibition and mandamus[1] alleging that the Commission on Elections (COMELEC) en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated August 26, 2005 denying petitioner's motion for reconsideration and affirming the Resolution dated May 12, 2005 of the COMELEC, Second Division.

The Resolution dated May 12, 2005 denied petitioner's petition to annul the proclamation of private respondents as the winning candidates in the special barangay elections of August 13, 2002 held in Barangay Basak/Bangco.

The facts are as follows:

For several elections prior to the August 13, 2002 Special Barangay Elections, the COMELEC registered the voters from Bangco together with the voters of Barangay Basak under Precinct No. 68A, Municipality of Madalum, Lanao del Sur.

In a Letter-Petition[2] dated June 25, 2002 addressed to the COMELEC Commissioner-in-charge for ARMM[3] Mejol K. Sadain, petitioner complained about the merger of Bangco, alleged to be a barangay, with Barangay Basak on the ground that "Barangay Bangco is not and never was a part of Barangay Basak."

Petitioner submitted in evidence the Oath of Office of barangay officials of Barangay Bangco in the 1994 barangay elections and the Certificate of Canvas and Proclamation of Winning Candidates of Barangay Bangco in the 1997 Barangay Elections to show that Bangco was considered a separate barangay in the 1994 and 1997 barangay elections. He also submitted a Certification dated June 19, 2002 from the Department of the Interior and Local Government (DILG), Province of Lanao del Sur as regards the barangay existence of Basak and Bangco.

Petitioner prayed that an Order be issued directing Municipal Election Officer Abbas Asira or his successor to separate the voters of Bangco from the certified list of registered voters of Barangay Basak and to prevent the registered voters of Bangco from running for elective office in Basak.

In Resolution No. 5227,[4] promulgated on July 13, 2002, the COMELEC en banc resolved "to give EO Abbas Asira a chance to present his side on the matter before the Commission renders its decision."

As a consequence of petitioner's letter-petition, the barangay election in Barangay Basak/Bangco scheduled on July 15, 2002 was declared a failure.

On August 5, 2002, the COMELEC issued Resolution No. 5479 setting the special barangay election in Barangay Basak/Bangco on August 10, 2002, which was later reset to August 13, 2002.

On August 9, 2002, the COMELEC issued Resolution No. 5503[5] amending Resolution No. 5479, and declaring that the special barangay election in Barangay Basak/Bangco scheduled on August 13, 2002 was held in abeyance pending the investigation on the merger of Bangco with Barangay Basak.

However, on August 13, 2002, respondent Election Officer Abbas Asira ordered the holding of the special barangay election in Barangay Basak/Bangco because he did not receive a copy of Resolution No. 5503. Petitioner and his counsel reported the incident to the COMELEC Commissioner-in-charge for ARMM, who was in a conference at the Marawi Resort Hotel, Marawi City. The Commissioner summoned Election Officer Asira to see him in Marawi City, and he informed Asira to stop the barangay election pursuant to Resolution No. 5503. Upon Asira's return to Barangay Basak/Bangco, the casting of votes had been completed.

In the late afternoon of August 13, 2002, the COMELEC Commissioner-in-charge for ARMM issued a field memorandum cancelling/nullifying the special barangay election held in Barangay Basak/Bangco pursuant to Resolution No. 5503 dated August 9, 2002. He issued another memorandum[6] on August 15, 2002 reiterating the cancellation/nullification of the special barangay election held in Barangay Basak/Bangco. The counting of the votes cast was stopped, and the ballot boxes were deposited for safekeeping at the PNP headquarters in Marawi City.

On January 14, 2003, the COMELEC en banc issued Minute Resolution No. 03-0062 favorably acting on the petition for immediate counting and proclamation of winning candidates in Barangay Basak/Bangco after the COMELEC Law Department found that Basak and Bangco had been considered to comprise one barangay and recommended the proclamation of winning candidates for Barangay and Sangguniang Kabataan. The COMELEC held:

It appearing that the recommendation of the Law Department is in order, the Commission RESOLVED, as it hereby RESOLVES, as follows:

- To DIRECT the Board of Election Tellers of Barangay Basak/Bangco of Precinct No. 68A, Madalum, Lanao del Sur, to immediately convene and count the ballots cast in said precinct and after notice to all candidates have been effected setting forth the date, time and place, when and where the board shall convene; and
- Thereafter, to DIRECT the Board of Canvassers to proclaim the winning candidates for Barangay and Sangguniang Kabataan of Barangay Basak/Bangco without delay in accordance with Resolution No. 4846 dated June 13, 2002 of the Commission.[7]

The Resolution adopted the recommendation of the COMELEC Law Department in its Memorandum dated December 16, 2002. The Memorandum reads:

Basak/Bangco is one of the barangays in the Municipality of Madalum, Lanao del Sur where a special election for Barangay and Sangguniang Kabataan has been conducted by the Commission last August 13, 2002 by reason of its failure to hold election in the scheduled July 15, 2002 elections. The special election was centralized at the Madalum Central Elementary School by order of the Commission. Although election was peacefully and orderly held thereat, the results [were] not counted yet due to controversy raised by the contending parties affecting the legal existence of Barangay Basak/Bangco prompting the Commission to order the safekeeping of the ballot box at the PNP Headquarters in Marawi City.

Due to petitions filed with the Commission questioning the legal existence of Barangay Basak/Bangco whether we should treat them as one (1) whole barangay or two (2) separate barangays has resulted into controversy between the parties affecting the counting of votes and proclamation of winning candidates.

From the records, it can be established that Basak/Bangco has been considered as one existing barangay regardless of its territorial boundaries so to speak. Evidence will show that based on the project precincts submitted by the Election Officer of Madalum Municipality covering the four (4) successive political exercises, to mention:

- May 14, 2001 Synchronized National and Local elections;
- August 14, 2001 ARMM Plebiscite;
- November 26, 2001 ARMM Regional elections; and
- July 15, 2002 Barangay and Sangguniang Kabataan elections.

We can readily conclude that Basak/Bangco had been established as one barangay. The whole territory comprising an election precinct for Basak/Bangco for the purpose of voting has only one Precinct number 68A located at Basak Primary School and one List of Registered Voters.

. . . [T]here is only one Precinct No. 68A which was established by the Commission for Basak/Bangco under one list of Registered Voters for the whole barangay. This is in accordance with Section 149 of the Omnibus Election Code providing every barangay to have at least one such precinct. On the contrary, if Basak/Bangco were already in existence as two separate barangays, then a separate precinct number for each of them [would] have been the most appropriate and logical conclusion under the law.

Moreso, during the National Precinct Mapping and CVL Verification Project conducted pursuant to Comelec Resolution No. 3116, Basak/Bangco was taken as one barangay only.

At any rate, any question relating to the legal existence of Basak and Bangco as separate barangays should be threshed out in a separate petition following the provision set forth in Section 380 of the Muslim [Autonomy] Act No. 25, otherwise known as the Local Government Code of Muslim Mindanao, which [petition] is considered [an adversarial] proceeding but not in the present case.

Wherefore, in view of the foregoing considerations, and in order not to delay the proclamation of candidates for Barangay and Sangguniang Kabataan, the Law Department respectfully RECOMMENDS as follows:

- To ORDER the Board of Election Tellers of Barangay Basak/Bangco of Precinct No. 68A, Madalum, Lanao del Sur, to immediately convene and count the ballots cast in said precinct after notice to all candidates have been effected setting forth the date, time and place, when and where the board shall convene; and
- Thereafter, for the Board of Canvassers to proclaim the winning candidates for Barangay and Sangguniang Kabataan of Barangay Basak/Bangco without delay in accordance with Resolution No. 4846 dated June 13, 2002 of the Commission.[8]

The COMELEC's directive was carried out, with due notice to the parties. Consequently, private respondents Greenstar Bocay Mangandingan, et al. were proclaimed the winning barangay officials of Barangay Basak/Bangco.

On February 19, 2003, petitioner, a losing candidate for Punong Barangay in the August 13, 2002 Special Barangay Elections, filed a petition to annul the proclamation of private respondents as the winning candidates of Barangay Basak, Madalum, Lanao del Sur and to affirm the nullity of the August 13, 2002 Special Barangay Elections in Barangay Basak/Bangco, docketed as SPC No. 03-001.

In a Resolution dated May 12, 2005, the COMELEC, Second Division, denied the petition for lack of merit, and affirmed the proclamation of private respondents as the duly elected officials of Barangay Basak/Bangco.

Petitioner's motion for reconsideration was denied by the COMELEC en banc in a Resolution dated August 26,

2005, thus:

WHEREFORE, premises considered, the Commission (en banc) RESOLVED, as it hereby RESOLVES, to DENY the instant Motion for Reconsideration for UTTER LACK OF MERIT and AFFIRMS the Resolution dated May 12, 2005 resolving the instant case issued by the Commission (Second Division).[9]

Hence, this petition.

Petitioner raises the following issues:

- Whether or nor the respondent Commission gravely abused its discretion amounting to lack or excess of jurisdiction in ruling that there was a valid election in Precinct No. 68A for Barangay Basak/Bangco.
- Whether or not the respondent Commission gravely abused its discretion amounting to lack or excess of jurisdiction in issuing COMELEC Minute Resolution No. 03-0062.
- Whether or not the respondent Commission gravely abused its discretion amounting to lack or excess of jurisdiction when it authorized the merger of Barangay Basak and Barangay Bangco treating it as one barangay.[10]

In the first two issues, petitioner argues that when the COMELEC en banc promulgated Resolution No. 5503 holding in abeyance the conduct of a special barangay election in Barangay Basak/Bangco on August 13, 2002, the authority of the Election Officer to hold an election in the said barangay was withdrawn. Consequently, any election held thereat was without the authority of the COMELEC. Thus, the barangay election held on August 13, 2002 was null and void. Accordingly, the Memoranda dated August 13 and 15, 2002 issued by the COMELEC Commissioner-in-charge for ARMM nullified the said special barangay election.

Petitioner asserts that since there was no valid election held in Precinct No. 68A for Barangay Basak/Bangco on August 13, 2002 pursuant to Resolution No. 5503 and also absent a COMELEC en banc resolution calling for such an election, the proclamation of private respondents cannot be held valid.

Hence, petitioner contends that respondent COMELEC gravely abused its discretion when it issued Minute Resolution No. 03-0062 allowing the counting of ballots and the proclamation of the winning candidates, and holding as valid the election of August 13, 2002 in Barangay Basak/Bangco after it was already held in abeyance by Resolution No. 5503, and nullified by two Memoranda dated August 13 and 15, 2002.

In its Resolution dated May 12, 2005, the COMELEC, Second Division, stated that the special barangay election of August 13, 2002 “was never rendered annulled by the [COMELEC] en banc, which has the sole discretion to annul elections.” Resolution No. 5503 only ordered that the subject special barangay election of August 13, 2002 be held in abeyance pending the ongoing investigation of the validity of the merger of Barangay Basak and Bangco. However, the said order was not implemented because Election Officer Asira only learned about it for the first time from the Commissioner-in-charge for ARMM in Marawi City while the election proceedings were ongoing. Although Election Officer Asira was told to stop the said barangay election, the casting of votes had been completed when he arrived in Barangay Basak.

Hence, the COMELEC stated that the order to hold the subject election in abeyance was not implemented because it “came to the knowledge of the voters only after the casting of votes.” It also held that the Election Officer acted appropriately when he proceeded with the election in the absence of any official document directing him to hold the election in abeyance.

As the COMELEC en banc did not annul the special barangay election of August 13, 2002 by the issuance of Resolution No. 5503, the COMELEC, Second Division, assumed instead that petitioner was praying for the

annulment of the said barangay election in his Petition to Annul the Proclamation of Candidates and to Affirm the Nullity of Elections in Barangay Basak/Bangco, Municipality of Madalum, Province of Lanao del Sur.

The COMELEC, Second Division, citing *Sanchez v. COMELEC*,^[11] stated that the annulment of election can only be done when the COMELEC finds that an election was vitiated by widespread and pervasive terrorism and election frauds, which resulted in the submission at gunpoint of falsified and tampered election returns, and it is impossible to purge the illegal from the valid returns, so that there are no returns worthy of faith and credit and from which would be gauged a fair and true expression of the popular will.

As basis for the denial of the annulment of the subject election, the COMELEC, Second Division stated:

The Commission, however, received no evidence to find the election vitiated by widespread and pervasive terrorism and election frauds. The counting of the ballots, as well as its canvassing, proceeded without any major untoward incident, establishing the presumption that the election held in August 13, 2002 for Barangay Basak/Bangco took place accordingly, thereby, giving credence to the election as well as to the results thereof.^[12]

As regards the third issue, petitioner contends that respondent COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction when it merged Barangay Basak and Bangco as one barangay considering that Bangco is a separate barangay and was treated as such in the barangay elections of 1994 and 1997.

In its Resolution dated May 12, 2005, the COMELEC, Second Division, stated that the assertion of petitioner that Bangco is a separate barangay from Barangay Basak has been resolved by the Certification dated June 19, 2002 from the DILG, Province of Lanao del Sur, which Certification was submitted as evidence by petitioner himself. The Certification reads:

x x x

This is to certify that according to the records available in this office, Barangay BASAK is one of the 37 regular barangays of the Municipality of Madalum, Lanao del Sur with Internal Revenue Allotment (IRA).

This certifies further that BANGCO is not an existing barangay in the municipality and it is not a sitio of barangay Basak based on the Masterlist of Barangays of the [M]unicipality of Madalum, Lanao del Sur last 1997 Barangay Elections. However, BANGCO has been included in the Masterlist of Barangays in 1994 with complete sets of officials but excluded in the 1997 Masterlist of Barangays for no legal basis of existence.^[13]

The COMELEC, Second Division, pointed out that the Certification of the DILG clearly states that Bangco has no legal basis to exist as a separate barangay. It held that absent any official declaration from the DILG and the Province of Lanao del Sur that Bangco is a separate barangay, the Commission acted appropriately when it relied upon its official documents and integrated the voters of Bangco with the voters of Barangay Basak under Precinct No. 68A like in the past several election exercises.

Petitioner's allegation of grave abuse of discretion by respondent COMELEC implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[14] Such grave abuse of discretion is absent in this case.

WHEREFORE, the petition is DISMISSED. The COMELEC Resolution in SPC No. 03-001 dated August 26, 2005 is hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.
Quisumbing, J., on official leave.

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] Letter-Petition for Separation of the Voting Precinct for the Registered Voters of Bangco, Madalum, Lanao del Sur, for the Purpose of the Barangay Elections.

[3] Autonomous Region for Muslim Mindanao.

[4] Resolution 5227 is entitled In the Matter of the Petition for Separation of the Voting Precinct for the Registered Voters of Bangco, Madalum, Lanao del Sur in Connection With the July 15, 2002 Barangay and SK Election, Rollo, p. 77.

[5] Id. at 85.

[6] Memorandum No. 2002-08-026.

[7] Rollo, p. 95.

[8] Id. at 93-94.

[9] Id. at 157.

[10] Id. at 17-18.

[11] No. L-55513, June 19, 1982, 114 SCRA 454.

[12] Rollo, p. 135.

[13] Id. at 69, Emphasis supplied.

[14] Land Bank of the Philippines v. Court of Appeals, G.R. No. 129368, August 25, 2003, 409 SCRA 455.

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