

ABDUL GAFFAR P.M. DIBARATUN, PETITIONER, VS. COMMISSION ON ELECTIONS AND ABDUL CARIM MALA ABUBAKAR, RESPONDENTS.*G.R. No. 170365. February 02, 2010*

Ponente: PERALTA, J.

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This is a petition for certiorari[1] of the Resolution of the Commission on Elections (COMELEC) en banc dated October 17, 2005 in SPA No. 02-481, which declared a failure of elections in Precinct No. 6A/7A, Barangay Bagoainguid, Municipality of Tugaya, Lanao del Sur and annulled the proclamation of petitioner Abdul Gaffar[2] P.M. Dibratun as the duly elected Punong Barangay of Barangay Bagoainguid in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

The facts are as follows:

Respondent Abdulcarim Mala Abubakar,[3] a re-electionist candidate for the position of Punong Barangay of Barangay Bagoainguid, Tugaya, Lanao del Sur, filed a petition[4] before the COMELEC to declare a failure of elections in Precinct No. 6A/7A, Barangay Bagoainguid, Tugaya, Lanao del Sur and to annul the proclamation of petitioner Abdul Gaffar P.M. Dibratun as the duly elected Punong Barangay of Barangay Bagoainguid in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

In his petition, respondent Abubakar alleged:

x x x x

- That on July 15, 2002 at around 10:30 o' clock in the morning, the casting of votes in the above named precinct was commenced at its designated Polling Place in Cayagan Elementary School and while only ten (10) voters had actually voted, a certain ALIPECRY ACOP GAFFAR, who is the son of respondent Punong Barangay candidate ABDULGAFFAR DIBARATUN got inside the polling place and was caught in possession of Three (3) filled up ballots where candidate ABDULGAFFAR DIBARATUN were voted which he wanted to place or insert inside the ballot box for official (sic).

- That when said ALIPECRY GAFFAR was confronted by the petitioner's watcher and other watchers confronted him of said official ballots, he got mad and flared up and committed violence which disrupted and stopped the casting of votes and because of the commotion, the chairman left the ballot box which was held by the companions of Alipecry Acop Gaffar and destroyed the said ballot box, took the official ballot contained therein and inserted, placed therein a bundle of substituted ballots.

- That due to the facts adverted to above, the casting of votes was stopped and it was never resumed nor continued. Only Ten (10) voters had actually voted out of One Hundred Fifty One (151) registered voters.

- That even candidates for Barangay Chairmen and Barangay Kagawad were unable to cast their votes because the casting of votes was illegally disturbed, disrupted, interrupted and stopped by Alipecry Acop Gaffar despite the presence of numerous registered voters ready to cast their votes.

x x x x

- The Election Officer knowing fully that there was really a failure of election in the said precinct recommended that a special election be called for the said precinct.

- That unknown to the petitioner, the respondent Board of Election Inspectors, in conspiracy and connivance with respondent - Abdulgaffar Dibratun, surreptitiously and clandestinely canvassed the election returns and then illegally proclaimed the respondent Abdulgaffar Dibratun and issued Certificate of Canvass of Votes and Proclamation of Winning Candidates dated July 16, 2002 which was ant[e]dated xerox copy of which is hereto attached as Annex "C" hereof.[5]

Respondents therein filed their Answer denying the allegations of herein private respondent. They contended that as 10 voters had actually voted, there was no failure of elections in the aforementioned precinct. They further contended that the petition was filed out of time.

In the Resolution dated October 17, 2005, the COMELEC en banc granted the petition, the dispositive portion of which reads:

WHEREFORE, premises considered, the Commission (en banc) RESOLVED, as it hereby RESOLVES, to GIVE DUE COURSE to the instant petition.

ACCORDINGLY, the proclamation of respondent Abdulgaffar P.M. Dibratun as the duly elected Punong Barangay of Barangay Bagoainguid, Tugaya, Lanao del Sur is hereby ANNULLED and he is thus ORDERED to CEASE AND DESIST from exercising the powers and responsibilities of the said office. Pending the conduct of the special elections yet to be scheduled by this Commission and until no Punong Barangay has been duly elected and qualified, the incumbent Punong Barangay shall continue to exercise the powers and duties of such office in a hold-over capacity in accordance with Section 5 of R.A. No. 9164 (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).

Let the Office of the Deputy Executive Director for Operations (ODEDO), this Commission, furnish a copy of this Resolution to the Provincial Election Supervisor of Lanao del Sur for the implementation of the same upon its finality.[6]

Dibratun filed this petition, raising the following issues:

1) The COMELEC en banc gravely abused its discretion amounting to lack or excess of jurisdiction when it unjustly gave due course to the unmeritorious petition of respondent Abubakar for the simple reason that it was filed out of time and the validity of the proclamation of petitioner Dibratun on July 16, 2002 can no longer be legally assailed after the expiration of ten (10) days.

2) Private respondent Abubakar is estopped to assert whatever rights he has in the election laws/rules of procedure when he desparately failed to make the proper objections during the casting, counting and canvassing of votes, and, therefore, the COMELEC en banc gravely abused its discretion amounting to lack or excess of jurisdiction when it erroneously heard and considered the unmeritorious petition of respondent Abubakar.

3) Public respondent COMELEC en banc gravely abused its discretion amounting to lack or excess of jurisdiction when it erroneously declared failure of elections in Precinct No. 6A/7A of Barangay Bagoainguid, Tugaya, Lanao del Sur and called for special elections in the said precinct.[7]

The main issue is whether or not the COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in declaring a failure of elections in Precinct No. 6A/7A of Barangay Bagoainguid, Tugaya, Lanao del Sur and in annulling the proclamation of petitioner as the elected Punong Barangay.

The petition is unmeritorious.

The 1987 Constitution vests in the COMELEC the broad power to enforce all the laws and regulations relative to the conduct of elections, as well as the plenary authority to decide all questions affecting elections except the question as to the right to vote.[8]

Section 6 of the Omnibus Election Code provides for the instances when the COMELEC may declare failure of elections, thus:

SEC. 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 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.

Sec. 6 of the Omnibus Election Code is reflected in Sec. 2, Rule 26 of the COMELEC Rules of Procedure.

In its Resolution, the COMELEC en banc, citing *Banaga, Jr. v. Commission on Elections*,[9] enumerated the three instances when a failure of elections may be declared by the Commission:

- (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 had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or
- (3) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.

Before the COMELEC can act on a verified petition seeking to declare a failure of elections, two conditions must concur: (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the elections.[10] The cause of such failure of election could only be any of the following: force majeure, violence, terrorism, fraud or other analogous causes.[11]

The COMELEC en banc based its decision to declare a failure of elections in Precinct No. 6A/7A on the second instance stated in Section 6 of the Omnibus Election Code, that is, the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes.

The COMELEC en banc held that in this case, it was undisputed that after only 10 registered voters cast their votes, the voting was suspended before the hour fixed by law by reason of violence. This was supported by the affidavits submitted by both petitioner and private respondent, who only disagreed as to the perpetrator of the violence as each party blamed the other party.

In its Resolution, the COMELEC en banc averred:

The letter of Mayor Abdul Jabbar Mangawan A.P. Balindong, Municipal Mayor of Tugaya, Lanao Del Sur, addressed to Chairman Benjamin Abalos, Sr., the Joint Affidavit of Norhata M. Ansari and Sahara T. Guimba, Poll Clerk and Third Member, respectively, of the Board of Election Inspectors of Precinct No. 6A/7A of Barangay Bagoainguid and the Joint Affidavit of PO1 Yahya M. Dirindigun and PO1 Casary C. Modasir all state that it is the petitioner and his relatives and followers who started the violence that caused the suspension of the voting.

Meanwhile, the affidavits submitted by the witnesses of the petitioner all state that it is respondent Dibaraton and his followers and relatives who were the cause of the violence which resulted in the suspension of the election after only ten (10) people managed to vote.[12]

The COMELEC en banc ruled that since both parties agreed that the elections were suspended before the hour fixed by law due to violence caused by undetermined persons, there was obviously a failure of elections in the aforementioned precinct.[13]

The findings of fact of the COMELEC en banc are binding on this Court. The grounds for failure of election (i.e., force majeure, violence, terrorism, fraud, or other analogous cases) involve questions of fact, which can only be determined by the COMELEC en banc after due notice to and hearing of the parties.[14] An application for certiorari against actions of the COMELEC is confined to instances of grave abuse of discretion,[15] amounting to lack or excess of jurisdiction. The COMELEC, as the administrative agency and specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, has the expertise in its field so that its findings and conclusions are generally respected by and conclusive on the Court.[16]

Thus, the Court agrees with the COMELEC that the elections in Precinct No. 6A/7A were suspended before the hour fixed by law for the closing of the voting due to violence. Only 10 voters were able to cast their votes out of 151 registered voters; hence, the votes not cast would have affected the result of the elections. The concurrence of these two conditions caused the COMELEC en banc to declare a failure of elections. When there is failure of elections, the COMELEC is empowered to annul the elections and to call for special elections.[17] Public respondent, therefore, did not commit grave abuse of discretion in its resolution of the case.

Moreover, petitioner contends that respondent Abubakar's petition for the declaration of failure of elections and to annul the proclamation of petitioner was in the nature of a pre-proclamation controversy under Sec. 241 of the Omnibus Election Code, but respondent failed to comply with the procedures therefor. Petitioner also contends that the petition was filed out of time, and that respondent failed to pay the docket fees on time.

Petitioner's arguments lack merit.

Respondent Abubakar's petition for declaration of failure of elections falls under Sec. 6 of the Omnibus Election Code. The allegations in respondent's petition constitute one of the instances for the declaration by the COMELEC of failure of elections in Precinct No. 6A/7A. Hence, the COMELEC en banc took cognizance of the petition pursuant to Sec. 4 of Republic Act No. 7166,[18] thus:

SEC. 4. Postponement, Failure of Elections and Special Elections.--The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.[19]

The Court finds the petition for declaration of failure of elections under Section 6 of the Omnibus Election Code to be in order, and it was properly disposed of by the COMELEC en banc. Hence, petitioner erred in contending

that the petition of respondent Abubakar was in the nature of a pre-proclamation controversy under Sec. 241 of the Omnibus Election Code, but failed to comply with the procedures therefor. The issue addressed by the COMELEC en banc was whether the evidence submitted supported the allegations in the petition that violence suspended the elections in Precinct No. 6A/7A, Barangay Bagoainguid, Tugaya, Lanao del Sur, before the hour fixed by law for the closing of the voting on July 15, 2002, which resulted in failure of elections. The issue does not fall under pre-proclamation controversies. The issues that may be ventilated in a pre-proclamation controversy are enumerated in Sec. 243 of the Omnibus Election Code,[20] thus:

- Illegal composition or proceedings of the board of canvassers;
- The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of the Omnibus Election Code;
- The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.[21]

A petition to declare a failure of elections is neither a pre-proclamation controversy as classified under Sec. 5 (h), Rule 1 of the Revised COMELEC Rules of Procedure, nor an election case.[22]

Further, petitioner's basis for the allegation that private respondent's petition was filed out of time is Sec. 252 of the Omnibus Election Code,[23] covering election contests for barangay offices, wherein a petition is filed with the proper municipal or metropolitan trial court within ten days after the proclamation of the results of the election. Granting that the petition filed was for an election contest, it would have been filed on time, since it was filed on July 26, 2002, which was within the ten-day period from the proclamation of petitioner on July 16, 2002.

However, the petition filed by private respondent was not for an election contest under Sec. 252 of the Omnibus Election Code, but for the declaration of failure of elections under Section 6 of the same Code. The Court notes that the provisions on failure of elections in Section 6 of the Omnibus Election Code[24] and Sec. 2, Rule 26 of the COMELEC Rules of Procedure do not provide for a prescriptive period for the filing of a petition for declaration of failure of elections. It appears that the COMELEC en banc has the discretion whether or not to take cognizance of such petition. In this case, the petition was filed 11 days after the scheduled election. In its Resolution, the COMELEC en banc declared that petitioner's allegation that the petition was filed out of time was rendered moot and academic by the fact that the petition was already heard by the Commission and submitted for resolution.[25] The COMELEC's resolution of private respondent's petition was in keeping with its function to ensure the holding of free, orderly, honest, peaceful, and credible elections.

Lastly, petitioner's allegation that private respondent failed to pay the docket fee on time does not appear to have been raised before the COMELEC; hence, it cannot be raised for the first time on appeal.

Petitioner's allegation of grave abuse of discretion by public respondent COMELEC en banc 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.[26] It is not present in this case, as public respondent issued the COMELEC Resolution dated October 17, 2005 based on the evidence on record and the law on the matter.

WHEREFORE, the instant petition for certiorari is hereby DISMISSED.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., and Perez, JJ., concur.

Abad, J., on official leave.

Mendoza, J., on leave.

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

[2] Also spelled as "Abdulgaffar" in the COMELEC Resolution dated October 17, 2005.

[3] Also spelled as "Abubacar" in the COMELEC Resolution dated October 17, 2005.

[4] Entitled Abdulcarim Mala Abubacar v. Board of Election Inspectors/Tellers of Precinct No. 6A/7A, Barangay Bagoainguid, Tugaya, Lanao del Sur.

[5] COMELEC Resolution dated October 17, 2005, rollo, pp. 32-33.

[6] Rollo, pp. 35-36.

[7] Id. at 15-16.

[8] Soliva v. Commission on Elections, G.R. No. 141723, April 20, 2001, 357 SCRA 336.

[9] G.R. No. 134696, July 31, 2000, 336 SCRA 701.

[10] Id.

[11] Id.

[12] Rollo, p. 34.

[13] Id. at 35.

[14] Immam v. Commission on Elections, G.R. No. 134167, January 20, 2000, 322 SCRA 866.

[15] Matalam v. Commission on Elections, G.R. No. 123230, April 18, 1997, 271 SCRA 733.

[16] Supra note 8.

[17] Id.

[18] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes. Approved on November 26, 1991.

[19] Emphasis supplied.

[20] As amended by Sections 17 to 22 of R.A. No. 7166.

[21] Supra note 15.

[22] Borja, Jr. v. Commission on Elections, G.R. No. 120140, August 21, 1996, 260 SCRA 604.

[23] Sec. 252. Election contest for barangay offices. - A sworn petition contesting the election of a barangay officer shall be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election. xxxx

[24] SEC. 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 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.

[25] Rollo, p. 35.

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

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