

MIKE A. FERMIN, PETITIONER, VS. COMMISSION ON ELECTIONS AND ALIMUDIN A. MACACUA, RESPONDENTS.

G.R. NO. 172563. April 27, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari alleging that the Commission on Elections (COMELEC) en banc acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated May 9, 2006 and May 16, 2006.

The facts are:

Petitioner Mike A. Fermin and private respondent Alimudin A. Macacua were candidates for Mayor in the May 2004 local elections in the Municipality of Kabuntalan, Maguindanao. The Municipal Board of Canvassers of Kabuntalan proclaimed petitioner as the duly elected mayor of Kabuntalan. The COMELEC, however, annulled the proclamation due to the failure of clustered polling Precinct No. 25A/26A to function in Barangay Guiawa, Kabuntalan, Maguindanao. The existence of 264 registered voters in the clustered precinct would affect the results of the election. Thus, the COMELEC scheduled a special election in clustered Precinct No. 25A/26A on July 28, 2004.

In the special election of July 28, 2004, private respondent was proclaimed as the winning candidate for Mayor. Petitioner challenged the special election due to alleged procedural infirmities. In a Resolution dated June 2, 2005, the COMELEC nullified the special election. Private respondent's proclamation was set aside and the vice mayor-elect temporarily assumed the mayoralty post.

The COMELEC scheduled another special election for clustered Precinct No. 25A/26A on May 6, 2006. It constituted a Special Municipal Board of Canvassers (SMBOC) for this purpose. One Hundred Seventy- Eight (178) out of the 264 registered voters cast their votes.

Per SMBOC canvass, petitioner garnered 39 votes, while private respondent obtained 136 votes. When the election results were added, petitioner and private respondent got 2,208 votes each, ending in a tie.

Pursuant to Sec. 240[1] of the Omnibus Election Code, SMBOC issued a notice suspending its proceedings and setting a Special Public Hearing on May 14, 2006.

In a Memorandum dated May 8, 2006, the SMBOC Chairman submitted to COMELEC a report on the conduct of the second special elections.

On May 9, 2006, private respondent filed with the COMELEC en banc an Extremely Urgent Omnibus Motion:

- To investigate why the May 6, 2006 Special Election was stopped at 2:15 p.m. with 30 to 40 voters still lined-up to vote;
- To require the SMBOC of Kabuntalan headed by Atty. Radam and the PNP Contingent headed by a certain

Supt. Gunting to show cause why they should not be held liable for an election offense under paragraphs (e) and (f), Sec. 261 and Sec. 262 of the Omnibus Election Code; and

- To hold in abeyance the Special Public Hearing set by the Board on May 14, 2006 for purposes of Sec. 240 of the Omnibus Election Code until after the Commission shall have ruled on the incidents.[2]

On even date, the COMELEC issued the first assailed Order dated May 9, 2006, the dispositive portion of which reads:

The Commission, after due deliberation, hereby orders as follows:

- to require the petitioner and the Special Municipal Board of Canvassers of Kabuntalan, Maguindanao to file their respective comments within five (5) days from receipt hereof;

- to hold in abeyance the Special Public Hearing set by the Special Municipal Board of Canvassers on May 14, 2006; and

- to set this Extremely Urgent Omnibus Motion for hearing on May 18, 2006 at 10:00 a.m., Comelec Session Hall, 8th Floor, Palacio del Gobernador, Intramuros, Manila.

SO ORDERED. [3]

Despite the Order dated May 9, 2006, the Special Public Hearing pushed through on May 14, 2006, and the SMBOC proclaimed petitioner as the duly elected Mayor of Kabuntalan. Private respondent alleged in his Comment[4] that he was absent during the Special Public Hearing.

On May 16, 2006, the COMELEC en banc issued the second assailed Order,[5] which annulled the proceedings of the Special Public Hearing conducted on May 14, 2006 and set aside the proclamation of petitioner.

Hence, this petition.

The issue is whether or not the COMELEC en banc gravely abused its discretion amounting to lack of jurisdiction in issuing the Orders dated May 9, 2006 and May 16, 2006.

Petitioner claims that the COMELEC acted with grave abuse of discretion when it ruled on private respondent's Extremely Urgent Motion despite the alleged lack of sufficient notice to the parties.

The Court is not persuaded.

Sections 3 and 4, Rule 1 of the COMELEC Rules of Procedure provide:

Sec. 3. Construction.—These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

Sec. 4. Suspension of the Rules. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

Moreover, *Pangandaman v. Commission on Elections*[6] held:

Section 2 (1) of Article IX (C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative referendum and recall." There can hardly be any doubt that the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly,

honest, peaceful and credible elections.

x x x

More pointedly, this Court recently stated in *Tupay Loong v. COMELEC, et al.*, that '[O]ur elections are not conducted under laboratory conditions. x x x Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. We cannot, however, engage in swivel chair criticism of these actions often taken under very difficult circumstances.'

The purpose of the governing statutes on the conduct of elections—

'... [i]s to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of votes cast in the elections. In the performance of its duties, the Commission must be given considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created — to promote free, orderly, and honest elections. The choice of means taken by the Commission of Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.[7]

In this case, the assailed Orders were issued by the COMELEC in the performance of its duty to promote free, orderly and honest elections. Private respondent's Extremely Urgent Omnibus Motion invoked COMELEC'S authority to investigate why the May 6, 2006 Special Election was stopped at 2:15 p.m. with 30 to 40 voters still lined-up to vote and determine the accountability of the SMBOC of Kabuntalan on the matter.

According to private respondent, a scripted scenario of violence initiated by persons identified with petitioner and abetted by the PNP contingent marred the second special elections on May 6, 2006. Further, the Chairman of the SMBOC allegedly stopped the election at 2:15 p.m. although there were still voters lined up to vote in the precinct.

Hence, the COMELEC issued the first Order dated May 9, 2006 requiring petitioner and the SMBOC to file their respective Comments on the omnibus motion, and to hold in abeyance the Special Public Hearing set on May 14, 2006.

However, despite notice to both parties and the SMBOC, the Special Public Hearing proceeded on May 14, 2006. In its Order dated May 16, 2006, the COMELEC annulled the proceedings of the Special Public Hearing and set aside the proclamation of petitioner therein as the duly elected mayor of Kabuntalan, evidently for failure to heed its Order dated May 9, 2006.

Under the circumstances, COMELEC's action is not tainted with grave abuse of discretion.

Petitioner also assails the COMELEC for taking cognizance of private respondent's omnibus motion although the matters raised therein did not constitute that of a pre-proclamation controversy, but should have been the subject of a separate criminal prosecution for election offenses.

The argument is without merit.

Under Section 227[8] of the Omnibus Election Code, the COMELEC is vested with the power of direct control and supervision over the board of canvassers; hence, it took cognizance of the complaint in the omnibus motion which questioned the conduct of the special elections by the SMBOC.

The Solicitor General aptly stated that the COMELEC cannot just cast a blind eye and concede to be powerless in

the midst of allegations of electoral fraud and violence in the second special elections held in Precinct 25A/26A in Kabuntalan, Maguindanao by the mere expedient of an alleged procedural flaw on the part of the party aggrieved. To do so would be an abandonment of COMELEC's constitutionally enshrined duty of ensuring an honest and clean election.

Petitioner's allegation of grave abuse of discretion by the COMELEC in issuing the assailed Orders implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[9] It is absent in this case.

WHEREFORE, the petition for certiorari is DISMISSED. The Orders of the COMELEC dated May 9, 2006 and May 16, 2006 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Nachura, J., No part,

[1] Sec. 240. Election resulting in a tie.—Whenever it shall appear from the canvass that two or more candidates have received an equal and highest number of votes, or in cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected, the board of canvassers, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the board of canvassers shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favored by luck, and the candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board of canvassers shall forthwith make a certificate stating the name of the candidate who had been favored by luck and his proclamation on the basis thereof. Nothing in this section shall be construed as depriving a candidate of his right to contest the election.

[2] Rollo, p. 41.

[3] Id. at 36.

[4] Id. at 94.

[5] Id. at 37.

[6] G.R. No. 134340, November 25, 1999, 319 SCRA 283.

[7] Id. at 299-300.

[8] Sec. 227. Supervision and control over board of canvassers.—the Commission shall have direct control and supervision over the board of canvassers. Any member of the board of canvassers may, at any time, be relieved for cause and substituted motu proprio by the Commission.

[9] *Batul v. Bayron*, G. R. Nos. 157687 & 158959, February 26, 2004, 424 SCRA 26, 41.

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