

**RICARDO P. PRESBITERO, JR., JANET PALACIOS, CIRILO G. ABRASIA,
ARMANDO G. ALVAREZ, NENITO A. ARMAS, RENE L. CORRAL,
JOEMARIE A. DE JUAN, ENRILICE C. GENOBIS, WILLIAM A.
PRESBITE...**

G.R. No. 178884. June 30, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for certiorari and prohibition assailing the June 25, 2007 Resolution[1] of the Commission on Elections (COMELEC) in SPA No. 07-534.

Briefly stated, the antecedent facts and proceedings are as follows:

On May 10, 2007, the 4[th] Municipal Circuit Trial Court (MCTC) of Valladolid-San Enrique-Pulupandan, Negros Occidental, in separate resolutions[2] in 16 inclusion/exclusion cases,[3] ordered the municipal election officer (EO) of Valladolid to include the names of 946 individuals in the list of qualified voters of the said municipality for the May 14, 2007 elections. Prompted by the advice of COMELEC Manila that decisions of trial courts of limited jurisdiction in inclusion/exclusion cases attain finality only after the lapse of five days from receipt of notice sans any appeal therefrom, the acting provincial election supervisor (PES), directed the EO on May 13, 2007 not to comply with the MCTC order.[4] As a consequence thereof, the said 946 were disallowed by the board of election inspectors to vote in their respective precincts.[5]

These 946 then moved before the MCTC for the issuance of a temporary restraining order (TRO) to prevent the Municipal Board of Canvassers (MBOC) from canvassing the election returns and from proclaiming the winning candidates for the local positions in the municipality.[6] On May 17, 2007, the MCTC granted the motion and issued the restraining order.[7] Nonetheless, contending that the MCTC had no jurisdiction over it, the MBOC continued with the canvassing and subsequently proclaimed all the winning candidates for the municipal offices, including four of the herein petitioners—Cirilo Abrasia, Armando Alvarez, Nenito Armas and Rene Corral—who won seats in the Sangguniang Bayan.[8]

Dissatisfied with the turn of events, petitioners filed before the COMELEC a petition for the declaration of failure of election and the holding of a special election in Valladolid, Negros Occidental, which was docketed as SPA No. 07-534.[9] The petition was anchored on the grounds that: (1) the 946 individuals who were found by the MCTC to be qualified voters were disenfranchised; (2) for reasons unclear to the petitioners, the EO of the municipality, who was also the ex-officio chairman of the MBOC, was abruptly and unceremoniously replaced by another person, an alleged COMELEC computer clerk, on orders of the acting PES; (3) the number of voters who actually voted in the said elections was unusually low and its percentage in relation to the number of registered voters barely reached 70%; (4) no less than 2,000 avid supporters of the petitioners failed to vote on election day as their names were missing from the official list of voters; (5) the MBOC blatantly defied the TRO issued by the MCTC; and (6) the acting PES and the acting EO threatened and coerced the vice chairman and member-secretary

of the MBOC to continue with the canvassing and proclaim the winning candidates.[10]

On June 25, 2007, the COMELEC en banc issued the assailed Resolution[11] dismissing the case for lack of merit. The COMELEC ruled that the grounds relied upon by the petitioners were not among those enumerated in Section 6 of the Omnibus Election Code (OEC)[12] which would warrant the declaration of failure of election. There was not even an allegation in the petition that the election in any polling place was not held or was suspended before the hour fixed by law or that the voting resulted in a failure to elect. To the contrary, petitioners admitted that elections were held, that 70% of the registered voters were able to cast their votes, and that the respondents emerged as winners. Further, the MCTC is without authority to order the suspension of the canvassing and of the proclamation of the winning candidates.[13]

Contending that the COMELEC gravely abused its discretion in the issuance of the said resolution, petitioners brought the case before us via a petition for certiorari and prohibition.

We agree with the ruling of the COMELEC. Thus, we dismiss the petition.

Stressed repeatedly in our prior decisions is that a failure of election may be declared only in the three instances[14] stated in Section 6[15] of the OEC: the election has not been held; the election has been suspended before the hour fixed by law; and the preparation and the transmission of the election returns have given rise to the consequent failure to elect, meaning nobody emerged as the winner.[16] Furthermore, the reason for such failure of election should be force majeure, violence, terrorism, fraud or other analogous causes.[17] Finally, before the COMELEC can grant a verified petition seeking to declare a failure of election, the concurrence of 2 conditions must be established, namely: (1) no voting has taken place in the precincts concerned on the date fixed by law or, even if there was voting, the election nevertheless resulted in a failure to elect; and (2) the votes cast would affect the result of the election.[18]

In the instant case, it is admitted by the petitioners that elections were held in the subject locality. Also, the private respondents and four of the petitioners won in the elections and were proclaimed as the duly elected municipal officials. There is nothing in the records from which the Court can make even a slim deduction that there has been a failure to elect in Valladolid, Negros Occidental. Absent any proof that the voting did not take place, the alleged disenfranchisement of the 946 individuals and 2,000 more supporters of the petitioners cannot even be considered as a basis for the declaration of a failure of election.[19] Had petitioners been aggrieved by the allegedly illegal composition and proceedings of the MBOC, then they should have filed the appropriate pre-proclamation case contesting the aforesaid composition or proceedings of the board,[20] rather than erroneously raising the same as grounds for the declaration of failure of election. On the TRO issued by the MCTC and the subsequent defiance thereof by the MBOC, suffice it to state that the propriety of suspending the canvass of returns or the proclamation of candidates is a pre-proclamation issue that is solely within the cognizance of the COMELEC.[21] In sum, petitioners have not adduced any ground which will warrant a declaration of failure of election.

As a final note, we reiterate our pronouncement in *Batabor v. Commission on Elections*[22] that "[t]he power to declare a failure of election should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever; or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise. There is failure of election only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected."

WHEREFORE, premises considered, the petition for certiorari and prohibition is DISMISSED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[1] Rollo, pp. 27-31.

[2] Id. at 57-135.

[3] Election Cases Nos. 07-006-V, 07-007-V, 07-008-V, 07-009-V, 07-010-V, 07-011-V, 07-012-V, 07-013-V, 07-014-V, 07-015-V, 07-016-V, 07-017-V, 07-018-V, 07-019-V, 07-020-V, and 07-021-V.

[4] Rollo, p. 11.

[5] Id. at 140-150.

[6] Id. at 151-161.

[7] Id. at 163-167.

[8] Id. at 168 and 200.

[9] Id. at 32.

[10] Id. at 35-42.

[11] Supra note 1.

[12] Batas Pambansa Blg. 881, approved on December 3, 1985.

[13] Rollo, pp. 29-30.

[14] Tan v. Commission on Elections, G.R. Nos. 166143-47 and 166891, November 20, 2006, 507 SCRA 352, 378; Banaga, Jr. v. Commission on Elections, 391 Phil. 596, 606-607 (2000).

[15] Section 6 of the OEC reads:

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.

[16] Mutilan v. Commission on Elections, G.R. No. 171248, April 2, 2007, 520 SCRA 152, 161; Borja, Jr. v. Commission on Elections, 329 Phil. 409, 414 (1996).

[17] Tan v. Commission on Elections, 463 Phil. 212, 233 (2003).

[18] Macabago v. Commission on Elections, 440 Phil. 683, 695 (2002).

[19] See Batabor v. Commission on Elections, G.R. No. 160428, July 21, 2004, 434 SCRA 630, 634, in which the

Court affirmed the COMELEC's refusal to declare a failure of election even if the votes of the allegedly disenfranchised supporters of the petitioner therein would, if cast, substantially affect the results of the elections, absent any proof that the voting did not take place. See also *Canicosa v. Commission on Elections*, 347 Phil. 189, 193 (1997), in which the Court did not consider as a ground for the declaration of failure of election the fact that the names of the registered voters in the various precincts were not in the list of voters.

[20] See Section 20 of the OEC, as modified by Section 19 of Republic Act No. 7166 entitled "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.

[21] See Section 242 of the OEC, which pertinently states that the Commission shall have exclusive jurisdiction of all pre-proclamation controversies; *Albano v. Hon. Arranz*, 114 Phil. 318, 321 (1962); *Salcedo, Jr. v. Commission on Elections*, 108 Phil. 1164, 1168 (1960); see also *Libardos v. Casar, A.M.* No. MTJ-92-728, July 8, 1994, 234 SCRA 13, 16, in which the Court held a judge administratively liable for having ordered the suspension of the canvassing in an election; *Gustilo v. Judge Real, Sr.*, 405 Phil. 435, 444 (2001), in which the Court considered a judge to have gravely abused his authority and to have usurped a power vested by law in the COMELEC when he annulled the proclamation of a duly elected barangay official; and *COMELEC v. Judge Datu-Iman*, 363 Phil. 446, 451 (1999), in which the Court ruled, citing *Zaldivar v. Estenzo*, No. L-26065, May 3, 1968, 23 SCRA 533, 539-541, that lower courts cannot issue writs of injunction enforceable against the COMELEC.

[22] *Supra* note 19, at 797.

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