

AMBROSIO JANAIRO, FRANCISCO MADARCOS, PETITIONERS, VS. COMMISSION ON ELECTIONS, ROMULO LUMAWIG, AND SIMPLICIO EGINA, RESPONDENTS.

G.R. No. 28315. December 08, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

In the local election held November 14, 1967 for the offices of Mayor and Vice-Mayor of the municipality of Caluya, province of Antique, the contending candidates were Ambrosio Janeiro and Romulo Lumawig, and Francisco Madarcos and Simplicio Egina, respectively.

On November 24, 1967 the team of Ambrosio Janeiro and Francisco Madarcos filed a petition for mandamus before this Court, alleging in substance: that, the re-spondents Romulo Lumawig and Simplicio Egina obtained a plurality of 23 votes over the petitioners; that there were eleven election precincts in the entire municipality of Caluya, but in one of them (Precinct No. 10, located in the island-barrio of Sibay) no election was held and not a single registered voter was able to cast his vote, because when the persons entrusted by the local COMELEC, registrar with the delivery of the list of registered voters arrived at the island they were fired upon and had to go back to Caluya, returning to Sibay only at 6:30 in the evening of the same day, at which time however the board of election inspectors refused to hold the election on the ground that it was against the law to do so.

Attached to the petition are copies of telegrams set to the Commission on Elections in Manila by the municipal treasurer of Caluya, the provincial supervisor for San Jose, Antique and the COMELEC registrar for Caluya, all advising the Commission of the occurrence and requesting appropriate instructions. Petitioner Francisco Madarcos sent a similar telegram, protesting at the same time the proclamation of his opponent Simplicio Egina for the office of Vice-Mayor.

Acting on the telegraphic requests aforementioned, the Commission on Elections met on November 21, 1967, and resolved: "to direct the municipal board of canvassers of Caluya, Antique, to suspend up to November 27, 1967 (Monday), the canvass to give the party concerned opportunity to go to the proper court for remedy, with the understanding, however, that if after November 27, 1967 no restraining order from the court is received by this Commission, the Board shall forthwith proceed to terminate the canvass and proclaim the winning candidates for local offices in Caluya, Antique." Notices of the foregoing resolution were sent to the municipal treasurer and the chairman of the muni-cipal board of canvassers of Caluya on November 22, 1967.

Alleging further that in precinct No. 10 of Caluya there are 173 voters (of whom 146 have complete identifica-tion cards and 27 have cards without their pictures there-on); that this precinct is a known bailiwick of the peti-tioners, as shown by the results of the 1963 elections; and that if an election should be held therein it would alter the results of the election in the entire municipa-lity, the petitioners pray that this Court direct the respondent Commission on Elections "to order the continua-tion of the election in precinct No. 10 of the municipality of Caluya; or in the alternative to recommend to the President of the Philippines the holding of a new

election in that place; or in the event that a legislation is necessary to hold an election in precinct No. 10, Caluya, to give sufficient time to the petitioners to seek the necessary legislation to that effect." Pending the holding of the election prayed for, the petitioners ask that the canvass of votes and the proclamation of the respondents be suspended.

This Court finds the petition without legal basis and therefore resolves to dismiss it, but considers the matter to be one of sufficient importance and public interest so as to require an extended resolution of denial.

The basic issue implicit in the petition concerns the authority of the Commission on Elections to order the holding of a new election in a particular precinct where, for some reason, the election failed to take place on the date specified by law, and, by inference, the authority of this Court to direct the Commission on Elections to issue such an order. There are two provisions in the Revised Election Code which have to do with the contingency thus envisioned. One is Section 8 of the Revised Election Code, which reads:

"SEC. 8. Postponement of Election.- When for any serious cause the holding of an election should become impossible in any political division or sub-division, the President, upon recommendation of the Commission on Elections, shall post-pone the election therein for such time as he may deem necessary."

The other is Section 21, paragraph c, which states:

"SEC. 21 xxx xxx xxx xxx

(c) Whenever the election for a local office fails to take place on the date fixed by law, or such election results in a failure to elect, the President shall issue, as soon as practicable, a proclamation calling a special election to fill said office."

It should be noted that in either of the two cases the authority is given to the President: in the first, to postpone the election upon recommendation of the Commission on Elections, the order of postponement, by its very nature, to be issued before the date fixed by law for the election arrives; and in the second, to issue a proclamation calling a special election to fill the office concerned. There is no law which gives similar authority to the courts or to the Commission on Elections. The general judicial power reposed in the courts by the Constitution does not cover the situation. As explained in the decision of this Court, penned by Associate Justice, now Chief Justice, Roberto Concepcion, in the case of *Salih Ututalum vs. Commission on Elections and Indanan Anni*, G. R. No. L-25349, December 3, 1965" ... the authority to order the holding of elections ... on any date other than ... the date fixed in our Revised Election Code, is merely incidental to, or an extension or modality of, the power to fix the date of elections. This is, in turn, neither executive nor administrative, but legislative in character... Hence, no elections may be held on any other date, except when so provided by another Act of Congress, or upon orders, of a body or officer to whom Congress may have delegated either its aforementioned power or the authority to ascertain or fill in the details in the execution of that power."

In the same decision this Court not only took note of the failure of the law to afford redress, either before the Commission on Elections or before the courts, to persons adversely affected by such failure, but recognized its possible effects upon the very institution of suffrage. The voters in precincts where no election is held on the date fixed by law, we said, "will in effect . . . be disfranchised, and unscrupulous politicians would be encouraged to resort to acts of terrorism in areas favoring their opponents, in order to offset the latter's advantage therein, and thus eventually defeat the will of the majority and undermine the foundation of our democracy." It is undeniable that the situation is fraught with dangerous possibilities.

The remedy, however, lies in Congress. The hiatus in our election law may be filled only by legislation, not by judicial fiat.

With respect to the alternative prayer of the petitioners - that this court recommend to the President that he call a special election in precinct No. 10 of Caluya, Antique - the same must likewise be denied for several reasons: first, the function of this Court is to adjudicate justiciable cases, not to make recommendations concerning the powers and functions of the other departments of the government; second, the petitioner may make such recommendation by themselves; and third, it is at best doubtful if the fact that no election was held in one out of eleven precincts in the municipality of Caluya may be considered as a failure of "the election for a local office to take place on the date fixed by law," as provided in Section 21(c) of the Revised Election Code.

PETITION DISMISSED. Let copies of this resolution be furnished the President of the Senate, the Speaker of the House of Representatives, the Commission on Elections, and the Secretary of Justice.

Concepcion, Reyes, JBL, Sanchez, Ruiz Castro, Angeles, and Fernandez, JJ., concur.
Dizon, Zaldivar, JJ., did not took part.

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