

VIRGILIO SANCHEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 55513. June 19, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Resolution of the Commission on Elections, dated May 15, 1980, in Pre-Proclamation Case No. 41, entitled Virgilio Sanchez vs. Mayor Armando P. Biliwang and the Municipal Board of Canvassers of San Fernando, Pampanga, is challenged in these consolidated Petitions for Certiorari.

In the local elections held on January 30, 1980, Virgilio Sanchez was the official candidate of the Nacionalista Party (NP) for Municipal Mayor of San Fernando, Pampanga, while Armando Biliwang was the Kilusang Bagong Lipunan's (KBL) official candidate for the same position. The latter was proclaimed winner by the Municipal Board of Canvassers of said town.

On February 1, 1980, Sanchez filed with the Commission on Elections a Petition to declare null and void the local elections in San Fernando due to alleged large scale terrorism. On the same day, the COMELEC denied the Petition for lack of merit. Sanchez moved for reconsideration. On February 8, 1980, the COMELEC recalled its Resolution and required Biliwang and the Municipal Board of Canvassers to answer. Hearings were conducted thereafter.

On May 15, 1980, the COMELEC issued the challenged Resolution, the dispositive portion of which reads:

"WHEREFORE, the Commission hereby orders the following:

"1. The annulment of the election held on January 30, 1980 of the local government officials in San Fernando, Pampanga, consequently, the annulment and setting aside of the proclamation of respondent Armando P. Biliwang and other municipal officials thereat; and

"2. To certify to the President/Prime Minister and the Batasang Pambansa the failure of election in San Fernando, Pampanga, so that remedial legislation may be enacted and that pending such enactment, the President/Prime Minister may appoint the municipal officials of San Fernando, Pampanga."

The aforesaid Resolution was prompted by the COMELEC's findings as follows:

"However, after the voting was over the terrorism and irregularities were committed as aforementioned. There is strong and sufficient evidence to support the charge that in the preparation of election returns, the teacher-members of the Citizens Election Committees (CEC's) were threatened and coerced into making spurious election returns without regard to the genuine ballots in the ballot boxes. Policemen, armed goons and other persons - all in obvious conspiracy - 'herded' the teacher-members of the CEC's to the Town Hall of San Fernando, where the ballot boxes were forced open and the contents thereof substituted with pre-prepared ballots favoring respondent Biliwang. In fact, some of the genuine ballots replaced with those fake ballots were produced at the hearing by the teachers who managed to 'save' or 'salvage' them secretly, together with some stubs detached from the fake ballots which upon comparison appeared wider than the genuine ones (Exhs. F &

G; N, N-1 to N-31; O, O-1 to O-16).

"The operation involving the use of force and coercion was so open and pervasive that after voting a preponderant number of the voting centers were placed under the control of the terrorists. And the Town Hall of San Fernando was virtually converted into a 'concentration camp', wherein the teacher-members of the CEC's for several hours were at the mercy of the armed goons who were bent to ensure the victory of the incumbent mayor at the time i.e. respondent Biliwang, at all costs. No watchers were allowed inside; the relatives and friends of the teachers were kept out-side until the early morning of January 31, 1980 ."[1]

The COMELEC then concluded:

"As pointed out above, it is the firm finding and conclusion of the Commission that there was total failure of election in San Fernando, Pampanga, not because of threats and coercion, or terrorism inflicted on the voters before or during election day as in the Antonio Case, but for the threats and coercion or terrorism and irregularities committed AFTER the elections or specifically the counting of the votes and in the preparation of the election returns upon the teacher-members of the Citizens Election Committees (CEC's) without regard to the genuine ballots in the ballot boxes which were substituted with pre-prepared ballots favoring respondent Biliwang."[2]

Sanchez sought reconsideration of that portion of the COMELEC Resolution which certified the failure of election in San Fernando to the President/Prime Minister and the Batasang Pambansa, and prayed instead that the COMELEC call a special election in San Fernando. Biliwang, for his part, also moved for reconsideration on the ground that the COMELEC has no authority to annul the entire municipal election. He prayed that he be proclaimed on the basis of the undisputed returns. Reconsideration was denied by the COMELEC in both instances.

On November 19, 1980, Sanchez filed a Petition for Certiorari with this Court, docketed as G. R. No. 55513, wherein he seeks a modification of that portion of the COMELEC Resolution of May 15, 1980 refusing to call a special election. He alleges that Section 5 of Batas Pambansa Bilang 52 specifically enjoins the COMELEC to call a special election if the election results in a failure to elect, and that by refusing to do so, the Commission has abdicated its duty.

On December 6, 1980, Biliwang instituted, also with this Court, a Petition for Certiorari, Prohibition and Mandamus, docketed as G. R. No. 55642, assailing the same COMELEC Resolution and alleging that said body has no power to annul an entire municipal election because: (a) Article XII-C, Section 2(1) of the Constitution grants to the COMELEC only the power to enforce and administer all laws relative to the conduct of elections; (b) Section 175 of the 1978 Election Code gave the power to said body to suspend and annul a proclamation only; and (c) Section 5 of Batas Pambansa Bilang 52 does not grant it the power to annul municipal elections. He further asserts that the COMELEC must make a proclamation on the basis of unchallenged returns when these returns represent a majority of the total election returns.

These two Petitions were ordered consolidated and were heard by the Court en banc on July 28, 1981. Required to submit Memoranda, Sanchez manifested that he was waiving the filing of the same as his Petition had exhaustively discussed and ventilated the facts and issues involved and that he was adopting his Petition as his Memorandum. Biliwang and the Solicitor General submitted their respective Memoranda, the former on August 7, 1981 and the latter on September 4, 1981.

The issues posed are:

- 1) Does the COMELEC have the power to annul an entire municipal election on the ground of post-election terrorism?

2) Does the COMELEC have the authority to call for a special election?

Power to Annul an Election

Biliwang asserts that COMELEC lacks the power to annul elections of municipal officials particularly so because, under Section 190 of the 1978 Election Code, the power to try election contests relative to elective municipal officials is vested in Courts of First Instance.

Be that as it may, it should be recalled that what COMELEC actually rejected were the sham and illegal returns in San Fernando, and that the kind of fraud and terrorism perpetrated thereat was sufficient cause for voiding the election as a whole. Besides, COMELEC is empowered *motu proprio* to suspend and annul any proclamation as, in fact, it did annul Biliwang's proclamation:

"SEC. 175. Suspension and annulment of proclamation. - The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, *motu proprio* or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof."

Biliwang's claim that he should be proclaimed on the basis of undisputed returns is devoid of merit in the light of COMELEC's categorical findings that it was impossible to purge the illegal from the valid returns.

It may be true that there is no specific provision vesting the COMELEC with authority to annul an election. However, there is no doubt either relative to COMELEC's extensive powers. Under the Constitution, the COMELEC is tasked with the function to "enforce and administer all laws relative to the conduct of elections"[3]The 1978 Election Code (PD No. 1296) accords it exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly and honest elections (Sec. 185).

The COMELEC found that the local election in San Fernando, Pampanga, was vitiated by post-election wide-spread and pervasive terrorism and resulted in the submission of "gunpoint or coerced" returns. In other words, there were no election returns worthy of faith and credit and from which could be gauged a fair and true expression of the popular will. Its action, there-fore, of rejecting all election returns and annulling the local elections thereat was but in keeping with its constitutionally ordained power of administration and enforcement of election laws and its main objective to insure free, orderly and honest elections. As it has been rightly said "an election return prepared at the point of a gun is no return at all; it is not one notch above a falsified and spurious return." [4]The Comelec has the power to reject returns when in its opinion they were illegal and not authentic.[5]In fact, it has the duty to dis-allow obviously false or fabricated returns,[6]as a falsified or spurious return amounts to no return at all.[7]

Admittedly, in *Abes vs. Comelec*, 21 SCRA 1252 (1967), this Court had ruled that the COMELEC is bereft of power to annul an election or to direct a new one. Then, we said:

"Enforcement and administration of all election laws by Comelec do not include the power to annul an election which may not have been free, orderly and honest, as such power is merely preventive, and not curative, and if it fails to accomplish that purpose, it is not for such body to cure or remedy the resulting evil, but for some other agencies of the Government: the Senate Electoral Tribunal, the House Electoral Tribunal, or the courts, as the case may be, who have the power to decide election contests (*Nacionalista Party vs. Comelec*, 85 Phil. 149, 155-156)."

That case was decided, however, under the aegis of the 1935 Constitution and the former Revised Election

Code.[8] Since then, the powers of the COMELEC have been considerably expanded. It is now "the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials",[9]where before the power to decide election contests was lodged with the Senate Electoral Tribunal, the House Electoral Tribunal, or the Courts, as the case may be.[10]

In other words, in line with the plenitude of its powers and its function to protect the integrity of elections, the COMELEC must be deemed possessed of authority to annul elections where the will of the voters has been defeated and the purity of elections sullied. It would be unreasonable to state that the COMELEC has a legal duty to perform and at the same time deny it the wherewithal to fulfill that task.

"x x x the Commission must be given considerable latitude in adopting means and methods that will ensure the accomplishment of the great objective for which it was created-to promote free, orderly and honest elections."[11]

As then Justice Enrique M. Fernando, now the Chief Justice, pointed out in his concurring opinion in *Antonio, Jr., vs. COMELEC*, 32 SCRA 319 (1970):

"Where majority of the voters of a province failed to cast their votes due to widespread terrorism committed, the Commission on Elections should annul the canvass and the proclamation of the winning candidate x x x."

The fact that widespread terrorism occurred after the elections, and not in the casting of votes, should make no difference.

Power to call a special election

On this issue, the COMELEC opined that it had no power to order the holding of a new or special election, stating:

"Although the broad powers and functions and jurisdiction of the Commission may be gleaned from the foregoing, nevertheless, neither the Constitution nor the 1978 Election Code and Batas Pambansa Bilang 52 has granted it the authority and power to call a special election under the peculiar facts and circumstances of these cases at bar. As pointed out above, it is the firm finding and conclusion of the Commission that there was total failure of election in San Fernando, Pampanga, not because of threats and coercion or terrorism inflicted on the voters before or during election day as in *Antonio Case*, but for the threats and coercion or terrorism and irregularities committed after the elections or specifically in the counting of the votes and in the preparation of the election re-turns upon the teacher-members of the Citizens Election Committees (CEC's) without regard to the genuine ballots in the ballot boxes which were substituted with pre-prepared ballots favoring respondent Biliwang.

In other words, this Commission finds that the election itself took place on the date fixed by law, i.e. January 30, 1980, was not suspended and was generally peaceful and orderly, but that its validity was impaired by the post-election acts of terrorism, violence, intimidation and threats which resulted in the submission of gun-point or coerced election returns.

Under the premises, the Commission has no power, even under Section 7 of the 1978 Election Code or Section 5 of Batas Pambansa Blg. 52 as quoted above, to order the holding of a new or special election. The existing laws do not provide such power. x x x."[12]

Thus, the COMELEC deemed it imperative "to certify to the President/Prime Minister and the Batasang Pambansa the failure of election in San Fernando, Pampanga, so that remedial legislation may be enacted x x x", explaining:

"Considering that there is now no Electoral Tribunal as Justice Teehankee, nor Congress, as Chief Justice

Fernando, have separately proposed in the Antonio Case, the Commission deems it as not only appropriate and necessary, but as the sole imperative and urgent remedy to certify to the President/Prime Minister and the Batasang Pambansa the failure of election in San Fernando, Pampanga, so that remedial legislation may be enacted and that pending such enactment, the President/Prime Minister may appoint the municipal officials of San Fernando." [13]

The pertinent portion of the concurring opinion of Chief Justice Fernando in the Antonio case, referred to above, reads:

"x x x and (the Commission on Elections shall) certify to Congress that the right to vote was frustrated and nullified so that the appropriate remedial measure in the form of a new election could be provided for by appropriate legislation."

The relevant portion of the concurring Opinion of Mr. Justice Claudio Teehankee in the same case states:

"x x x The question of whether there remained an election for which a winner may be proclaimed or whether there was a failure of election since the remaining returns do not represent a valid constituency under the pre-vailing doctrine of the House Electoral Tribunal is one that pertains to the exclusive jurisdiction of said Tribunal and should be certified thereto as indicated in the body of this opinion for resolution." [14]

In *Ututalum vs. Comelec*, 15 SCRA 465 (1965), this Court also had occasion to hold:

"The functions of the Commission on Elections under the Constitution are essentially executive and administrative in nature. Upon the other hand, the authority to order the holding of elections on any date other than that fixed in the 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, not only by nature, but, also, insofar as national elections are concerned, by specific provisions of the Constitution, for, pursuant thereto, the elections for Senators and Members of the House of Representatives and those for President and Vice-President, shall be held on the dates 'fixed by law' (Article VI, Sec. 8 [1] and Article VII, Sec. 4 Constitution), meaning an Act of Congress. 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 said power. There is, however, no such statutory grant of authority to the Commission on Elections."

Again, the foregoing Opinions were rendered under the regime of the 1935 Constitution and the former Revised Election Code (Republic Act No. 180, as amended), whereby there was no constitutional nor statutory precept that empowered the COMELEC to direct a new election after one had already been held. [15] Under section 8 of that former statute, authority was given to the President to postpone the election upon the recommendation of the COMELEC. And Section 21(c) of the same law authorized the President to issue a proclamation calling a special election whenever the election for a local office failed to take place on the date fixed by law. In other words, the prerogative to postpone an election or call a special election, was formerly lodged with the President. Besides, the Antonio case involved a House contest at a time when the House Electoral Tribunal was the sole Judge to determine the validity of the returns and elections. [16]

As the laws now stand, however, COMELEC has been explicitly vested with the authority to "call for the holding or continuation of the election." Thus, Section 5 of Batas Pambansa Blg. 52 explicitly provides:

"Sec. 5. Failure of Election. - Whenever for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure and other analogous cases of such nature that the holding of a free, orderly and honest election should become impossible, the election for a local office fails to take place on the date fixed by law, or is suspended, or such election results in a failure to elect, the Commission on

Elections shall, on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election as soon as practicable." (Italics ours)

Section 7 of the Election Code of 1978 (PD No. 1296) similarly provides:

"Sec. 7. Failure of election. If, on account of force majeure, violence, terrorism, or fraud the election in any voting center has not been held on the date fixed or has been suspended before the hour fixed by law for the closing of the voting and such failure or suspension of election in any voting center would affect the result of the election, the Commission may on the basis of a verified petition and after due notice and hearing, call for the holding or continuation of the election not held or suspended."

Section 8 of the same 1978 Election Code empowers the COMELEC to call a special election to fill a vacancy or a newly created elective position.

"SEC. 8. Call of special election. Special elections shall be called by the Commission by proclamation on a date to be fixed by it, which shall specify the offices to be voted for, that it is for the purpose of filling a vacancy or a newly created elective position, as the case may be."

Clearly, under Section 5 of Batas Pambansa Blg. 52, above-quoted, when the election "results in a failure to elect, the COMELEC may call for the "holding or continuation of the election as soon as practicable." We construe this to include the calling of a special election in the event of a failure to elect in order to make the COMELEC truly effective in the discharge of its functions. In fact, Section 8 of the 1978 Election Code, *supra*, specifically allows the COMELEC to call a special election for the purpose of filling a vacancy or a newly created position, as the case may be. There should be no reason, therefore, for not allowing it to call a special election when there is a failure to elect.

We do not share the view of public respondent and the Solicitor General that the power of the COMELEC to call for special elections is circumscribed by the very same Section 5 of Batas Pambansa Blg. 52 itself, and that "the San Fernando situation is not within its ambit".[17] More specifically, their position is:

"Weighing incontrovertibly against the petitioner's claim is the language of the law itself. What does Section 5, Batas Pambansa Blg. 52 say? It states that the Commission is empowered to call for the 'holding or continuation of the election as soon as practicable' where: (1) 'the holding of a free, orderly and honest election should become impossible; (2) 'the election for a local office fails to take place on the date fixed by law; (3) the election for a local office x x x on the date fixed by law is suspended; and (4) 'such election results in a failure to elect x x x.'

"An examination of the foregoing enumeration clearly reveals that the same essentially and solely refer to the casting of ballots for the public office concerned. Surely, this is a clear case of *ejusdem generis*. The last of the enumerated situations must hew to the same specific meaning as the first three. And clearly, the first three enumerated instances refer to the actual casting of ballots. The petitioner's general definition cannot apply here. The failure to elect must, therefore, result specifically from a failure relative to the casting of ballots. This envisions a situation where an election is not impossible to hold; neither does it fail to take place; nor is it suspended; but nevertheless, the voters are unable to cast their votes, due to the operation on such voters of either violence, terrorism, loss or destruction of election paraphernalia or records, force majeure and other analogous cases. Here, there was no failure relative to the free and voluntary casting of votes on the part of the voters.

"The petitioner's attempt then to interpret the terms 'election' in the above provision of law as including, not only the casting of ballots, but the counting thereof, the preparation of election returns, canvass and proclamation is, indeed, mis-placed in the light of the language of the above controlling provision of law.

"It is not to be doubted that the voters in San Fernando cast their votes freely and voluntarily before the various

CEC's of the municipality. In the light of the above provision of law, election had actually taken place. As the evidence clearly shows, the 'failure to elect' here was the result of the operation of a massive, systematic and palpably evil operation to: (1) substitute fake for genuine ballots; (2) manufacture election returns at gunpoint; and (3) secure a proclamation on the basis of these false documents. Because of these illegal maneuvers to frustrate the will of the electorate, there was, more accurately, a failure to gauge the true and genuine will of the electorate, rather than a failure of election. Ballots were duly cast, but because of the above massive and systematic operations to frustrate the electorate's will, their true and authentic vote could not be ascertained."[18]

In a nutshell, it is contended that "the illegal maneuvers to frustrate the will of the electorate was, more accurately, a failure to gauge the true and genuine will of the electorate, rather than a failure of election;" that the COMELEC could no longer call for the holding of a special election in this case because fraud and terrorism were committed after the voters had already cast their ballots, and therefore, elections had actually taken place; and that for there to be a failure to elect, it must result specifically from a failure relative to the casting of ballots.

It should be recalled that the COMELEC found the post-election acts of terrorism in San Fernando so massive and pervasive in nature that it rejected all the returns. It made the "firm finding and conclusion x x x that there was total failure of election in San Fernando, Pampanga".[19]When all the returns are void, it cannot be gainsaid that there was a failure to elect. But to state that this is not the failure of election contemplated by Batas Pambansa Blg. 52 because elections did take place is, to our minds, too tenuous a distinction. In practical effect, no election has at all been held; there has been in truth and in fact, a failure to elect.

It would be to circumscribe the power of the COMELEC to ensure free, orderly and honest elections if we were to hold that the COMELEC authority to call for the holding of the election is applicable only when the causes therefor occurred before the elections; in other words, that the grounds for calling special elections do not include post-election terrorism. That interpretation would not only hamper the effectiveness of the COMELEC in the discharge of its functions but it would also, in case of failure to elect due to post-election terrorism, delay the opportunity to the voters to cast their votes at the earliest possible time. The electorate should not be disenfranchised for long and the COMELEC should not be prevented from taking the necessary steps to complete the elections. After all, the casting of ballots is not the only act constitutive of elections. An election is not complete until proclamation has been made.

"An election is not an election and popular will is not deemed to have been expressed until the last act necessary to complete the election under the law has been performed. Under the laws of the Philippines the act which completes the election is the proclamation of the provincial board of canvassers."[20]

In fine, we uphold the power and prerogative of the COMELEC to annul an election where the will of the voters has been defeated, as well as to call for a special election where widespread terrorism, whether before or after election, has been proven resulting in a failure to elect, without need of recourse to the President and the Batasang Pambansa for the enactment of remedial legislation.

Biliwang raises for the first time on review his right to a "hold-over". Not only has this been belatedly raised but the fact also remains that his elective term expired on December 31, 1975 and that he already held-over by virtue of PD No. 1576. He ceased to hold-over, however, when elections were held on January 30, 1980, besides the fact that the President has already appointed an officer-in-charge in San Fernando, Pampanga.

WHEREFORE, 1) in G. R. No. 55513, the challenged Resolution of May 15, 1980 is hereby modified, and the Commission on Elections hereby held empowered to call a special election where there has been a failure to elect. That portion which certifies the failure of election in San Fernando, Pampanga, to the President and the Batasang Pambansa for the enactment of remedial measures, is here-by set aside.

2) In G. R. No. 55642, the Petition is hereby denied for lack of merit, and the authority of the Commission on Elections to annul an election hereby upheld.

No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez, and Relova, JJ., concur.

Barredo and Gutierrez, Jr., JJ., concur in the dissenting opinion of Justice Aquino.

Aquino, J., see dissent.

Concepcion, Jr., no part.

[1] pp. 24-25, Resolution.

[2] p. 35, *ibid*.

[3] Art. XII(c), Sec. 2(1), 1973 Constitution.

[4] *Pacis vs. COMELEC*, 25 SCRA 377, 390 (1968).

[5] *Alonto vs. Comelec*, 22 SCRA 878 (1968).

[6] *Lagumbay vs. Comelec*, 16 SCRA 175 (1966).

[7] *Abrigo vs. Comelec*, 31 SCRA 26 (1970).

[8] Republic Act No. 180, as amended.

[9] Section 188, 1978 Election Code [PD No. 1296]

[10] Sec. 4, Art. VI, 1935 Constitution; Secs. 174, 178, 182, Revised Election Code [RA No. 180, as amended].

[11] *Cauton vs. Comelec*, 19 SCRA 911 (1967).

[12] pp. 67-68, Rollo of G. R. No. 55513.

[13] p. 68, *ibid*.

[14] p. 65, *ibid*.

[15] *Abes vs. COMELEC*, *supra*.

[16] Sec. 4, Art. VI, 1935 Constitution.

[17] *cf. Ututalum vs. Comelec*, 15 SCRA 465 (1965).

[18] pp. 81-83, Rollo of G. R. No. 55513.

[19] p. 35, COMELEC Resolution.

[20] *Manalo vs. Sevilla*, 24 Phil. 609.

CONCURRING AND DISSENTING OPINION

AQUINO, J.:

I concur in the result in the Biliwang case. I agree that the Comelec is invested with the power to annul an election for municipal officials on the ground of post-election terrorism.

I dissent from the ruling in the Sanchez case that the Comelec can order the holding of a special election in San Fernando , Pampanga. I agree with the Comelec and the Solicitor General that the situation in this case, where an election was legally held for the municipal officials of San Fernando but the votes could not be counted because of terrorism and massive substitution of fake ballots for the genuine ballots, is not covered by section 5 of Batas Pambansa Blg. 52 and section 7 of the Election Code of 1978, Presidential Decree No. 1296.

That situation is not a case of failure to elect but of failure to count the votes cast or the impossibility of ascertaining who were elected.

I cannot see how the Comelec could be mistaken in holding that it has not found any legal provision to sustain the view that it can call a special election in a case where an election was held but the votes could not be counted. That contingency is similar to a case where after the election but before the votes could be counted the ballots were destroyed.

I vote to affirm the dismissal of the petition in the Sanchez case.

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