

SULTAN MOHAMAD L. MITMUG, PETITIONER, VS. COMMISSION ON ELECTIONS, MUNICIPAL BOARD OF CANVASSERS OF LUMBA-BAYABAO, LANA DEL SUR, AND DATU GAMBAL DAGALANGIT, AND DATU GAMBAL DAG...

G.R. Nos. 106270-73. February 10, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The turnout of voters during the 11 May 1992 election in Lumba-Bayabao, Lanao del Sur, was abnormally low. As a result, several petitions were filed seeking the declaration of failure of election in precincts where less than 25% of the electorate managed to cast their votes. But a special election was ordered in precincts where no voting actually took place. The Commission on Elections (COMELEC) ruled that for as long as the precincts functioned and conducted actual voting during election day, low voter turnout would not justify a declaration of failure of election. We are now called upon to review this ruling.

Petitioner SULTAN MOHAMAD L. MITMUG and private respondent DATU GAMBAL DAGALANGIT were among the candidates for the mayoralty position of Lumba-Bayabao during the 11 May 1992 election. There were sixty seven (67) precincts in the municipality.

As was heretofore stated, voter turnout was rather low, particularly in forty-nine (49) precincts where the average voter turnout was 22.26%, i.e., only 2,330 out of 9,830 registered voters therein cast their votes. Five (5) of these precincts did not conduct actual voting at all.[1]

Consequently, COMELEC ordered the holding of a special election on 30 May 1992 in the five (5) precincts which failed to function during election day. On 30 July 1992 another special election was held for a sixth precinct.[2]

In the interim, petitioner filed a petition seeking the annulment of the special election conducted on 30 May 1992 alleging various irregularities such as the alteration, tampering and substitution of ballots. But on 13 July 1992, COMELEC considered the petition moot since the votes in the subject precincts were already counted.[3]

Other petitions seeking the declaration of failure of election in some or all precincts of Lumba-Bayabao were also filed with COMELEC by other mayoralty candidates, to wit:

- SPA No. 92-324: On 6 June 1992, private respondent Datu Gamba Dagalangit filed an urgent petition praying for the holding of a special election in Precinct No. 22-A alleging therein that when the ballot box was opened, ballots were already torn to pieces. On 14 July 1992, the petition was granted and a special election for Precinct No. 22-A was set for 25 July 1992.[4]
- SPA No. 92-336: On 16 June 1992, Datu Elias Abdusalam, another mayoralty candidate, filed a petition to declare failure of election in twenty-nine (29) more precincts as a result of alleged tampering of ballots[5] and

clustering of precincts.[6] On 16 July 1992, the petition was dismissed. COMELEC ruled that there must be a situation where there is absolute inability to vote before a failure of election can be declared.[7] Since voting was actually conducted in the contested precincts, there was no basis for the petition.

- SPC No. 92-368: On 20 June 1992, private respondent filed another petition, this time seeking to exclude from the counting the ballots cast in six (6) precincts on the ground that the integrity of the ballot boxes therein was violated.[8] Again, on 14 July 1992, COMELEC considered the petition moot, as the issue raised therein was related to that of SPA No. 92--311 which on 9 July 1992 was already set aside as moot.[9]

- SPA No. 92-347: On 1 July 1992, Datu Bagtao Khalid Lonta, a fourth mayoralty candidate, filed a petition which in the main sought the declaration of failure of election in all sixty-seven (67) precincts of Lumba-Bayabao, Lanao del Sur, on the ground of massive disenfranchisement of voters.[10] On 9 July 1992, COMELEC dismissed the petition, ruling that the allegations therein did not support a case of failure of election.[11]

On 8 July 1992, petitioner filed a motion to intervene in these four (4) petitions.[12] But COMELEC treated the same as a motion for reconsideration and promptly denied it considering that under the COMELEC Rules of Procedure such motion was a prohibited pleading.[13]

Thereafter, a new Board of Election Inspectors was formed to conduct the special election set for 25 July 1992. Petitioner impugned the creation of this Board. Nevertheless, on 30 July 1992, the new Board convened and began the canvassing of votes. Finally, on 31 July 1992, private respondent was proclaimed the duly elected Mayor of Lumba-Bayabao, Lanao del Sur.

On 3 August 1992, petitioner instituted the instant proceedings seeking the declaration of failure of election in forty-nine (49) precincts where less than a quarter of the electorate were able to cast their votes. He also prayed for the issuance of a temporary restraining order to enjoin private respondent from assuming office.

On 10 August 1992, petitioner lodged an election protest with the Regional Trial Court of Lanao del Sur disputing the result not only of some but all the precincts of Lumba-Bayabao, Lanao del Sur.[14]

Respondents, on the other hand, assert that with the filing of an election protest, petitioner is already deemed to have abandoned the instant petition.

It may be noted that when petitioner filed his election protest with the Regional Trial Court of Lanao del Sur, he informed the trial court of the pendency of these proceedings. Paragraph 3 of his protest states “[T]hat on August 3, 1992, your protestant filed a Petition for Certiorari with the Supreme Court x x x docketed as G.R. No. 106270 assailing the validity of the proclamation of the herein protestee x x x”[15] Evidently, petitioner did not intend to abandon his recourse with this Court. On the contrary, he intended to pursue it. Where only an election protest *ex abundante ad cautela* is filed, the Court retains jurisdiction to hear the petition seeking to annul an election.[16]

The main issue is whether respondent COMELEC acted with grave abuse of discretion amounting to lack of jurisdiction in denying *motu proprio* and without due notice and hearing the petitions seeking to declare a failure of election in some or all of the precincts in Lumba-Bayabao, Lanao del Sur. After all, petitioner argues, he has meritorious grounds in support thereto, viz., the massive disenfranchisement of voters due to alleged terrorism and unlawful clustering of precincts, which COMELEC should have at least heard before rendering its judgment.

Incidentally, a petition to annul an election is not a pre-proclamation controversy. Consequently, the proclamation of a winning candidate together with his subsequent assumption of office is not an impediment to the prosecution of the case to its logical conclusion.[17]

Under the COMELEC Rules of Procedure, within twenty-four (24) hours from the filing of a verified petition to

declare a failure to elect, notices to all interested parties indicating therein the date of hearing should be served through the fastest means available.[18] The hearing of the case will also be summary in nature.[19]

Based on the foregoing, the clear intent of the law is that a petition of this nature must be acted upon with dispatch only after hearing thereon shall have been conducted. Since COMELEC denied the other petitions[20] which sought to include forty-three (43) more precincts in a special election without conducting any hearing, it would appear then that there indeed might have been grave abuse of discretion in denying the petitions.

However, a closer examination of the COMELEC Rules of Procedure, particularly Sec. 2, Rule 26, thereof which was lifted from Sec. 6, B.P. 881, otherwise known as the Omnibus Election Code of the Philippines, indicates otherwise. It reads –

Sec. 2. Failure of election. If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any precinct 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 of 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 (30) days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

Before COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precinct or precincts on the date fixed by law or, even if there was voting, the election nevertheless results in failure to elect; and, second, the votes not cast would affect the result of the election.[21]

In the case before us, it is indubitable that the votes not cast will definitely affect the outcome of the election. But, the first requisite is missing, i.e., that no actual voting took place, or even if there is, the results thereon will be tantamount to a failure to elect. Since actual voting and election by the registered voters in the questioned precincts have taken place, the results thereof cannot be disregarded and excluded.[22] COMELEC therefore did not commit any abuse of discretion, much less grave, in denying the petitions outright. There was no basis for the petitions since the facts alleged therein did not constitute sufficient grounds to warrant the relief sought. For, the language of the law expressly requires the concurrence of these conditions to justify the calling of a special election.[23]

Indeed, the fact that a verified petition is filed does not automatically mean that a hearing on the case will be held before COMELEC will act on it. The verified petition must still show on its face that the conditions to declare a failure to elect are present. In the absence thereof, the petition must be denied outright.

Considering that there is no concurrence of the two (2) conditions in the petitions seeking to declare failure of election in forty-three (43) more precincts, there is no more need to receive evidence on alleged election irregularities.

Instead, the question of whether there have been terrorism and other irregularities is better ventilated in an election contest. These irregularities may not as a rule be invoked to declare a failure of election and to disenfranchise the electorate through the misdeeds of a relative few.[24] Otherwise, elections will never be carried out with the resultant disenfranchisement of innocent voters as losers will always cry fraud and terrorism.

There can be failure of election in a political unit only if the will of the majority has been defiled and cannot be

ascertained. But, if it can be determined, it must be accorded respect. After all, there is no provision in our election laws which requires that a majority of registered voters must cast their votes. All the law requires is that a winning candidate must be elected by a plurality of valid votes, regardless of the actual number of ballots cast.[25] Thus, even if less than 25% of the electorate in the questioned precincts cast their votes, the same must still be respected. There is prima facie showing that private respondent was elected through a plurality of valid votes of a valid constituency.

WHEREFORE, there being no grave abuse of discretion, the Petition for Certiorari is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Melo, Quiason, Puno, Vitug, and Kapunan, JJ., concur.

Nocon, J., on leave.

[1] Precinct Nos. 18-B-1, 28, 28-A, 30 and 30-A.

[2] Precinct No. 22-A.

[3] COMELEC Resolution in SPA No. 92-333; Annex “D,” Petition; Rollo, pp. 42-45.

[4] Annex “B,” Petition; Rollo, pp. 32-33.

[5] Precinct Nos. 16, 16-A, 18, 18-A-1, 30, 32, 32-A, 34-A, 35 and 50.

[6] Precinct No. 4-A, 10, 10-A, 13, 13-A, 16, 16-A, 16-A-1, 18, 18-A, 18-A-1, 29, 29-A, 40 and 40-A.

[7] Annex “F,” Petition; Rollo, pp. 52-55.

[8] Precinct Nos. 18-B, 28, 28-A, 30, 30-A and 50.

[9] Annex “J,” Petition; Rollo, pp. 79-80.

[10] Annex “G,” Petition; Rollo, pp. 56-59.

[11] Annex “H,” Petition; Rollo, pp. 60-62.

[12] Annex “K,” Petition; Rollo, pp. 81-85.

[13] COMELEC Resolution of 21 July 1992; Annex “O,” Petition; Rollo, pp. 150-153.

[14] Docketed as Election Protest Case No. 167-92.

[15] Election Protest, p. 2; Annex “1,” Reply; Rollo, p. 224.

[16] *Olfato v. Commission on Elections*, G.R. No. 52749, 31 March 1981, 103 SCRA 741.

[17] *Jardiel v. Commission on Elections*, G.R. No. 58575, 21 September 1983, 124 SCRA 650.

[18] Sec. 4, Rule 27.

[19] Sec. 6, Rule 27.

[20] SPA Nos. 92-324, 92-336 and 92-347 as well as SPC No. 92--366.

[21] *Sardea v. Commission on Elections*, G.R. No. 106164, 17 August 1993.

[22] Anni v. Izquierdo, No. L-35918, 28 June 1974, 57 SCRA 692.

[23] See Note 21.

[24] Ututalum v. Commission on Elections, G.R. Nos. 84843-44, 22 January 1990, 181 SCRA 335.

[25] Antonio, Jr. v. Commission on Elections, No. L-31604, 17 April 1970, 32 SCRA 319.

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