

## EN BANC

[ G.R. No. 175390, May 08, 2007 ]

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

#### **DECISION**

##### **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 Resolution promulgated on November 20, 2006, disallowing the conduct of a third special election in Barangay Guiawa, Kabuntalan, Maguindanao.

The facts are:

Petitioner Alimudin A. Macacua and private respondent Mike A. Fermin were candidates for Mayor in the May 2004 local elections in the Municipality of Kabuntalan, Maguindanao. The Municipal Board of Canvassers of Kabuntalan proclaimed private respondent 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, petitioner was proclaimed as the winning candidate for Mayor. Private respondent challenged the special election due to alleged procedural infirmities. In a Resolution dated June 2, 2005, the COMELEC nullified the special election. Petitioner'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. The Special Municipal Board of Canvassers (SMBOC) of Kabuntalan, Maguindanao was created composed of Atty. Lilian A. Suan-Radam as Chairman; Atty. Paisal Diaz Tanjili - Vice-Chairman; and Atty. Yogie G. Martirizar as Member Secretary. Atty. Piio Jose S. Josen, Executive Director of the Commission, was tasked to supervise the special election and the deputized PNP and military contingents were to provide security for the exercise.

The special election held on May 6, 2006 was peaceful and orderly at the onset. However, at about 1:45 p.m., the election was disrupted when two persons, in the queue where the voters' verification was being made, engaged in a heated argument and began pushing each other. They were later pacified by the deputized security forces manning the area. But before the special election could be

concluded at 3:00 p.m., SMBOC Chairman Suan-Radam stopped the election at 2:15 p.m. upon the advice of P/S Supt. Lumala Gunting, head of the PNP contingent, that armed elements were seen in the vicinity of the barangay. There were still thirty-one (31) voters lined up to vote in the precinct when the election was stopped.

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

The SMBOC notified the parties concerned that a Special Public Hearing would be held on May 14, 2006 at the Municipal Hall of Sharif Aguak, Maguindanao to break the tie pursuant to Sec. 240<sup>[1]</sup> of the Omnibus Election Code.

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

- A. 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;
- B. 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
- C. 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.

On May 9, 2006, the COMELEC issued an Order, the dispositive portion of which reads:

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

1. 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;
2. to hold in abeyance the Special Public Hearing set by the Special Municipal Board of Canvassers on May 14, 2006; and
3. to set this Extremely Urgent Omnibus Motion for hearing on **May 18, 2006** at 10:00 a.m., Comelec Session Hall, 8<sup>th</sup> Floor, Palacio del Gobernador, Intramuros, Manila.

SO ORDERED.

Despite the Order dated May 9, 2006, the Special Public Hearing pushed through on May 14, 2006, and the SMBOC proclaimed private respondent as the duly elected Mayor of Kabuntalan.

On May 16, 2006, petitioner filed a Manifestation and Motion to nullify the proclamation of private respondent on May 14, 2006, to cite the private respondent

and the SMBOC in contempt of the Commission for defying its Order dated May 9, 2006, and to proceed with the hearing on the omnibus motion on May 18, 2006.

On May 16, 2006, the COMELEC *en banc* issued an Order, which annulled the proceedings of the Special Public Hearing conducted on May 14, 2006 and set aside the proclamation of private respondent.

In the hearing of May 18, 2006, the following field personnel of the Commission appeared and testified: Atty. Lilian A. Suan-Radam, SMBOC Chairman; Atty. Lintang H. Bedol, Provincial Election Supervisor of Maguindanao; Board of Election Inspectors Chairman<sup>[2]</sup> Dante A. Parnas; and Atty. Yogie G. Martirizar, SMBOC Member Secretary. Their testimonies covered the circumstances of the stoppage of the special elections in Kabuntalan, including the proceedings conducted by the SMBOC on May 14, 2006.

During the hearings held on May 30, 2006 and June 6, 2006, the following persons appeared or testified regarding what transpired during the May 6, 2006 special election: P/S Supt. Lumala Gunting, Lt. Col. Julieto D. Ando, P/S Supt. Salik E. Macapantar, Barangay Captain Senting M. Ampuan, Gaudencio P. Teves, Datumanong Salik, Naot Gomez, Utok Samson, and COMELEC Executive Director Pio Jose S. Joson.

On June 20, 2006, petitioner filed a Memorandum praying that the COMELEC *en banc* issue an Order to set the mechanics for the continuation of the aborted special election held on May 6, 2006. Private respondent filed a Memorandum on June 26, 2006.

On November 20, 2006, the COMELEC *en banc* promulgated its Resolution in SPC No. 04-296, entitled *Mike A. Fermin v. Special Board of Canvassers of Kabuntalan and Alimudin A. Macacua*, which Resolution also considered the petitioner's<sup>1/2</sup> Extremely Urgent Omnibus Motion dated May 9, 2006 and his Manifestation and Motion dated May 16, 2006. The pertinent portions of the Resolution read:

At the onset, it must be emphasized that the instant case had its inception when herein petitioner Mike A. Fermin filed before this Commission a "Petition to Annul Proclamation and/or Declare Proclamation Null and Void Ab Initio", with respect to the proclamation of private respondent Alimudin A. Macacua as Mayor of Kabuntalan, Maguindanao in the 10 May 2004 Synchronized National and Local Elections. The Commission took cognizance of the petition and docketed the same as a Special Case pursuant to Section 5(h), Rule 1 of the COMELEC Rules of Procedure.

Bearing this in mind, we believe that the first and most important to be resolved among the issues raised herein before us by the parties is the matter of whether or not to hold a third or another special election in Barangay Guiawa. Accordingly, if we rule in the affirmative, it would be the third special election that will be held thereat considering that the two (2) special elections conducted before both resulted in a failure to elect.

To the above-mentioned issue, we in the Commission (*en banc*) find it

rather unfortunate that we cannot anymore sanction the holding of a third or another special election in Barangay Guiawa. Verily, to declare such will truly be unprecedented for never in the history of the Commission that three (3) special elections were ordered held in one place. Our decision to forego of another special election however is not solely grounded on this. More compelling are the peculiar facts surrounding the instant case and the force of circumstances attendant to it, not to mention on matter and principles of law and equity also.

Firstly, judicial notice must be taken of the fact that there is already scarcity of funds in the Commission considering that even as of this writing, its budget for the year 2006 has yet to be approved and released by the Department of Budget and Management (DBM). Thus, at present, it can very well be said that there is truly lack of available funds for the holding of another special election in Barangay Guiawa. Whatever amount, if any, is still left in the Commission's coffers, the same has already been channeled and devoted to the other equally urgent and/or more important projects/endeavors of the Commission, which the pursuit, to us, has more the assurance of transparency, reliability and success.

Moreover, it must be stressed that the Commission has already spent considerable amounts in the regular election and in the last two (2) special elections held in Barangay Guiawa which, sadly, all resulted in a failure to elect. In the second special election alone, the Commission already spent the huge amount of P300,000.00 for just one (1) clustered precinct (Precinct No. 25A/25B) comprising of two hundred sixty-four (264) registered voters. It must be noted however that based on the records, only one hundred seventy-eight (178) voters voted in the failed electoral exercise.

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Another cogent and compelling reason not to conduct another special election anymore in Barangay Guiawa deals with the peculiar circumstances that attended the regular election and the past two (2) special elections held thereat. It must be recalled that after the 10 May 2004 regular local election failed, the two (2) special elections that followed in said barangay likewise resulted in a failure of election. Primarily, initial investigation shows that this is because of the anomalies that transpired during the course or proceedings thereof brought about by the very persons who are supposed, under the law, to ensure that the said elections would be free, orderly, honest, peaceful, and credible. Sadly, included in the controversy are some of our very own people in the Commission.

As already told, we in the Commission (en banc) find it very disappointing that the regular election and the two (2) special elections held in just one (1) precinct in Barangay Guiawa failed notwithstanding the enormous amount the Commission had spent particularly in the second special election. Verily, this is the main reason why in the final hearings of the instant case, an initial investigation was conducted