

EN BANC

[G.R. No. 147909, April 16, 2002]

**MAUYAG B. PAPANDAYAN, JR., PETITIONER, VS. THE
COMMISSION ON ELECTIONS AND FAHIDA P. BALT,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul the resolution, dated May 8, 2001, of the Second Division^[1] of the Commission on Elections (COMELEC), disqualifying petitioner Mauyag B. Papandayan, Jr. as a candidate for municipal mayor of the Municipality of Tubaran, Province of Lanao del Sur in the May 14, 2001 elections, and the resolution of the COMELEC *en banc*, dated May 12, 2001, denying petitioner's motion for reconsideration.

In the May 14, 2001 elections, three candidates ran for the position of mayor of Tubaran, Lanao del Sur, namely: petitioner Mauyag B. Papandayan, Jr., respondent Fahida P. Balt, who was the incumbent mayor seeking reelection, and Maiko Hassan Bantuas. Respondent Balt sought the disqualification of petitioner in SPC Case No. 01-114 of the COMELEC, alleging that petitioner was not a resident of Barangay Tangcal in Tubaran, Lanao del Sur but a permanent resident of Bayang, Lanao del Sur.

In support of her allegation, respondent submitted the joint affidavit,^[2] dated February 14, 2001, of Barangay Chairman Hadji Bashir Ayonga and two members of the Sangguniang Barangay of Tangcal, Tubaran, Hadji Taher Batawe and Saadori Buat, stating that petitioner never resided in Barangay Tangcal, Tubaran as they personally knew all the registered voters of the said barangay; that petitioner omitted to own nor lease any house in Barangay Tangcal; and that petitioner's father, the late Mauyag Papandayan, Sr., who was a school superintendent, and his family were permanent residents of Bayang, Lanao del Sur. Respondent also submitted a similar affidavit,^[3] dated February 17, 2001, of Samoranao Sarip, a member of the Sangguniang Barangay of Tangcal. She averred that petitioner did not state in his Voter Registration Record,^[4] accomplished on May 8, 1999, the number of years and months (Annex D-1) he had been a resident of the Municipality of Tubaran.

In his answer,^[5] petitioner claimed that he was a resident of No. 13 Barangay Tangcal in Tubaran; that he was the son of the late Mauyag Capal Papandayan, Sr., a former school superintendent, and Hadja Khalida Magangcong Balt; that both the Capal and Papandayan clans were natives of Tangcal, Tubaran, and the Magangcong clan were from Boribid, Tubaran while most of the Balt clan were residents of Bayang; that in 1990, he transferred his domicile from Bayang to Tangcal and

stayed there with his wife Raina Guina Dimaporo, whose family and relatives were residents and natives of Tangcal, Tubaran; that he managed an agricultural land in Tubaran which he co-owned with his family; and that he filed in 1998 his certificate of candidacy for the position of municipal mayor of Tubaran, which he later withdrew.

To support his allegations, petitioner presented the following:

1. Affidavit,^[6] dated March 8, 2001, of Taha C. Ali, Municipal Election Officer of the Office of the Assistant Regional Election Director of the COMELEC, Region XII, Iligan City, stating that, based on the continuous verification of household members in Tubaran, petitioner and his wife lived at No. 13 Barangay Tangcal, Tubaran.
2. Affidavit of Witness,^[7] dated March 8, 2001, of Delgado Caontongan, stating that he was an elementary school teacher of Tubaran and that he was appointed Chairman of the Board of Election Inspectors (BEI) of Precinct No. 28-A in Tangcal, Tubaran in the May 8, 1999 registration of voters; that he personally received the Voter Registration Record of petitioner whom he knew to be a resident of Tubaran; and that he knew petitioner to be a qualified voter and, for that reason, he approved petitioner's Voter Registration Record and included his name in the master list of voters in Precinct No. 28-A.
3. Certificate of Candidacy for Mayor^[8] of petitioner, filed on January 11, 2001, with the COMELEC stating, among other things, that he was born on October 14, 1964; that his place of birth was Marawi City; that he was employed as a municipal employee of a local government unit in Bayang; that he was a resident of Tangcal, Tubaran, Lanao del Sur; that he was a registered voter of Precinct No. 28-A in Barangay Tangcal, Tubaran, Lanao del Sur; and that his length of residency in the Philippines was 36 years and 10 months (Annex 3-A).
4. Affidavit of Witness,^[9] dated March 8, 2001, of Rafael Guina Dimaporo (brother of petitioner's wife), stating that his family and the family of petitioner were residents of Tangcal, Tubaran; that his relatives on the maternal side (the Andag and the Guina clans) were natives of Barangays Tangcal and Datumanong, both in the Municipality of Tubaran; and that during the May 11, 1992 national and local elections, he was one of the mayoralty candidates who garnered the second highest number of votes.
5. Affidavit of Witness,^[10] dated March 8, 2001, of Sobair Tagtal, stating that he was a farmer and one of the share tenants of an agricultural land located in Tubaran, co-owned by petitioner and the latter's siblings; that petitioner had been managing the land and residing in Tangcal, Tubaran since 1990; and that he knew petitioner filed his certificate of candidacy in the 1998 mayoralty election in Tubaran.
6. Certification,^[11] dated March 7, 2001, by Salem Buzar, Election Officer in Bayang, Lanao del Sur, certifying that petitioner was not registered as a voter of Bayang in the May 11, 1998 and May 14, 2001 elections.

7. Affidavit of Desistance,^[12] dated March 8, 2001, of Hadji Bashir Ayonga, stating that he was withdrawing the joint affidavit, dated February 14, 2001, which he had earlier executed, together with Hadji Taher Batawe and Saadori Buat, as he did not understand the consequences of signing the said affidavit and its contents had not been explained to him; that he did not know that the affidavit would be used in a disqualification case against petitioner who was a first cousin of his grandchildren; that he knew petitioner to be a registered voter and a candidate for municipal mayor in Tubaran; and that petitioner is a native of Tubaran because he is a descendant of Datu Sa Tatarikun Tangcal (Sumowa) on the paternal side and a legitimate member of the Sultanate of Boribid in Tubaran on the maternal side.

8. Affidavit of Desistance,^[13] dated March 8, 2001, of Samoranao Sarip, stating that he was withdrawing the affidavit, dated February 17, 2001, which he had earlier executed, as he did not understand the consequences of signing the said affidavit and its contents had not been explained to him; that he did not know that the affidavit would be used in a disqualification case against petitioner; that he knew petitioner to be a registered voter and a candidate for municipal mayor of Tubaran; and that petitioner is a native of Tubaran because he is a descendant of Datu Sa Tatarikun Tangcal (Sumowa) on the paternal side and a legitimate member of the Sultanate of Boribid in Tubaran on the maternal side.

In its resolution, dated May 8, 2001, the COMELEC (Second Division) in SPA No. 01-114 declared petitioner to be disqualified and ordered his name to be stricken off the list of candidates and all votes cast in his favor not to be counted but considered as stray votes. Citing the joint affidavit, dated February 14, 2001, of Hadji Bashir Ayonga, Hadji Taher Batawe, and Saadori Buat and the affidavit of Samoranao Sarip stating that petitioner had not at any time been a resident of Tangcal, Tubaran, the COMELEC ruled that it was the fact of petitioner's residence, not the statement in his certificate of candidacy, which determined whether or not he had satisfied the residency requirement of one (1) year preceding the May 14, 2001 elections. In finding that petitioner never intended to relinquish his former domicile in Bayang, the COMELEC took note of the testimony of petitioner in the exclusion proceedings against him before the municipal trial court (Election Case Nos. 2001-237-T to 2001-244-T), in which petitioner stated that he was living in Marawi City where he was the private secretary of Mayor Abdillah Ampatua.

On May 14, 2001, elections were held in Tubaran. Petitioner was among those voted by the electorate for the position of municipal mayor. On May 15, 2001, he received a telegram^[14] from the COMELEC notifying him of the resolution, dated May 12, 2001, of the COMELEC *en banc* which denied his motion for reconsideration.

On May 17, 2001, he filed the present petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

Meanwhile, on May 19, 2001, petitioner filed a petition with the COMELEC (First Division) in SPC No. 01-039 seeking the issuance of an order directing the Board of Election Inspectors (BEI) of Tubaran to count and tally the ballots cast in his favor during the May 14, 2001 elections pursuant to COMELEC Resolution N. 4116. The said resolution provides that if the disqualification case has not become final and

executory on the day of the election, the BEI shall tally and count the votes of the candidate declared disqualified.

On the other hand, respondent filed a pre-proclamation case (SPC No. 01-259) in the COMELEC.

On May 29, 2001, the First Division of the COMELEC (in SPC No. 01-039) issued an order suspending the proclamation of petitioner as the duly elected mayor of Tubaran pending the resolution of this present petition. However, despite the said order (in SPC No. 01-039), the Municipal Board of Canvassers of Tubaran proceeded with the proclamation of petitioner on June 3, 2001. Upon motion of respondent, therefore, the COMELEC (First Division), in an order, dated June 25, 2001, set aside the proclamation of petitioner, without prejudice to the filing of the appropriate charges against the members of the Board responsible for the proclamation.^[15] Thereafter, the COMELEC *en banc* issued a resolution, dated January 30, 2002, sustaining the annulment of the proclamation of petitioner and dismissing SPC No. 01-039 for being moot and academic. It appears that, as a consequence thereof, the incumbent Vice-Mayor of Tubaran assumed the position of mayor pursuant to the COMELEC *en banc* resolution dated January 30, 2002.

On May 22, 2001, this Court required the COMELEC and respondent Fahida Balt to comment on the petition and, upon the posting of a bond by petitioner in the amount of P10,000.00, issued a temporary restraining order enjoining the COMELEC from implementing its resolutions of May 8 and May 12, 2001.

In a manifestation,^[16] dated May 28, 2001, petitioner submitted the certificates of votes (Annexes A to A-30), duly signed by the BEI Chairman and his two members, showing that in the 31 precincts of Tubaran, he obtained 1,744 votes [should be 1,730] votes, while respondent Balt and Bantuas obtained 1,528 votes [should be 1,540 votes] and 974 votes [should be 967 votes], respectively. Respondent countered that, despite these results, petitioner could not be proclaimed mayor as she had appealed from the ruling of the Municipal Board of Canvassers of Tubaran, wherein she sought the exclusion and the annulment of the election returns from certain precincts in Tubaran because of massive fraud, terrorism, and substitution of registered voters.

After canvass of the election returns, the Municipal Board of Canvassers issued a Municipal Certificate of Canvass^[17] showing the following results:

Petitioner Papandayan – 1,744 votes

Respondent Balt – 1,540 votes

Maiko Hassan Bantuas – 968 votes

The Office of the Solicitor General filed a motion in lieu of a comment, recommending that this Court grant the present petition. It contends that the joint affidavit, dated February 14, 2001, of Barangay Chairman Hadji Bashir Ayonga and Sangguniang Barangay members Hadji Taher Batawe and Saadori Buat, stating that petitioner had not at any time been a resident of Tubaran, constituted hearsay evidence as the three affiants were never presented during the proceedings of the case. In fact, one of the affiants, Hadji Bashir Ayonga, later executed an Affidavit of Desistance, dated March 8, 2001, retracting his earlier statements. As for the

statements made by petitioner in Election Case Nos. 2001-237-T to 2001-244-T, pending before the municipal trial court, that he was then “not residing” in Bayang but in Tubaran, Lanao del Sur although “living” in Marawi City, the Solicitor General says that the same does not necessarily mean that petitioner was not a resident of Tubaran as such answer merely means that he was previously living in Marawi City.

In her comment, respondent insists that petitioner was not a resident of Tubaran but of Bayang. She contends that petitioner made misrepresentations in claiming that he filed his certificate of candidacy for mayor of Tubaran in the May 11, 1998 elections and that he was a registered voter in the May 11, 1998 elections; that when petitioner registered as a voter in Precinct No. 28-A in Tangcal, Tubaran on May 8, 1999, he refused to fill out the space corresponding to the period of his residency in Tubaran; that it was unusual for the BEI Chairman to execute an affidavit, stating therein that he allowed the registration of the petitioner because he had known the latter to be a “legitimate resident of [Tubaran] even prior to the May 8, 1999 registration”; that it was doubtful if the election officer of Tubaran really conducted a continuous verification of household members of Tubaran; and that the certification of the election officer of Bayang that petitioner was not a registered voter in Bayang during the May 11, 1998 and May 14, 2001 elections does not prove that he was a registered voter in Tubaran. Respondent argues that the COMELEC did not commit any “error of jurisdiction” to justify the grant of this petition for certiorari but, if at all, only an “error of judgment,” which is correctible by ordinary appeal.

In his reply to respondent’s comment, petitioner points out that respondent did not appear at the March 9, 2001 hearing of the disqualification case before the COMELEC; that of the six witnesses whom respondent said she was presenting, only two — Hadji Taher Batawe and Saadori Buat — appeared, and both merely affirmed their joint affidavit; that, although the cross-examination of the two was reset on March 12, 2001, they nevertheless failed to appear and thus deprived petitioner’s counsel of the opportunity to cross-examine them; that respondent’s four other witnesses — Hadji Bashir Ayonga, Sultan Sarip Bilao, Osio Balbal, and Puno Balbal — did not appear either; that instead Sultan Sarip Bilao later executed an affidavit^[18] denying his earlier statement that the petitioner was not a resident of Tubaran; and that the Second Division of the COMELEC and the COMELEC *en banc* did not conduct any hearing in the disqualification case and merely relied on the recommendations submitted by the hearing officer. According to petitioner, while he filed his certificate of candidacy for mayor of Tubaran in the May 11, 1998 elections, the same was later withdrawn on his behalf by Casim A. Guro, his brother-in-law. This fact was corroborated by Macawaris P. Masanang, a sultan in Tubaran, who stated that he had been an Election Assistant of the COMELEC since 1978 and that, as such, he received petitioner’s certificate of candidacy, which was later withdrawn by Casim A. Guro on behalf of petitioner.

After reviewing the records, we find the foregoing allegations of petitioner to be correct. Hence, his petition should be granted.

First. Petitioner contends that the resolution, dated May 12, 2001, of the COMELEC *en banc* was not yet final and executory when the elections were held on May 14, 2001. Consequently, the Board of Election Inspectors of Tubaran, in the exercise of its ministerial duty, had to count the votes cast in his favor. Respondent, on the other hand, avers that the assailed resolution, dated May 12, 2001, of the COMELEC