

EN BANC

[G.R. No. L-150312, July 18, 2002]

BAGO P. PASANDALAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND BAI SALAMONA L. ASUM, RESPONDENTS.

DECISION

CARPIO, J.:

A petition for declaration of failure of election must specifically allege the essential grounds that would justify the exercise of this extraordinary remedy. Otherwise, the Comelec can dismiss outright the petition for lack of merit. No grave abuse of discretion can be attributed to the Comelec in such a case because the Comelec must exercise with utmost circumspection the power to declare a failure of election to prevent disenfranchising voters and frustrating the electorate's will.

The Case

Before us is a petition for review on certiorari of the Resolution^[1] of the Commission on Elections en banc dated October 12, 2001 dismissing petitioner Bago P. Pasandalan's ("Pasandalan" for brevity) petition to declare a failure of election.

Pasandalan and private respondent Bai Salamona L. Asum ("Asum" for brevity) were candidates for mayor in the Municipality of Lumbayanague, Lanao del Sur during the May 14, 2001 elections.

On May 23, 2001, Pasandalan filed a petition^[2] before public respondent Commission on Elections ("Comelec" for brevity) seeking to nullify the election results in Barangay Cabasaran (Precinct Nos. 9A, 10A, 11A and 12A), Barangay Deromoyod (Precinct Nos. 24A, 25A and 26A), Lamin (Precinct Nos. 29A and 30A), Barangay Wago (Precinct Nos. 46A, 47A and 48A), Barangay Meniros (Precinct Nos. 32A, 33A and 34A), Barangay Bualan (Precinct Nos. 6A, 7A and 8A) and Barangay Pantaon (Precinct Nos. 38A and 39A), all of Lumbayanague, Lanao del Sur.

Petitioner alleged that on May 14, 2001, while voting was going on, some Cafgu's stationed near Sultan Gunting Elementary School indiscriminately fired their firearms causing the voters to panic and leave the polling center without casting their votes. Taking advantage of the confusion, supporters of Asum allegedly took the official ballots, filled them up with the name of Asum and placed them inside the ballot boxes. The incident allegedly marred the election results in Precinct Nos. 9A-12A, 24A-26A and 29A-30A.

In Precinct Nos. 46A, 47 and 48A, the members of the Board of Election Inspectors ("BEI" for brevity) allegedly failed to sign their initials at the back of several official ballots and to remove the detachable coupons. The BEI members allegedly affixed their initials only during the counting of votes.

In Precinct Nos. 6A-8A, 32A-34A and 38A-39A, Pasandalan claims that Asum's supporters, taking advantage of the fistfight between Asum's nephew and the supporters of candidate Norania Salo, grabbed the official ballots and filled them up with the name of Asum.

Pasandalan contends that a technical examination of several official ballots from the contested precincts would show that only a few persons wrote the entries.

On June 26, 2001, Asum filed an Answer denying Pasandalan's allegation that the volley of shots fired on May 14, 2001 disrupted the voting. Private respondent countered that the gunshots were heard around 2:35 p.m. and not at the start of the voting. On June 30, 2001, Asum was sworn into office and assumed the position of municipal mayor of the Lumbayanague, Lanao del Sur.

On October 12, 2001, the Comelec issued a Resolution dismissing the petition for lack of merit.^[3]

Hence, this petition.

The Comelec's Ruling

The Comelec ruled that the power to declare a failure of election, being an extraordinary remedy, could be exercised only in three instances: (1) the election is not held; (2) the election is suspended; or (3) the election results in a failure to elect. The third instance is understood in its literal sense, that is, nobody was elected.

The Comelec dismissed the petition because none of the grounds relied upon by Pasandalan falls under any of the three instances justifying a declaration of failure of election. First, the elections in the questioned precincts were held as scheduled. Second, the gunshots heard during the casting of votes did not suspend the election as the voting continued normally. Third, Asum was elected by a plurality of votes.

The authenticity and integrity of the election returns were left undisturbed throughout the preparation, transmission, custody and canvass of the returns. Pasandalan alleges fraud and terrorism, in that there was massive substitution of voters, firing of guns to frighten the voters, and failure of the BEI members to sign at the back of some official ballots and to remove the detachable coupons. The Comelec ruled that these allegations are better ventilated in an election contest.

The Comelec did not give credence to Pasandalan's evidence in support of his allegations of terrorism and fraud since the evidence consisted only of affidavits executed by Pasandalan's own poll watchers. The Comelec considered these affidavits self-serving and insufficient to annul the results of the election. Thus, the Comelec dismissed the petition for lack of merit.

The Issues

Pasandalan now assails the Comelec's dismissal of his petition, raising the following issues:

"1. WHETHER THE COMMISSION ON ELECTIONS ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION IN SPA NO. 01-305 FOR ALLEGED LACK OF MERIT;

2. WHETHER THE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT ANNULING THE ELECTION OR DECLARING A FAILURE OF ELECTION IN THE SIXTEEN (16) QUESTIONED PRECINCTS;

3. WHETHER THE COMMISSION ON ELECTIONS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN NOT DECLARING AS ILLEGAL, NULL AND VOID AB INITIO THE PROCLAMATION OF THE PRIVATE RESPONDENT AS THE DULY ELECTED MAYOR OF LUMBAYANAGUE, LANA DEL SUR IN THE LAST MAY 14, 2001 REGULAR ELECTIONS AND MAY 30, 2001 SPECIAL ELECTIONS.”^[4]

The Court’s Ruling

We rule that the petition is without merit. The Comelec correctly dismissed the petition for declaration of failure of election because the irregularities alleged in the petition should have been raised in an election protest, not in a petition to declare a failure of election.

Under Republic Act No. 7166, otherwise known as “The Synchronized Elections Law of 1991,”^[5] the Comelec en banc is empowered to declare a failure of election under Section 6 of the Omnibus Election Code (B.P. Blg. 881). Section 6 of the Code prescribes the conditions for the exercise of this power, thus:

“SEC. 6. Failure of Election. - If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or 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 but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.”

Based on the foregoing provision, three instances justify a declaration of failure of election. These are:

“(a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud or other analogous causes;

(b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or

(c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.”^[6]

What is common in these three instances is the resulting failure to elect.^[7] In the first instance, no election is held while in the second, the election is suspended.^[8] In the third instance, circumstances attending the preparation, transmission, custody or canvas of the election returns cause a failure to elect. The term failure to elect means nobody emerged as a winner. ^[9]

Pasandalan asserts that the conditions for the declaration of failure of election are present in this case. The volley of shots from high-powered firearms allegedly forced the voters to scamper away from the polling place, paving the way for Asum's supporters to write the name of Asum on the ballots. The gunfire also frightened Pasandalan's poll watchers. The heavy firing allegedly suspended or prevented the holding of elections in the contested precincts, resulting in failure to elect. The victory of Asum is thus put in serious doubt.

We do not agree. Pasandalan's allegations do not fall under any of the instances that would justify the declaration of failure of election. The election was held in the 16 protested precincts as scheduled. At no point was the election in any of the precincts suspended. Nor was there a failure to elect because of force majeure, violence, terrorism, fraud or other analogous causes during the preparation, transmission, custody and canvass of the election returns. The alleged terrorism was not of such scale and prevalence to prevent the holding of the election or to cause its suspension. In fact, the casting and counting of votes, the preparation, transmission and canvassing of election returns and the proclamation of the winning candidate took place in due course.

Courts exercise the power to declare a failure of election with deliberate caution so as not to disenfranchise the electorate.^[10] The fact alone that actual voting took place already militates against Pasandalan's cause. Also, Pasandalan's allegations of terrorism and fraud are not sufficient to warrant a nullification of the election in the absence of any of the three instances justifying a declaration of failure of election. Terrorism may not be invoked to declare a failure of election and to disenfranchise the greater number of the electorate through the misdeeds of only a few,^[11] absent any of the three instances specified by law.

To warrant a declaration of failure of election on the ground of fraud, the fraud must prevent or suspend the holding of an election, or mar fatally the preparation, transmission, custody and canvass of the election returns.^[12] The conditions for the declaration of failure of election are stringent. Otherwise, elections will never end for losers will always cry fraud and terrorism.^[13]

The allegations of massive substitution of voters, multiple voting, and other electoral anomalies should be resolved in a proper election protest^[14] in the absence of any of the three instances justifying a declaration of failure of election. In an election protest, the election is not set aside, and there is only a revision or recount of the ballots cast to determine the real winner.^[15]

The nullification of elections or declaration of failure of elections is an extraordinary remedy.^[16] The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a prima facie case for the declaration of failure of election, and convincing evidence must substantiate the allegations.^[17]