

EN BANC

[G.R. No. 139545, January 28, 2000]

MAIMONA H. N. M. S. DIANGKA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ATTY. ALI M. BALINDONG, RESPONDENTS.

DECISION

GONZAGA-REYES, J.:

Challenged in this petition for *certiorari* with a prayer for the issuance of a temporary restraining order and/or preliminary injunction are the Resolution of September 2, 1998^[1] of the Second Division of the Commission on Elections (COMELEC), declaring petitioner Maimona H.N.M.S. Diangka (DIANGKA) disqualified as candidate for Mayor of Ganassi, Lanao del Sur in the May 11, 1998 elections, and the Resolution of August 24, 1999^[2] of the COMELEC *en banc* denying DIANGKA's motion for reconsideration.

Briefly, the antecedents as gathered from the records are:

A special action for disqualification was commenced by private respondent Ali M. Balindong (BALINDONG), a rival mayoralty candidate of DIANGKA, before the COMELEC on May 27, 1998.^[3] BALINDONG sought to disqualify DIANGKA from continuing to run as candidate for Mayor in the May 11, 1998 elections in the municipality of Ganassi, Lanao del Sur, on the ground that the latter and her husband, then incumbent mayor of said municipality, committed acts of terrorism in order to accord DIANGKA an undue advantage at the polls. BALINDONG alleged, among others, that DIANGKA, directly or indirectly through her husband, committed serious acts of terrorism in violation of the Omnibus Election Code as follows:

1. First Act of Terrorism – that of having compelled the Watchers of other candidates through force, threat and intimidation to leave the ballot box and election paraphernalia for Precinct No. 2-A thereby giving respondent and her followers free hands in the filling-up of the official ballots in favor of the respondent and thereby enhanced her candidacy.^[4]
2. Second Act of Terrorism – that of having swooped down and assaulted the Poblacion of Ganassi, Lanao del Sur, creating tumultuous commotion or disturbances therein scaring away and preventing voters from casting their votes, snatching ballot boxes and other election paraphernalia including the official ballots and thereafter stuffing the ballot boxes with spurious ballots favoring and enhancing the candidacy of the respondent.^[5]

As regards the first act of terrorism, it was alleged that DIANGKA together with the Barangay Chairman of Barangay Bagoaingud, Lombayan Dubar and several others,

loaded and transported the ballots, ballot boxes and other election paraphernalia intended for Precinct No. 2A at the Gadongan Elementary School in an ambulance car of the municipality. Instead of transporting the ballots, ballot boxes and other election paraphernalia directly to the aforesaid precinct, the ambulance stopped in Barangay Bagoaingud where the watchers of DIANGKA's rivals were forced to alight from the ambulance amidst threats and intimidation.^[6] As regards the second act of terrorism, it was alleged that on election day, the husband of DIANGKA, Mayor Omra Maning Diangka, accompanied by several armed men including the Chief of Police went to the Ganassi Central Elementary School where several precincts were clustered and created commotion by firing their firearms in the air.^[7]

In her Answer^[8] filed on July 2, 1998, DIANGKA did not traverse the allegations contained in the petition but merely made a general denial and attacked the sworn statements attached to the petition as hearsay, self-serving, biased, fabricated and designed to eliminate her from the mayoralty race in the municipality.

On July 14, 1998, the COMELEC *en banc* issued an Omnibus Order declaring a partial failure of election in nine (9) out of the fifty-eight (58) precincts in Ganassi, Lanao del Sur, and, accordingly scheduled special elections on July 27, 1998 in the nine (9) precincts. The results of the special elections were consolidated with the results of the May 11, 1998 elections, and DIANGKA emerged as the winner. Based on the COMELEC's preliminary determination that the evidence against DIANGKA in the petition for disqualification is strong, the former ordered the Municipal Board of Canvassers to cease and desist from proclaiming her. Nevertheless, DIANGKA's proclamation as mayor of the municipality proceeded on July 27, 1998 since the Municipal Board of Canvassers received the order an hour after the proclamation.^[9]

On the date of the hearing of the petition for disqualification on August 13, 1998, only BALINDONG and his counsel appeared. BALINDONG's counsel marked and offered in evidence the affidavits of BALINDONG's witnesses to support the petition and thereafter asked the COMELEC for a period of five (5) days to file his memorandum. After BALINDONG and his counsel left, the counsel of DIANGKA arrived and was informed of what had transpired. Upon his request, DIANGKA's counsel was allowed to file a memorandum with the affidavits of her witnesses.

On September 2, 1998, the COMELEC 2nd Division issued a Resolution disqualifying DIANGKA as candidate for Mayor of Ganassi, Lanao del Sur, on the basis of the following findings:

"x x x. Respondent is the wife of then incumbent Ganassi Mayor Omra Maning Diangka who is disqualified from seeking another term as Mayor. As a gesture of tradition in Philippine politics, if the husband is disqualified to run by reason of his having already served three (3) consecutive terms, it is the wife who is fielded as candidate in her husband's stead. While we find credibility and consistency in the testimonies of petitioner's witnesses which all point to the perpetration of terrorism during the election, respondent cannot escape liability by the mere expedient of stating that she is not privy nor a participant to the said acts of terrorism. In our considered view, such terrorism and violation of election laws were perpetrated to enhance her candidacy and are attributable to her, she being the wife of the incumbent Mayor and

widely acknowledged to be fielded by her husband to run for the mayoralty seat in Ganassi, Lanao del Sur.

After a careful and thorough examination of the evidences, we find that the same possess the degree of persuasiveness that could warrant the disqualification of respondent from running as mayoralty candidate of Ganassi, Lanao del Sur. The alleged acts of terrorism and violation of election laws are sufficiently established by the documentary evidence submitted by petitioner Balindong."^[10]

On September 9, 1998, DIANGKA filed a motion for reconsideration.^[11] In a Resolution dated August 24, 1999, the COMELEC *en banc* denied the motion for reconsideration and affirmed the resolution of the COMELEC Second Division.^[12]

In the meantime, however, and during the pendency of the instant petition, Baguio A. Macapodi, duly elected Municipal Vice-Mayor of Ganassi, Lanao del Sur took his oath of office on August 30, 1999 as Municipal Mayor of Ganassi, Lanao del Sur and has assumed the duties and responsibilities thereof as the lawful successor in accordance with the Local Government Code.^[13]

Hence, the present petition for *certiorari* on the following grounds:

1. THE PETITIONER COULD NOT BE DISQUALIFIED ON THE BASIS OF THE ALLEGED TERRORISM SUPPOSEDLY PERPETRATED BY HER HUSBAND AT THE GANASSI CENTRAL ELEMENTARY SCHOOL AT 2:00 P.M., MAY 11, 1998. THE COMELEC VIOLATED THE RULE OF *RES INTER ALIUS ACTA*. IT IS NOT EVEN CLAIMED THAT THE PETITIONER CONSPIRED WITH HER HUSBAND IN THE ALLEGED CRIMINAL ACTS COMMITTED. THERE IS EVEN NO EVIDENCE SUBMITTED THAT THE PETITIONER WAS WITH HER HUSBAND WHEN THE ALLEGED CRIMINAL ACTS WERE COMMITTED;
2. WITH RESPECT TO PRECINCT 2A, THE COMELEC DISQUALIFIED THE PETITIONER CITING AS SOLE BASIS THE AFFIDAVITS OF TWO (2) WATCHERS OF THE PRIVATE RESPONDENT WHO ARE OBVIOUSLY BIASED WITNESSES. ONLY ONE WITNESS AFFIRMED HIS AFFIDAVIT BEFORE THE COMELEC. THE OTHER DID NOT;
3. THE COMELEC DID NOT EVEN DISCUSS OR CONSIDER THE TESTIMONY OF THE ELECTION OFFICER OF GANASSI; THE MEMBERS OF THE BOARD OF ELECTION INSPECTORS OF THE ADJOINING PRECINCTS; THE TESTIMONY OF THE PNP CHIEF OF POLICE WHO ALL DENIED THE ALLEGATIONS OF THE TWO (2) WATCHERS OF THE PRIVATE RESPONDENT. "*Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.*" [*Ang Tibay vs. Court of Industrial Relations*, 69 Phil. 635] THERE IS VIOLATION OF DUE PROCESS OF LAW.
4. THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT MERELY RELIED ON THE AFFIDAVITS OF THE WITNESSES OF

THE PRIVATE RESPONDENT WITHOUT CONDUCTING CLARIFICATORY QUESTIONING AND/OR CROSS-EXAMINATION OF THE WITNESSES. THE PROCEEDINGS ON AUGUST 13, 1998 BEING EX-PARTE, THE COMELEC SECOND DIVISION SHOULD HAVE CONDUCTED CLARIFICATORY QUESTIONS AND/OR CROSS-EXAMINATION OF THE WITNESSES OF PRIVATE RESPONDENT. IT SHOULD NOT HAVE RELIED ON THE MERE SAY SO OF THE WITNESSES."^[14]

At the outset, it must be stressed that we cannot depart from the settled norm of reviewing decisions of the COMELEC, i.e., "this Court cannot review the factual findings of the COMELEC absent a grave abuse of discretion and a showing of arbitrariness in its decision, order or resolution."^[15] The arguments of petitioner DIANGKA do not convince this Court that the COMELEC gravely abused its discretion in ordering her disqualification.

A perusal of the issues raised by DIANGKA readily shows that there is an attempt to discredit the factual findings of the COMELEC that DIANGKA, directly or indirectly through her husband, who was then incumbent mayor of the municipality, committed acts of terrorism which is a ground for disqualification under Section 68 of the Omnibus Election Code. The said section enumerates the instances where a candidate can be disqualified by the COMELEC, to wit:

SEC. 68. – *Disqualifications.* - Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions: **(b) committed acts of terrorism to enhance his candidacy;** (c) spent in his election campaign an amount in excess of that allowed by this code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Section 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant of a foreign country shall not be qualified to run for any elective office under this code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Sec. 25, 1971 EC)." (emphasis supplied)

The following are excerpts from the Resolution dated August 24, 1999 of the COMELEC *en banc* affirming the Resolution dated September 2, 1998 of the COMELEC (Second Division):

"There is enough evidence to support the findings of the Commission (Second division) that the alleged acts of terrorism and violation of election laws, which transpired in her presence, are sufficiently established by the evidence submitted by the Petitioner and that the same were perpetrated to enhance her candidacy and are attributable to her.

It is not denied by respondent that then incumbent Mayor of Ganassi is

Omra Maning Diangka, her husband. A preponderance of evidence shows that it was an ambulance car that was used in the distribution of ballots and other election paraphernalia. In fact, in her affidavit, respondent explicitly stated that it was an ambulance that was used. She had not denied that the same is under the control of and being used by Omra Maning Diangka and his family. No specific denial of this fact can be found in her Answer. And as shown by the evidence, the respondent was in that ambulance, at the front seat beside the driver where she can easily give directions for the latter to follow during the time material to the petition.

Petitioner's witness, Hadji Naif Amerol, a watcher of mayoral candidate Salahudin Amerol, stated in his affidavit the following:

2. At about 12:00 noon of May 11, 1998 we boarded the ambulance car of Ganassi, Lanao del Sur to keep watch over the election paraphernalia, official ballots and ballot box intended for Precinct No. 2A of Barangay Bagoinged loaded in the said car. On board the car were certain Mansawi, the BEI Chairman of the said precinct, Mr. Mamosaca Marangit, an elementary Grades teacher and brother-in-law of mayoral candidate Maimona Diangka; one (1) armed man whom I have identified later on as LOMBAYAN DUBAR, Barangay Chairman of Barangay Bagoinged, Ganassi, Lanao del Sur; mayoral Maimona Diangka;
3. The ambulance vehicle took off from Pindulunan and was driven straight to Barangay Bagoinged. The election paraphernalia, official ballots and other election supplies intended for Precinct No. 2A were not brought to the officially designated polling place at Gadungan Elementary School at Gadungan, Ganassi, Lanao del Sur but to a private house at Bagoinged, Ganassi, Lanao del Sur. We protested but to no avail in that we were threatened to be killed with high-powered firearms of several men led by Barangay Lombayan Dubar if we insist on watching them or do not leave the place;

The Commission (En Banc) finds it significant that Respondent has not successfully refuted the allegations of Petitioner. Nowhere in all her pleadings submitted before this Commission has Respondent presented any evidence sufficient to rebut Petitioner's allegations. It was only in her affidavit attached to her motion for reconsideration that Respondent denied these allegations. Quite late for her.

In Respondent's belatedly submitted affidavit, she stated as follows:

2. *I did not participate nor did I have any previous knowledge nor consented to the alleged terrorism supposedly committed by my husband, Mayor Maning Diangka described by Mamolawan B. Balindong in her supposed affidavit submitted to the Commission on*