

EN BANC

[G.R. No. 139028, April 12, 2000]

HADJI RASUL BATADOR BASHER, PETITIONER, VS. COMMISSION ON ELECTIONS AND ABULKAIR AMPATUA, RESPONDENTS.

DECISION

PANGANIBAN, J.:

An election must be held at the place, date and time prescribed by law. Likewise, its suspension or postponement must comply with legal requirements. Otherwise, it is irregular and void.

The Case

Petitioner^[1] assails before us the June 8, 1999 Resolution of the Commission on Elections (Comelec)^[2] in SPA Case No. 97-276 which dismissed a Petition to Declare a Failure of Election and to Call Special Election in Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur. The assailed Resolution disposed as follows:

"In view of the foregoing considerations, We he[re] by hold that the special elections in Barangay Maidan, Tugaya, Lanao del Sur on August 30, 1997 did not fail. The result thereof must therefore be accorded respect.

"WHEREFORE, premises considered, the Commission En Banc **RESOLVES** to **DISMISS** the petition for lack of merit."^[3]

The Facts

Petitioner Hadji Rasul Batador Basher and Private Respondent Abulkair Ampatua were both candidates for the position of Punong Barangay in Barangay Maidan, Tugaya, Lanao del Sur during the May 12, 1997 barangay election. The election was declared a failure and a special one was set for June 12, 1997. Again, the election failed and was reset to August 30, 1997.

According to the Comelec, the voting started only around 9:00 p.m. on August 30, 1997 because of the prevailing tension in the said locality. Election Officer Diana Datu-Imam reported that she was allegedly advised by some religious leaders not to proceed with the election because "it might trigger bloodshed." She also claimed that the town mayor, "being too hysterical, yelled and threatened me to declare ^[a] failure of election in Maidan." Subsequently, the armed followers of the mayor pointed their guns at her and her military escorts, who responded in like manner towards the former. The parties were then pacified at the PNP headquarters. With the arrival of additional troops, the election officer proceeded to Maidan to conduct the election starting at 9:00 p.m. until the early morning of the following day. The

holding of the election at that particular time was allegedly announced "over the mosque."^[4]

The tally sheet for the said "election" showed the following results: private respondent – 250 votes; petitioner – 15 votes; and Baulo Abdul Razul, a third candidate – 10 votes.^[5] Private respondent was proclaimed winner.

Petitioner then filed a Petition before the Comelec praying that the election be declared a failure. Alleging that no election was conducted in the place and at the time prescribed by law, petitioner narrated that there was a dispute that day (August 30, 1997) among the candidates regarding the venue of the election in the lone voting precinct of the barangay. In order to avoid bloodshed, they ultimately agreed that no election would be conducted. Accordingly, the election officer turned over for safekeeping the ballot box containing election paraphernalia to the acting station commander (OIC) of the Philippine National Police (PNP). The following day, petitioner and the third candidate were surprised to learn that the election officer had directed the Board of Election Tellers to conduct the election and to fill up the election returns and certificates of canvass on the night of August 30, 1997 at the residence of the former mayor. Petitioner also stated that no announcement to hold the election at the former mayor's house that night was ever made.^[6]

As earlier stated, the Comelec dismissed the Petition. Hence, this recourse to this Court.^[7]

Ruling of the Comelec

The Comelec ruled against a failure of election because the two conditions laid down in *Mitmug v. Comelec*^[8] were not established. It held that the "election was conducted on the scheduled date. The precinct functioned. Actual voting took place, and it resulted not in a failure to elect."^[9]

In justifying the balloting at the dead of night, the poll body cited Section 22, Article IV of Comelec Resolution 2971, which provided in part that "[i]f at three o'clock, there are still voters within thirty meters in front of the polling place who have not cast their votes, the voting shall continue to allow said voters to cast their votes without interruption. x x x" The Comelec then went on to state that "experience had shown that even when there is a long delay in the commencement of the voting, voters continue to stay within the area of the polling place."^[10]

Issue

Petitioner submits the following questions for the consideration of the Court:

"1. Whether or not the election held at around 10:00 o'clock in the evening of August 30, 1997 after the Acting Election Officer had verbally declared or announced a failure of election in Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur is contrary to law, rule and jurisprudence;

"2. Whether or not the election held at the residence of an Ex-mayor far from the designated Polling Place of Precinct No. 12, Barangay Maidan, Tugaya, Lanao del Sur is legal or valid;

"3. Whether or not the proclamation of the private respondent as the duly elected Punong Barangay of Barangay Maidan and the seven (7) Barangay Kagawads is illegal, null and void ab initio."^[11]

In the main, the crucial question that needs to be addressed is whether the "election" held on the date, at the time and in the place other than those officially designated by the law and by the Comelec was valid.

The Court's Ruling

The Petition is meritorious.

Main Issue: **Validity of the Special Election**

Citing *Mitmug v. Comelec*,^[12] the Comelec points out that a failure of election requires the concurrence of two conditions, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election. It ruled that these requirements were not met.

We do not agree. The peculiar set of facts in the present case show not merely a failure of election but the absence of a valid electoral exercise. Otherwise stated, the disputed "election" was illegal, irregular and void.

Election Situs Was Illegal

First, the place where the voting was conducted was illegal. Section 42 of the Omnibus Election Code provides that "[t]he chairman of the board of election tellers shall designate the public school or any other public building *within the barangay* to be used as polling place in case the barangay has one election precinct x x x." Petitioner, citing an Affidavit^[13] supposedly executed by the members of the Board of Election Tellers (BET) for Barangay Maidan, alleges that the election of officials for said barangay was held at the residence of former Mayor Alang Sagusara Pukunun, which is located at Barangay Pandarianao, instead of the officially designated polling precinct at Cagayan Elementary School. If this allegation were true, such "election" cannot be valid, as it was not held within the barangay of the officials who were being elected. On the other hand, it is admitted that there was a public school or building in Barangay Maidan -- the Cagayan Elementary School, which was the earlier validly designated voting center.

While the BET members later repudiated their Affidavit, they could only claim that the election was held "in Barangay Maidan."^[14] They, however, failed to specify the exact venue. In fact, to this date, even the respondents have failed to disclose where exactly the voting was conducted. This glaring omission definitely raises serious questions on whether the election was indeed held in a place allowed by law.

Voting Time Was Likewise Irregular

Second, as to the time for voting, the law provides that "[t]he casting of votes shall

start at seven o'clock in the morning and shall end at three o'clock in the afternoon, except when there are voters present within thirty meters in front of the polling place who have not yet cast their votes, in which case the voting shall continue but only to allow said voters to cast their votes without interruption."^[15] Section 22, Article IV of Comelec Resolution No. 2971 also specifies that the voting hours shall start promptly at 7:00 a.m. and end at 3:00 p.m. of the *same* day.

However, the "election" for Barangay Maidan officials was supposed to have been held after 9:00 p.m. of August 30, 1997 until the wee hours of the following day. Certainly, such schedule was not in accordance with law or the Comelec Rules. The Comelec erred in relying on the second sentence of Section 22, Article IV of Comelec Resolution 2971, which states that "[i]f at three o'clock [in the afternoon], there are still voters within thirty meters in front of the polling place who have not cast their votes, the voting shall continue to allow said voters to cast their votes without interruption." This sentence presupposes that the election *commenced* during the official time and is simply *continued* beyond 3:00 p.m. in order to accommodate voters who are within thirty meters of the polling place, already waiting for their turn to cast their votes. This is clearly the meaning and intent of the word *continue* - - "to *go on* in a specified course of action or condition."^[16] The action or condition already subsists and is allowed to go on. Otherwise, the law should have stated instead that "the voting may also start even beyond 3:00 p.m. if there are voters within thirty meters in front of the polling place."

The strained interpretation espoused by the Comelec encourages the conduct of clandestine "elections," for it virtually authorizes the holding of elections beyond normal hours, even at midnight when circumstances could be more threatening and conducive to unlawful activities. On a doctrinal basis, such nocturnal electoral practice discourages the people's exercise of their fundamental right of suffrage, by exposing them to the dangers concomitant to the dead of night, especially in far-flung barangays constantly threatened with rebel and military gunfires.

Election Date Was Invalid

Third, the Comelec scheduled the special election on August 30, 1997. Any suspension or postponement of an election is governed by Section 2 of RA 6679,^[17] which states that "[w]hen for any serious cause such as rebellion, insurrection, violence, terrorism, loss or destruction of election paraphernalia, and any analogous causes of such nature that the holding of a free, orderly and honest election should become impossible in any barangay, the Commission on Election motu proprio or upon sworn petition of ten (10) registered voters of a barangay, after summary proceedings of the existence of such grounds, shall suspend or postpone the election therein to a date reasonably close to the date of the election that is not held or is suspended or postponed, or which resulted in a failure to elect, but not later than thirty (30) days after the cessation of the cause for such suspension or postponement of the election or failure to elect, and in all cases not later than ninety (90) days from the date of the original election."

Election Officer Diana Datu-Imam of Tugaya, Lanao del Sur practically postponed the election in Barangay Maidan from the official original schedule of 7:00 a.m. to 3:00 p.m. of August 30, 1997 to 10:00 p.m. of August 30, 1997 until the early morning of August 31, 1997. She attempted to justify her postponement of the election by

citing threats of violence and bloodshed in the said barangay. Allegedly because of the tension created by armed escorts of the municipal mayor and the military, Datu-Imam declared a failure of election in order "to ease their aggression." However, as election officer, she has no authority to declare a failure of election. Indeed, only the Comelec itself has legal authority to exercise such awesome power. An election officer alone, or even with the agreement of the candidates, cannot validly postpone or suspend the elections.

Election Postponement Was Invalid

Fourth, Datu-Imam did not follow the procedure laid down by law for election postponement or suspension or the declaration of a failure of election. She narrated the circumstances surrounding her declaration as follows:^[18]

"When I returned to [as] certain the situation in Maidan, the Mayor, being too hysterical, yelled and threatened me to declare [a] failure of elections in Maidan. When I insisted to personally confirm the probable cause of bloodshed (at Maidan), his armed followers/escorts pointed their guns to me and my escorts. Likewise my military escorts pointed their guns to the mayor and his men 'Man to Man'. The Datus and religious leaders pacified us at the PNP Headquarters.

"After a couple of hours, the military officers and I agreed to adapt another strategy just to pursue with the elections in Maidan [by] hook or by crook. Considering that they forcibly took away from us the ballot box containing paraphernalia of Maidan, I didn't have any recourse but give them. I turned-over the ballot box to the Acting Chief of Police, Malik Bantuas with proper receipt, taking away from the box the CEF 2 & 2-A, declaring verbally a failure of elections in Maidan just to ease their aggression and so that we could pull-out of the place freely."

It clearly appears from the very report of Datu-Imam to the Comelec that she did not conduct any proceeding, summary or otherwise, to find out whether any of the legal grounds for the suspension or postponement or the declaration of failure of the election actually existed in the barangay concerned.

Notice Was Irregular

Finally and very significantly, the electorate was not given ample notice of the exact schedule and venue of the election. The election officer herself relates:^[19]

"When the tension was slightly alleviated, I directed the military personnel to pull-out of the Municipio and withdrew to a nearby Barangay (for safety) where some of the militaries (sic) were deployed. After planning and coordinating with the Batallion (sic) Commander, we waited for the additional troupes (sic) that arrived at around 8:30 in the evening. At the stroke of 9:00 o'clock, we started for Maidan via the national Highway thru the Municipality of Balindong and others thru a short-cut way (sic) eastward of Tugaya. Utilizing the election paraphernalia earlier shipped by the Commission as I have requested (sic) and a ballot box from the PES, we went on with the election (after announcing it over the mosque) peacefully and orderly despite the tiredness (sic) and