

## EN BANC

[ G.R. No. 133676, April 14, 1999 ]

### TUPAY T. LOONG, PETITIONER, VS. COMMISSION ON ELECTIONS AND ABDUSAKUR TAN, RESPONDENTS, YUSOP JIKIRI, INTERVENOR.

#### D E C I S I O N

##### PUNO, J.:

In a bid to improve our elections, Congress enacted R.A. No. 8436 on December 22, 1997 prescribing the adoption of an **automated election system**. The new system was used in the May 11, 1998 regular elections held in the Autonomous Region in Muslim Mindanao (ARMM) which includes the Province of Sulu. Atty. Jose Tolentino, Jr. headed the COMELEC Task Force to have administrative oversight of the elections in Sulu.

The voting in Sulu was relatively peaceful and orderly.<sup>[1]</sup> The problem started during the automated counting of votes for the local officials of Sulu at the Sulu State College. **At about 6 a.m. of May 12, 1998**, some election inspectors and watchers informed Atty. Tolentino, Jr. of discrepancies between the election returns and the votes cast for the mayoralty candidates in the **municipality of Pata**. Some ballots picked at random by Atty. Tolentino, Jr. confirmed that votes in favor of a mayoralty candidate were not reflected in the printed election returns. He suspended the automated counting of ballots in Pata and immediately communicated the problem to the technical experts of COMELEC and the suppliers of the automated machine. **After consultations, the experts told him that the problem was caused by the misalignment of the ovals opposite the names of candidates in the local ballots. They found nothing wrong with the automated machines.** The error was in the printing of the local ballots, as a consequence of which, the automated machines failed to read them correctly.<sup>[2]</sup>

**At 12:30 p.m. of the same day**, Atty. Tolentino, Jr. called for an emergency meeting of the local candidates and the military-police officials overseeing the Sulu elections. Those who attended were the various candidates for governor, namely, petitioner Tupay Loong, private respondent Abdusakur Tan, intervenor Yusop Jikiri and Kimar Tulawie. Also in attendance were Brig. Gen. Edgardo Espinosa, AFP, Marine forces, Southern Philippines, Brig. Gen. Percival Subala, AFP, 3rd Marine Brigade, Supt. Charlemagne Alejandrino, Provincial Director, Sulu, PNP Command and congressional candidate Bensandi Tulawie.<sup>[3]</sup>

The meeting discussed how the ballots in Pata should be counted in light of the misaligned ovals. There was lack of agreement. Those who recommended a shift to manual count were Brig. Generals Espinosa and Subala, PNP Director Alejandrino, gubernatorial candidates Tan and Tulawie and congressional candidate Bensandi Tulawie. Those who insisted on an automated count were gubernatorial candidates

Loong and Jikiri. In view of their differences in opinion, Atty. Tolentino, Jr. requested the parties to submit their written position papers.<sup>[4]</sup>

**Reports that the automated counting of ballots in other municipalities in Sulu was not working well were received by the COMELEC Task Force. Local ballots in five (5) municipalities were rejected by the automated machines. These municipalities were Talipao, Siasi, Tudanan, Tapul and Jolo. The ballots were rejected because they had the wrong sequence code.**<sup>[5]</sup>

Private respondent Tan and Atty. Tolentino, Jr. sent separate communications to the COMELEC *en banc* in Manila. Still, on May 12, 1998, Tan requested for the suspension of the automated counting of ballots throughout the Sulu province.<sup>[6]</sup> On the same day, COMELEC issued Minute Resolution No. 98-1747 ordering a manual count but only in the municipality of Pata. The resolution reads:<sup>[7]</sup>

"x x x x x x x x

"In the matter of the Petition dated May 12, 1998 of Abdusakur Tan, Governor, Sulu, to suspend or stop counting of ballots through automation (sic) machines for the following grounds, quoted to wit

'1.. The Election Returns for the Municipality of Pata, Province of Sulu-District II do not reflect or reveal the mandate of the voters:

'DISCUSSIONS

'That the watchers called the attention of our political leaders and candidates regarding their discovery that the election returns generated after the last ballots for a precinct is scanned revealed that some candidates obtained zero votes, among others the Provincial Board Members, Mayor, Vice-Mayor, and the councilors for the LAKAS-NUCD-UMDP;

**'That the top ballot, however, reveals that the ballots contained votes for Anton Burahan, candidate for Municipal Mayor while the Election Return shows zero vote;**

**'That further review of the Election Return reveals that John Masillam, candidate for Mayor under the LAKAS-NUCD-UMDP-MNLF obtains (sic) 100% votes of the total number of voters who actually voted;**

'The foregoing discrepancies were likewise noted and confirmed by the chairmen, poll clerks and members of the Board of Election Inspectors (BEI) such as Rena Jawan, Matanka Hajirul, Dulba Kadil, Teddy Mirajuli, Rainer Talcon, Mike Jupakal, Armina Akmad, Romulo Roldan and Lerma Marawali to mention some;

'The Pata incident can be confirmed by no less than Atty. Jose Tolentino, Head, Task Force Sulu, whose attention was called regarding the discrepancies;

'The foregoing is a clear evidence that the automated machine (scanner) cannot be relied upon as to truly reflect the contents of the ballots. If such happened in the Municipality of Pata, it is very possible that the same is happening in the counting of votes in the other municipalities of this province. If this will not be suspended or stopped, the use of automated machines will serve as a vehicle to frustrate the will of the sovereign people of Sulu;

'Wherefore, the foregoing premises considered and in the interest of an honest and orderly election, it is respectfully prayed of this Honorable Commission that an Order be issued immediately suspending or stopping the use of the automated machine (scanner) in the counting of votes for all the eighteen (18) municipalities in the Province of Sulu and in lieu thereof, to avoid delay, counting be done through the usual way known and tested by us.'

**"While the commission does not agree with the conclusions stated in the petition, and the failure of the machine to read the votes may have been occasioned by other factors, a matter that requires immediate investigation, but in the public interest, the Commission,**

**'RESOLVED to grant the Petition dated May 12, 1998 and to Order that the counting of votes shall be done manually in the Municipality of PATA, the only place in Sulu where the automated machine failed to read the ballots, subject to notice to all parties concerned.'"**

Before midnight of May 12, 1998, Atty. Tolentino, Jr. was able to send to the COMELEC *en banc* his report and recommendation, urging the use of the manual count in the entire Province of Sulu, viz: <sup>[8]</sup>

"The undersigned stopped the counting in the municipality of Pata since he discovered that votes for a candidate for mayor was credited in favor of the other candidate. Verification with the Sulu Technical Staff, including Pat Squires of ES & S, reveals that the cause of the error is the way the ballot was printed. Aside from misalignment of the ovals and use of codes assigned to another municipality (which caused the rejection of all local ballots in one precinct in Talipao), error messages appeared on the screen although the actual condition of the ballots would have shown a different message. Because of these, the undersigned directed that counting for all ballots in Sulu be stopped to enable the Commission to determine the problem and rectify the same. It is submitted that stopping the counting is more in consonance with the Commission's mandate than proceeding with an automated but inaccurate count.

"In view of the error discovered in Pata and the undersigned's order to suspend the counting, the following documents were submitted to him.

"1. Unsigned letter dated May 12, 1998 submitted by Congressman Tulawie for manual counting and canvassing;

"2. Petition of Governor Sakur Tan for manual counting;

"3. Position paper of Tupay Loong, Benjamin Loong and Asani Tamang for automated count;

"4. MNLF Position for automated count; and

"5. Recommendation of General E.V. Espinosa, General PM Subala, and PD CS Alejandrino for manual count;

"Additional marines have been deployed at the SSC. The undersigned is not sure if it is merely intended to tame a disorderly crowd, inside and outside SSC, or a show of force.

**"It is submitted that since an error was discovered in a machine which is supposed to have an error rate of 1: 1,000,000, not a few people would believe that this error in Pata would extend to the other municipalities. Whether or not this is true, it would be more prudent to stay away from a lifeless thing that has sown tension and anxiety among and between the voters of Sulu.**

Respectfully submitted:

12 May 1998

(Sgd.) JOSE M. TOLENTINO, JR."

The next day, May 13, 1998, COMELEC issued Resolution No. 98-1750 approving Atty. Tolentino, Jr.'s recommendation and the manner of its implementation as suggested by Executive Director Resurreccion Z. Borra. The Resolution reads:<sup>[9]</sup>

"In the matter of the Memorandum dated 13 May 1998 of Executive Director Resurreccion Z. Borra, pertinent portion of which is quoted as follows:

"In connection with Min. Res. No. 98-1747 promulgated May 12, 1998 which resolved to order that the counting of votes shall be done manually in the municipality of Pata, the only place in Sulu where the automated counting machine failed to read the ballots, subject to notice to all parties concerned, please find the following:

"1. Handwritten Memo of Director Jose M. Tolentino, Jr., Task Force Head, Sulu, addressed to the Executive Director on the subject counting and canvassing in the municipality of Pata due to the errors of the counting of votes by the machine brought about by the error in the printing of the ballot, causing misalignment of ovals and use of codes assigned to another municipality.

He recommended to revert to the manual counting of votes in the whole of Sulu. He attached the stand of Congressman Tulawie, Governor Sakur Tan and recommendation of Brigadier General Edgardo Espinosa, General Percival Subla, P/Supt. Charlemagne Alejandrino for manual counting. The position paper of former Governor Tupay Loong, Mr. Benjamin Loong and Mr. Asani S. Tammang, who are candidates for Governor and Congressman of 1st and 2nd Districts respectively, who wanted the

continuation of the automated counting.

**"While the forces of AFP are ready to provide arm (sic) security to our Comelec officials, BEIs and other deputies, the political tensions and imminent violence and bloodshed may not be prevented, as per report received, the MNLF forces are readying their forces to surround the venue for automated counting and canvassing in Sulu in order that the automation process will continue.**

"Director Borra recommends, that while he supports Minute Resolution No. 98-1747, implementation thereof shall be done as follows:

**"1. That all the counting machines from Jolo, Sulu be transported back by C130 to Manila and be located at the available space at PICC for purposes of both automated and manual operations. This approach will keep the COMELEC officials away from violence and bloodshed between the two camps who are determined to slug each other as above mentioned in Jolo, Sulu. Only authorized political party and candidate watchers will be allowed in PICC with proper security, both inside and outside the perimeters of the venue at PICC.**

**"2. With this process, there will be an objective analysis and supervision of the automated and manual operations by both the MIS and Technical Expert of the ES & S away from the thundering mortars and the sounds of sophisticated heavy weapons from both sides of the warring factions.**

"3. Lastly, it will be directly under the close supervision and control of Commission on Elections En Banc.

"RESOLVED:

**"1. To transport all counting machines from Jolo, Sulu by C130 to Manila for purposes of both automated and manual operations, with notice to all parties concerned;**

**"2. To authorize the official travel of the board of canvassers concerned for the conduct of the automated and manual operations of the counting of votes at PICC under the close supervision and control of the Commission En Banc. For this purpose, to make available a designated space at the PICC;**

**"3. To authorize the presence of only the duly authorized representative of the political parties concerned and the candidates watchers both outside and inside the perimeters of the venue at PICC."**

**Atty. Tolentino, Jr. furnished the parties with copies of Minute Resolution No. 98-1750 and called for another meeting the next day, May 14, 1998, to discuss the implementation of the resolution.**<sup>[10]</sup> The meeting was attended by