

## EN BANC

[ G.R. No. 134169, February 02, 2000 ]

**SADIKUL SAHALI, PETITIONER, VS. COMMISSION ON  
ELECTIONS (COMELEC) AND HADJA JUBAIDA H. MATBA,  
RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

Petitioner Sadikul Sahali and respondent Hadja Jubaida H. Matba were two of the contending gubernatorial candidates in Tawi-Tawi in the elections of May 11, 1998. On May 13, 1998, the Provincial Board of Canvassers proclaimed petitioner as the duly elected governor of Tawi-Tawi.

The counting of votes, canvassing of returns and consolidation of results of the elections were conducted using the Automated Election System, authorized under Republic Act No. 8436.

Before petitioner could assume office on June 30, 1998, the COMELEC promulgated Minute Resolution No. 98-1959 dated June 29, 1998, the pertinent part of which reads:

RESOLVED, consistent with the resolutions of the Commission in Sulu and Maguindanao cases, to direct the immediate manual recounting of ballots in the province of Tawi-Tawi; and in the meantime, to suspend the effects of the proclamation as a logical consequence of the manual counting and that all pleadings filed relative to SPA No. 98-349 be made to survive even beyond the June 30, 1998 deadline.<sup>[1]</sup>

It appears that the COMELEC passed the above Minute Resolution in connection with a petition filed by respondent Matba and Ismael B. Abubakar, Jr. On May 22, 1998 and docketed as SPA No. 98-349, praying for the immediate manual counting of ballots in the Province of Tawi-Tawi, on the allegation that the automated counting machines utilized in said province suffered massive and total systems breakdown resulting in the following problems:

1. Inability of the machines to read the ballots properly;
2. Inability of the ballots to reject spurious and excess ballots;
3. Material discrepancies of figures appearing in various election documents, such as the election returns, municipal certificates of canvass, statement of votes per precinct and municipality, and the provincial certificate of canvass. Needless to say, these material discrepancies resulted in the proclamation of losing candidates. A case in point is the election contest in the Municipality of South

Ubian;

4. Cases of several candidates not obtaining any vote in the precinct where they are registered and where they voted;
5. Absence of any entry in the statements of votes in some forty (40) precincts of Tawi-Tawi involving the position of president down to municipal councilors.<sup>[2]</sup>

On July 3, 1998, petitioner brought this special civil action for certiorari seeking the annulment of COMELEC Minute Resolution No. 98-1959. Petitioner likewise prayed for the issuance of a temporary restraining order and writ of preliminary injunction to restrain the COMELEC from implementing or executing the assailed Resolution.

Petitioner contends that he was not notified of the filing of SPA No. 98-349. Consequently, he was not afforded an opportunity to answer the petition, and was thereby denied his constitutional right to due process. He alleges that he was also not officially notified of the promulgation by the COMELEC of Minute Resolution No. 98-1959; that he only learned of it from newspaper reports after which his counsel went to the COMELEC office in Manila to verify. Petitioner maintains that his right to assume the office of governor of Tawi-Tawi constitutes property right within the meaning of the due process clause of the Constitution. The Minute Resolution, he argues, is also void ab initio inasmuch as no pre-proclamation controversy was filed during the canvassing, and there can be no suspension of the effects of a proclamation or a recounting of ballots where there is no pre-proclamation controversy. Petitioner further states that the COMELEC erred when it granted respondent's prayer that the petition in SPA No. 98-349 be extended beyond June 30, 1998 on the strength of Section 16 of the Synchronized Elections Law of 1991,<sup>[3]</sup> saying that the said provision is inapplicable in the case at bar since no pre-proclamation case was filed. Consequently, petitioner submits that the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner subsequently filed a "Very Urgent Motion Reiterating the Prayer for the Issuance of a Temporary Restraining Order."<sup>[4]</sup> Thus, on July 14, 1998, this Court issued a Resolution directing the parties "to maintain the status quo ante prevailing at the time of the filing of the petition."<sup>[5]</sup>

In the meantime, the Office of the Solicitor General filed on October 9, 1998 a "Manifestation in Lieu of Comment,"<sup>[6]</sup> wherein it opined that the COMELEC should have conducted a summary hearing before issuing Minute Resolution No. 98-1959 and should not have taken the allegations concerning systems failure in the automated counting system as gospel truth. Hence, the Solicitor General argues that the questioned resolution was issued in violation of petitioner's constitutional right to due process, citing the case of *Bince, Jr. v. Commission on Elections*,<sup>[7]</sup> where this Court held that the right to public office is a right protected by the due process clause, and the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing.<sup>[8]</sup>

On October 15, 1998, the Philippine National Bank (PNB) filed in this case a "Motion

with Leave to Allow the Undersigned to Seek Clarification,"<sup>[9]</sup> asking the Court whom --- between Mr. Sulay H. Halipa, who had been designated by ARMM Governor Nur P. Misuari as Officer-in-Charge of the Office of the Governor of Tawi-Tawi, and petitioner Sadikul Sahali --- it should recognize as authorized to transact business with the bank on behalf of the Province of Tawi-Tawi.

Acting on the above motion, this Court issued a Resolution on October 20, 1998.<sup>[10]</sup> It found that the COMELEC issued on July 14, 1998 a resolution holding in abeyance the implementation of the assailed Minute Resolution of June 29, 1998. On this basis, the Court ruled that, under its *status quo ante* order in this case, official business with the governor of Tawi-Tawi should be dealt through petitioner Sadikul Sahali, inasmuch as he was the one proclaimed as such by the COMELEC prior to the filing of this petition. In its Resolution, this Court also noted the Manifestation filed by the Office of the Solicitor General and required the COMELEC to comment on the petition.

On December 7, 1998, public respondent COMELEC submitted its Comment.<sup>[11]</sup> It countered that its findings in the assailed Minute Resolution No. 98-1959 was supported by the following documents, to wit:

1. Narrative Report of Idlana Mangona, Acting Provincial Election Supervisor of Tawi-Tawi, recommending that the petition for manual recounting and revision of the official ballots be considered, due to discrepancies found in the Election Reporting System (ERS) computer;<sup>[12]</sup>
2. Letter of Brigadier General Edgardo V. Espinosa, Commanding General, Headquarters Marine Forces, Southern Philippines, to then COMELEC Chairman Bernardo P. Pardo, recommending the manual counting and re-counting of votes to minimize post-election related incidents and to satisfy complaints against the use of automated counting machines which resulted in some technical and unexplained defects and errors;<sup>[13]</sup>
3. Joint letter of respondent Hadja Jubalda Matba and Ismael Abubakar, Jr. to the COMELEC alleging massive systems breakdown of the automated counting machines in Tawi-Tawi.<sup>[14]</sup>

The COMELEC further stressed that the instant petition was premature because it was filed before the assailed Minute Resolution No. 98-1959 became final. The petition was subsequently rendered moot and academic when the COMELEC issued Minute Resolution No. 98-2145 on July 14, 1998, which held in abeyance the implementation of Minute Resolution No. 98-1959.<sup>[15]</sup> These events were explained further by the COMELEC when it promulgated Minute Resolution No. 98-2828 on October 15, 1998,<sup>[16]</sup> which pertinently reads:

x x x. This means that the Commission in issuing Min. Res. 98-2145 corrected itself, thus Minute Resolution 98-1959 and Min. Res. 98-2106 were never implemented and therefore at the time the *status quo ante* order was issued by the Supreme Court, the prevailing situation was that Sadikul Sahali was the duly proclaimed winning candidate for Governor in

Tawi-Tawi as well as other proclaimed local candidates as of May 13, 1998.

**RESOLVED**, to clarify that Sadikul Sahali and other proclaimed local candidates are duly elected officials of Tawi-Tawi at the time referred to in the status quo ante order by the Supreme Court.

Petitioner thereafter filed his Reply,<sup>[17]</sup> reiterating the substantial arguments in his Petition and amplifying those contained in the Manifestation of the Solicitor General.

On April 29, 1999, respondent Matba filed a "Manifestation & Motion", wherein he invoked the Resolution of this Court dated March 15, 1999 dismissing the petition in G.R. No. 134188 entitled "*Nur G. Jaafar, Petitioner versus The Commission on Elections, Radja Jubaida H. Matba, Ismael B. Abubakar, Jr., Habid Gulam Hadjirul, Sauragal Dayan, Hadja Monera Managula, Hadji Ladjakawasa Tabarasa, Abdurahman Nawali and Laurel Tahil, Respondents*", which petition likewise sought the annulment of COMELEC Minute Resolution No. 98-1959. Accordingly, respondent Matba prayed that the instant petition be likewise dismissed for being moot and academic.

This Court agrees with respondents. Indeed, it can be gleaned from the records that shortly after the promulgation of Minute Resolution No. 98-1959, Hon. Nur G. Jaafar, Congressman, Lone District of Tawi-Tawi, wrote a letter to the COMELEC on July 3, 1998 contending that the Commission was misinformed and misled into promulgating the assailed Minute Resolution. Congressman Jaafar alleges the following to be the correct facts:

1. That, the May 11, 1998 elections in Tawi-Tawi were generally clean, honest and peaceful. The votes were **casted** (*sic*), **machine counted and canvassed. The winning candidates were duly proclaimed and have taken their respective oath of office** prior to the promulgation of said questionable Resolution;
2. That, the counting of votes were done through the automated counting machine which was **pre-tested** a few days before the election by Comelec technicians and conducted in the presence of representatives of all political parties. The same machine were used (*sic*) in the counting of votes by municipalities also in the presence of the Military, Police, Namfrel, Comelec and representative of all parties concerned which eventually led to the proclamation of the winning candidates for various positions;
3. That, the recommendation of Mr. Idlana Mangona to conduct a manual recount because of system failure and/or total breakdown of the machine should not be used solely as a basis in promulgating said Resolution because Mr. Mangona was **not the Comelec-In-Charge of the province** during the elections, neither is he in the position to **technically attest** to the defectiveness of the counting machine. Atty. Alloden Dalaig of the Comelec Central Offices was the one assigned as Chairman of the Provincial Board of Canvassers (PBC) and designated Comelec-In-Charge for the entire Province of Tawi-Tawi.