

EN BANC

[G.R. No. 160428, July 21, 2004]

HADJI RASUL BATABOR, PETITIONER, VS. COMISSION ON ELECTIONS, BARANGAY BOARD OF CANVASSERS, BOARD OF ELECTION INSPECTORS OF PRECINCTS NOS. 3A, 4A AND 5A, BARANGAY MAIDAN, TUGAYA, LANA DEL SUR, AND MOCASIM ABANGON BATONDIANG, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

The power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever; or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise. There is failure of elections only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected.^[1]

Before us is a petition for *certiorari*^[2] with application for a temporary restraining order and writ of preliminary injunction, assailing the Commission on Elections (COMELEC) *En Banc*'s Resolution dated October 9, 2003 in SPA No. 02-295 (Brgy.). In this Resolution, the COMELEC denied Hadji Rasul Batabor's petition seeking: (a) the declaration of failure of election in Precincts 3A, 4A and 5A of Barangay Maidan, Tugaya, Lanao del Sur; (b) the annulment of the proclamation that Mocasin Abangon Batondiang is the duly elected Punong Barangay of Barangay Maidan; and (c) the holding of a special election in the questioned precincts.

In the synchronized July 15, 2002 Barangay and Sangguniang Kabataan Elections, Hadji Rasul Batabor, petitioner, and Mocasin Abangon Batondiang, private respondent, ran as opposing candidates for the position of Punong Barangay in Barangay Maidan, Tugaya, Lanao del Sur. It was petitioner's re-election bid being then the incumbent Punong Barangay.

The result of the election shows that private respondent won as Punong Barangay, garnering 123 votes, as against petitioner's 94 votes, or a difference of 29 votes.

In due time, private respondent was proclaimed the duly elected Punong Barangay of Barangay Maidan.

Bewailing the outcome of the election, petitioner filed with the COMELEC a petition to declare a failure of election in Precincts 3A, 4A and 5A of Barangay Maidan, docketed as SPA No. 02-295 (Brgy.). The petition alleges that during the election,

the voting started at around 8:30 o'clock in the morning. It was temporarily suspended during the lunch break and was to resume at 1:00 o'clock in the afternoon of that day. But after lunch, the Chairwoman of the Board of Election Inspectors (BEI) of Precincts 3A, 4A and 5A suddenly tore all the unused official ballots. Thus, the voting was not continued. The BEI then padlocked the ballot boxes. At that time, petitioner was not present. Despite the note of Election Officer Taha Casidar directing the BEI to resume the voting, the latter did not allow the remaining voters to vote. Thus, petitioner's relatives and followers, numbering more than 100, were not able to cast their votes.

In his comment, private respondent averred that petitioner's allegations are not supported by substantial evidence. It was petitioner who padlocked the ballot boxes as shown by the affidavit of Comini Manalastas. During the counting of votes, petitioner's wife, daughter and son actually witnessed the same. Besides, petitioner's allegations can be properly ventilated in an election protest because the issues raised are not grounds for declaration of a failure of election.

On October 9, 2003, the COMELEC *En Banc* issued the assailed Resolution^[3] denying the petition.

Petitioner now contends in his petition for certiorari before us that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his petition in SPA No. 02-295 (BRGY.). He reiterates his allegations in his petition filed with the COMELEC showing there was failure of election.

The Solicitor General, in his comment on the instant petition, vehemently disputes petitioner's allegations and prays that the petition be dismissed for lack of merit.

We dismiss the petition.

The power to declare a failure of election is vested exclusively upon the COMELEC. ^[4] Section 6 of the Omnibus Election Code^[5] provides:

"Section 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 the 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 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 on a date reasonably close to the date 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."

Explaining the above provisions, we held in *Benito vs. Commission on Elections*^[6] that these two (2) conditions must exist before a failure of election may be declared: (1) no voting has been held in any precinct or precincts due to fraud, *force majeure*, violence or terrorism; and (2) the votes not cast therein are sufficient to