

## EN BANC

[ G.R. No. 134913, January 19, 2001 ]

**ZAIPAL D. BENITO, PETITIONER, VS. COMMISSION ON  
ELECTIONS, IBRAHIM PAGAYAWAN, AND THE MUNICIPAL  
BOARD OF CANVASSERS OF CALANOGAS, LANAOS DEL SUR,  
RESPONDENTS.**

### DECISION

**DE LEON, JR., J.:**

Before us is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, seeking the reversal of an *en banc* Resolution<sup>[1]</sup> dated August 10, 1998 by the public respondent Commission on Elections (COMELEC, for brevity) which dismissed SPA No. 98-333, a petition to declare a failure of elections and to call for a special elections in several precincts in the Municipality of Calanogas, Lanao del Sur.

The facts are:

Petitioner ZAIPAL D. BENITO and private respondent IBRAHIM PAGAYAWAN were two (2) of eight (8) candidates vying for the position of municipal mayor in Calanogas, Lanao del Sur during the May 11, 1998 elections. Of the municipality's election precincts, five (5) were clustered in Sultan Disimban Elementary School. These were precincts 15A (Barangay Tagoranao), 6A/6A1 (Barangay Luguna), 17A (Barangay Tambak), 2A/2A1 (Barangay Calalanoan), and 13A (Barangay Pindulonan). The election in the first three (3), namely precincts 15A, 6A/6A1 and 17A are the subject of BENITO's petition to declare failure of elections filed before the respondent COMELEC.

On the day of the election, voting started peacefully at the polling place. Shortly before noon, however, the proceedings were interrupted when some thirty (30) armed men appeared at the school premises and fired shots into the air. This sowed panic among the voters and election officials, causing them to scatter in different directions. A spot report<sup>[2]</sup> issued by the commanding officer of the Alfa Company, 28<sup>th</sup> Infantry Battalion, 4<sup>th</sup> Infantry Division of the Philippine Army, Captain Benedicto S. Manquiquis summarized the incident in the following manner:

00a 1113009 May 98, election held at Sultan Disimban Elem school comprising Brgys Luguna, Calalanoan, Pindolonan, Tagoranao, and Tambak. All of Calanogas Lanao del Sur was suspended when more or less 30 armed men with cal. 30 LMG under Mayoralty candidate Jabbar Macapodi Maruhom fired shots on the air which cause the voters and BEIs to scamper in different direction

(signed)  
BENEDICTO S. MANQUIQUIS  
CAPT (INF) PA  
CO, "A" CO, ISIB, 4ID

Both parties contest alleged events transpiring after the interruption of the voting. By petitioner's account, the ballot boxes and other election materials were taken to the municipal hall by the military forces providing security. From then on, the voting allegedly never resumed, even when voters who had not yet cast their ballots returned to their respective polling places after the lawless elements had left.

In direct opposition, private respondent avers that voting in fact resumed when the armed men left at about 1:00 o'clock in the afternoon. There were no further untoward incidents until voting closed at 3:00 o'clock. As proof, private respondent submitted a "Final Incident Report"<sup>[3]</sup> issued by the same Captain Manquiquis, the full text of which is hereunder reproduced:

"HEADQUARTERS  
ALFA COMPANY, 28<sup>TH</sup> INFANTRY BATTALION, 4<sup>TH</sup> INF DIV, PA  
Calanugas, Lanao del Sur

28A-

11 May 1998

SUBJECT: Final Incident Report

TO: Atty. Wynnies Asdala  
Head, COMELEC Task Force Team  
Marawi City

THRU: Acting Election Officer  
Calanugas, Lanao del Sur

1. 00A 111200H May 98, election held at Sultan Disimban Elementary School comprising Brgys Laguna, Calalanoan, Pindulonan, Tagoranao and Tambak all of Calanugas, Lanao del Sur was suspended when more or less thirty (30) armed men equipped with HPFAs including Cal. .30 LMG under Mayoralty Candidate Jabbar Macapodi Maruhom fired shots on the air which cause the voters and BEIs to scamper into different directions.
2. That about one (1) hour thereafter, the voting resumed in an orderly and peaceful manner until about 1500H same day without any trouble or untoward incident. After 1500H when no voter was in the premises of the voting precincts, the casting of votes was closed by the different BEIs.

(signed)  
BENEDICTO S. MANQUIQUIS  
Capt (INF) PA  
Commanding Officer"

These turn of events, notwithstanding, the ballot boxes for the five (5) precincts in Disimban Elementary School were taken together with those from the nineteen (19)

other precincts of Calanogas, to Marawi City for counting. The votes from precincts 15A, 6A/6A1 and 17A were excluded upon objection by petitioner's counsel who, it is claimed, arrived only after the ballots from the other nineteen (19) precincts had already been tabulated.

After counting, these results emerged:

CANDIDATE	NO. OF VOTES
Ibrahim Pagayawan	927
Zaipal Benito	879
Amoran Macaborod	524
Jabbar Maruhom	(no data available)

Private respondent won over petitioner by forty-eight (48) votes.

On the other hand, the total votes cast for the three (3) excluded precincts numbered forty-one (41) only, which is broken down as follows:

PRECINCT	NO. OF REGISTERED VOTERS	VOTES CAST
15A	177	1
6A/6A1	225	19
17A	188	21
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TOTAL	590	41

Considering that private respondent would still lead petitioner by seven (7) votes even if all forty-one (41) votes from the three (3) excluded precincts were counted in the latter's favor, private respondent was proclaimed mayor of Calanogas.

On May 25, 1998, petitioner filed an amended petition<sup>[4]</sup> to declare failure of election and to call a special elections in precincts 15A, 6A/6A1 and 17A, docketed as SPA No. 98-333. He also filed a separate petition<sup>[5]</sup> for the annulment of the proclamation of private respondent, docketed as SPC No. 98-159.

On June 10, 1998, the COMELEC issued an Order<sup>[6]</sup> consolidating SPC No. 98-159 with SPA No. 98-333. On June 29, 1998, it also issued Resolution No. 3049<sup>[7]</sup> wherein SPA No. 98-333 and SPA No. 98-159 were included among those cases certified as active even beyond June 30, 1998.

Abbreviating the proceedings, after the parties had filed their respective answers, replies, memoranda, and other related pleadings, on August 10, 1998, the COMELEC issued the assailed resolution, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the petition is hereby dismissed for lack of merit. Precincts 6A/6A1, 15A and 17A functioned on 11 May 1998 elections. The Municipal Board of Canvassers of Calanogas, Lanao del Sur is hereby ordered to **reconvene and count the remaining uncounted votes** for the three precincts aforementioned. Thereafter, they shall proclaim the three other un-proclaimed municipal councilors and **enter the correct votes** garnered by the parties in the Consolidation of Votes

and Proclamation.

**Considering that the remaining uncounted votes will no longer affect the lead of the winning candidate for the position of mayor, the Commission hereby affirms the proclamation made by the Municipal Board of Canvassers of Calanogas, Lanao del Sur.**

Hence, the instant petition.

The following issues are submitted for our resolution:

1. WHETHER OR NOT THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION (A) IN DISMISSING THE PETITION OF PETITIONER DOCKETED AS SPA NO. 98-333 (INCLUDING SPC 98-159 WHICH WAS CONSOLIDATED TO SPA 98-333 BY ORDER OF THE COMELEC ON JUNE 10, 1998) FOR LACK OF MERIT AND (B) IN DECLARING THAT THE ELECTIONS IN PRECINCTS 6A & 6A1, 15A AND 17A HAVE CONTINUED AN HOUR AFTER THEY WERE SUSPENDED ON THE BASIS OF THE ALLEGED FINAL REPORT OF CAPTAIN MANQUIQUIS;
2. WHETHER OR NOT THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT HOLDING A SPECIAL ELECTION IN PRECINCT NOS. 15A, 6A & 6A1 AND 17A ON GROUND OF FAILURE OF ELECTION OR OF A SUSPENDED ELECTION BEFORE THE CLOSING OF THE VOTING AT 3:00 O'CLOCK IN THE AFTERNOON OF THE MAY 11, 1998 ELECTION DAY ON GROUND OF THREATS, VIOLENCE AND TERRORISM; AND
3. WHETHER OR NOT THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT ANNULING THE CERTIFICATE OF PROCLAMATION OF PRIVATE RESPONDENT DATED MAY 15, 1998.

It is the COMELEC *en banc* which has the exclusive power to postpone, to declare a failure of election, or to call a special election.<sup>[8]</sup> In relation thereto, Section 6 of the Omnibus Election Code<sup>[9]</sup> provides:

SEC. 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.

Elucidating on the aforesaid provision, we held in *Hassan v. Commission on Elections*<sup>[10]</sup> that two (2) pre-conditions must exist before a failure of election may be declared, thus: (1) no voting has been held in any precinct or precincts due to *force majeure*, violence or terrorism; and (2) the votes not cast therein are sufficient to affect the results of the election. The cause of such failure may arise before or after the casting of votes or on the day of the election.<sup>[11]</sup>

Coming to the merits of the petition, we are not sufficiently persuaded that the public respondent COMELEC gravely abused its discretion in denying BENITO's petition to declare a failure of election in precincts 15A, 6A/6A1 and 17A of Calanogas. Grave abuse of discretion means "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."<sup>[12]</sup> It is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.<sup>[13]</sup>

It is obvious at the outset that petitioner raises issues foreign to the remedy he seeks. He avers that a failure of elections must be declared in the precincts in question since the voting therein was interrupted by the sudden and threatening arrival of armed goons of a rival candidate. He unequivocally states that there was never any resumption of voting since the ballot boxes and other election materials were taken into custody by the military and brought to the municipal hall. In contrast, it is private respondent's contention that, in truth, voting resumed peacefully at about one o'clock in the afternoon on election day or after the departure of the armed men. It is clear to us that whether there was a resumption of voting is essentially a question of fact. Such are not proper subjects of inquiry in a petition for *certiorari* under Rule 65.<sup>[14]</sup>

In the same vein, neither may petitioner ask us to judge which of the two (2) incident reports issued by Captain Manquiquis should be given more credence. In this connection, it will not be amiss to point out that the purported inconsistency between the two reports appear to be more imaginary than real. Petitioner characterizes the final incident report as "a product of falsification" on the ground that its alleged time and date of execution was at "OOA 111200H May 98" whereas the handwritten spot report was prepared at "OOa 111300H May 98." How then, petitioner bewails, could such a final report have been issued ahead of the initial report? We disagree with petitioner; we have read the final incident report and conclude that the time stated therein referred not to the time of execution of the said report but to the time of the occurrence of the incident. We note that this is an approximation of the time when the armed strangers appeared and disrupted the theretofore peaceful conduct of the elections.

Similarly, nor would it be proper for us to pass upon the authenticity of the contradictory affidavits supposedly executed by the members of the board of election inspectors of the affected precincts. Both parties seek to introduce into evidence affidavits ostensibly executed by the same persons yet whose recitations are contradictory to each other. As regards the incident reports, evaluation of evidentiary matters is beyond the province of a writ of *certiorari*.<sup>[15]</sup> In any event, we find that the COMELEC did not gravely abuse its discretion in refusing to give