

Failure of Elections Special Elections

1. Grounds
2. Call of Special Elections

Read:

1. Secs. 6 – 7, Article I, Omnibus Election Code;
 2. Sison v. COMELEC, G.R. No. 134096, March 3, 1999;
 3. Ampatuan v. COMELEC, 375 SCRA 503;
 4. Bao v. COMELEC, 418 SCRA 469;
 5. Pangandaman v. COMELEC, 319 SCRA 283
-

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 of 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.

Section 7 *Call of special election.* -

(1) In case a vacancy arises in the Batasang Pambansa eighteen months or more before a regular election, the Commission shall call a special election to be held within sixty days after the vacancy occurs to elect the Member to serve the unexpired term.

(2) In case of the dissolution of the Batasang Pambansa, the President shall call an election which shall not be held earlier than forty-five nor later than sixty days from the date of such dissolution.

The Commission shall send sufficient copies of its resolution for the holding of the election to its provincial election supervisors and election registrars for dissemination, who shall post copies thereof in at least three conspicuous places preferably where public meetings are held in each city or municipality affected.

JURISPRUDENCE:

SISON vs. COMELEC

It appears that while the election returns were being canvassed by the Quezon City Board of Canvassers but before the winning candidates were proclaimed, petitioner commenced suit before the COMELEC by filing a petition seeking to suspend the canvassing of votes and/or proclamation in Quezon City and to declare a failure of elections. The said petition was supposedly filed pursuant to Section 6^[3] of the Omnibus Election Code (Batas Pambansa Blg. 881, as amended) on the ground of “massive and orchestrated fraud and acts analogous thereto which occurred after the voting and during the preparation of election returns and in the custody or canvass thereof, which resulted in a failure to elect.”^[4]

In support of his allegation of massive and orchestrated fraud, petitioner cited specific instances which are summarized and set forth below:

- 4. According to the minutes of the City Board of Canvassers, there were precincts with missing election returns;*
- 5. Several election returns with no data on the number of votes cast for vice mayoralty position;*
- 6. Highly suspicious persons sneaking in some election returns and documents into the canvassing area;*

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While the petition was pending before the COMELEC, the City Board of Canvassers proclaimed the winners of the elections in Quezon City, including the winning candidate for the post of vice mayor. On June 22, 1998, the COMELEC promulgated its challenged resolution dismissing the petition before it on the ground (1) that the allegations therein were not supported by sufficient evidence, and (2) that the grounds recited were not

among the pre-proclamation issues set fourth in Section 17 of Republic Act No. 7166.^[5]

Alleging that COMELEC overstepped the limits of reasonable exercise of discretion in dismissing SPC No. 98-134, petitioner argues in the main that the electoral body failed to afford him basic due process, that is, the right to a hearing and presentation of evidence before ruling on his petition. He then proceeded to argue that the election returns themselves, as well as the minutes of the canvassing committee of the City Board of Canvassers were, by themselves, sufficient evidence to support the petition.

Upon a meticulous study of the parties' arguments together with the pertinent statutory provisions and jurisprudence, this Court is of the opinion that there is no compelling reason why we should withhold our *imprimatur* from the questioned resolution.

Under the pertinent codal provision of the Omnibus Election Code, there are only three (3) instances where a failure of elections may be declared, namely:

(a) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud, or other analogous causes;

(b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud, or other analogous causes; or

(c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of *force majeure*, violence, terrorism, fraud, or other analogous causes.^[9]

We have painstakingly examined petitioner's petition before the COMELEC but found nothing therein that could support an action for declaration of failure of elections. He never alleged at all that elections were either not held or suspended. Furthermore, petitioner's claim of failure to elect stood as a bare conclusion bereft of any substantive support to describe just exactly how the failure to elect came about.

AMPATUAN VS COMELEC

Ampatuan and Respondent Candao were candidates for the position of Governor of Maguindanao during the 2001 elections ^

May 2001: respondents filed a petition with the comelec for the annulment of election results and/or declaration of failure of elections in several municipalities. They claimed that the elections were “completely sham and farcical”. The ballots were filled-up en masse by a few persons the night before the election day, and in some precincts, the ballot boxes, official ballots and other election paraphernalia were not delivered at all. ^ Comelec suspended proclamation of winning candidates ^ Petitioners filed a motion to lift suspension of proclamation. Comelec granted and proclaimed the petitioners s winners.

^ June 2001: Respondents filed with SC a petition to set aside Comelec order and prelim injunction to suspend effects of the proclamation of petitioners.

^ July 2001: Comelec ordered the consolidation of the respondents’ petition for declaration of failure of elections.

^ Sept 2001: Petitioners filed the present petition and claimed that by virtue of the proclamation, the proper remedy available to the respondents was not petition for declaration of failure of elections but an election protest. The former is heard summarily while the latter involves a full-blown trial.

^ Oct 2001: Comelec ordered the suspension of the 2 assailed orders (with regard to respondents’ petition for failure of elections and directing the continuation of hearing and disposition of the consolidated SPAs on the failure of elections and other incidents related thereto)

The main issue to be resolved is whether the Commission on Elections was divested of its jurisdiction to hear and decide respondents’ petition for declaration of failure of elections after petitioners had been proclaimed.

We deny the petition.

Petitioners submit that by virtue of their proclamation as winners, the only remedy left for private respondents is to file an election protest, in which case, original jurisdiction lies with the regular courts. Petitioners cited several rulings that an election protest is the proper remedy for a losing candidate after the proclamation of the winning candidate. ^[25]

However, the authorities petitioners relied upon involved pre-proclamation controversies. In *Loong v. Commission on Elections*,^[26] we ruled that “a pre-proclamation controversy is not the same as an action for annulment of election results, or failure of elections.” These two remedies were more specifically distinguished in this wise:

“While, however, the Comelec is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the Comelec is duty bound to investigate allegations of fraud, terrorism, violence, and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. ***Thus, the Comelec, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters’ signatures and thumbprints*** in order to determine whether or not the elections had indeed been free, honest and clean.”^[27]

The fact that a candidate proclaimed has assumed office does not deprive the Comelec of its authority to annul any canvass and illegal proclamation.^[28] In the case at bar, we cannot assume that petitioners’ proclamation and assumption into office on June 30, 2001, was legal precisely because the conduct by which the elections were held was put in issue by respondents in their petition for annulment of election results and/or declaration of failure of elections.

Respondents’ allegation of massive fraud and terrorism that attended the May 14, 2001 election in the affected municipalities cannot be taken lightly as to warrant the dismissal of their petition by the Comelec on the simple pretext that petitioners had been proclaimed winners. We are not unmindful of the fact that “a pattern of conduct observed in past elections has been the pernicious ‘grab-the-proclamation-prolong-the-protest’ slogan of some candidates or parties” such that even if the protestant wins, it becomes “a mere pyrrhic victory, i.e., a vindication when the term of office is about to expire or has expired.” xxx “We have but to reiterate the oft-cited rule that the validity of a proclamation may be challenged even after the irregularly proclaimed candidate has assumed office.”^[29]

Petitioners likewise rely on the case of [*Typoco, Jr. v. Commission on Elections*](#).^[30] This Court held that Comelec committed no grave abuse of

discretion in dismissing a petition for declaration of failure of elections. However, we made a pronouncement that the dismissal was proper since the allegations in the petition did not justify a declaration of failure of elections. “Typoco’s relief was for Comelec to order a recount of the votes cast, on account of the falsified election returns, which is *properly the subject of an election contest*.”^[31]

Respondents’ petition for declaration of failure of elections, from which the present case arose, exhaustively alleged massive fraud and terrorism that, if proven, could warrant a declaration of failure of elections. Thus:

“4.1. The ‘*elections*’ in at least eight (8) other municipalities xxx were completely sham and farcical. There was a total failure of elections in these municipalities, in that in most of these municipalities, no actual voting was done by the real, legitimate voters on election day itself but ‘*voting*’ was made only by few persons who prepared in advance, and *en masse*, the ballots the day or the night before election and, in many precincts, there was completely no voting because of the non-delivery of ballot boxes, official ballots and other election paraphernalia; and in certain municipalities, while some semblance of ‘*voting*’ was conducted on election day, there was widespread fraudulent counting and/or counting under very irregular circumstances and/or tampering and manufacture of election returns which completely bastardized the sovereign will of the people. These illegal and fraudulent acts of desecration of the electoral process were perpetrated to favor and benefit respondents. These acts were, by and large, committed with the aid and/or direct participation of military elements who were deployed to harass, intimidate or coerce voters and the supporters or constituents of herein petitioners, principally, of re-electionist Governor Datu Zacaria Candao. Military units and personnel visibly, openly and flagrantly violated election laws and regulations by escorting people or elements engaged in the illegal, advanced preparation of ballots and election returns and, at times, manning the polling places or precincts themselves and/or staying within the prohibited radius. Ballot boxes and other election paraphernalia were brought not to the precincts or voting centers concerned but somewhere else where massive manufacture of ballots and election documents were perpetrated.”^[32]

The Comelec *en banc* has the authority to annul election results and/or declare a failure of elections.^[33] Section 6 of the Omnibus Election Code further provides that:

“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 of 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 but not later than thirty days after the cessation of the cause of such postponement or suspension of the election of failure to elect.”

Elucidating on the concept of failure of election, we held that:

“xxx before Comelec can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precincts concerned on the date fixed by law or, even if there was voting, the election nevertheless resulted in a failure to elect; and second, the votes cast would affect the result of the election. In *Loong vs. Commission on Elections*, this Court added that the cause of such failure of election should have been any of the following: force majeure, violence, terrorism, fraud or other analogous cases.”^[34]

In another case, we ruled that “while it may be true that election did take place, the irregularities that marred the counting of votes and the canvassing of the election returns resulted in a failure to elect.”^[35]

BAO VS COMELEC

Petitioner Sangcad S. Bao sought re-election as mayor of Butig, Lanao del Sur in the May 14, 2001 elections.

On May 25, 2001, petitioner filed before the COMELEC a Very Urgent Petition for Suspension of Counting of Votes by [the] B[oard of] E[lection] I[n]s[pectors], Canvass of Election Returns and Proclamation of Winners by [the Municipal Board of Canvassers], and Declaration of Failure of Election in Butig, Lanao del Sur

Petitioner later filed on May 29, 2001 an Additional Submission² containing Casidars Narrative Report on the Conduct of [the] May 14, 2001 National and Local Elections in the Municipality of Butig, Lanao del Sur³ reading *verbatim*:

X X X

1. Per my instruction, the BEIs immediately started the election.
2. while the election was going on, at around 2 pm, several bombings occurred almost in the area where the election was held which caused commotion.
3. due to the incident and fear, the BEIs assigned in some other precincts locked their ballot boxes and brought them to the Municipal Hall while others continued the casting of votes [until] the last hour.
4. . . . the electors and some other candidates were forcing and/or convincing me to open the ballot boxes brought to the Municipal Hall to continue the election which I refused as it was already too late.
5. . . . due to intimidation and force shown or displayed by some of the supporters and candidates themselves, I failed to decide on time as it will endanger my life and other civilians in the area.

X X X

On June 4, 2001, petitioner filed a Very Urgent Motion to Defer Canvass of Election Returns and Suspend Proclamation,^[4] reiterating the arguments in his previous petition.

On June 8, 2001, Langco (petitioner-intervenor), filed a petition-in-intervention^[5] adopting the allegations of petitioner and further alleging the occurrence of other irregularities during the conduct of the elections, to wit:

1. watchers were not allowed to escort the ballot boxes and witness the distribution of ballots;

2. a member of the Philippine Army was putting inside the ballot box official ballots already filled up;
3. around 11:20 a.m., there were simultaneous explosions causing the voters to scamper away which resulted to low voter turn-out;
4. the casting of votes was stopped at 1:30 p.m.;
5. the clustering made by the COMELEC based on the convenience and safety of the voters was not followed;
6. the casting of votes was done in public as there were no voting booths;

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WHETHER OR NOT RESPONDENT COMMISSION ON ELECTIONS ILLEGALLY OR ARBITRARILY RESOLVED TO DENY THE PETITION OF BAO AND INTERVENOR LANGCO AND ROMATO, THAT THEIR ALLEGATIONS AND EVIDENCES ATTACHED TO THEIR PLEADINGS ARE INSUFFICIENT TO DECLARE FAILURE OF ELECTION.¹⁰ (Underscoring omitted)

Petitioner contends that SPA No. 01-336 being a contentious case, the COMELEC acts as a quasi-judicial tribunal and thus falls under the term court; that the questioned resolution failed to express clearly and distinctly the facts and the law on which it is based in contravention of Article VII of the 1987 Constitution;¹¹ that contrary to the findings of the COMELEC, the two (2) conditions set forth in *Mitmug v. COMELEC*¹² to declare a failure of election was present in the instant case; and that the serious and massive election irregularities in thirty out of forty precincts in Butig were more than sufficient to affect the election results as they disenfranchised more than 70% of the registered voters.¹³

Petitioner further contends that even if there was voting, the election nevertheless resulted in failure to elect;¹⁴ that the COMELEC erred in not giving credence to the official Narrative Report of Casidar which contained facts affecting the validity of the elections;¹⁵ and that in failing to conduct summary hearing for the reception of evidence, the COMELEC violated the Omnibus Election Code and its own rules.¹⁶

The issue in the main is whether the COMELEC committed grave abuse of discretion in not declaring a failure of election.

This Court holds in the negative.

Section 6 of the Omnibus Election Code 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 failure to elect, and in any of 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.

In *Mitmug v. COMELEC*,^[17] this Court held that before the COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precinct or precincts on the date fixed by law or, even if there was voting, the election nevertheless results in failure to elect; and second, the votes not cast would affect the result of the election.

And in *Typoco v. COMELEC*,¹⁸ this Court held:

Clearly then, there are only three instances where a failure of election may be declared, namely: (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes; (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes. In all instances there must have been a

failure to elect; this is obvious in the first scenario, where the election was not held and second where the election was suspended. As to the third scenario, the preparation and transmission of election returns which give rise to the consequence of failure to elect must as aforesaid be literally interpreted to mean that nobody emerged as winner.

In the present case, the allegations-bases of both the petition and Langcos petition-in-intervention before the COMELEC are mostly grounds for an election contest, not for a declaration of failure of election. While there are allegations which may be grounds for failure of election, they are supported by mere affidavits and the narrative report of the election officer. That petitioner and petitioner-intervenor were not able to present substantial evidence in support of their allegations should not be blamed on the COMELEC, for during the June 28, 2001 hearing, Atty. Jose Ventura Aspiras, collaborating counsel for petitioner, on being informed that respondent Pansar had not yet received the summons to necessitate the resetting of the hearing, made a request, which was granted, that said respondent should just file an answer or memorandum to abbreviate the proceedings, and did not object to the COMELEC's pronouncement to consider the petition submitted for resolution after the filing of the answer or memorandum.

Thus, there can be no other recourse for this Commission than to deny the petition. **General allegations, without sufficient evidentiary support, do not warrant a declaration of a failure of elections.** Election results are the expression of the will of the people whose welfare and interests must immediately be served by those upon whom the people have placed their trust. Peripherally but not trivially, elections need be consummated with dispatch because the losers or even those just lagging behind in the counting, more often than not, file all kinds of protests and complaints and objections that delay the election process and threaten to deny the people their representation in government.²⁰

G.R. No. 134340 November 25, 1999

PANGANDAMAN VS COMELEC

Recently, this Court emphatically stated that "[U]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all. Well done is always better than well said." ¹ Corollarily, laws and statutes governing election contests especially the appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. ² These standards will be the legal matrix within which this controversy will be adjudged.

Challenged in this petition for *certiorari* and prohibition with prayer for temporary restraining order and preliminary injunction is the Omnibus Order of the Commission on Elections (COMELEC) *en banc* dated July 14, 1998, ³ the dispositive portion of which reads as follows:

WHEREFORE, premises considered, *special elections* for the municipalities, namely

Butig Lumbayabague

Kapatagan Sultan Dumalondong

Maguing Sultan Gumander

Masiu Marawi City

Lumbabayabao

shall be held *on 18 July 1998*.

Special elections shall also be held *on July 25, 1998* for the municipalities of

Ganassi Lumbatan

Malabang Pagayawan

Marantao Tubaran

Petitioner asserts that the COMELEC acted with grave abuse of discretion amounting to lack of jurisdiction in issuing the assailed Omnibus Order —

1.] By insisting on holding special elections on July 18 and 25, 1998 more than thirty (30) days after the failure to elect, in certain municipalities, in contravention of the clear and explicit provisions of Section 6 of the Omnibus Election Code;

In support of his cause, petitioner insists on a strict compliance with the holding of special elections not later than thirty (30) days after failure to elect pursuant to Section 6 of the Omnibus Election Code which provides that:

Sec. 6. Failure of elections. — 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 transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of 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.

Petitioner argues that the above-quoted provision is mandatory because of the word "shall". He further asserts that the prescribed time frame actually "delimits" COMELEC's authority to call for a special election and that instead, the power to call for a special election after the 30th day now resides in Congress.

The provision invoked can not be construed in the manner as argued by petitioner for it would defeat the purpose and spirit for which the law was enacted.

It is a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution and that the spirit, rather than the letter of the law determines its construction; for that reason, a statute must be read according to its spirit and intent.⁴ Thus, a too literal interpretation of the law that would lead to absurdity prompted this Court to —

Sec. 2 (1) of Article IX (C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite initiative, referendum and recall." There can hardly be any doubt that the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.

In fixing the date for special elections the COMELEC should see to it that: 1.] it should not be later than thirty (30) days after the cessation of the cause of the postponement or suspension of the election or the failure to elect; and, 2.] it should be reasonably close to the date of the election not held, suspended or which resulted in the failure to elect. The first involves a question of fact. The second must be determined in the light of the peculiar circumstances of a case.¹⁰ Thus, the holding of elections within the next few months from the cessation of the cause of the postponement, suspension or failure to elect may still be considered "reasonably close to the date of the election not held."¹¹

In this case, the COMELEC can hardly be faulted for tardiness. The dates set for the special elections were actually the nearest dates from the time total/partial failure of elections was determined, which date fell on July 14, 1998, the date of promulgation of the challenged Omnibus Order. Needless to state, July 18 and 25, the dates chosen by the COMELEC for the holding of special elections were only a few days away from the time a total/partial failure of elections was declared and, thus, these were "dates reasonably close" thereto, given the prevailing facts herein. Furthermore, it bears stressing that in the exercise of the plenitude of its powers to protect the integrity of elections, the COMELEC should not and must not be straitjacketed by procedural rules in the exercise of its discretion to resolve election disputes.¹²