

RASID LUCMAN, PETITIONER, VS. MACACUNA DIMAPORO AND THE PROVINCIAL BOARD OF CANVASSERS OF LANA DEL SUR, RESPONDENTS.

G.R. No. L-31558. May 29, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The petition herein purports to be an "appeal by certiorari" from a resolution of the Commission on Elections. The petition was, at first, denied; but, on motion for reconsideration, the Court granted the same, required the respondents to answer said petition - which was regarded as one for certiorari, under Rule 65 of the Rules of Court, to expedite the disposal of the case, in view of the public interest involved therein - and issued a temporary restraining order, effective immediately and until further orders from the Court. Respondents filed their respective answers, to which Petitioner replied, after which the parties were heard on oral argument, and then filed their respective memoranda.

Rasid Lucman - hereinafter referred to as Petitioner - was the official Liberal Party candidate for the House of Representatives in the lone congressional district of Lanao del Sur, during the general elections held on November 11, 1969. Macacuna Dimaporo - hereinafter referred to as Respondent - was then the official Nacion-alista Party candidate for the same office.

On November 14, 1969, Petitioner filed with the Commission on Elections a petition alleging that the precinct books of voters for the municipality of Tubaran, Lanao del Sur, had been stolen on the eve of the elections, for which reason the Special Action Team of the Commission in said province had urged the Commission to recommend to the President the suspension of the elections in Tubaran, and that, although no elections had been held therein, there were election returns therefor, which, accordingly, are fictitious or obviously manufactured, and praying that the provincial board of canvassers - hereinafter referred to as the Board - be ordered to suspend the canvass of said returns, as well as the proclamation of the winning candidate for the House of Representatives in Lanao del Sur.

Acting upon said petition, the Commission, in a resolution, dated November 15, 1969, ordered the Board to refrain from canvassing the aforementioned election returns. This resolution was, however, amended by another, of November 21, 1969, directing the Board to proceed with the canvass of all the returns for Lanao del Sur and requiring the parties to interpose their objections before said Board, which should, however, withhold the proclamation of the winning candidate, to enable said parties to elevate the matter, either to the Commission, or to the courts.

As the Board met at Camp Crame, Quezon City, on November 25, 1969, and began the canvass, Petitioner moved, in writing, for the exclusion therefrom of the returns for all of the sixteen (16) precincts of Tubaran and the twenty-nine (29) precincts of Balabagan, as well as those of two (2) precincts (Nos. 6 and 8) of Balindong, two (2) (Precincts Nos. 8 and 11) of Binidayan, and one (1) (Precinct No. 18) of Lumba-Bayabao. During the

canvass, Petitioner objected, moreover, to the inclusion in the canvass of a number of other returns. On November 29, he filed a supplemental petition for the exclusion of the returns, not only for the precincts mentioned in the original petition, but, also, for additional precincts - name-ly, two (2) (Precincts Nos. 7-A and 8) of Bacolod-Grande, fourteen (14) (Precincts Nos. 1, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5, 5-A, 9, 10, 11-A and 11-B) of Balindong, eleven (11) (Precincts Nos. 1, 2, 3, 4, 4-A, 5, 6, 7, 9, 9-A and 10) of Binidayan, three (3) (Precincts Nos. 6, 7 and 9) of Madamba, one (1) (Precinct No. 8) of Malabang, and two (2) (Precincts Nos. 2-A and 5) of Pualas.

Said petitions for exclusion were soon denied by the Board, in view of which Petitioner sought, on December 6, 1969, a review of its action by the Commission.

On December 12, 1969, the latter held that the rule laid down in *Lagumbay v. Comelec*¹ authorizing the exclusion of returns, upon the ground of statistical improbability, where 100% of the number of voters registered or votes cast are credited exclusively to all the candidates of one political party, without a single vote for any of the other candidates is inapplicable to the returns contested by the Petitioner, and, consequently; sustained the action of the Board in rejecting his objection, upon the ground of statistical improbability to the returns for the following precincts, to wit:

PUALAS

-

Precincts Nos. 2-A and 5;

MALABANG

-

Precinct No. 8;

MADAMBA

-

Precincts Nos. 6, 7 and 9;

BINIDAYAN

-

Precinct No. 4-A;

BALINDONG

-

Precincts Nos. 11-A and 11-B;

TUBARAN

-

Precinct No. 15.

For the same reason, Petitioner's objection to the inclusion in the canvass of the returns for the following precincts was, similarly, overruled:

TUBARAN

-

Precincts Nos. 1-14 and 16;

BALABAGAN

-

All the 29 precincts;

BALINDONG

-

Precincts Nos. 1, 1-A, 2, 2-A, 3, 3-A, 4, 4-A, 5, 5-A, 6, 8, 9, 10 and 11;

BINIDAYAN

-

Precincts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 10 and 11;

BACOLOD-GRANDE

-

Precincts Nos. 7-A and 8;

LUMBA-BAYABAO

-

Precinct No. 18;

BAYANG

-

Precinct No. 10-A.

but, he having objected to these returns upon other additional grounds - not being in due form and other irregularities in its preparation - the Commission decided to examine the Provincial Treasurer's copies thereof.

On December 17, 1969, it, moreover, created a Committee -

" x x x to examine all the returns questioned on the ground that they were not in due form, not signed by the proper officials or otherwise, defective, said Committee to examine the returns one by one in the presence of the representative of the parties, to receive their evidence and note their objections and thereafter to submit its report to the Commission not later than December 20, 1969. Said Committee submitted its report to the Commission which set the same for hearing on December 29, 1969. After hearing the arguments and manifestation of both parties, the Commission approve in toto said report and ordered further investigation of the returns for Precinct Nos. 8, 13 and 14, Tubaran; Precinct Nos. 8, 9 and 14, Balabagan. In view of the finding of the Committee that the returns for Precinct Nos. 10 and 11, Balindong, Precinct Nos. 6 and 9-A, Binidayan, and Precincts Nos. 7 and 8, BACOLOD-GRANDE were tampered with, the Committee resolved to examine the copies of said returns in order to ascertain the existence of a serviceable (copy) of said returns. The Commission also ordered the re-view of the returns for Precinct No. 9, Balindong, in view of the finding of the Committee that said election return was not signed by the members of the Board of Inspectors and,

therefore, not a properly accomplished return."¹

On motion of the petitioner, the Commission, likewise, ordered, on December 18, 1969, that the ballot boxes of Precincts Nos. 6, 7, 8 and 9 of Balindong, and Precincts Nos. 8, 9, 9-A, 10 and 11 of Binidayan, be brought to its offices in Manila. Soon later, or on December 24, 1969, Petitioner moved that subpoenae and subpoenae duces tecum be issued to the election registrars of Tubaran, Balindong, Balabagan and Binidayan, directing them to bring with them the CE Forms Nos. 242 and 263 specified in the motion, and testify before the Commission. The next day, Petitioner filed another motion for the issuance of subpoenae to the members of all boards of election inspectors of Tubaran and Bala-bagan, and those of specified precincts of Balindong, Binidayan, Bacolod-Grande, Malabang, Bayang and Madalum, summoning them to Manila to testify before the Commission, "at government ex-pense, and to allow the Petitioner to present other witnesses."

These motions for the issuance of subpoenae and subpoenae duces tecum were denied by the Commission on December 29, 1969. The Commission, moreover, ordered its aforementioned Committee to conduct further investigations with respect to certain precincts⁴ and the opening of the ballot boxes of Tubaran. It summoned the election registrar of Balabagan to testify before the Commission, and denied Petitioner's motion for the opening of the ballot boxes of said municipality, upon the ground that the reasons adduced in support thereof are proper for an election protest, as well as directed the Board to reject the return for Precinct No. 9 of Balindong, the same not being signed by the members of its board of inspectors, and reset the case for hearing on January 6, 1970, "to give the parties opportunity to elevate any of the above rulings to the Supreme Court."

On January 3, 1970, Petitioner filed with this Court a petition, docketed as G. R. No. L-31430, for certiorari and mandamus, with preliminary injunction, against the Commission, the Board and herein Respondent, Macacuna Dimaporo. Petitioner prayed therein:

"(a) that preliminary injunction be issued ex parte, restraining the COMELEC from continuing the hearing of the case entitled 'LUCMAN vs. DIMAPORO, et al.,' pending before it, scheduled on January 6, 1970 at 2:30 p.m., and thereafter, until further orders of the Court, upon a bond as may be fixed hereof;

"(b) that after hearing, judgment be rendered annulling paragraphs 2 and 3 on page 3 of the COMELEC resolution dated December 29, 1969 in said case;

"1) directing the COMELEC to open the ballot boxes of TUBARAN and BALABAGAN, and to make physical count of the ballots inside the ballot boxes, if any, and together with the tally sheet therein, ascertain the true results of the elections held thereat, if possible, or rule as the evidence and the law may warrant;

"2) to grant the motion of petitioner to subpoena the Election Registrars of BALABAGAN, TUBARAN, BALIN-DONG; and BINIDAYAN, and to bring with them CE FORMS Nos. 24 and 26 used during the election last November 11, 1969;

"3) to subpoena the Boards of Inspectors of TUBARAN and BALABAGAN, and to allow petitioner to adduce other testimonial evidence, or to cross-examine the witnesses against him, at the hearing of the said case."

In a minute resolution of this Court, dated January 6, 1970, said petition in G.R. No. L-31430 was, however, dismissed for "lack of merit." A motion for reconsideration of said resolution, or, at least, modification thereof - so as to state that the dismissal was due, not to "lack of merit," but to its "being premature" was denied on January 14, 1970.

Prior thereto, or on January 5, 1970, Petitioner had filed a second supplemental petition asking that "in addition to the prayer in the Supplemental petition for review x x x the true votes in Precincts 10 and 10-A of Bayang, x x x Precincts 8 and 9-C of Malabang, Precincts 8 and 9-A of Binidayan and Precincts 10 and 11 of Balindong x x x be

entered in the canvass in lieu of the tampered votes thereof." Inasmuch as the aforementioned petitions for exclusion were based upon several grounds - namely: (1) statistical improbability; (2) formal defects and other irregularities in the preparation of the returns; (3) tampering thereof; (4) falsity of the returns, there having allegedly been no election; and (5) returns prepared at gunpoint - the Commission decided to dispose of the same by process of elimination.

On January 13, the Commission opened the ballot boxes of all precincts of Tubaran and found no ballots in five (5) of them - Precincts Nos. 3, 6, 7, 12 and 12-A - although Respondent maintains, as regards Precincts Nos. 3, 6 and 7, that the Commission had merely refused to open any of the envelopes found in the ballot boxes thereof - because none of said envelopes bore, outside thereof, an inscription to the effect that they contain "counted ballots" - despite his request that the envelopes be opened because there may be ballots inside the same. The Commission, likewise, approved a supplemental report, submitted by the aforementioned Committee, reiterating the findings in its original report of December 20, 1969, and ruled that the defects pointed out by the Petitioner did not affect the integrity of, or overcome the presumption of regularity with respect to, the returns for Precincts Nos. 8, 13 and 14 of Tubaran, 8 of Balindong, and 9 and 14 of Balabagan.

On the same date, Petitioner invited attention to the fact that, in canvassing the votes for Senators, the Commission had rejected, on December 2, 1969, upon the ground of being obviously manufactured, the returns for Precincts Nos. 3, 4-B and 15 of Balabagan and 3 of Tubaran, and set aside, owing to patent irregularities in their preparation, the returns for Precincts Nos. 9 and 11 of Balindong.

On January 16, 1970, the Commission rejected Petitioner's objection to these returns, except as regards that for Precinct 11-B of Balindong, with respect to which, it resolved "to examine the Provincial Treasurer's copy and the Comelec copy of said return."

In a separate resolution of the same date, the Commission: (1) approved in toto the Committee's supplemental report; (2) ruled that the returns for Precincts Nos. 8, 13 and 14 of Tubaran, 8 of Balindong, and 9 and 14 of Balabagan, have no fatal defects; (3) ordered the opening of the ballot boxes of Precincts Nos. 7-A and 8 of Bacolod-Grande, 11 of Balindong and 6 and 9-A of Binidayan, for examination of the returns contained therein; (4) sustained the action of the Board in including in its canvass the provincial treasurer's copy of the return for Precinct No. 11-B of Balindong; (5) held, upon examination of the copies of the Commission and the provincial treasurer of the return for Precinct No. 10 of Balindong, that Dimaporo had obtained therein 246 votes, without prejudice to a judicial re-count if the result would be affected; (6) found, upon examination of the provincial treasurer's copy of the return for Precinct 11 of Balindong, that there is a misalignment of the number of votes therein recorded, and, accordingly, ordered the use of the copy of the Commission, pursuant to which Lucman had obtained 15 votes, Dimaporo 225, and independent candidate Liningding Pangandaman 0; (7) ordered the use, with respect to Precinct No. 10 of Bayang, of the Commission's copy of its return, and, as regards Precinct No. 10-A thereof, of the provincial treasurer's copy; (8) directed the use of the Commission's copy of the returns for Precincts Nos. 8 and 9-C of Malabang; (9) ordered that the ballot box copies of the returns for Precincts Nos. 7-A and 8 of Bacolod-Grande be used in the canvass; and (10) as to Precincts Nos. 6 and 9-A of Binidayan, it decided, as to the former, to "restore original writing not superimposition, to wit: Lucman - 42 votes; Dimaporo - 112 votes; Pangandaman - 4 votes, without prejudice to judicial recount if result will be affected", and, as to the latter, the use of the provincial treasurer's copy of the return.

With respect to other objections made by the parties, the Commission decided to defer the resolution thereof until the completion of the evidence, for which purpose it required them to make, not later than January 20, 1970, their formal offer of documentary evidence or exhibits, as well as to give them until January 22, 1970 to file, simultaneously, their respective memoranda, and declared that the case would be deemed submitted for decision

upon the fling of said memoranda.

On January 26, 1970, the Commission issued its appealed resolution, the dispositive part of which reads as follows:

"In view of the foregoing, the Commission RESOLVES:

"(1) To hold that, except with respect to Precincts Nos. 3, 6, 7, 12 and 12-A, there was voting in Tubaran and, therefore, the action of the board in including in the canvass the returns from Precincts Nos. 1, 2, 4, 5, 8, 9, 10, 11, 13, 14 and 16 is hereby sustained;

"(2) To reject the returns from Precincts Nos. 3, 6, 7, 12 and 12-A Tubaran, it appearing that the ballot boxes for said precincts are empty and, therefore, the returns prepared for said pre-cincts are fictitious or false and to direct the Board of Canvassers to exclude from the canvass the returns from said precincts;

"(3) To hold that petitioner has not sub-stantiated his claim that there was no voting in twenty-eight (28) precincts of Balabagan; that the LP inspectors of said precincts were excluded in the canvass and/or forced to sign the returns at gunpoint; and/or that said returns have been prepared and signed by persons other than the members of the Board of Inspectors and to sustain the actions of the Board with respect to said re-turns, except with respect to Precinct No. 61 where the Board is directed to ascertain the exist-ence of a serviceable copy of the return, if need be to order the opening of the ballot box to retrieve the ballot box copy, unless the parties jointly manifest to waive the canvass of this precinct since the outcome of the election is not affected by the result from this precinct or there was really a failure of election in this precinct;

"(4) To hold that the Commission has no jurisdiction to nullify the results of the election of Precinct No. 5-A, Madalum, where petitioner alleged that election took place on November 12, 1969 instead of November 11, 1969, such question being one within the jurisdiction of the House of Electoral Tribunal;

"(5) To hold that the evidence presented by petitioner to substantiate his claim that the returns for Precinct No. 18, Lumba-Bayabao, Precincts Nos. 8, 9, 9-A, 10 and 11, Binidayan and Precincts Nos. 6, 7, 8 and 9, Balindong have been prepared at gunpoint or that the LP inspectors therein have been illegally substituted or forced to sign the return are inconclusive to overcome the presumption of regularity in the pre-paration of said returns or in favor of their valid-ity, especially where there is also evidence sub-mitted by respondent to fortify said presumption and to hold further that the alleged irregularities committed in these precincts are corrupt election practices and anomalies more appropriately sub-ject of election protests;

"(6) To order the Provincial Board of Canvassers to reconvene in Manila to revise and complete the canvass for the position of Member, House of Representatives of the lone district of Lanao del Sur in accordance with the herein reso-lution and the resolutions of the Commission pre-viously promulgated by this Commission, parti-cularly those promulgated on December 12, 1969, December 29, 1969, January 15, 1970 and January 16, 1970 (Item D, Agenda) copies of which reso-lutions are attached and made integral parts hereof;

"(7) To instruct the board that after it completes the canvass to desist from proclaiming the winner until Friday, January 30, 1970 at 5:00 P.M. unless restrained by the Supreme Court."¹

Briefly stated, Petitioner herein seeks the exclusion from the canvass of the returns for the following:

1. 14 precincts of Tubaran
2. 28 precincts (all except Precinct No. 6) of Balabagan
3. 4 precincts (Precincts Nos. 6, 7, 8 and 11-B) of Balindong
4. 5 precincts (Precincts Nos. 8, 9, 9-A, 10 and 11) of Binidayan
5. 1 precinct (Precinct No. 18) of Lumba-Bayabao

6. 1 precinct (Precinct No. 5-A) of Madalum.

By reason of the grounds upon which they are contested, said returns may be divided into four (4) groups, namely: (1) those of Tubaran, which are objected to upon the theory that no elections had been held in said municipality; (2) those of Balabagan, which are assailed as having been made without counting the ballots or votes cast; (3) those of the four (4) other municipalities, in addition to the returns for three (3) precincts (Nos. 8, 13 and 14) of Tubaran and two (2) (Precincts Nos. 9 and 14) of Balabagan, which are impugned upon several grounds; and (4) those of three (3) precincts of Balabagan, which had been excluded, in the canvass for Senators, as being obviously manufactured.

With respect to Tubaran, Petitioner maintains that no elections were held therein because the precinct books of voters of said municipality had been stolen on the eve of election day. This contention was sustained by the Commission as regards only five (5) precincts (Precincts Nos. 3, 6, 7, 12 and 12-A) of Tubaran, no ballots having been found inside its ballot boxes when the same were opened before the Commission, on January 13, 1970. Respondent alleges that this finding is inaccurate, insofar as Precincts Nos. 3, 6 and 7 are concerned, because the Commission had merely found in its ballot boxes no envelope with an inscription to the effect that it is "for counted ballots," and denied his request that the envelopes contained in said boxes be opened, for the reason that there might be used ballots therein, notwithstanding the absence of the aforementioned inscription. We do not propose, however, to pass upon the question thus raised by Respondent, the same being one of fact which is not proper in the proceedings before Us, whether the same be regarded as an original action for certiorari or as an appeal by certiorari. Indeed, in special civil actions for certiorari, the main issue is one of jurisdiction - lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction¹ whereas petitions for review on certiorari are limited to the consideration of questions of law.¹

Petitioner asserts that the Commission has erred in sanctioning the inclusion, in the canvass, of the returns for-Precincts Nos. 1, 2, 4, 5, 8, 9, 10, 13, 14 and 16 of Tubaran, despite his claim that no elections had been held therein, which the Commission found he had failed to substantiate.

The question whether or not there had been elections or not in said precincts is manifestly one of fact and, in view of the last paragraph of section 9 of Commonwealth Act No. 657, which is identical to that of Section 5 of the present Revised Election Code,² reading:

" xxx xxx xxx "

"Any decision, order or ruling of the Commission on Elections may be reviewed by the Supreme Court by writ of certiorari in accordance with the Rules of Court or with such rules as may be promulgated by the Supreme Court."

the majority opinion, in *Sotto v. Commission on Elections*³ stated that "this Court can not x x x review the rulings or findings of fact of the Commission on Elections."

It Is true that such pronouncement was not concurred in by several members of this court who were inclined to believe that its constitutional power of review of decisions, orders or rulings of the Commission is absolute. We do not share, however, such belief for: (1) the Constitution uses the term "review," not "appeal," and these terms have different connotations in our jurisdiction; (2) Congress is deemed to retain its general power to define the manner in which the Supreme Court shall exercise its power of re-view, in the absence of clear and specific provision to the contrary, and no such provision exists; (3) pursuant to our Administrative Law, the findings of fact of administrative organs created by ordinary legislation will not be disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings,¹ and there is no reason to believe that the framers of our Constitution intended to place the Commission on Elections - created and explicitly

made "independent" by the Constitution itself - on a lower level than said statutory administrative organs; and (4) the aforementioned provision of the Election Law is presumed to be valid until otherwise declared by competent court.

At any rate, in addition to the admitted fact that all pre-cinct books of voters for Tubaran had disappeared on the eve of election, the evidence for the Petitioner consisted of affidavits of the LP election inspectors in Tubaran, the Chairmen and Poll Clerks of some precincts therein, the LP Chairman and local leader of the Petitioner, and a few registered voters, aside from a message of the Special Action Team of the Commission in Lanao del Sur suggesting that the Commission recommend to the President the suspension of the elections in Tubaran, owing to the disappearance of said books of voters.

After going over the record, We are satisfied that the finding of the Commission to the effect that elections had been held in Precincts Nos. 1, 2, 4, 5, 8, 9, 10, 11, 13, 14 and 16 of Tubaran, is supported by substantial evidence. In fact:

(1) Ballots were found inside the ballot boxes of said precincts;

(2) The Municipal Treasurer of Tubaran testified that, owing to the disappearance of the books of voters and to the fact that the Election Registrar was unavailable on election day, he (the municipal treasurer) had caused the precinct lists of voters and copies of CE Form No. 39 to be furnished each precinct by forcing open the cabinets, in the office of the Election Registrar, in which said documents were kept. Petitioner assails the credibility of said testimony, but such matter is beyond our power of review in the present case, apart from the fact that the Commission, before which the testimony had been given, was in a better position than We are to pass upon it.

(3) The contested finding of the Commission is, also, borne out by the aforementioned message of its Special Action Team, which reported that the "MUNICIPAL TREASURER X X X FORCIBLY OPENED CABINETS OFFICE ELEC REGISTRAR WHERE PRECINCT LIST VOTERS KEPT AND DISTRIBUTED SAME TO BOARDS ELEC INSPECTORS X X X."¹

(4) Further corroboration is supplied by the returns for the 11 precincts aforementioned.

(5) Then, too, Respondent submitted affidavits of the chairmen, poll clerks and NP inspectors of said precincts, contradicting the affidavits submitted by Petitioner. The latter insists that said affidavits filed by Respondent should not be entertained, he (Petitioner) having objected thereto as hearsay evidence, for he had no opportunity to cross-examine the affiants, despite his request that they be summoned therefor, which was denied. Even, however, without said affidavits for Respondent, the disputed finding of the Commission would, still be supported by substantial evidence, and, hence, should not be disturbed.

With respect to twenty-eight (28) precincts of Balabagan, Petitioner alleges that the election returns therefor were "prepared at the Municipal Hall of said municipality, where the ballot boxes were forcibly brought, without opening said ballot boxes, and without counting the votes cast, with the LP inspectors excluded in the preparation of said election returns at gunpoint, or, in some, were coerced to sign the election returns at gunpoint."²

To substantiate this allegation, Petitioner introduced the affidavits of a number of LP inspectors and CNEA watchers, two (2) members of the PC and some 12 leaders in Balabagan. Respondent Dimaporo countered, however, with affidavits of practically all of the chairmen, poll clerks and NP inspectors, as well as of some LP inspectors. Moreover, the testimony of the Election Registrar of Balabagan, who was summoned by the Commission, bore out the theory of Respondent herein. Passing upon Petitioner's objections to the aforementioned returns, the Commission had the following to say:

"In view of this conflict in the sworn statements of the witnesses of petitioner and respondent, the Commission decided to summon Abdul Marahom-salic, the Comelec Registrar of Balabagan. He testified before the Commission denying the imputation of petitioner and his witnesses that he, together with the mayor, had ordered the Board of Inspectors to bring the ballot boxes to the Municipal Building where the Board of Inspectors were ordered to pre-prepare the returns without opening the ballot boxes to read or canvass the votes. He was subjected to lengthy examination by the Members of the Commission and grueling cross examination by counsel for the petitioner. After hearing the testimony of said registrar and observing closely his demeanor and manner of testifying at the witness stand mission is inclined to believe his testimony and that there is no truth to the charge that he and the mayor had ordered the preparation of the returns without the canvassing of the votes.

"In any event, the very nature of canvass proceedings which the Supreme Court in its recent decision in the ILARDE vs. TAMANO case has again emphasized to be merely summary would not require the Commission to go beyond the need of determining a prima facie case. In view of this fact, the Commission believes that the presumption of regularity, which in this case is supported by the sworn statements of the chairmen and poll clerks in this disputed precincts of Balabagan and of the election registrar not to mention those of the NP inspectors and in some precincts LP inspectors, has not been overcome by the sworn statements of the witnesses of petitioner x x x "1

Petitioner impugns the foregoing conclusion upon the ground that: (1) the affidavits for Respondent are inadmissible as hearsy evidence, because the affiants could not be cross-examined, the Commission having refused to summon them, despite timely motions filed by Petitioner; (2) the testimony of the election registrar is unworthy of credence; (3) the affidavits for the Petitioner include those of some members of the PC and CNEA watchers, which are supported by the report of the Special Action Team of the Commission, and, hence, should be accorded much weight; (4) the presumption of regularity is inapplicable to the case at bar; and (5) the returns for Precincts Nos. 3, 4-B and 15 of Balabagan had been excluded by the Commission in its canvass of the returns for senators, as obviously manufactured.

The first ground relied upon by Petitioner is untenable, for:

(a) The records show that the Commission had indicated its intention to determine the case on the basis of the affidavits and the documentary evidence introduced by the parties and that it was with such understanding that Respondent filed affidavits in his favor and did not object to those made for Petitioner herein.

(b) Petitioner's objection would be plausible, if the Commission were a court of justice or could determine and settle with finality the issue, of fact raised in connection with the returns for the municipality of Balabagan. The Commission has no such authority. Hence, when, upon denial of Petitioner's motions for the issuance of subpoenae to the affiants for Respondent herein, Petitioner instituted Case No. L-31430 of this Court - to compel the Commission, by mandamus, to, inter alia issue the aforementioned subpoenae -We forthwith dismissed the petition therein and, soon thereafter, denied petitioner's motion for reconsideration of our resolution of dismissal of the case.

Indeed, in connection with the canvass of the returns for the office of member of the House of Representatives for Lanao del Sur, the functions of its Provincial Board of Canvassers is purely ministerial in nature. In fact, in, his original petition for exclusion, filed with the Board, petitioner quoted from *Dimapiles, v. Comelec*¹.

"A canvassing board performs a purely ministerial function - that of compiling and adding the results as they appear in the returns transmitted to it. This is the teaching in *Nacionalista Party v. Commission on Elections*: the canvassers are to be satisfied of the genuineness of the returns - namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied, x x x they may not reject any returns because of informalities in them or because of illegal and

fraudulent practices in the elections."

Equally ministerial, therefore, is the function of the Commission, in the exercise of its supervisory power over said Board, pursuant to our Constitution and laws.² There being no law vesting in either the power to decide and settle the question whether the election returns of given precincts have been prepared without counting the votes cast therein, their views in connection therewith, whatever they may be, do not foreclose the subsequent determination of that question in the corresponding election protest, if any. So long as the election returns have been accomplished in due form, the Board, and, on appeal therefrom, the Commission, must include said returns in the canvass.

(c) *Lagumbay v. Comelec*¹ presented a peculiar situation. Two (2) sets of returns were involved therein. In the first set, "in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for, each and every, candidate of the Liberal Party, the party in power; whereas, all the candidates of the Nacionalista Party got exactly zero; and in the second set x x x all the reported votes were for candidates of the Liberal Party, all of whom were credited with exactly the same number of votes in each precinct; x x x whereas, all the candidates of the Nacionalista Party were given exactly zero in all said precincts." As a consequence, this Court held that said returns were "obviously manufactured" "contrary to all statistical probabilities," "utterly improbable and clearly incredible." It should be noted that this was not strictly an issue of fact. Indeed, the main elements essential to its determination appeared on the face of the returns themselves. In other words, there was no dispute as regards such elements. The dispute boiled down to the proper conclusion to be drawn therefrom, and, hence, it partook of the nature of a question of law.² What is more, in the view of this Court, that conclusion was clear, obvious, manifest, and indubitable.

Such is not the situation obtaining in the case at bar. The irregularity pointed out by the Petitioner is denied by Respondent, thereby raising a purely factual question. Instead of settling the same, the affidavits submitted by both parties merely stressed the contentious nature of the issue. Moreover, the same could not have been wiped out or even minimized by the presence and cross-examination of the affiants for Respondent, had they appeared before the Commission. In other words, unlike the condition of the returns involved in the *Lagumbay* case - which this Court considered incontestable that existing as regards the returns for Balabagan is clearly a very controversial one, which the Commission has no power to decide with finality.

(d) The Commission could not, moreover, summon the affiants for Respondent, without granting him the same right to examine the affiants for Petitioner. This would have entailed a full-dress elucidation of the aforementioned issue of fact, which, after all, the Commission cannot settle authoritatively. Worse still, it would create a situation fraught with possibilities, inimical to the spirit of the laws establishing boards of canvassers.

It is well settled that the same are meant, not only to charge purely ministerial duties, based upon returns submitted thereto in due form, but, also, to perform this function summarily, so that winning candidates could assume their office on the date set for the commencement of their term. The main role of the Commission in connection therewith is to see to it that such objective be carried out. The theory advanced by petitioner herein would, however, induce the candidates who are likely to lose, on the basis of said returns, to raise questions of fact requiring the introduction of testimonial evidence thereon. If sustained, its effect would be to delay, far beyond the time envisaged by law, the proclamation of the winning candidates and their assumption of office, thereby de-priving the people, in the meanwhile, of the representation they are entitled to. Again, there would be an unnecessary duplication of the proceedings peculiar to election protests, with the consequent possibility of having different results and the serious dangers concomitant therewith.

(e) The contested resolution of the Commission was issued on appeal from the action of the Board in denying the

petitions for exclusion filed by petitioner herein. Hence, petitioner could not legally raise before the Commission, in the exercise of its appellate jurisdiction, any question not originally set up before said Board. The propriety of considering affidavits when its makers have not been made available for cross-examination was never put in issue before said Board. Accordingly, Petitioner had no right to do so on appeal taken to the Commission.¹

The matter of credibility of the testimony given by the election registrar of Balabagan cannot, for the reasons already adverted to, be entertained in the present proceedings.

As regards the CNEA watchers, the Commission had the following to say:

" x x x the Commission well remembers that in organizing the CNEA for Lanao del Sur, the Chairman and two Members of the Commission who went to Marawi City last September 1969, were faced with the difficulty of looking for impartial and non-partisan CNEA representatives for as they were then informed in Lanao del Sur one is either a rabid partisan or follower of the DIMAPORO's or of the LUCMAN's and ALONTO's. Consequently, it is possible that all witnesses whose sworn statements have been submitted to the Commission are partisans of the one or the other. xxx ."1

We find nothing in the record to justify our disturbing the foregoing view. On the contrary, the same is bolstered up by the fact that most of the affidavits belonging to each set follow, mutatis mutandis, an identical pattern, as to both the substance of its contents and the language thereof.

Then again the report of the Special Action Team of. the Commission referred to two (2) precincts only of Balabagan - Pre-cincts 9 and 9-A and merely expressed an opinion, based; not upon personal knowledge, but upon the affidavits of an enlisted man and a lieutenant, both of the PC, made 9 and 15 days, respectively, after the elections. Being limited to two (2) precincts of Balabagan, said report can not affect the other precincts thereof. Besides, it can not prevail, over the contested resolution of the Commission or prove that the latter is erroneous. The Commission had conducted more extensive investigations, as well as received and considered much more evidence than said Team.

In support of the theory that Respondent may not avail of the presumption of regularity, Petitioner quotes from *Corpus Juris Secundum*:

"The presumption cannot be indulged to the extent of supplying the necessary authority for an act, or to sustain official action where the man-datory requirements of a statute concerning such action are wholly disregarded.¹

This argument assumes, however, that the mandatory provisions of the Election Law have not been 'complied with in connection with the returns for Balabagan; but, this is merely Petitioner's contention, which, at best, is debatable. As the party asserting that irregularities had been committed in the preparation of said returns, Petitioner had the burden of proving the same and of offsetting the presumption of regularity established by law. As heretofore adverted to, he, however, failed in both.

Let us now consider the returns for precincts Nos. 3, 4-B and 15 of Balabagan, which had been excluded by the Commission from its canvass of the returns for senators, upon the ground that they were obviously manufactured. This conclusion was based upon the fact that 100% of the votes cast in said precincts were credited to every one of the candidates for senator belonging to only one political party. It appears, however, that the candidates for the House of Representatives were credited in said returns "with a few votes." Obviously, the entries with respect to these candidates for the House of Representatives do not come within the purview of the rule laid down in the *Lagumbay* case and are not obviously manufactured. In fact; We had previously ruled that:

"We agree with the respondents that the second and third grounds (supra) advanced by petition-ers to force rejection by Comelec of the contested returns are untenable. For while the Commission in its role as senatorial

canvasser had the power to reject returns before it that in its opinion was illegal or not authentic, neither law nor precedent authorize it to impose the same criterion in advance upon the provincial boards of canvassers. The latter are certainly entitled to use their own judgment in determining whether the irregularities appearing on returns before them warrant their rejection. It must not be forgotten that the copies of the returns upon which the provincial canvassers act are different from those in the possession of the Comelec, and the irregularities noted in the latter may not necessarily exist in the former. Should there be any discrepancy between the official copies, the petitioners can recourse to a judicial recount under section 163 of the Election Code. But certainly, an a priori rejection on the basis of previous Comelec action is not justifiable.²

Petitioner maintains, also, that there were other irregularities in the preparation of the returns for the following precincts, or that there are defects therein, warranting the exclusion thereof from the canvass:

- (a) Precincts Nos. 8, 13 and 14 of Tubaran, involving altogether 193 votes for Respondent and 11 votes for Petitioner, or a plurality of 182 votes in favor of Respondent;
- (b) Precincts 9 and 14 of Balabagan, involving a total of 330 votes for Respondent and zero (0) vote for Petitioner, or a plurality of 330 votes in favor of Respondent;
- (c) Precincts Nos. 6, 7, 8 and 11-B of Balindong, involving a total plurality of 762 votes in favor of Respondent¹;
- (d) Precincts Nos. 8, 9, 9-A, 10 and 11 of Binidayan, involving an aggregate of 1,562 votes for Respondent and 57 votes for Petitioner, or a plurality of 1,505 votes in favor of Respondent.²
- (e) Precinct No. 18 of Lumba-Bayabao, involving 54 votes for Respondent and 50 votes for Petitioner, or a plurality of 4 votes in favor of Respondent; and
- (f) Precinct No. 5-A of Madalum, involving 102 votes for Respondent and 1 vote for Petitioner, or a plurality of 101 votes in favor of Respondent.³

It should be noted, however, that the tentative result of the canvass conducted by the Board gave Respondent a total of 46,326 votes, Petitioner 41,157 votes and independent candidate Pangan-daman 7,875 votes, or a plurality of 5,169 votes in favor of Respondent, over his closest opponent, Petitioner herein. Upon the other hand, the aggregate plurality of Respondent in the precincts above mentioned is 2,884 votes, which, added to his plurality of 371 votes in Precincts Nos. 3, 6, 7, 12 and 12-A of Tubaran,⁴ gives a grand total of 3,255 votes. Deducting the same from the plurality of 5,169 tentatively found by the Board in favor of Respondent, he would still have a plurality of 1,914 votes to his credit. It is, accordingly, unnecessary for Us to pass upon Petitioner's objections to the returns for the aforementioned sixteen (16) precincts.

WHEREFORE, the petition herein should be as it is hereby dismissed and the writ prayed for denied. The temporary restraining order issued by this Court, on February 2, 1970, is, moreover, set aside and dissolved. With costs against the Petitioner.

IT IS SO ORDERED.

Reyes, J., concurs with J. Dizon.

Dizon, J., concurs in a separate opinion.

Makalintal and Zaldivar, JJ., in the result.

Fernando and Villamor, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Castro, J., on leave.

1 G.R. No. L-25444, January 31, 1966.

1 Page 3 of Annex T; Page 199 of Rollo.

2 Required for making substitution of election inspectors.

3 In which the oath of new appointees as election in-spectors are made.

4 Precincts Nos. 8, 13, and 14 of Tubaran; Precincts Nos. 8, 10 and 11 of Balindong; Precincts Nos. 9 and 14 of Balabagan; and Precincts Nos. 7-A and 8 of Bacolod-Grande.

1 "The Committee was unable to examine a copy of the return for Precinct 6, Balabagan for what was shown to the Committee was merely the form for Certificate of Votes received by each candidate. The parties reserved their rights to present the matter to the Commission but have not done so. See Report, page 13."

1 Pages 205-207, Rollo.

1 Hamoy v. Sec. of Agriculture, G.R. No. L-13456, Jan. 30, 1960; Ma-ao Sugar Central v. Barrios, 79 Phil. 666; Ang Ching Gi v. De Leon, 79 Phil. 580; Ong Sit v. Piccio, 78 Phil. 785; Tarnate v. Daza, 76 Phil. 842; Alafriz v. Nable, 72 Phil. 278; Abad Santos v. Province of Tarlac, 67 Phil. 480; Tavera-Luna, Inc. v. Nable, 67 Phil. 340; Claudio v. Zandueta, 64 Phil. 812, 817; Chua Ke v. Abeto, 63 Phil. 539; Westminster Bank v. Torres, 57 Phil. 422; Sabado v. Gonzales, 53 Phil. 770.

1 Section 5, R.A. No. 180; Sec. 1, Rule 43, Rules of Court; and Sec. 2, Rule 45, Rules of Court. Lo Ching v. Court of Appeals, 81 Phil. 601; Meneses v. Commonwealth of the Philippines, 69 Phil. 647; Mamuyac v. Abena; 67 Phil. 289; Mateo v. Collector of Customs, 63 Phil. 470; Guico v. Mayuga, 63 Phil. 328.

2 Republic Act No. 180.

3 76 Phil, 516, 521.

1 Municipality of Gattaran v. Elizaga, 91 Phil. 440; Halili v. Belane, 88 Phil. 450, 452; Jason v. Santos, 79 Phil. 381; Jaro Express Co. v. Lopez, 66 Phil. 158; Manila Yellow Taxicab v. Danon, 58 Phil. 75; San Miguel Brewery v. Lapid, 53 Phil. 542.

1 Exh. A, p. 436, Record.

2 Par. 4, of the Petition.

1 Pages 202-203, Rollo. Underscoring ours.

1 G.R. No. L-28396, December 29, 1967.

2 Sec. 2, Article X of the Constitution and section 2 of R.A. No. 180.

1 Supra.

2 Joaquin v. Navarro, 93 Phil. 257, 269-270; Cunanan v. Lazatin, 74 Phil. 719, 724; Luna v. Linatoc, 74 Phil. 15.

1 Subido v. Lacson, 103 Phil. 417; Suarez v. Abad Santos, 96 Phil. 302, 307; Talento v. Makiki, 93 Phil. 855; Ramento v. Cosuangco, 93 Phil. 56; Pacheco v. Arro, 85 Phil. 505; Villareal v. People, 84 Phil. 264; Coingco v. Flores, 82 Phil. 284; Tan Si Kiok v. Tiacho, 79 Phil. 696; Saludes v. Pajarillo, 78 Phil. 754; Re Gregorio, 77 Phil. 906; De Leon Vda. De Lontok v. Padua, 75 Phil. 548; City of Manila v. Vda. De Roxas, 60 Phil. 215; Martinez v. Tolentino, 43 Phil. 492; Vergara v. Laciapag, 28 Phil. 439; Tan Machan v. Trinidad, 3 Phil. 684.

1 Page 203, Rollo.

1 31 C.J.S. 807.

2 Alonto v. Comelec, G.R. No. L-28490, Feb. 28, 1968.

1 According to petitioner's Manifestation of January 24, 1970, in Vol. II, Case No. 696, Comelec.

2 According to the petition in G.R. No. L-31430.

3 See Manifestation filed by petitioner with Comelec in January 24, 1970.

4 See Appendix K to Petition for Review of December 5, 1969 filed with the Comelec. There are no returns for Precincts Nos. 12 and 12-A.

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CONCURRING OPINION**DIZON, J.:**

I concur with the decision penned by Mr. Chief Justice Concepcion, but in connection with the statement made at page 15 thereof to the effect that "The functions of its Provincial Board of Canvassers is purely ministerial in nature.", and that other statement appearing in the same page to this effect: "Equally ministerial, therefore, is the function of the Commission, in the exercise of its supervisory power over said Board, pursuant to our Constitution and laws", I wish to state briefly my own view of the true nature and scope of the powers of Boards of Canvassers and the Comelec, under our Electoral Code and jurisprudence, in connection with the matter to which the quoted statements refer.

In *Nacionalista Party vs. Commission on Elections*, We said clearly and without equivocation that "the canvassers are to be satisfied of the genuineness of the returns". In *Dimapiles vs. Comelec* (G.R. No. L-28396, December 29, 1967), We quoted that categorical statement with approval. Indeed, in *Lagumbay vs. Comelec* (G.R. No. L-25444, January 31, 1966) We upheld, upon the facts therein obtaining, the authority of Comelec to reject given election returns submitted to it for the purpose of the required canvass, if in its opinion, they were "obviously manufactured" or "contrary to all statistical probabilities", or "utterly improbable and clearly incredible".

It is clear, I believe, that when in *Nacionalista vs. Comelec* We said that the canvassers are to be satisfied of the genuineness of the returns, We recognized their authority to determine - and this inevitably implies the exercise of judgment or discretion, however limited whether any given return before them is genuine.

Now, what is meant by genuine? The true meaning of the term, I submit, is that the document speaks the truth; that it is what it purports to be - a faithful statement or record of the truth. In reality, "genuine" and "authentic" - which are considered synonymous - mean trustworthy or not false. So when a given document is said to be genuine or authentic, it is meant that it is fully trustworthy and is in accordance with fact or actuality (Webster's Seventh New Collegiate Dictionary, p. 59).

From all the foregoing I draw the conclusion that, if in the opinion of a Board of Canvassers a particular return before it does not speak the truth or is false in any material respect; that it is not fully trustworthy or is not in

accordance with fact or actuality, it may reject it in the exercise of the discretion We have recognized it possesses; otherwise stated, it may declare that it is not "satisfied of the genuineness" of the document.

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