

ABDULGAFAR PUÑGUTAN, PETITIONER, VS. BENJAMIN ABUBAKAR, COMMISSION ON ELECTIONS, AND THE PROVINCIAL BOARD OF CANVASSERS OF SULU, RESPONDENTS.*G.R. No. L-33541. January 20, 1972*

Ponente: FERNANDO, J.

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The resolution of respondent Comelec[1] now assailed in this petition for review, was undoubtedly motivated by the objective of insuring free, orderly and honest elections in the discharge of its constitutional function to enforce and administer electoral laws.[2] It excluded from the canvass for the election of delegates for the lone district of the province of Sulu the returns from 107 precincts of Siasi, 56 precincts of Tapul, 67 precincts of Parang and 60 precincts of Luuk for being spurious or manufactured and therefore no returns at all. Unless set aside then, petitioner Abdulgafar Puñgutan, who otherwise would have been entitled to the last remaining seat for delegates to the Constitutional Convention, there being no question as to the election of the other two delegates,[3] would lose out to respondent Benjamin Abubakar. Petitioner would thus dispute the power of respondent Commission to exclude such returns as a result of oral testimony as well as the examination of the fingerprints and signatures of those who allegedly voted as the basis for the holding that no election in fact did take place. This contention is, however, unavailing, in the light of our holding last month in *Usman vs. Comelec*. [4] The other principal question raised is whether the recognition of such prerogative on the part of respondent Commission would contravene the constitutional provision that it cannot pass on the right to vote. The appropriate answer as will be made clear is likewise adverse to petitioner. Hence, respondent Commission must be sustained.

The case had its origin from a petition filed on December 16, 1970, by respondent Abubakar and the other candidates,[5] superseding an earlier one dated December 7, 1970 alleging that in the towns of Siasi, Tapul, Parang and Luuk, no elections were in effect held in view of massive violence, terrorism and fraud.[6] The respondents named therein, including now petitioner Puñgutan, answered on December 18, 1970 to the effect that the elections were duly held in the above-mentioned municipalities and denied the allegation as to the existence of massive fraud, terrorism and serious irregularities. The case was duly heard, with oral testimony from five chairmen of certain precincts in Tapul, five teachers from Parang, five teachers from Luuk and three teachers from Siasi, followed by an examination of the precinct book of voters from said towns and the fingerprints and signatures of those who voted, as shown at the back of CE Form No. 1 and CE Form No. 39 for the 1970 elections for the Constitutional Convention.

After reciting the relevant facts, respondent Commission came to this conclusion: "In the light of the foregoing findings of the Commission with respect to the manner in which the elections were conducted in Siasi, Tapul, Parang and Luuk, the Commission is of the opinion that the elections in said municipalities were just as bad if not worse than the elections in Karomatan, Lanao del Norte. Actually no elections were held in said municipalities as the voting was done by persons other than the registered voters while armed men went from precinct to precinct, prepared the ballots and dictated how the election returns were to be prepared. The same reasons which compelled

the Commission to reject the returns from Karomatan and to consider said returns as no returns at all or spurious or manufactured returns not one notch above returns prepared at gunpoint (again paraphrasing in the reverse the second Pacis case) compel us with much greater justification to find that the returns from Siasi, Tapul, Parang and Luuk are spurious returns or manufactured returns and no returns at all and that the elections in said municipalities are sham." [7]

The above findings of fact found support in the light of the competent and credible evidence sustaining that the most flagrant irregularities did attend the so-called elections in Siasi, Tapul, Parang and Luuk.

As to Siasi: "In Siasi where there were 21,688 registered voters it was made to appear that 20,970 had voted. However, the result of the examination of the thumbmarks and signatures of those who voted compared with the fingerprints of the registered voters appearing in their registration record, CE Form 1 showed that only 460 of the registered voters had been definitely established to have actually voted, 131 identified through the thumbmarks and 329 by their signatures. The 11,154 of those who voted were found to be substitute voters: 7,557 were discovered to be voters voting in substitution of the registered voters through their thumbmarks and 3,597 through their signatures. No opinion was made with respect to the rest of the votes cast because not all of the 13,282 voters whose thumbprints could not be analyzed were referred to the NBI for signature examination. Only 4,631 of these blurred thumbprints from 28 precincts were referred to the NBI for signature examination. Examination of these 4,631 signatures revealed that 3,597 were by persons other than the registered voters, only 329 were by the registered voters and no opinion could be rendered with respect to 705 for lack of sufficient basis of comparison. In 26 precincts of Siasi there was 100% voting but not necessarily by the registered voters. The overall average for the whole town is 96.6% voting. There were 80 persons who were able to vote without any CE Form 1 or without voting in the name of the voters registered in the precinct." [8]

With respect to Tapul: "In Tapul where there were 12,223 registered voters it appeared that 11,575 votes were cast. 197 persons were able to vote without CE Form No. 1 without using the names of registered voters in the precinct. When the thumbprints corresponding to the 11,575 votes cast were examined by the Fingerprint Identification Division of the Commission, only 3 were found to be identical with the thumbprints of the registered voters in their registration record: one each in Precincts 8, 29 and 20-A. 5,300 thumbmarks were found to be not identical with the corresponding thumbmarks of the registered voters in their registration records, CE Form 1. 6,199 thumbmarks however, could not be analyzed because they were blurred, smudged or faint. Of these 6,199 blurred thumbprints from 56 precincts, 4,187 from 31 precincts were referred to the NBI handwriting experts for signature examination. The result of said examination by the NBI of these 4,187 signatures showed that only 13 were found to be identical with the signatures of the registered voters in their registration record, CE Form 1, while 2,897 were those of persons other than the registered voters. No opinion could be rendered on 1,277 signatures for lack of sufficient basis of comparison." [9] Further: "It appeared, therefore, that in the whole town of Tapul out of the 11,575 votes cast only 13 were definitely established as cast by the registered voters. 8,197 were definitely established as cast by substitute voters. No opinion could be rendered with respect to 1,277 for lack of sufficient basis, 2,012 were not examined anymore since these were in precincts where the number of substitute voting had been found to constitute a very high percentage. It has been also established that on Election Day about one hundred men armed with long arms were seen going around from precinct to precinct in Tapul driving away the voters and instructing the teachers-inspectors on how to prepare the election returns. Some of the ballot boxes were seen to have been brought to the Municipal Treasurer's office early in the afternoon of Election Day hours before the closing of voting. Nineteen (19) precincts of Tapul reported 100% voting while the over-all percentage of voting in the whole municipality was 94.5%." [10]

Then came the recital as to Parang: "In Parang, where there were 11,761 registered voters in 67 precincts, it was

made to appear that 11,083 votes were cast. 66 voters who were not registered in the precinct were able to vote illegally without even using the names of the registered voters therein. An examination of the thumbprints of those who voted appearing in CE Form 39 or at the back of CE Form 1 compared with the corresponding thumbprints of the registered voters appearing in their registration record in CE Form 1 showed that only 39 thumbprints of the registered voters in his CE Form 1, while 4,698 were different from those of the registered voters. 6,539 thumbmarks could not be analyzed because they were blurred, smudged or faint. However, only 2,647 of these 6,539 smudged thumbprints were referred to the NBI for signature examination since the rest of said blurred thumbmarks were in precincts where a high percentage of non-identical thumbmarks was already discovered. 1,573 signatures were found to be by persons other than the registered voters and only 83 were found to be identical with those of the registered voters. No opinion could be rendered with respect to 991 signatures for lack of sufficient basis. In 20 precincts it was made to appear that all the registered voters had voted. The overall percentage for the whole town of Parang was 94%. The evidence also showed that in a number of precincts in Parang armed men had entered the polling places and prepared the ballots. The registered voters were not able to vote."[11]

Lastly, as to Luuk: "In Luuk where there were 13,124 registered voters, 12,263 votes were cast. 281 persons who were not registered voters in this precinct were able to vote illegally without even using the names of the registered voters. The thumbprints of those who voted appearing in their voting record either in CE Form 1 or in CE Form 39 compared with the thumbprints of the registered voters appearing in the voter's registration record in CE Form 1 showed that only 22 of the thumbmarks of those who voted were identical with the thumbmarks of the registered voters, while 6,021 were found to be different from those of the registered voters. 6,134 thumbmarks could not, however, be analyzed because they were found to be blurred, smudged or faint. However, the signatures of those who voted in 13 precincts were examined by the NBI and it was found that the said signatures were written by just a few persons as explained with greater particularity in the earlier pages of this resolution."[12]

In the light of the above and finding no need to determine how the election was in fact conducted as to Pata, Patikul, Indanan, Panamao, South Ubian, Balimbing, Bongao and Tandubas, it was the holding of the Commission in the resolution of May 14, 1971: "1. To rule by unanimous vote that the returns from the 107 precincts of Siasi, 56 precincts of Tapul, 67 precincts of Parang and 60 precincts of Luuk are spurious and/or manufactured returns or no returns at all and as such should be excluded from the canvass for the election of delegates for the lone congressional district of the province of Sulu; 2. To hold also by unanimous vote that further hearings on the petition of [Benjamin Abubakar, et al] for the rejection or exclusion from the canvass of the returns from Indanan, Panamao, Pata, Tandubas, South Ubian, Patikul, Bongao and Balimbing would no longer be necessary, it appearing that the results of the election would no longer be affected by the returns from said municipalities after the rejection of the returns from the four towns of Siasi, Tapul, Parang and Luuk and, therefore, for the purpose of the completion of the canvass, to direct the Board of Canvassers to include the returns from said municipalities in the canvass; 3. By majority vote of the members of the Commission to direct the Provincial Board of Canvassers of Sulu to reconvene in Jolo and complete the canvass excluding from said canvass the returns from the towns of Siasi, Parang, Tapul, and Luuk and to proclaim the 3rd winning candidate at 5:00 P.M. on May 28, 1971, unless restrained by the Supreme Court."[13]

On May 22, 1971, this petition for the review of the above resolution of May 14, 1971 of respondent Commission was filed. Three days later, a resolution was adopted by this Court requiring respondents to file an answer not later than June 4, 1971. Both respondent Commission on Elections and respondent Abubakar duly filed their answers on said date. Respondent Commission took pains to explain with even more detail why such a resolution had to be issued considering the "massive voting anomalies ranging from substitute voting to grabbing of ballots

to preparation of election returns and other election documents at gunpoint" thus justifying its conclusion that the elections in the four towns amounted to a sham. The case was heard on June 8, 1971 with petitioner Puñgutan represented by Attorney Jose W. Diokno. Respondent Abubakar, represented by Attorney Jovito R. Salonga, sought permission to submit a memorandum, which was received by this Court on June 28, 1971. Petitioner was given the opportunity to reply thereto, and he did so in his memorandum filed with this Court on October 18, 1971. The case was deemed submitted on December 3, 1971. It is the decision of this Court, as noted at the outset, after a careful study of the pleadings and in the light of our decision last month in *Usman vs. Commission on Elections*[14] that the challenged resolution of respondent Commission of May 14, 1971 is in accordance with law. The petition must therefore fail.

1. There is no merit to the contention that respondent Commission is devoid of power to disregard and annul the alleged returns from 107 precincts of Siasi, 56 precincts of Tapul, 67 precincts of Parang and 60 precincts of Luuk for being spurious or manufactured. So we have held on facts analogous in character in the above *Usman* decision rendered last month. Nor is it to be wondered at. Any other view would indict itself for lack of fealty to reason and to the realities of the situation. It goes without saying that what is contemplated in the law is that the electors in the exercise of their free will can go to the polls and exercise their right of suffrage, with the boards of inspectors crediting each candidate with the votes duly obtained after an honest count. It is on that basis that election returns are to be made. Where no such election was in fact held as was found by respondent Commission with respect to the four towns, it is not only justified but it is its clear duty to stigmatize the alleged returns as clearly spurious and manufactured and therefore bereft of any value. The words of Justice Castro, in the *Usman* decision, referring to the election returns from Karomatan, considered as likewise not entitled to credit because of their lack of integrity and authenticity, are apposite: "These circumstances definitely point, not merely to a few isolated instances of irregularities affecting the integrity and authenticity of the election returns, but to an organized, well-directed large-scale operation to make a mockery of the elections in Karomatan. We find and so hold that the election returns from the 42 precincts in question were prepared under circumstances conclusively showing that they are false, and are so devoid of value as to be completely unworthy of inclusion in the canvass. We have no alternative but to affirm the Comelec's finding that they are spurious and manufactured." [15]

Nor is it to be lost sight of that the power to reject returns of such a character has been exercised most judiciously. Even a cursory perusal of the mode and manner of inquiry conducted by respondent Commission resulting in the challenged resolution should suffice to remove any doubt as to the absence of any impropriety or improvidence in the exercise of such a prerogative. Clearly, there was care and circumspection to assure that the constitutional objective of insuring that an election be "free, orderly and honest" be realized. If, under the circumstances disclosed, a different conclusion were arrived at, then certainly there is a frustration of such an ideal. Moreover, this Court has not displayed any reluctance in yielding the imprimatur of its approval to the action taken by respondent Commission in the discharge of its constitutional function of the enforcement of all laws relative to the conduct of elections. The long line of decisions especially so since *Cauton vs. Commission on Elections*, [16] is not susceptible of any other interpretation. Only thus may there be an assurance that the canvassing and proclamation reflect with fidelity and accuracy the true results of an election, in fact actually held. We do so again. As a matter of fact, such a sympathetic approach to the results arrived at in the discharge of its functions started with the leading case of *Sumulong vs. Commission on Elections*. [17] As was so well put by Justice, later Chief Justice, Abad Santos: "The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created — free, orderly and

honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere." [18] The same approach is reflected in the opinion of the Chief Justice in *Lucman vs. Dimaporo* when as he pointed out if "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 * * * 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; * * *." [19]

2. The right to vote has reference to a constitutional guarantee of the utmost significance. It is a right without which the principle of sovereignty residing in the people becomes nugatory. [20] In the traditional terminology, it is a political right enabling every citizen to participate in the process of government to assure that it derives its power from the consent of the governed. What was so eloquently expressed by Justice Laurel comes to mind: "As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority." [21]

How such a right is to be exercised is regulated by the Election Code. [22] Its enforcement under the Constitution is, as noted, vested in respondent Commission. Such a power, however, is purely executive or administrative. So it was characterized by the Chief Justice in *Abcede vs. Imperial*: [23] "Lastly, as the branch of the executive department — although independent of the President — to which the Constitution has given the 'exclusive charge' of the 'enforcement and administration of all laws relative to the conduct of elections,' the power of decision of the Commission is limited to purely 'administrative questions.' * * *."

It becomes obvious then why the right to vote, a denial of which should find redress in the judiciary as the guardian of constitutional rights, is excluded from the authority vested in respondent Commission. If the exclusion of the returns from the four towns in Sulu involved a question as to such a right, then, clearly, what the Commission did was beyond its competence. Such is not the case however. What is deemed outside such a sphere is the determination of whether or not a person can exercise or is precluded from exercising the right of suffrage. Thus, the question of inclusion or exclusion from the list of voters is properly judicial. [24] As to whether or not an election has been held is a question of a different type. It is properly within the administrative jurisdiction of respondent Commission. If, as is our decision, no such voting did take place, considering the massive irregularities that attended it in the four towns, then the exclusion of the alleged returns is not tainted by infirmity. In that sense, the second issue raised by petitioner that in so acting the respondent Commission exceeded its constitutional power by encroaching on terrain properly judicial, the right to vote being involved, is likewise to be resolved against him. At any rate, what was set forth by Justice J. B. L. Reyes in *Diaz vs. Commission on Elections* [25] would likewise dispose of such a contention adverse to petitioner. Thus: "It is pleaded by respondents that the rejection of the Sagada returns would result in the disfranchisement of a large number of legitimate voters. But such disfranchisement would only be provisional, subject to the final determination of the validity of the votes at the protest that may be filed with the Constitutional Convention." [26]

3. As to the plea in the prayer of the petition that in the event that the challenged resolution of May 14, 1971 as to the power of respondent Commission is sustained, a special election be called by it in all the 290 precincts in the four municipalities of Siasi, Tipul, Parang and Luuk, it suffices to refer to our ruling in *Usman vs. Commission on*

Elections, where a similar point was raised without success. So it should be in this case. We see no reason to order such a special election.[27]

WHEREFORE, the petition is dismissed and the resolution of the Commission on Elections dated May 14, 1971 is affirmed. The Commission on Elections is directed to order the board of canvassers to convene without delay and forthwith proceed with and complete the canvass of the election returns from all the precincts of Sulu, excluding therefrom all the election returns from 107 precincts of Siasi, 56 precincts of Tapul, 67 precincts of Parang and 60 precincts of Luuk, and thereafter proclaim the winning candidate for the third Constitutional Convention seat allotted to the said province. This decision is hereby declared immediately executory. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., concurs without committing himself as to whether or not the same consideration herein invoked would apply to elections other than those of the delegates to the 1971 constitutional Convention.

[1] Resolution No. RR-904 of the Commission on Elections of May 14, 1971, Annex G to Petition.

[2] Sec. 2 of Art. X of the Constitution, insofar as pertinent, reads: "The Commission on Elections shall have exclusive charge of its enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court."

[3] Jai Anni and Tating Sangkula.

[4] G.R. No. L-33325, December 29, 1971.

[5] The other candidates are: Jose Fernandez, Tiblani Jamiri, Nurulaji Misuari, Jacob Ismi, Kalbi Tupay and Tome Biteng.

[6] The towns of Indanan, Panamao, Luuk, Pata, Tandubaso, South Ubian, Patikul, Bongao and Balimbong were likewise included.

[7] Resolution No. RR-904 of the Commission on Elections of May 14, 1971, Annex G to Petition, pp. 55-56.

[8] Ibid, pp. 49-50.

[9] Ibid, pp. 50-51.

[10] Ibid, pp. 51-52.

[11] Ibid, pp. 52-53.

[12] Ibid, pp. 53-54.

[13] Ibid, pp. 58-59.

[14] L-33325, December 29, 1971.

[15] Usman vs. Comelec, L-33325, December 29, 1971, p. 18.

[16] L-25467, April 27, 1967, 19 SCRA 911. The other cases are Espino vs. Zaldivar, L-22325, Dec. 11, 1967, 21 SCRA 1204; Ong vs. Commission on Elections, L-28415, Jan. 29, 1968, 22 SCRA 241; Mutuc vs. Commission on Elections, L-28517, Feb. 21, 1968, 22 SCRA 662; Pedido vs. Commission on Elections, L-28539, March 30, 1968, 22 SCRA 1403; Aguam vs. Commission on Elections, L-28955, May 28, 1968, 23 SCRA 883; Pelayo Jr. vs. Commission on Elections, L-28869, June 29, 1968, 23 SCRA 1374; Pacis vs. Commission on Elections, L-29026, Sept. 28, 1968, 25 SCRA 377; Ligot vs. Commission on Elections, L-31380, Jan. 21, 1970, 31 SCRA 45; Abrigo vs. Commission on Elections, L-31374, Jan. 21, 1970, 31 SCRA 26; Moore vs. Commission on Elections, L-31394, Jan. 23, 1970, 31 SCRA 60; Ilarde vs. Commission on Elections, L-31446, Jan. 23, 1970, 31 SCRA 72; Antonio Jr. vs. Commission on Elections, L-31604, April 17, 1970, 32 SCRA 319; Lucman vs. Dimaporo, L-31558, May 29, 1970, 33 SCRA 387; Diaz vs. Commission on Elections, L-33378, Nov. 29, 1971; Usman vs. Commission on Elections, L-33325, Dec. 29, 1971.

[17] 73 Phil. 288 (1941).

[18] Ibid, p. 294.

[19] Lucman vs. Dimaporo, L-31558, May 29, 1970, 33 SCRA 387, 401.

[20] According to Sec. 1 of Art. II of the Constitution: "The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them."

[21] Moya vs. Del Fierro, 69 Phil. 199, 204 (1939).

[22] Cf. Election Code of 1971, Republic Act No. 6388.

[23] 103 Phil. 136, 141 (1958).

[24] Cf. Secs. 136 and 137 of the Election Code of 1971 (Republic Act No. 6388), formerly Secs. 119 and 121 of the Revised Election Code (Republic Act No. 180, as amended [1947]).

[25] L-33378, November 29, 1971.

[26] Ibid, p. 7.

[27] The conclusion reached by this Court in Antonio vs. Comelec, L-31604, April 17, 1970, 32 SCRA 319, as to the absence of any need for the holding of a special election may likewise be invoked. Parenthetically, it may be observed that the writer of this opinion dissented from nine of his colleagues on that point, but as spokesman for the Court now, he would accord to such a view due respect and deference.

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