

MASTURA USMAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND LUIS QUIBRANZA, RESPONDENTS.

G.R. No. L-33325. December 29, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

Pursuant to Republic Act 6132,[1] election of delegates to the Constitutional Convention was held throughout the nation on November 10, 1970. Republic Act 6132 called for the election of three hundred and twenty delegates apportioned among sixty-seven representative districts.

Section 2 of the aforesaid law, inter alia, allocated three delegates to represent the lone district of Lanao del Norte, including Iligan City. Twenty-nine candidates contended for the three seats thus allotted.

On November 12, 1970, Luis Quibranza, Francisco Abalos, Alfredo Bosico, Luis Buendia and Bonifacio Legaspi (hereinafter referred to as the Comelec petitioners), candidates for delegate in the aforementioned district, petitioned the Commission on Elections (hereinafter referred to as the Comelec) for a declaration of nullity of the election returns from all the precincts of seven municipalities and municipal districts - Karomatan, Pantao-Ragat, Ma-tungao, Munai, Tangcal, Magsaysay, and Nunungan - and four barrios - Kapatagan, Salvador, Lala, and Kauswagan - of Lanao del Norte. The Comelec petitioners alleged as grounds that in the said municipalities and barrios, no actual voting took place because of "terrorism and other machinations," and that

"fictitious election returns were prepared under duress, and the influence of terrorism and/or bribery wherein, it was made to appear that certain favored candidates obtained most, if not all the votes fictitiously cast therein, while petitioners were made to appear as having obtained very few, if no votes at all."

The Comelec petitioners particularly stressed that the canvassing of the fictitious votes and the preparation of the election returns from the precincts of Karomatan were in violation of the procedure laid down in resolution 769 of the Comelec. They prayed for the holding of a special election in the municipalities and barrios concerned and, ad interim, the suspension of the canvass as well as the proclamation of the winning candidates until after hearing and decision on the merits of the petition.

The initial canvass of all the election returns from all the precincts of Lanao del Norte showed the following results:

1. Mariano Badelles

30, 770,

2. Mastura Usman

23, 615,

3. Francisco Abalos

22, 843,

4. Cornelio Sugano

18, 486,

5. Luis Quibranza

17, 831,

With the exclusion, however, of the tally of the election returns from the 42 precincts of Karomatan, the results would be as follows:

1. Francisco Abalos

22,827,

2. Mariano Badelles

22,292,

3. Luis Quibranza

17,379,

4. Mastura Usman

14,301.

On November 14, 1970, the Comelec issued two resolutions ordering the board of canvassers to canvass the election returns in Manila, ordering the same board to desist from proclaiming the winning candidates until further orders, and setting the petition for hearing in Manila to ascertain the truth of the allegation that no voting took place in the disputed precincts.

On November 24, 1970, the Comelec petitioners, joined by another candidate, Potri Ali Pacasum, amended their petition, asking for the exclusion of the election returns from the precincts of the barrios of Kapatagan, Salvador, Lala, and Kauswagan, ex-cept those from precincts 16 and 24 of Kapatagan and precincts 14 and 14-A of Salvador, and repeating their allegation that no elections actually took place in the questioned precincts,

"and/or in the remote possibility that elections had been initiated, they were suspended before the hour fixed by law for the closing of the voting because of violence or terrorism and that the votes not cast therein are

sufficient to affect the results of the elections,"

and adding that the election returns from the said precincts

"... were prepared prior to the elections, and/ or had been tampered with and/or are statistically improbable in that the number of voters who allegedly cast their votes is out of proportion to the actual population in those municipalities and municipal districts concerned."

Mariano Badelles, Cornelio Sugano and Mastura Usman (herein-after referred to as the Comelec respondents), candidates affected by the petition, two of whom appeared as frontrunners per the initial canvass of all the election returns from all the precincts of Lanao del Norte, filed an amended answer dated November 26, 1970 wherein they vehemently denied the allegations of the Comelec petitioners, brushing them off as "preposterous and without basis both in fact and in law." Claiming that "free clean, peaceful and orderly" elections took place in all the places and precincts enumerated by the Comelec petitioners, they asked for the dismissal of the petition on the ground of lack of cause of action.

At a preliminary conference between the parties, they assented to the summoning by the Comelec of the chairmen of the boards of inspectors of Karomatan to testify in Manila. They also agreed to allow the chairmen of the boards of inspectors of the other municipalities to testify in Iligan City. The Comelec then subpoenaed the 42 chairmen of the boards of inspectors of Karomatan. On December 9, 1970, a number of them arrived in Manila.

At the hearing, four chairmen testified, three of whom declared that the elections in their respective precincts were "free, honest and orderly." Of the three, however, one broke down on cross-examination and revealed what really transpired in his precinct on election day. He related that only about 10% to 20% of the registered voters in his precinct actually voted and that armed men prepared and filled up the rest of the ballots. In addition, he stated that two unidentified men gave him a piece of paper with the names of five candidates written thereon with the corresponding number of votes "they were supposed to receive in the precinct." The unidentified men told him to give the indicated number of votes to the persons listed the piece of paper; so the board prepared the election returns in accordance with their instructions.

The fourth chairman who testified revealed that on the day before the elections, the members of the boards of inspectors, having been summoned, appeared at the office of the mayor where they were questioned on their "willingness to cooperate" by making some candidates win in their respective precincts. She further testified that on election day, about twenty Muslims appeared in her precinct who prepared and filled up the ballots and thumbmarked and signed the voting record.

In the meantime, the Comelec, upon the application of the Comelec petitioners, ordered the production in Manila of the precinct books of voters for Karomatan, including CE forms 39 (lists of voters who voted) used in connection with the 1970 elections.

On December 12, 1970, the Comelec, by resolution, directed the chief of its Fingerprint Identification Division, Jose Abrigo, to examine all the precinct books of voters for Karomatan, together with the CE forms 39 accomplished in connection with the 1970 elections, to determine:

"a. Whether the thumbmark affixed on the 1970 voting record of each voter on Form No. 1 coincides with the thumbmark of the voters on the face of said Form No. 1 and also in the 1970 Form No. 39;

"b. How many are there where the thumbmark on Form 1, the voting record and Form 39 are by the same persons indicating that the registered voter had cast his vote in the precinct?

"c. How many are there where the thumbmark on Form 1, the voting record and Form 39 are by more than one person?

"d. Are there thumbmarks in Form 39 which appear more than once, indicating that one person affixed his thumbmark more than once?

"e. Are there thumbmarks appearing in more than one voting record also indicating that one person affixed his thumbmark in two or more voting records in Form 1?",

and in the case of blurred thumbmarks or thumbmarks not capable of being used as bases for identification, to examine the signatures in CE form 1, the voting record, and CE form 39 instead. The Comelec ordered Abrigo to submit his report thereon.

In the same resolution, the Comelec ordered the suspension of the examination of the other chairmen of the boards of inspectors.

On December 21, 1970, Abrigo having submitted a partial report, the Comelec directed him to withdraw the same and submit a complete one. Abrigo thereafter submitted two reports dated December 28, 1970 and January 21, 1971. Subsequently, the Comelec ordered the revision of both reports for easier understanding and the inclusion of the report of the NBI handwriting experts. On February 9, 1971, Abrigo submitted the revised report which introduced no changes with regard to the findings made in the previous reports.

The revised report stated that the Fingerprint Identification Division of the Comelec, in six teams of three members each, examined, analyzed and made a comparison of the registered voter's right hand thumbmark appearing on the voter's registration record (front side of CE form 1) with that appearing on the voting record (back side of CE form 1) and/or on the list of voters who voted (CE form 39), to determine whether or not the registered voter actually voted. The revised report also stated that the examiners made no analysis in those instances wherein a person appears to have voted as his name appears on CE form 39 but has no CE form 1, or wherein a voter failed to place his thumbmark on CE form 39 and on the back side of CE form 1. The revised report showed the following results:

1. Total number of registered voters

per precinct books of voters - - - - -

9,419

2. Total number of persons who voted per CE forms 39 - - - - -

9,455

(102 voters who voted per CE forms 1 but not listed in CE forms 39 will be added to this total),

3. Total number of persons

without CE form 1 but who

voted per CE forms 39 - - - - -

673,

4. Total number of registered

voters who did not vote -----

521,

The revised report revealed the following results:

1. Number of voters with thumb-

mark on voting record for 1970

and/or on CE form 39 not identical with that on CE form 1 -----

5,192,

2. Number of voters with thumb-

mark on voting record for 1970

and/or on CE form 39 identical

to that on CE form 1 -----

22

3. Number of voters with blurred,

smudged or faint thumbmarks -----

3,684

With regard to the blurred, smudged or faint thumbmarks, the revised report explained, the Questioned Documents experts of the NBI detailed with the Comelec instead made a comparison of the signatures appearing on the registration record and voting record. The results of the examination are:

1. Number of signatures found

positive (signed by the same

person) - - - - -

217,

2. Number of signatures found

negative (not signed by the

same person) - - - - -

955,

3. Number of signatures wherein

the examiners reached and made

no opinion - - - - -

2,506.

On March 12, 1971 the Comelec issued Resolution RR-892 wherein, among others, it (1) declared, by unanimous vote, the returns from the 42 precincts of Karomatan as "spurious and/or manufactured;" (2) ordered, by unanimous vote, the exclusion from the canvass for the election of delegates for Lanao del Norte the aforesaid returns; and (3) by unanimous vote, held as unnecessary any further hearing on the petition relating to the disputed returns from Pantao-Ragat, Matungao, Munai, Tangcal, Magsaysay, Nunungan, Kapatagan, and Salvador, "it appearing that the results of the election would no longer be affected by questioned returns from said municipalities after the rejection of the returns from the 42 precincts of Karomatan," and directed the board of canvasser to include the returns from the said municipalities' in the canvass.

The Comelec found that

"in the 42 precincts of Karomatan, there were 9,419 registered voters; and that 9,557 had actually voted, or that 138 votes were in excess of the number of registered voters. Of these 9,557 who voted, only 239 had been established to have actually voted among the registered voters in all the 42 precincts; that 6,147 of the registered voters had been voted for by substitute voters, while an additional 673 persons who were not registered in any of the 42 precincts were able to vote without using the name of any of the registered voters. 2,498 of those who voted could not be determined whether they were registered voters or persons who voted in substitution of the registered voters."

Continuing, the Comelec observed that

"(I)n all the 42 precincts, many of the registered voters have been voted for by persons other than the registered

voters; in several precincts, several groups of thumbprints and signatures were made by one person; in majority cases, none or only one each thumbprint or signature appears to belong to a registered voter in the precinct but those identified as registered voters who voted in the precincts were probably those who were able to vote before the substitute voters had voted. A very high percentage of voting could be noted in these 42 precincts, there having been 100% voting in 10 pre-cincts, and with more than 100% in 7 precincts where there is an excess of votes over the registered voters. There was also an excess of votes in the whole town by 138 votes over the number of registered voters."

Anent the testimony of the chairmen of the boards of inspectors relating to the "free, honest, and orderly" elections in their respective precincts and the joint affidavits of the members of the afore-said boards attesting to the orderliness and peacefulness of the elections in the precincts wherein they served, the Comelec stated that the findings of its Fingerprint Identification Division and of the NBI handwriting experts conclusively belie the statements of the afore-mentioned members of the boards of inspectors of Karomatan. Rejecting the veracity of their statements, the Comelec opined that the members of the boards of inspectors were

"co-conspirators or hostages of the perpetrators of a deeply rooted practice spawned by the political caciquism of Karomatan, unwilling to tell the truth either because they would thereby be admitting their guilty participation or exposing themselves and their families to reprisals."

In rejecting the election returns from the 42 precincts of Karomatan, the Comelec stated:

"An election return is a report prepared and certified as true and correct by the members of the board of election inspectors of the election in their respective precincts, showing how the votes had been read, counted and tallied by the board and the number of votes received by candidates. But an election return presupposes that there is a bona fide, not a sham election, conducted in the precinct where only the registered voters had voted. But if the election is sham, how can the board of inspectors make a report on the presumptive result of the election in their respective precincts? How can said returns be accorded any prima facie value? x x x."

"What the board of inspectors of Karomatan should have done was to certify that there was no voting in their precinct since the registered voters did not vote but somebody else voted in their names. When instead of doing this they prepared the returns and certified to a falsehood, the returns prepared by them must be considered spurious, false or manufactured returns and in fact is no return at all."

As to the question of whether or not to hold a special election in Karomatan, two members of the Comelec voted down the calling of such a special election and directed the completion of the canvass on the basis of the valid returns from the rest of the precincts of Lanao del Norte, and the proclamation, upon authority of Antonio, Jr. vs. Comelec, et al. (32 SCRA 319), of the third winning candidate. The third Comelec member held the view that the finding by the Comelec that the registered voters in the 42 precincts of Karomatan had not voted amounts to a finding of failure of election in the said 42 pre-cincts. He opined that pursuant to section 17 (e) of Republic Act 6132, the situation necessarily called for the holding of a special election in Karomatan.

Thus, Usman, on March 22, 1971, filed the present petition for review,[2] (1) challenging the jurisdiction of the Comelec in resolving the issue relating to the genuineness and authenticity of the disputed election returns, and in inquiring into the regularity or irregularity of the thumbmarks and signatures of the voters who voted; (2) questioning the regularity of the proceedings adopted by the Comelec in relation to the exercise of its jurisdiction; and (3) assailing the probative value of the findings made regarding the signatures and thumbmarks of the voters who voted in the 42 precincts of Karomatan. Usman prayed for (1) the issuance of a writ of preliminary injunction restraining the Comelec from enforcing its resolution dated March 12, 1971 and stopping the proclamation of the winning candidates tentatively set on March 25, 1971; (2) the setting aside of the Comelec resolution dated March 12, 1971 and the inclusion of the results from the 42 pre-cincts of Karomatan in the canvass of the election

returns and his proclamation as the winning candidate; and (3) in case this Court sustains the aforesaid Comelec resolution the calling of a special election in all the 42 precincts of Karomatan, pursuant to section 17 (e)[3] of Republic Act 6132.

On March 23, 1971, this Court issued a temporary restraining order enjoining the Comelec from enforcing its Resolution dated March 12, 1971 and from proceeding with the proclamation of the winning candidate temporarily scheduled on March 25, 1971.

The Comelec filed its answer on April 6, 1971; Quibranza his on April 13, 1971. Both the Comelec and Quibranza vehemently refute Usman's claim of want of jurisdiction on the part of the Comelec to inquire into the regularity or irregularity of the thumbmarks and signatures of the voters who voted relative to its inquiry into the genuineness and authenticity of the election returns from the 42 precincts of Karomatan. Regarding the regularity of the proceedings questioned by Usman, the Comelec and Quibranza maintain that the action filed by the former - a special civil action for certiorari - excludes any consideration of procedural errors.

After hearing of the case on April 21, 1971, this Court required the parties to submit their memoranda in amplification of their arguments. Quibranza filed his on May 3, 1971; Usman his on May 5, 1971.

In his memorandum, Usman repeats his arguments in support of his stand that the Comelec lacks jurisdiction to inquire into the regularity or irregularity of the thumbmarks and signatures of the voters who voted and claims denial of due process, alleging that the Comelec gave him no opportunity

"to engage the services of a handwriting expert and a fingerprint expert to examine the thumbmarks and signatures of the registered voters who voted in all the 42 precincts of Karomatan, Lanao del Norte,"

and that the said Comelec refused to divulge

"the qualification, competency, educational back ground and training, if any, of all the members of the six (6) teams who allegedly conducted the so called expert examination of thumbmarks."

Then, this Court, in a resolution dated May 17, 1971, set aside the Comelec resolution of March 12, 1971 and remanded the case to the Comelec to enable it to reopen the proceedings

"for the purpose of giving petitioner Usman a reasonable period of thirty (30) days from receipt of its order implementing this decision, within which to summarily present whatever competent evidence he may have, expert or otherwise, tending either to show the lack of qualifications of the Comelec thumb-print or, handwriting experts or to rebut their findings, on the basis of which the Comelec has ruled that the returns from the 42 precincts in question of Karomatan, Lanao del Norte 'are spurious and/or manufactured returns and as such should be excluded from the can-vass for the election of delegates for the lone congressional district of Lanao del Norte'."

The majority of this Court stated in the resolution that the Comelec failed to fully recognize and respect Usman's right to due process when

"(a) petitioner Usman was not allowed by the Comelec, without sufficient reasons, to present any evidence to rebut the findings of its experts regarding the thumbprints and signatures in the C.E. Forms 1 and their corresponding C.E. Forms 39 submitted to them to the effect that out of the total of 9,557 votes cast in the said 42 precincts in Karomatan, only 239 had been established to have been cast by duly registered voters, 673 had been cast by non-registered persons, 6,147 had been cast by substitute voters and 2,498 had been cast by persons whose thumbprints and signatures are not definitely identifiable; (b) the qualifications of almost all of said experts were not duly disclosed, much less proven during the hearing, thus depriving the petitioner, in spite of his request, of the opportunity to properly scrutinize them; and (c) only the chief of said experts, Jose M. Abrigo, who had not personally examined and studied all the thumbprints and signatures in question, was

called to testify, albeit aided by his assistants, and his testimony on cross-examination appears to have been unduly limited by the Comelec; not to mention the fact that the several re-ports of the experts of the Comelec, and of the National Bureau of Investigation, who, with the exception of only Eduardo V. Maniwang, were not called to testify, are not clearly consistent with each other."

Pursuant to the aforestated resolution, the Comelec reopened the proceedings and set the case for hearing on June 29, 1971.

At the resumed hearing, Usman, asked to present his evidence, informed the Comelec of his desire to call to the witness stand the Comelec fingerprint examiners who personally studied the precinct books of voters and CE forms 39 of Karomatan. So the Comelec, on July 9, 10, 17 and 20, 1971, called the 18 fingerprint examiners to the witness stand and Usman questioned them as to their qualifications. Usman also informed the Comelec of his intention to present one finger-print and handwriting expert after he finished with his interrogation of all the Comelec fingerprint examiners. However, after the questioning of the Comelec fingerprint examiners, Usman notified the Comelec that instead of presenting any expert witness, he intended to submit affidavits of voters of Karomatan.

On July 9, 1971 Usman also petitioned the Comelec to send a team of 21 Comelec lawyers to Karomatan to take the affidavits of the registered voters, members of the boards of election inspectors, government officials and employees, and religious and civic leaders of the said municipality. On July 14, 1971 Quibranza opposed the aforementioned petition, stating that the move was "another maneuver to prolong and delay the case." Subsequently, on July 17, 1971, the Comelec resolved to allow Usman to secure the affidavits subject to the following conditions:

"A. The affidavits may be sworn to before any Notary Public or Municipal Judge;

"B. The affidavits shall not only be sworn to by affiants but shall also contain:

- 1) Three (3) facsimile signatures of the affiants;
- 2) Fingerprints of the two (2) hands of the affiant which must be legible, otherwise, the affidavit shall not be considered; and
- 3) The affidavit shall contain the precinct number where the affiant voted in the last election or the precinct number where the affiant served in the last election in case of members of the Board of Inspectors;

"C. Candidate Mastura Usman shall have until July 30, 1971 to submit to the Commission such affidavits; and

"D. Upon the suggestion of Counsel Pedro Quadra, the other candidates for the position of delegate in the province of Lanao del Norte shall be notified of the date and time of the taking of the said affidavits, who may be present personally or thru their authorized representatives."

On July 30, 1971, the day set for the presentation of the affidavits, the counsel for Usman informed the Comelec that he had not yet received the said affidavits, and asked for an extension up to August 9, 1971 to submit them. He also manifested that the extension would be the last and that he would rest his case on the basis of the affidavits secured on August 9, 1971.

On August 9, 1971, the counsel for Usman again asked for a resetting of the hearing for August 13, 1971 on the ground of non-receipt of the affidavits from Karomatan. Over the objections of the counsel for Quibranza, the Comelec reset the hearing to August 13, 1971.

At the hearing at 10 o'clock in the morning of August 13, 1971, Usman's counsel asked for a recess as he expected the arrival of the affidavits that morning. Thus the Comelec, to give the counsel for Usman ample time to sort out

the affidavits for an orderly presentation, re-scheduled the case for hearing the following Monday, August 16, 1971.

Came Monday morning and the counsel for Usman failed to appear. Instead, he sent his secretary to deliver the affidavits, together with a motion for postponement and a petition asking for more time within which to gather additional affidavits. Usman's counsel, in asking for postponement, alleged as cause his appearance before the Criminal Circuit Court in Baguio City in connection with the hearing of the criminal case against Vincent Crisologo. The Comelec, before acting on the motion for postponement, called the secretary to the witness stand to find out the reason for the non-appearance of Usman's counsel despite the fact that the Comelec had reset the case to August 16, 1971 with the counsel's prior knowledge and for his convenience. The Comelec found out that Usman's counsel gave his secretary instructions to bring the affidavits to the Comelec only the preceding night and that two other lawyers, belonging to the said counsel's law office, were also handling the Crisologo case in Baguio City. So the Comelec denied the motion for postponement.

Anent the affidavits, the counsel for Quibranza objected to their admission in evidence on the ground of non-compliance with the conditions laid down by the Comelec. The Comelec sustained the objection of Quibranza's counsel and denied the admission of the affidavits. Nonetheless, the Comelec ordered the inclusion of the affidavits as part of the records of the case. Quibranza's counsel not having any rebuttal evidence to present, the Comelec considered the case submitted for resolution.

The Comelec, in its resolution of August 21, 1971, found no basis to reconsider its findings based on the reports of the finger-print and handwriting experts, and resolved to confirm its previous ruling declaring the returns from the 42 precincts of Karomatan as "spurious and manufactured" returns and ordering their exclusion from the canvass. On the question of whether or not to call a special election, the Comelec chairman maintained his original view relating to the completion of the canvass on the basis of the valid returns from the rest of the precincts of the lone district of Lanao del Norte and the proclamation of the third winning candidate on the basis of the said canvass. The other member maintained his original view on the need of holding a special election in the 42 precincts of Karomatan. And because of the retirement of the third commissioner, the Comelec found itself in a deadlock on the issue of whether to call a special election in Karomatan or to proclaim the third winning candidate on the basis of the canvass of all the valid returns from the remaining precincts of Lanao del Norte.

Upon the voluminous record of the case at bar,^[4] the mass of accumulated facts graphically narrated by the parties, and the various arguments advanced, the issue tendered for resolution, as we see it, relates fundamentally to the authority of the Comelec to declare the election returns from the 42 precincts of Karomatan as "spurious and/or manufactured" and to exclude them from the canvass.

Usman's main argument hinges entirely on what he views as the well-circumscribed jurisdiction of the Comelec in pre-proclamation controversies. He argues that the Comelec, in such proceedings - summary in nature and character - has jurisdiction only to determine questions relating to the qualification of the members of the board of canvassers, the completeness or incompleteness of a canvass, and the integrity and authenticity of election returns.

The Comelec, in its inquiry, Usman states, should concern itself only with the integrity and authenticity of the election returns, and not their veracity - that is, whether the said returns are genuine, whether they are forged and spurious, whether they were signed by the proper officers, and whether they were signed under duress and/or intimidation by the election inspectors. The Comelec should decide the question of the integrity and authenticity of the election returns solely on the basis of the face of the said returns since it has no legal authority to receive evidence aliunde in that regard.

Usman further alleges that the questions of the validity of the ballots cast in support of the election returns and the

regularity of the voting, have no relevance whatsoever to the integrity and authenticity of the election returns. The power to reject and set aside the said election returns on the ground of the invalidity of the ballots cast in support thereof pertains solely to the Constitutional Convention.

Therefore, Usman points out, the Comelec has no authority at all to receive evidence aliunde to determine the regularity or irregularity of the voting in the 42 precincts of Karomatan or to ascertain the genuine-ness or falsity of the thumbmarks and signatures of the registered voters who voted, for the purpose of deciding the question of the integrity and authenticity of the election returns. Usman attributes the Comelec's lack of jurisdiction to two factors - the first, the summary nature and character of a pre-proclamation controversy which requires the termination of the proceedings with the least possible delay; the second, the limited composition and restricted organization of the Comelec which render it incapable of exercising the authority questioned.

Quibranza, for his part, argues that the Comelec has authority to admit evidence aliunde in a controversy arising in the course of canvass proceedings. True, he states, regarding election returns objected to on the ground of defects patent on the face of the said returns - like tampered returns or returns with erasures and alterations - the Comelec has no jurisdiction to go beyond the face of the election returns. Nevertheless, regarding election returns objected to on some grounds not discernible from the face of the said returns - like coerced, gunpoint, spurious or manufactured returns - the Comelec has authority to admit evidence aliunde to rebut the value of the returns as prima facie evidence of the count of votes in the precincts involved.

Similarly, Quibranza asserts, the Comelec has jurisdiction to receive evidence aliunde that would show that "registered voters did not in fact vote, but that other persons voted for them." In such an event where a great majority of substitutes voted in lieu of those duly registered as voters, the election returns drawn up on the basis of the votes cast by the substitute voters should be considered as spurious returns and should consequently not be accorded prima facie value. Certainly, there could be no genuine and regular returns certifying to the results of an election that did not, in law, take place.

Quibranza finally avers that the Comelec acted within its authority when it ordered - for the purpose of determining whether or not validly registered voters actually voted in the precincts in dispute - the examination and analysis of the standard thumbmarks and signatures appearing on the voters' registration records and their comparison with those found on the voting records and/or list of voters who voted. In doing so, he adds, the Comelec concerned itself only with the conduct of the elections in Karomatan in consonance with its constitutional duty to enforce and administer "all laws relative to the conduct of elections" and to insure "free, orderly, and honest elections."

Indeed, the case at bar directly confronts this Court with a problem fraught, not with fancied serious effects, but with possible far-reaching consequences attendant to the flood of pre-proclamation controversies that could be brought before the Comelec. Mindful of the vital role of the Comelec of insuring free, orderly and honest elections pursuant to the mandates of the Constitution and the Election Code, on the one hand, and of the diverse - and oftentimes, novel - anomalous devices and schemes aimed at subverting the popular will ingeniously conceived and practised by unscrupulous politicians and their followers, on the Other hand, we approach and view the problem with utmost concern and circumspection.

The broad power of the Comelec, conferred upon it by the Constitution, to enforce and administer "all laws relative to the conduct of elections" and to decide all administrative questions affecting elections "for the purpose of insuring free, orderly and honest elections," has been the key in the resolution of many pre-proclamation controversies involving the integrity and authenticity of election returns. Invoking the aforesaid power of the Comelec, we justified the action and upheld the authority of the Comelec to order the exclusion of "obviously

manufactured" returns,[5] or tampered returns,[6] or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity,[7] emphasizing the duty of the Comelec to see to the use and inclusion in the canvass of only genuine and regular election returns for determining the true result of the elections.

Several circumstances, defying exact description and dependent mainly on the factual milieu of the particular controversy, have the effect of destroying the integrity and authenticity of disputed election returns and of avoiding their prima facie value and character. If satisfactorily proven, although in a summary proceeding, such circumstances as alleged by the affected or interested parties, stamp the election re-turns with the indelible mark of falsity and irregularity, and, consequently, of unreliability, and justify their exclusion from the canvass.

Remarkably, Quibranza, in the petitions he filed (together with Abalos, Bosico, Buendia, Legaspi and Pacasum) with the Comelec, alleged that no actual voting took place in the precincts in question. Determined to pursue its quest for the truth, the Comelec summoned the 42 chairmen of the boards of inspectors of Karomatan to testify in Manila. And because only a number of the chairmen arrived to give their versions of what supposedly happened in their respective precincts, the Comelec deemed it proper to resort to the more convincing mode of discovery. It thus ordered the production in Manila of the precinct books of voters and CE forms 39 of Karomatan. Then it directed the chief of its Fingerprint Identification Division to conduct examination, comparison and analysis of the fingerprints appearing on the voters' registration records and on the voting records and/or lists of voters who voted. With regard to those voters with blurred, smudged or faint fingerprints, the Comelec referred their records to the Questioned Documents experts of the NBI for examination and analysis of their signatures.

In the performance of its duty to guard against the use and inclusion of returns prepared under circumstances showing their falsity in the canvass of election results, the Comelec should not be hampered in the choice of effective means and methods to fully ascertain the genuineness and regularity of disputed election returns. To establish the indubitable existence of any of such circumstances - necessarily not evident from an examination of the election returns themselves - demands recourse to proof independent of the election returns or to evidence aliunde.

At this juncture, we find it necessary to mention that the results of the examination and analysis of the voters' fingerprints and signatures indicating that many of the registered voters have been voted for by persons not even registered in the 42 precincts of Karomatan, constituted not the sole factor which prompted the Comelec to declare the 42 election returns as "spurious and/ or manufactured." A totality of circumstances - not merely of persuasive but of compelling character - led the Comelec to consider and conclude that the aforesaid election returns are "spurious and/or manufactured" and therefore unworthy of inclusion in the canvass of the election results. The Comelec heavily relied on the following noteworthy circumstances:

1. The very high percentage of voting in the 42 precincts of Karomatan - with 100% voting in 10 precincts, and with more than 100% voting in 7 precincts where the number of votes exceeded the number of registered voters - in the whole town of Karomatan, there appeared an excess of 138 votes over the number of registered voters;
2. The day before the elections, the members of the boards of inspectors of Karomatan were summoned to the office of the mayor where they were "asked" to "cooperate" by making some candidates win in their respective precincts;
3. The members of the boards of inspectors of Karomatan, either out of fear due to terrorism or in connivance with those responsible for the election anomalies, allowed voting by persons other than those registered as voters in their respective precincts;

4. The other irregularities - among them, multiple registration, blurred fingerprints making identification impossible, and ID pictures attached to CE forms 1 showing the registered voters as minors - appearing in the precinct books of voters of Karomatan making possible the perpetration of the election anomalies; and

5. The notorious election record of Karomatan in previous elections since 1953 indicating a phenomenal increase in the voting population.[8] The record shows:

Year :

No. of Registered Voters :

No. of Precincts

1953

1,028

4

1955

1,655

4

1957

1,935

5

1959

2,929

5

1961

3,447

8

1963

5,756

13

1965

8,446

24

1967

8,000

18

1969

9,061

42

1970

9,945

42

We fully agree with the Comelec that the totality of all the foregoing circumstances, taken together with the findings of the Fingerprint Identification Division of the Comelec and of the Questioned Documents experts of the NBI, more than suffices to completely overcome the prima facie value of the 42 election returns from Karomatan, strongly belying their integrity and authenticity.[9] 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.

The only question that remains relates to Usman's plea for the holding of a special election in Karomatan. With section 17 (e) of Republic Act 6132 in mind, Usman considers it mandatory on the part of the Comelec to call for a special election in the precincts concerned if it found that

"no voting has been held or that voting has been suspended before the hour fixed by law for the closing of the voting in any precinct or precincts because of force majeure, violence or terrorism, and the votes not cast therein are sufficient to affect the results of the election."

Quibranza counters that the aforesaid provision of law leaves to the discretion of the Comelec the calling of a special election. In addition, he submits that the said provision finds no application in the case at bar because of the non-fulfillment of one of the conditions laid down by section 17 (e), which condition is that the "votes not cast therein are sufficient to affect the results of the election." Usman, according to Quibranza, adduced no evidence whatsoever to show that the "votes not cast" in Karomatan would alter the results of the election.

In resolving this question, as previously stated, the Comelec commissioners, per the resolution dated August 21, 1971, failed to reach a consensus. One commissioner believed that the canvass should be completed on the basis of the valid returns from, the other precincts of Lanao del Norte and that the proclamation of the third winning candidate on the basis of the said canvass should logically follow; the other commissioner maintained his original view that there is need of a special election in Karomatan.

A reading of section 17 (e) of Republic Act 6132 makes it apparent that Congress has delegated to the Comelec the power to call for a special election - a power essentially legislative in nature, being merely an incident to or an extension or modality of the power to fix the date of the elections.[10] However, in the proper exercise of the delegated power, Congress saw fit to require the Comelec to ascertain that (1) no voting has been held in any precinct or precincts because of force majeure, violence or terrorism, and (2) that the votes not cast therein suffice, to affect the results of the elections. The language of the provision clearly requires the concurrence of the two circumstances to justify the calling of a special election.

The Comelec concedes that what transpired in Karomatan constitutes "not merely a simple case of irregularity in the voting but a case of no voting or no election at all." However, the Comelec attributes this to "massive fraud"

rather than to force majeure, violence or terrorism - the three causes explicitly enumerated by section 17 (e). Unlike section 17 (d) which empowers the Comelec to postpone the election in any political division or subdivision whenever it finds that the holding of a free, orderly and honest election therein is rendered impossible by reason of fraud, violence, coercion, terrorism, or any other serious cause or causes, section 17 (e) excludes the situation where no voting has been held because of fraud. Furthermore, doubt exists whether or not the irregularities committed in Karomatan properly partake of violence or terrorism. This being the case, we find that the first circumstance is not attendant.

As to the second circumstance, therefore, we find it unnecessary to indulge in surmises.[11]

ACCORDINGLY, (1) the petition is dismissed; (2) the resolution of the Commission on Elections dated August 21, 1971 is affirmed; and (3) the restraining order dated March 23, 1971 issued by this Court is lifted. 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 Lanao del Norte, excluding therefrom all the election returns from the 42 precincts of Karomatan, and thereafter proclaim accordingly the winning candidate for the third Constitutional Convention seat allotted to the said province. This judgment is hereby declared immediately executory. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur. Zaldivar, J., did not take part.

[1] AN ACT IMPLEMENTING RESOLUTION OF BOTH HOUSES NUMBERED TWO AS AMENDED BY RESOLUTION OF BOTH HOUSES NUMBERED FOUR OF THE CONGRESS OF THE PHILIPPINES CALLING FOR A CONSTITUTIONAL CONVENTION, PROVIDING FOR PROPORTIONAL REPRESENTATION THEREIN AND OTHER DETAILS RELATING TO THE ELECTION OF DELEGATES TO AND THE HOLDING OF THE CONSTITUTIONAL CONVENTION, REPEALING FOR THE PURPOSE REPUBLIC ACT FOUR THOUSAND NINE HUNDRED FOURTEEN, AND FOR OTHER PURPOSES (otherwise known as the 1971 Constitutional Convention Act).

[2] Considered by this Court as a special civil action per Resolution dated March 23, 1971.

[3] Section 17 (e) states:

"(e) Whenever the Commission determines, after notice and hearing, that no voting has been held or that voting has been suspended before the hour fixed by law for the closing of the voting in any precinct or precincts because of force majeure, violence or terrorism, and the votes not cast therein are sufficient to affect the results of the election, the Commission may call for the holding or continuation of the election in the precinct or precincts concerned. Pending such call, no candidate whose election may be affected by the holding or continuation of the election, shall be proclaimed elected."

[4] A consolidation of G. R. Nos. L-33325 and L-34043.

[5] Lagumbay vs. Climaco and Comelec, 16 SCRA 175.

[6] Cauton vs. Comelec and Sanidad, 19 SCRA 911.

[7] Pacis vs. Comelec, 25 SCRA 391; Antonio, Jr. vs. Comelec, et al., 32 SCRA 319.

[8] Parenthetically, the Comelec, considering circumstances 3 and 4, motu proprio initiated proceedings for the annulment of the precinct books of voters of Karomatan pursuant to its authority to annul precinct books of voters

not prepared in accordance with the provisions of Republic Act 3588, as amended, or prepared with attendant serious irregularities.

[9] A phase of the controversy at bar, although not constituting a determinant factor, deserves passing mention. The intervening period of about seven months from November 10, 1970 (the day of the election of delegates to the Constitutional Convention) to June 1, 1971 (the day of the inaugural opening of the Convention itself) provided the Comelec with sufficient time to fully inquire into the irregularities committed with connection with the conduct of the said elections. This available time, in addition to the Comelec's "fact-finding facilities, its contact with political strategists, and its knowledge derived from actual experience in dealing with political controversies" (Sumulong vs. Comelec, 73 Phil. 288), enabled it to make a meticulous and extensive study of the existence, nature and causes of the irregularities which attended the elections.

[10] Ututalum vs. Comelec and Anni, 15 SCRA 465.

[11] Prescinding from the matter of the exclusion from the canvass of all the 42 election returns from Karomatan, resulting in the non-inclusion of the 239 votes found by the Comelec to have been actually cast by registered voters in their respective precincts, it is to be observed that crediting all the 239 votes in favor of Usman would not suffice to alter the results. Usman would have a resulting total of only 14,450 votes against Quibranza's 17,739.

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