

ALIM BALINDONG, PETITIONER, VS. COMMISSION ON ELECTIONS AND USO DAN AGUAM, RESPONDENTS.

G.R. No. L-29610. March 28, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Two of the contenders for the mayorship of Ganassi, Lanao del Sur, in separate petitions, direct attention for review:

(a) Alim Balindong, on original petition for certiorari and mandamus with preliminary mandatory injunction, in L-29610, of that portion of the decision of the Commission on Elections (Comelec) in Election Case RR-612, declaring invalid the election return copy for the ballot box in Precinct 8, Ganassi, Lanao del Sur, and directing the board of election inspectors of Precinct 8 to file a petition for correction of the votes cast for said Alim Balindong; and

(b) Uso Dan Aguam, on appeal by certiorari, in L-29617, of that portion of the same decision annulling the canvass and proclamation of said Uso Dan Aguam as Mayor-elect of Ganassi, made by the municipal canvassing board.

This Court issued a restraining order against the Comelec and candidate Uso Dan Aguam.

The petitions, as they require a look into a common factual background, are to be resolved together.

During the 1967 general elections, the following, with their respective party affiliations, were amongst the mayoralty candi-dates for Ganassi: Daud Marohombsar official candidate of the Nacionalista Party; Uso Dan Aguam - Liberal Party official candidate; and Alim Balindong - Independent Liberal Party.

Uso Dan Aguam was proclaimed Mayor-elect of Ganassi by the municipal board of canvassers on November 20, 1967.

On November 21, 1967, Alim Balindong, apparently unaware of the proclamation of Uso Dan Aguam, filed suit in the Court of First instance of Lanao del Sur for annulment of the elections in Precincts 5 and 8 with a prayer for preliminary injunction to restrain the canvass and proclamation of the municipal officials-elect. The court declared itself without jurisdiction to take cog-nizance of the action.

On December 30, 1967, Uso Dan Aguam took his oath of office and started to act as Mayor of Ganassi.

"It was on January 6, 1968 when respondent Alim Balindong went to Comelec [Case RR-612, Commission on Elections] with a petition for the annulment of the November 20, 1967 canvass and proclamation, and for the opening of the ballot box in Precinct 8. The November 20 canvass and proclamation were there assailed by respondent Alim Balindong from different directions. Averment was there made that the board of canvassers was illegally consti-tuted; that fraud and irregularities, which were made in connivance between the municipal treasurer and petitioner Uso Dan Aguam, attended the canvassing; that no notice thereof was given to said

respondent and other candidates; that the canvassing and proclamation were kept under wraps; that the election return for Precinct 8 was tampered with by making it appear that Alim Balindong obtained 8 votes in said precinct when in fact he obtained 13 votes; and that as a result of such tampering, petitioner Uso Dan Aguam herein was made to win against respondent Alim Balindong by a margin of 3 votes.

The foregoing petition was met by petitioner Uso Dan Aguam with an answer and a motion to dismiss. After making certain denials and admissions, petitioner herein raised in Comelec the issues, amongst others, of jurisdiction and time-bar."^[1]

On April 27, 1968, Comelec, in a minute resolution, upheld its power to inquire into the alleged irregularities and open the ballot box for Precinct 8.

The issue was elevated by Uso Dan Aguam to this Court in L-28955. This Court, on May 28, 1968, affirmed the power of Comelec to "inquire into the nullity of the November 20, 1967 proclamation, and consequently to inquire into the tampering of the election return in Precinct 8."

Comelec investigation of Case RR-612 was resumed. The facts there elicited and recited below, roundup the issues.

On the alleged irregularities attending the canvass and the illegal constitution of the canvassing board, the following facts are edifying:

Shortly before the proclamation of Uso Dan Aguam on November 20, 1967, the municipal treasurer, upon instructions of Comelec, appointed substitute members to the canvassing board of Ganassi. Those appointed, admittedly recommendees of the local chapter of the Liberal Party, were the following:

1. Zamman Abbas vice Mayor Daud Marohombsar;
2. Rubel Amerol vice Councilor Guinar Marohomsalic;
3. Mustapha Aguam vice Councilor Mama Rote (Dilna);
4. Nor Marohombsar vice Councilor Murad Marohombsar;
5. Macapontong (Marohomsalic) Macalipot vice Councilor Tocod Mangandag ;
6. Tambalilid Bongaros vice Councilor Garogadi Cabogatan; and
7. Lukus (Lumindang) Marohombsar vice Councilor Ating Tangcolo.

Amongst the vacancies filled were those of Mayor Vaud Marohombsar and Councilors Tocod Mangandag and Garogadi Cabogatan, who were all elected to their respective positions in 1963 as Liberal Party candidates but who ran for reelection in 1967 under the Nacionalista Party.

Comelec's instruction, per Res. No. RR-544 promulgated on September 11, 1967, was that municipal treasurers must notify all candidates and members of the canvassing board, amongst others, of the date, time and place of the meeting of said board. But the municipal treasurer of Ganassi issued written notices to the mayoralty candidates that the canvassing was "temporarily set" at the PC Barracks in Pindolonan, Ganassi, at 9:00 a.m. on November 20, 1967 "as soon as the said Board is duly constituted." The notices were served by reelectionist candidate Murad Marohombsar and substitute member of the Ganassi canvassing board Lukus Marohombsar.

To be noted is that the canvassing did not actually take place in Pindolonan, Ganassi. What, actually took place was, as stated by Comelec in its decision, as follows:

"On the scheduled time and date of canvassing, no candidate appeared, except Candidate Murad Maro-hombsar, the one who served the notices. Following the advise of Lt. Servando Albarico, an Army Officer detailed in Ganassi to maintain peace and order, and upon approval by the Commission Provincial Election Supervisor, Atty. Mamasapunod Aguam, the canvassing in Ganassi was transferred to Camp Keithly, Marawi City. The new place of canvass is around 39 Kms. away and takes about 2 to 3 hours ride from Ganassi.

Municipal Treasurer Buruan admitted that he did not send any notice to the candidates as regards the transfer of the place of canvass to Marawi City, because Lt. Albarico allegedly volunteered to notify the parties concerned. For this matter, a soldier was allegedly sent to give the necessary notices of transfer. The same municipal treasurer, however, admitted that he did not verify whether the parties concerned were duly notified of said transfer to the new place of canvass."^[2]

Murad Marohombsar testified^[3] that the municipal treasurer waited in his house, not in the PC Barracks in Pindolonan where canvassing was "temporarily set", as the notice stated. He further testified that except for Vice-Mayor Mohamad Map, the members of the canvassing board converged in the house of the municipal treasurer and it was in said house that Lt. Albarico appeared and suggested that the meeting be transferred to Marawi City. Accord-ing to Murad, the party headed by the municipal treasurer left the latter's house for Marawi City at around 11:00 a.m., passing only briefly by the municipal building to get the things needed for the canvass.

Thus, the actual canvass proceeded in the afternoon of the same day - in Marawi City. The precinct-by-precinct votes the board credited the two candidates follow:

For Mayor

Precinct Numbers

Total

12

2

3

4

5

6

7

8

9

10

11

Uso Dan Aguam

58

95

38

50

125

61

50

89

5

4

0

575

Alim Balindong

39

23

5

130

21

30

25

8

209

51

31

572

At 5:00 p.m. Uso Lan Aguam was proclaimed Mayor-elect of Ganassi with 575 votes. His closest rival, Alim Balindong, obtained 572 votes.

Looming large in the resolution of these cases is the fact that the original entries in the return for Precinct 8 would show that Uso Dan Aguam received "89" votes and Alim Balindong "13" votes. If the votes were to be computed on this basis, Uso Dan Aguam would have obtained 575 votes to Balindong's 577 votes. In which case, Alim Balindong should have been proclaimed Mayor-elect, with a 2-vote margin.

But the board of canvassers used in the canvass the changed entries - as to Balindong's votes - in the election return from Pre-cinct 8. This altered election return shows that the word "Thirteen" and the figure "13"

corresponding to the votes of Alim Balindong were crossed out and, instead, the word "Eight" and figure "8" were placed. Thus it is, that Alim Balindong's votes were effectively reduced from 577 to 572. This spells the difference which accounts for the proclamation of Uso Dan Aguam as Mayor-elect with a majority of 3 votes.

Those who actually composed the 8-member canvassing board of Ganassi that convened in Marawi City for the canvass and proclamation as shown by the certificate of canvass and proclamation^[4] were the following members:

1. Mustapha Aguam, Chairman;
2. Raubel Amerol, Member;
3. Tambalilid Bongaros, Member;
4. Lukus (Lumindang) Marohombsar, Member;
5. Nor Marohombsar, Member,
6. Zamman Abbas, Member;
7. Macaponton (Marohomsalic) Macalipot, Member; and
8. Kiram L. Buruan, Treasurer/Secretary.

The participation of Ganassi municipal treasurer Kiram L. Buruan in the canvass and proclamation is explained by Comelec, thus:

"Vice-Mayor Mohamad Map, a member of the canvassing board who was not a candidate in the 1967 elections, was not also notified of the transfer of canvass to Marawi City. His absence in the session of November 20, 1967 as shown by the minutes of the canvassing, further confirms the absence of proper notice of said transfer. By signing the proclamation paper (CE Form No. 85) and the canvassing sheet (CE Form No. 87), Municipal Treasurer Buruan obviously acted in place of said absent Vice Mayor to complete its membership to eight."^[5]

Comelec also proceeded to investigate the charges of falsification of the election return from Precinct 8. That investigation revealed the condition of the election return copies. Says the decision under review:

"Presented to the Commission were the three official copies of the election return for Precinct 8, namely, the copy for the Commission on Elections, the copy for the municipal treasurer and the copy for the ballot box. The latter was retrieved by the Commission from the ballot box of Precinct 8 in the presence of counsels for both parties. The Commission copy shows the altered entry of votes for Alim Balindong from 13 to 8. The municipal treasurer's copy shows similar changes of Balindong's votes from 13 to 8. The ballot box copy shows that the entries for all offices both in the names of the Candidates and the votes received in words and figures, are original entries written in ink without alterations and the votes written for Balindong is 'thirteen' in word and '13' in figure, but said return was signed only by the LP inspector. The provincial treasurer's copy was not presented to the Commission, but the petitioner presented the minutes of the canvassing by the Lanao del Sur Provincial Board of Canvassers on December 5, 1967, wherein manifestations, without any objection, were made that the entry of votes for Balindong in the Office of Mayor was also altered from 13 to 8 (P. 25, Exh. G-1 and 0-2)."^[6]

As to the ballot box copy, Comelec gave the following findings:

"The election return retrieved from the ballot box of Precinct B, Ganassi, contains original entries written in ink, instead of carbon impressions, as normally it should be. This is not a valid document for it bears only one signature, the original signature of the LP Inspector, and all the three members including said LP Inspector

who testified in this case disowned the preparation of said ballot box copy of the election return. The LP Inspector who admitted his signature therein testified that when he signed the same, the original entries in ink were not in the document."

Comelec, on September 24, 1968, came out with its disputed decision, the dispositive part of which is quoted in full as follows:

"WHEREFORE, the Commission hereby RESOLVES:

1. To annul the canvass and proclamation made by the respondent Municipal Board of Canvassers of Ganassi, Lanao del Sur, on November 20, 1967, because said Board was illegally constituted and for lack of notice of said proceedings to the candidates and a member of said canvassing Board;
2. To declare invalid and of no value the copy of the election return for the ballot box of Precinct 8, Ganassi, Lanao del Sur;
3. To declare that there is no valid entry of votes cast for petitioner Alim Balindong in the existing copies of the election return for Precinct 8, Ganassi, Lanao del Sur - the copy for the Commission on Elections, the copy for the Provincial Treasurer, and the copy for the Municipal Treasurer;
4. To direct the Board of inspectors of Precinct 8, Ganassi, Lanao del Sur, to file a petition with the Court of First Instance of Lanao del Sur for correction of the election return for said precinct, on the votes cast for Candidate Alim Balindong;
5. To direct the Municipal Treasurer of Ganassi, Lanao del Sur, as the authorized representative of the Commission on Elections, to reconstitute the Municipal Board of Canvassers of Ganassi, Lanao del Sur by appointing as substitute members thereof, the recommendees of the authorized representative of the Nacionalista Party in the municipality, to take the place of the disqualified members, namely: Daud Marohombsar, Tocod Mangandag, and Garogadi Cabogatan;
6. To suspend the recanvassing of the votes cast for the office of Mayor pending action on the election return of Precinct No. 8 to be taken under Par. 4 hereof;
7. To direct the Municipal Board of Canvassers of Ganassi, Lanao del Sur, as reconstituted, to recanvass all the votes cast for the municipal officials of Ganassi, Lanao del Sur, except for the Office of Mayor, using the Municipal Treasurer's copies of the election returns for all the eleven precincts of said municipality, and, thereafter, to proclaim, all the winning candidates for the elective offices of Ganassi, except for the Office of Mayor; and
8. To designate a lawyer of the Commission to supervise the recanvass of votes and proclamation of the officials-elect of Ganassi, Lanao del Sur, as directed in paragraph 7 hereof, which shall be made in Camp Keithley, Marawi City, on the date and time) to be fixed by said supervisor, who shall also carry out the other provisions of this decision."[7]

1. The validity of the November 20, 1967 canvass and proclamation of Uso Dan Aguam as Mayor-elect is the issue in L-29617. There surfaces a number of reasons for thumbing down said canvass and proclamation for being invalid.

The canvassing board of Ganassi was illegally constituted. Three substitute members thereof were recommended by the local chapter of the Liberal Party, and not by the local chapter of the Nacionalista Party to which the substituted members belonged at the time of their disqualification. This violates Section 167 of the Revised Election Code as clarified by the ruling in *Ibuna vs. Commission on Elections*.^[8] The *Ibuna* case explains that said Section 167 requires the substitute members of the municipal board of canvassers to be recommendees of the political party to which the substituted members belonged at the time of their disqualification.

While granting that Ibuna was promulgated after Comelec issued its instruction to the municipal treasurer of Ganassi to appoint as substitute members of the canvassing board, the recommendees of the party to which the disqualified members belonged at the time of their election in 1963, this fact does not remove the illegal taint from the appointments. Ibuna merely declared the true impact of the existing law in the Revised Election Code, viz:

"SEC. 167. Municipal board of canvassers.- (a) The municipal council shall constitute the municipal board of canvassers, excluding the members who are candidates and who shall be replaced by the Commission on Elections with registered voters of the same party."

At the time Comelec issued the directive to the municipal treasurer, the aforequoted was, as it continues to be, the existing law. The Comelec instruction is, therefore, contrary to law. The appointments made by the municipal treasurer in compliance with said instruction cannot fare any better. They, too, are illegal.

Giving added cause for invalidity of the canvass is the finding of Comelec that Vice-Mayor Mohamad Adap, a member of the canvassing board, and the candidates, were not notified of the transfer of the boards meeting to Marawi City. In spite of the protestations of Uso Dan Aguam in his petition that Vice-Mayor Mohamad Adap and the candidates were actually notified or had knowledge of the transfer of the meeting of the canvassing board to Marawi City, a credibility gap exists. The municipal treasurer did not verify whether the vice-mayor and the candidates were actually notified of the transfer to Marawi City by the PC soldiers.[9] Besides, no written notice of such transfer was issued. This contravenes Comelec's explicit instructions to municipal treasurers contained in Comelec's Resolution RR-544, promulgated September 11, 1967.

In, this case, a notice of the transfer to Marawi City is important. The first notice allegedly issued by the Municipal Treasurer on November 19, 1967 served to notify those concerned that the canvass was "temporarily set" at the PC Barracks in Pindolonan, Ganassi at 9:00 a.m. of November 20, 1967. There was nothing certain about the meeting in Pindolonan. The said notice of November 19 (for the meeting the next day) also conveyed, the idea that the board of canvassers had not, as of then, been constituted. Is it any wonder then that many of those notified did hesitate to go to the tentative meeting at the tentative place?

But even if such notice were actually served, the municipal treasurer himself did not wait at the PC Barracks in Pindolonan, the temporary meeting place, but at his residence. This and the fact that the members of the canvassing board converged at his residence and not in the PC Barracks is indicative of an earlier intention not to hold the meeting at the PC Barracks at all, or at least, the uncertainty of the meeting and the place thereof.

Thus, for failure to give sufficient notice to a member who was not disqualified, and to the candidates, the meeting of the board of canvassers of Ganassi was null and void.[10] Such failure is, at least, violative of the regulations of Comelec [in RR-544].

Besides, even if it be conceded that Vice-Mayor Adap was actually notified of the transfer to Marawi City but failed to attend, still, Kiram L. Buruan, the municipal treasurer, should not have taken his place. By so doing, Buruan exceeded the instructions given to him by Comelec. As a representative of Comelec, he should have inhibited himself. For, in the appointment of substitute members to the municipal canvassing board, party affiliation is - by law - the prime consideration. He thereby subverted, the intention of the election, code. No law authorizes him to sit as member of the canvassing board. Why should he cast himself into the melee of petty political rivalry?

2. Worse still is that the members of the board of canvassers failed to follow the line of proper canvassing of election returns. In the election, law scheme, the canvassing board performs a definite role. Pithily described, "it is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their

face do not reveal any irregularities or falsities." [11] A contrario a canvass based on tampered returns is illegal. [12] Alleged tampering must therefore be ascertained, first by the canvassing board, then by Comelec. [13]

The municipal treasurer's copy of the return from Precinct 8 used by the board reveals on its face palpable material alterations as to Balindong's votes. The change in, rather subtraction from, Balindong's votes made the difference between victory and defeat. Such alterations were not judicially authorized. Nor were they even initialed by the inspectors. Therefore, as far as the canvassing board was concerned, the election return copy before it, contained unauthorized alterations which are irregularities that could prevent a proper canvass and necessitate an investigation. Yet, the board jumped investigation and canvassed the votes based on returns palpably tampered.

This is another reason why Comelec's conclusion that the November 20, 1967 canvass and proclamation are null and void must be affirmed.

3. The most serious dispute, we perceive, is as to the number of votes that should be counted for Alim Balindong in Precinct 8. To repeat: If we count his votes as "8", as Uso Dan Aguam would have it, Use Dan Aguam would be credited with 575 votes and Alim Balindong 572 votes, or a difference of 3 votes in favor of the former; if, on the other hand, the votes for Mini Balindong were tallied as "13", he would receive a total of 577 votes while Uso Dan Aguam would garner the same 575 votes, but Alim Balindong would have to be declared winner by 2 votes.

The first question that presents itself is this: Under the circumstances, what should have been the procedure in ascertaining the true votes cast for Precinct 8 for purposes of proclamation?

Comelec's view is that the board of inspectors should file a petition for correction in the Court of First Instance. This remedy is now unavailing. What we are confronted with are tampered returns. And then, a petition for judicial correction of the returns is a privilege left to the members of the board of inspectors themselves. More than this, "unanimous consent of all the members of the board" is required to effect correction. [14] Courts may not coerce inspectors to file petitions for correction. [15] It is a distinct remedy, unrelated to the investigatory procedure for tampered returns before Comelec. [16]

4. When and by whom was the tampering really made?

Testimony furnished by the members of the board of inspectors before the Comelec leaves much to be desired. Their oral evidence shows that the election returns were prepared by the chairman of the board of inspectors; that after publication of the results of the election and the board of inspectors had issued the certificates of votes of candidates to the different watchers and after the watchers had gone, it occurred to the chairman of the board of inspectors to suggest that the returns be checked with the tally sheet. And, it was then that they allegedly discovered their "mistake": that the number of votes for Alim Balindong, as shown in the tally sheet, was "8"; and that the returns had to be corrected to show that Alim Balindong received merely "8" instead of "13" votes. Of course, the known result of this alteration is that Uso Dan Aguam was made to win with a majority of 3 votes.

This explanation is shot through with holes.

First. An examination of the return itself would show that the alleged correction was made in the case of only one candidate, Alim Balindong. Although testimony there was that such alteration was effected by the chairman himself, Comelec found otherwise. Comelec declared that the alterations were done in blue ink, while the original entries - which admittedly were made by the chairman himself - were in red ink; and that the substituted word "Eight" was written "with apparently different handwriting." One has merely to look at the return, Exhibit Q, to be convinced that the writing with a heavy hand of the corrected word "Eight" and the corrected figure "8" is totally different from the light handwriting of the rest.

Second. Really, it is hard to believe that the inspectors, could have so unceremoniously made corrections after they issued the certificates of votes to the watchers. They knew that by so doing they would violate Section 154 of the Election Code, which reads:

"SEC. 154. Alterations in the statement.- After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

Third. But if it were true that these corrections were made shortly after the inspectors issued the certificates of votes to the watchers, it is strange that these corrections did not bear the initials of the members of the board of inspectors. The latter did not even draw up formal minutes of that important proceeding so decisive of the political fortunes of candidates Balindong and Aguam.

Fourth. The allegedly genuine tally sheet which the inspectors claim to be the true tally sheet and which was found in the ballot box does not as much as carry the signature of even one of the inspectors. The spaces in the tally sheet corresponding to the signatures of the members of the board were indeed in blank. The seal of this tally sheet is four-fifths broken.

Fifth. Corrections were allegedly made after everybody had gone and the inspectors and the poll clerk were left alone. But, why rely on the unsigned tally sheet when the votes were also tallied on a blackboard in the 'precinct itself for others to see?

Sixth. If there was a mistake, that mistake could have readily been detected. Because the evidence of record reveals that while counting was being made, the watchers were there, watching and witnessing the whole proceeding. It is quite reasonable to assume that if the real votes counted were not merely "13" but "8" for Balindong, that could not have easily escaped notice, what with the election officials themselves counting and tallying and the watcher's of the opposing candidates listening and observing.

Seventh. No reason is given why after the watchers had left, like a bolt from the clear blue, it should occur to these inspectors to check the returns. They declared that they altered all the copies of the returns. And yet, as it turned out, the ballot box copy, which by the way was signed only by the LP inspector, remained unaltered.

Eighth. In spite of all of these alleged mistakes, not one of the inspectors breathed out a word. They did not recall the certificates of votes they issued to the watchers. Neither did they issue corrected certificates. Nothing in the record would suggest that they took steps to notify Comelec, the losing mayor-alty candidates, especially Alim Balindong, to enable the latter to take steps to protect his own interests. Let us not for a moment forget that Alim Balindong ran as an independent LP without inspectors.

That there was tampering of the returns from Precinct 8 we do not doubt. Mute but formidable is Exhibit Q - the copy of the return for Comelec. It shows that the tampering from "Thirteen" to "Eight" was by a hand different from that of the chairman who wrote the original words and figures in said returns. Such falsification was obviously fathered by one without scruples and done long after the counting of the votes and the certification thereof by the inspectors. The people's will expressed at the polls, it must be stressed, should not be frustratingly hamstrung by permitting use of false, tampered or spurious returns or returns illegally corrected by wrongdoers in the hope of grabbing the proclamation for a candidate who, to all appearances, was repudiated by the people.

5. The factual makeup with respect to Precinct 8 may thus be summarized as follows: Copies for the municipal treasurer, the Comelec and the provincial treasurer of the returns are all tampered: "Thirteen" to "Eight" votes for Balindong. The ballot box copy containing the original entry in ink, of "Thirteen" for Balindong, is signed only by the LP inspector. The tally sheet, on which the inspectors' testimony was principally built, is unsigned, its paper

seal four-fifths broken. The custody of the ballot box and the sealing of the same are riddled with irregularities. Even the integrity of the ballot box is open to grave doubts.

It would seem to us that the only reliable and untampered documents reflecting the results of the election in Precinct 8 are the certificates of votes of candidates issued to the watchers. But said certificates certainly cannot serve as returns for canvassing purposes. Judicial recount cannot legally be made either. Under Section 168, in relation to Section 163, of the Revised Election Code, such remedy is possible only "[i]n case of contradictions or discrepancies between the copies of the same statements." And, jurisprudence that has already taken root is that said discrepancies must appear amongst the authentic returns, not tampered returns.[17]

6. But is it still possible to canvass the return from Pre-cinct 8?

There is an impressive unanimity on the part of all concerned - the members of the board of inspectors included - that the original entries of votes in the election return for Precinct 8 for Alim Balindong consist of the word "Thirteen" and the figure "13". Before the unauthorized alteration of those entries, the said return bore the guarantee of the election officials' signatures and the scrutiny of the watchers of the opposing candidates. It makes eminent sense to say that such election return - in its original form - should not be allowed to cease as an instrument embodying the expression of the people's will. A way of preserving the integrity of the election return, we believe, is by knocking off the falsified words and figures and restoring the original.

Even conceding that the alteration of "13" to "8" was done by the election inspectors, yet such act was unauthorized by, and contrary to, the provisions of Section 154 of the election code. The inspectors could not plead ignorance to this, on the assumption that they really discovered this "mistake". Such is a stratagem we are not prepared to legitimize. For, the dispiriting lesson in past elections is that election returns are tampered to favor a candidate. The election inspectors' strained explanation, accordingly, is no substitute for the fact that the original words and figures in the returns were unceremoniously changed.

More. The original, entry of "13" votes for Balindong is fully corroborated by a hard-to-fault piece of evidence - the official certificates of votes a candidates for municipal mayor signed by all the inspectors and the poll clerk as required by Section 153 of the election code. The issuance of these certificates certainly measures the emptiness of the inspectors' proffered explanation of "mistake". For, the said certificates of votes of candidates bear the solemn representation to all and sundry by the chairman, the LP inspector, the NP inspector and the poll clerk (see Exhibits H and I) that "WE HEREBY CERTIFY that the candidates mentioned below have obtained in this precinct the votes set opposite their respective names:

Candidate's

Name

Office

Number of Votes

in Words

Number of Votes

in Figures

Alim Balindong

Mayor

Thirteen

13

x

x

x

Usong Dan Aguam

Mayor

eighty-nine

89"[18]

It must be remembered that these certificates of votes of candidates are only given after the oral and public announcement of the votes polled[19] and after making the returns for the ballot box, the municipal treasurer, the provincial treasurer and Comelec.[20] This brings to mind the true functions of a certificate of votes. As well expressed in a case,[21] they are: "(a) to prevent or to deter the board of inspectors or treasurers from altering the statements, because they know of the existence of such certificates (See *Benitez v. Paredes*, 52 Phil. 18); (b) to advise the candidate (for mayor, in this case) definitely of the number of his votes; so that in case the election statement sub-mitted to the municipal board of canvassers does not tally with the certificate in his hands, he may proceed to the Provincial Treasurer's Office or Commission on Elections and secure official copy of the statement there (if it agrees with his certificate), and then present such copy to the board of canvassers (and the court) to demand the remedy provided by Sections 163 and 168"; or (c) to serve as "evidence in the protest and in the subsequent prosecution of the inspectors, if any."

7. Election returns should be maintained inviolate. Once the return is made and the certificates of votes of candidates are issued, no one, not even the inspectors themselves, may make any change without authority. We should not place at the whim of the inspectors, or any person for that matter, the fortunes of the candidates for a given position. Because, the candidates' fate depends in a great measure upon the election return preserved and unsullied, and unspoiled by hands of man. Tampering, falsification, spoliation of returns or making spurious returns must have to be discouraged.

We, accordingly, rule that when an election return has been tampered and it is still possible to salvage and ascertain the original entries of votes prior to such tampering, the votes originally entered should be considered as votes in said return for purposes of canvass.

Indeed, our view on this score is not new, In *Pacis vs. Commission on Elections* (the second *Pacis* case),[22] Comelec "made use of the services of the NBI to determine the original erased entry for *Pacis* and the testimony of the chairman and poll clerk of the precinct [Precinct 19]." The original votes of the candidates, as originally entered, were then ascertained through this procedure. We held that Comelec did not abuse its discretion. We pronounced that: "if the true result of the voting in Precinct 19 could still be determined, it is within Comelec's power to direct that they be used in the canvass. And this was done."

Here, it is conceded that the original entry of votes for Balindong in the election return from Precinct 8 is thirteen. This number should be credited in his favor.

For the reasons given, JUDGMENT is hereby rendered:

1. Granting the petition of Allan Balindong for certiorari and mandamus in L-29610 and declaring null and void the decision of the Commission on Elections of September 24, 1968 insofar as (a) it pronounced that there is no valid entry of votes cast for petitioner Alim Balindong in the existing copies of the election return for Precinct 8, Ganassi, Lanao del Sur, and (b) insofar as it directs the board of inspectors of Precinct 8, Ganassi, to file a petition with the Court of First Instance "for correction of the election return for said precinct, on the votes cast for Candidate Alim Balindong";
2. Directing the Commission on Elections to instruct the reconstituted board of canvassers of Ganassi (a) to convene immediately for the re canvass of all the returns of the votes for Mayor a Ganassi in all the precincts, and (b) for purposes of such recanvass, to count thirteen (131 votes for Alim Balindong in the return for Precinct 8 and (c) thereafter, forthwith to proclaim the winning candidate; and
3. Affirming said decision of the Commission on Elections in all other respects.

Let a copy of this decision be forwarded to the Provincial Fiscal of Lanao del Sur for such action as he may deem proper in the premises.

Costs against Uso Dan Aguam.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Taken from the decision of this Court in L-28955, *Uso Dan Aguam, petitioner, vs. The Commission on Elections and Alim Balindong, respondents*, May 28, 1968.

[2] See also: Tr., July 9, 1968, p. 96.

[3] Tr., July 9, 1968, pp. 33 et seq.

[4] Exhibit 15 for Respondent *Uso Dan Aguam* in L-29610.

[5] Emphasis supplied.

[6] Emphasis (except on "original") supplied.

[7] Rollo of L-29610, pp. 36-37.

[8] 21 SCRA 1457, 1460. Ruling reiterated in *Pacis vs. Commission on Elections*, 22 SCRA 539, 553.

[9] Tr., July 9, 1968, p. 97.

[10] *Pacis vs. Commission on Elections*, supra, at p. 552, citing *Campos vs. Commission on Elections*, L-28439 (Resolution), December 29, 1967.

[11] *Demafiles vs. Commission on Elections*, 21 SCRA 1462, 1468; emphasis supplied.

[12] *Abes vs. Commission on Elections*, 21 SCRA 1252, 1256.

[13] *Ong vs. Commission on Elections*, 22 SCRA 241, 249-251.

[14] *Peña vs. Tengco*, 21 SCRA 1398, 1401.

[15] Astilla vs. Asuncion, L-22246, February 29, 1964.

[16] Ong vs. Commission on Elections, *supra*, pp. 251-252.

[17] Espino vs. Zaldivar, 21 SCRA 1204, 1212-1215, citing cases; Ong vs. Commission on Elections, *supra*.

[18] Exhibits H and I in L-29610.

[19] Section 153, Revised Election Code.

[20] Sections 151 and 152, Revised Election Code.

[21] Parlade vs. Quicho, L-16259, December 29, 1959.

[22] 25 SCRA 377, 389-390.

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