

SHEIK ACHMAD BASHIER, PETITIONER, VS. COMMISSION ON ELECTIONS, TOCOD MACARAYA, SACAR BASMAN, PANGALIAN BALINDONG AND MACAPANTON ABBAS, JR., RESPONDENTS.*G.R. No. L-33692. February 24, 1972*

Ponente: TEEHANKEE, J.

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These three separate petitions for review and/or certiorari all seek review and modification of Resolution No. RR-913 dated June 14, 1971 of the Commission on Elections, with its previous related resolutions. The three petitioners question the Comelec resolution of the disputes between the contending candidates as to the inclusion or exclusion of election returns of the November 11, 1970 election of delegates to the Constitutional Convention of 1971 for the lone district of Lanao del Sur, under Republic Act No. 6132. Accordingly, all three cases which were ordered consolidated and jointly heard are now jointly resolved in this decision.

The 1971 Constitutional Convention Act allocated to the lone district of Lanao del Sur, including Marawi City, six delegates to the Convention. Eighteen candidates^[1] ran and were voted for the said six positions of delegates at the November 11, 1970 election of delegates to the Constitutional Convention.

The questioned Comelec resolution relates that after the tentative tabulation of votes, including returns with pending objections on grounds that they were gunpoint or spurious returns, it appeared that such pending objections would not affect the winning of three (3) front-running candidates, namely AHMAD DOMOCAO ALONTO, MANGONTAWAR GURO and LININDING PANGANDAMAN. Hence, the Comelec granted PANGADAMAN's petition to be proclaimed in advance together with ALONTO and GURO, which advance proclamation was likewise favored by all the other candidates:

"* * * In compliance with [Comelec's] instructions, the [Canvassing] Board prepared a tentative tabulation of the returns, including the said tabulation in the meantime, all the returns that were objected to on the grounds that they were prepared at gunpoint or the returns were spurious because there were no elections. The tentative tabulation prepared by the Board of Canvassers showed the votes for the first ten (10) front runners to be as follows:

"(1)

Ahmad Domocao Alonto

58,798

(2)

Magontawar Guro

47,007

(3)

Pangalian Balindong

44,438

(4)

Liningding Pangadaman

43,750

(5)

Oga Mapupuno

43,473

(6)

Tocod Macaraya

43,461

(7)

Sheik Achmad Bashier

38,884

(8)

Macabangkit Lanto

36,332

(9)

Ansare Sacar Basman

36,200

(10)

Macapanton Y. Abbas, Jr.

34,456

"It appeared that the remaining questions involving gunpoint returns and no elections of returns would not have any effect on the winning of the three (3) of the candidates namely ALONTO, GURO and PANGANDAMAN, while there was still a possibility that BALINDONG, MAPUPUNO and MACARAYA may be dislodged as probable winners depending upon the resolution of the pending questions on gunpoint returns and the question of no elections, particularly, in the municipalities of Malabang, Balabagan, Tubaran, Balindong and Binidayan. Consequently, the Commission decided to grant the petition of LININGDING PANGADAMAN to be proclaimed in advance together with GURO and ALONTO in order that at least, the Muslim provinces would be represented in the pre-convention conferences of the members of the Constitutional Convention. As a matter of fact, all the other candidates favored the proclamation in advance of

at least these three (3) candidates aforementioned."[2]

Comelec, stating that it had at the previous hearings of December 15 and 16, 1970 ruled on all objections to the disputed returns based on grounds "that they were tampered or altered, incomplete or defective, statistically improbable, obviously manufactured because those who voted were greatly in excess of the registered voters, improperly constituted boards of inspectors canvassing at a place not authorized by the Commission," then recounted in the questioned resolution of June 14, 1971 the measures it took on the remaining objections, as follows:

"To resolve the remaining questions on gunpoint returns and 'no election' the Commission required the parties to submit within ten (10) days from February 9, 1971 the affidavits of all their witnesses, serving copies thereof to the other parties and in turn, the other parties will submit their counter-affidavits within five (5) days from receipt of said affidavits. The Commission also ordered the Fingerprint Identification Division and the NBI agents detailed with the Commission to examine the Precinct Books of Voters and CE Form 39 of the Municipalities of Malabang, Balabagan, Balindong, Binidayan and Tubaran. Unfortunately, while the Precinct Book of Voters of Binidayan and form 39 which were ordered to be brought to Manila, were deposited by the Election Registrar of Binidayan in the house of Vice-Mayor of said town because according to him when he was bringing said records, the motor boat developed engine trouble and he had to return to Binidayan and deposited said records in the house of the Vice-Mayor where they were stolen on the same night that he deposited them there. (sic) In the case of Tubaran, the Precinct Book of Voters were stolen on the eve of the 1969 elections and with respect to CE Form 39, only those from Precincts 9, 10, 12, 12-A and 16 from Tubaran were received in Manila. Apparently, the Board of Inspectors of Precincts 1, 2, 3, 4, 5, 6, 7, 8, 13 and 14, Tubaran, did not actually accomplish said Form 39 for the 1970 elections.

"Only candidates BASMAN, MACARAYA, BALINDONG, and ABBAS submitted affidavit of their witnesses supporting their allegations of gunpoint returns and no elections.

"The Fingerprint Identification Division through its Head, Mr. Abrigo, and Mr. Maniwang, the NBI handwriting expert, submitted to the Commission their reports on the results of the examination of fingerprints and signatures on the (a) Precinct Books and Form 39 of Malabang, Balabagan and Balindong, (b) the central file copies of CE Form 1 for the municipalities of Binidayan and Tubaran and CE Form 39 for six precincts of Tubaran.[3] These reports were marked and presented in evidence.

* * * * *

"The Commission conducted hearings on said reports and gave all the candidates an opportunity to cross-examine Mr. Abrigo or any members of the teams who examined the fingerprints found in CE Form 1 and CE Form 39 and the central file copies of CE Form 1 and Mr. Maniwang, examined the signatures and handwritings of the registered voters and those who voted appearing in said forms. The curriculum vitae of all the members of the teams, who examined the fingerprint showing the training and experience of said examiners were marked in evidence, were made available for examination by the parties and opportunity to cross examine to test the competence and qualifications of said examiners was also given to the parties.

"Because of the loss of Form 39 and Precinct Book of Voters for Binidayan and the loss of Precinct Book of Voters and non-availability Form 39 in Tubaran, except in Precincts 9, 10, 11, 12, 12-A and 16, Mr. Maniwang, the NBI Handwriting Expert, was ordered to examine the central file copies of CE Form 1 for Binidayan and Tubaran, and submit a report of his findings on cases of multiple registration. His reports on the results of his examination were presented in evidence as Exhibit K and L. The Fingerprint Identification Division was also required to make further analysis of all the blurred fingerprints of the Precinct Book of Voters and Form 39 of the municipality of Malabang because a random examination made by the members of the Commission of these fingerprint revealed prima facie evidence of deliberate blurring or smudging to prevent detection. The report of the Fingerprint examiners were also marked and submitted in evidence and the

parties were given opportunities to examine either Mr. Abrigo or any members of the teams who examined the individual thumbprints."

Comelec then proceeded to make its findings for the five disputed municipalities of Malabang, Balabagan, Balindong, Tubaran, and Binidayan, "(O)n the basis of the evidence presented to the Commission, namely: the affidavits submitted by the parties in support of their respective petitions; the reports of the hearing of examiner [who] conducted preliminary hearings in Marawi City on the conduct of the elections in Malabang and the transcript of stenographic notes of said hearing, which were also formally presented in evidence by candidates BASMAN and ABBAS, the reports of the Fingerprint Identification Division and the NBI Handwriting Expert marked as Exhibit K and L and the oral testimonies of Mr. Abrigo and Mr. Maniwang, explaining their reports on the fingerprint and handwriting examination and the witnesses presented by the parties," as follows:

1. Malabang

"In the 50 precincts whose CE Form 39 for 1970 were examined with a total of 9,333 registered voters in said 50 precincts, it was found that there were 1,886 who had voted without any CE Form 1. The total number of registered voters in these precincts is 9,333 but the total number of votes cast is 9,650 which means therefore that there were more votes cast than registered voters. (a) Only 10 thumbprints of those who voted as shown in either the voting record of CE Form 1 or CE Form 39 matched with the thumbprints of the registered voters appearing in their approved application for registration CE Form 1. (b) 470 of the Thumbmarks of those who voted as shown in either form 1 or 39 did not match with the corresponding supposed thumbprints of the voters in their approved application. (c) 8,477 thumbmarks could not be analyzed because they were blurred, smudged or faint. The smudging or blurring of these thumbprints appeared to have a uniform pattern of smudging, such that further examination made of these blurred or smudged thumbprints showed that (d) 8,092 were deliberately blurred or smudged, the smudging consisting of super-imposing one thumbprint over another thumbprint.[4] Only in 5 thumbprints did the smudging appear unintentional. No opinion can be made over the 394 (Exhibit 'J')."

On the basis, furthermore, of examination of the signatures appearing in the voting records of CE Form 1, either in letter or cursive form or arabicform, Comelec made the following precinct by precinct finding for the same town of Malabang:

Precinct 2-B – "at least 101 persons were voted for by only 2 persons"

Precinct 3 – "at least 191 persons were voted for by only 3 persons"

Precinct 4-B – "at least 116 persons were voted for by only 2 persons"

Precinct 5 – "at least 195 persons were voted for by only 3 voters"

Precinct 5-A – "at least 120 persons were voted for by only 5 persons"

Precinct 6 - "at least 206 voters were voted for by only 2 persons"

Precinct 6-A – "125 signatures in letter form appeared to be written by one and the same person"

Precinct 8-A "at least 160 persons were voted for by only 5 persons"

Precinct 9 - "at least 159 voters appear to have been voted for by just 3 persons"

Precinct 9-A – "at least 114 voters appear to have been voted for by just 2 persons"

Precinct 9-B – "at least 111 voters appear to have been voted for by just 3 persons"

Precinct 9-C – "at least 162 voters appear to have been voted for by just 4 persons"

Precinct 11 – "149 voters appear to have been voted for by just 2 persons"

Precinct 11-A – "57 voters appear to have been voted for by just 2 persons"

Precinct 12 – "155 voters appear to have been voted for by just 2 persons"

Precinct 12-A – "127 voters appear to have been voted for by just 2 persons"

Precinct 13 – "83 voters appear to have been voted for by just 2 persons"

Precinct 13-A – "94 voters appear to have been voted for by just 2 persons"

Precinct 14-A – "102 voters appear to have been voted for by just a single individual"

Precinct 15-A - "155 voters appear to have been voted for by just 3 persons"

Precinct 15-B – "134 voters appear to have been voted for by just 2 persons"

Precinct-16 — "127 voters were voted for by just 2 persons"

Precinct 16-A — "75 voters appear to have been voted for by just 4 persons"

Precinct 17-B - "71 voters appear to have been voted for by just 2 persons"

Precinct 19 – "187 voters appear to have been voted for by just 3 persons"

Precinct 20 -- "137 voters appear to have been voted for by just 2 persons"

Precinct 20-A -- "133 voters appear to have been voted for by just 3 persons"

Precinct 21 – "198 voters appear to have been voted for by just 2 persons"

Comelec thus found a dove-tailing of the evidence of the fingerprints and signatures of the "voters" and the testimonial evidence of the witnesses, to wit:

"The result of the fingerprints and signatures examination of the voters in their voting record in Malabang showing that only a few persons cast the votes for the voters in Malabang actually confirms the testimony of the witnesses who appeared before the hearing officer appointed by the Commission to conduct hearings on the complaints of several candidates concerning election irregularities in Malabang. These witnesses testified that persons other than the registered voters were allowed to vote; that policemen and followers of the Mayor of Malabang were the ones who read the ballots instead of the inspectors; that the Mayor ordered the Board of Inspectors to read and count the ballots in accordance to his instructions crediting practically all the votes to his son, one of the candidates; and that the watchers of the candidates not favored by the Mayor were excluded from the polling place."

Comelec's findings for the four other disputed municipalities follow:

2. Balabagan

"(a) In 28 out of 30 precincts, (in 2 precincts, no CE Form 1 and CE Form 39 were submitted) there were 929 who appeared to have voted without any CE Form 1. These 929 were clearly illegal voters. (b) In Precinct 2, only 2 thumbmarks in the voting record of the voters, either in CE Form 1 or CE Form 39, matched with the thumbmarks of the voters in their registration approved application, CE Form 1. (c) In the rest of the 28 precincts, none of the thumbprints in the voting records, CE Form 1 or 39, matched with the thumbprints of the voters in their registration record, CE Form 1, so that in the whole town of Balabagan, except Precinct 1-C And 16, which could not be examined because CE Form 1 and 39 for said precincts were not submitted, there were only 2 thumbprints in the voting record which matched with the thumbprints of the voters in the registration record, CE Form 1. 2,287 thumbprints in the voting record did not match with the thumbprints in the

registration record. CE Form No. 1."[4-a]

The result of the handwriting examination showed:

Precinct 5-B - "64 voters were voted for by just 2 persons"

Precinct 11 - "123 persons were voted for by only 2 persons"

Precinct 13 - "130 persons were voted for by only 2 persons"

Precinct 15 - "144 persons were voted for by only 2 persons"

"In the other precincts of Balabagan, the signatures did not contain sufficient basis of comparison and therefore, no opinion could be rendered as to whether or not they were written by one and the same person.

"Random examination made by the members of the Commission during the hearing of the thumbprints in the precinct books of voters showed signs that the smudged or blurred thumbprints were intentionally caused. Some were caused by super-imposition of thumbprints over another. Others by the sliding of the thumbprints, blurring impressions of the thumbprints."

3. Balindong

"In the 16 precincts of Balindong with the total of 4,418 registered voters, (a) 162 persons appeared to have voted without any CE Form 1. b) 704 thumbprints in the voting record of the voters did not match with the thumbprints in CE Form 1 (c) 2,868 thumbmarks could not be analyzed due to blurring or smudging.[4-b]

"Examination of the signatures in the voting records of the voters in CE Form 1 was successful only in 9 out of 16 precincts. In 7 precincts, the majority of the signatures did not contain basis of comparison and, therefore, no opinion could be rendered as to whether or not they were written by one and the same person."

Precinct 1 - "at least 180 voters were voted for by only 2 persons"

Precinct 4 - "at least 47 persons were voted for by only 2 persons"

Precinct 6 - "at least 73 persons were voted for by only 2 persons"

Precinct 7 - "at least 165 persons were voted for by only 2 persons"

Precinct 10 - "at least 158 persons were voted for by only 2 persons"

Precinct 11 - "at least 129 persons were voted for by only 2 persons"

Precinct 11-A - "at least 70 persons were voted for by only 2 persons"

Precinct 11-B - "at least 167 persons were voted for by only 3 persons"

Precinct 12 - "at least 161 persons were voted for by only 2 persons"

4. Tubaran

"The Precinct Book of Voters Of Tubaran were stolen on the eve of the 1969 elections. In the 1970 elections only the Board of Inspectors for Precincts 9, 10, 11, 12, 12-A and 16 accomplished Form 39. No Form 39 was accomplished for Precincts 1, 2, 3, 4, 5, 6, 7, 8, 13 and 14. Consequently, the best that the Fingerprint Identification Division could do was to compare the thumbprints of the voters in Form 39 for Precincts 9, 10, 11, 12, 12-A and 16 with the thumbprints of the voters in the central file copies of CE Form 1. The result of said examination showed that no thumbmark of those who voted as shown in Form 39 matched with the corresponding thumbmark of the registered voters in the central file copy of form 1. 354 thumbmarks in Form 39 did not match with corresponding thumbmarks of the voters in Form 1, while 283 thumbmarks could not be

analyzed due to their being blurred, smudged or faint. Moreover, there were 517 persons who were able to vote in these 6 precincts without being registered therein as they had no CE Form 1. It appeared, therefore, that in these 6 precincts, out of 1,056 votes cast, 871 were illegal votes, either because the ones who voted were not registered in the precinct or that they voted in substitution of the registered voters.

"Examination of the thumbprints of the registered voters appearing in the CE Form 1 in Precincts 1, 2, 3, 4, 5, 6, 7, 8, 13 and 14 yielded inclusive results because about 70% of said thumbprints were blurred or smudged and could not, therefore, be analyzed.

"The signatures of the voters in the central file copies of CE Form 1 were also analyzed by Mr. Maniwang, the NBI expert. He reported that it was only the signatures of said forms in Precincts 3, 4, 5, 6, 9, 10, 11, 12 wherein he could render an opinion on the signatures as the rest did not have sufficient basis for comparison. According to his report in Precinct 3, the signatures in 21 applications for registration, CE Form 1, were signed by only 3 persons; in Precinct 4, the signatures in 57 applications for registration, CE Form 1 were signed by only 9 persons; in Precinct 5, the signatures in 8 applications for registration, CE Form 1 were signed by only 2 persons; in Precinct 6, the signatures in 118 applications for registration, CE Form were signed by only 11 persons; in Precinct 9, the signatures in 118 applications for registration, CE Form 1 were signed by only 5 persons; in Precinct 10, the signatures in 41 applications for registration, CE Form 1 were signed by only 4 persons; in Precinct 11, the signatures in 48 applications for registration, CE Form 1 were signed by only 3 persons; in Precinct 12, the signatures in 6 applications for registration, CE Form 1 were signed by only 2 persons. However, the registered voters in these precincts for the 1970 elections were as follows: 150 registered voters in Precinct 3; 282 in Precinct 4; 289 in Precinct 5; 119 in Precinct 6; 111 in Precinct 9; 303 in Precinct 10; 283 in Precinct 11; 154 in Precinct 12."

5. Binidayan

"The Precinct books of Binidayan and Form 39 for 1970 as previously stated were stolen from the house of the Vice Mayor. Consequently, the best that could be done for Binidayan was to examine only the thumbprints of the signatures appearing in the central file copy of CE Form 1. The central file copy of CE Form 1, however, do not contain the voting records of the voter. The only purpose of the examination of the signatures and thumbprints would be to find cases of multiple registration. The results of the examination of the fingerprints appearing in the central file copies of CE Form 1 was rather inconclusive inasmuch as out of 2,462 thumbprints examined, 2,179 could not be analyzed because the thumbprints were either smudged, blurred or faint. Similarly, examination of the signatures' handwriting in said forms was also inconclusive because out of the 13 precincts, it was only in Precinct 2 and 4 where the number of multiple registration was about 50% or more of the total number of the registered voters in the precinct."

Comelec thus made the following summary of its conclusion:

"From the evidence submitted to the Commission particularly the reports of the Fingerprint Identification Division and the NBI handwriting Expert, and in the case of Malabang, the oral testimony of the witnesses who appeared before the hearing officer of the Commission in Marawi City (transcript of the proceedings in Marawi having been admitted in evidence by agreement of the parties) the Commission finds and so holds that there was actually no voting in the municipalities of Malabang, Balabagan, and Balindong and in Precincts 9, 10, 11, 12, 12-A and 16 of Tubaran and that the election returns for Malabang, Balabagan, Balindong and Precincts 9, 10, 11, 12, 12-A and 16 of Tubaran are spurious returns or no returns at all. In said three (3) towns and six (6) precincts of Tubaran aforementioned, the registered voters did not vote but were voted for by other persons and as a matter of fact, there were numerous instances discovered wherein several voters have been voted for by only one person. To prevent identification of those who voted, said persons deliberately smudged their thumbmarks in their voting record, CE Form 1 or in CE Form 39. In Malabang, the evidence confirmed the charges of some of the candidates that the Municipal Mayor of Malabang was the one responsible for making the Board of Inspectors allow persons other than the registered voters to vote and to prepare the returns

crediting practically all the votes in Malabang to his son, one of the candidates.

"On the other hand, because of the fact that the precinct books of voters and Form 39 from Binidayan were not available for examination because they were stolen from the house of the Vice Mayor and in Precincts 1, 2, 3, 4, 5, 6, 7, 8, 13 and 14 of Tubaran, there were no precinct books and no. Form 39 that could be examined because the precinct books were stolen in the 1969 elections and the Board of Inspectors in said ten precincts did not accomplish Form 39, there is no sufficient evidence upon which the Commission can base a finding that the returns from Binidayan and the ten precincts of Tubaran abovementioned were spurious, or that no actual voting by the registered voters had taken place in said municipalities and precincts."

As in previous cases before it in connection with the canvassing of the 1970 Constitutional Convention returns from Lanao del Norte and Sulu, Comelec was split on the question of whether special elections should be held before my proclamation of the winners, thus:

"* * * the Chairman and Commissioner Cesar Miraflor are of the opinion that proclamation of the winning candidates should be made on the basis of the valid election returns, whereas, Commissioner Lino M. Patajo votes that no proclamation should as yet be made and instead election be held in Malabang, Balabagan, Balindong and Precincts 9, 10, 11, 12, 12-A and 16 of Tubaran pursuant to Section 17 of the 1971 Constitutional Convention Act."

Comelec accordingly resolved, as follows:

"(1) To declare the returns from all of the precincts of Malabang, Balabagan, Balindong and Precincts 9, 10, 11, 12, 12-A and 16 of Tubaran are spurious returns;

"(2) To order the Provincial Board of Canvassers exclude from the canvass all the returns from Malabang, Balabagan, Balindong and Precincts 9, 10, 11, 12, 12-A and 16 of Tubaran:

"(3) In order that the canvassing be completed, to sustain the action of the Board of Canvassers in including in the canvass the returns from Precincts 8 and 8-A, Butig, Precinct 9, Binidayan, Precinct 12-A, Bayang, Precinct 1, Pagayawan and Precincts 15 and 19, Lumbatan and the number of votes to each of the candidates in said precincts, without prejudice however, upon petition of any candidate claiming that the returns from these precincts would in so far as he is concerned [affect] the results of the election, to reopening the case before the proclamation of the winning candidates by the Board of Canvassers solely for the purpose of determining whether there is need for judicial recount pursuant to Section 6, sub-paragraph H of the 1971 Constitutional Convention Act to determine the true results of the count of votes in said precincts;

"(4) By majority vote, to order the Board of Canvassers to reconvene and complete the canvass for the proclamation of the remaining three (3) winning candidates without altering, however, the previous canvass made by them for the purpose of proclaiming the first three (3) winning candidates which included the returns ordered to be excluded herein;

"(5) By majority vote, to direct the Provincial Board of Canvassers upon completing the canvass, to proclaim the winning candidates not earlier than 5:00 p.m. on June 30, 1971, unless restrained by the Supreme Court or instructed otherwise by the Commission;

"(6) To direct the Law Department to conduct investigation to determine the extent of the participation and degree of culpability of the members of the Board of Inspectors who served in all the precincts of Malabang, Balabagan, Balindong and Precincts 9, 10, 11, 12, 12-A and 16 of Tubaran in the anomalies and irregularities committed in their respective precincts and to file proper charges against them should the evidence so warrant."

Petitioners Bashier and Abbas filed on June 28 and June 29, 1971, respectively, their petitions for review and/or certiorari and mandamus with preliminary injunction challenging the Comelec resolution insofar as it was adverse

to them, each claiming that he should be within the winning circle of six, and to enjoin the completion of the canvass and proclamation of the remaining three winning candidates as directed by Comelec.

In resolutions issued on June 30, 1971, the Court ordered the issuance of summons to respondents and of a restraining order against enforcement of the challenged Comelec resolution. The Court also ordered consolidation of the cases and set their hearing for July 20, 1971. In view of the far-reaching questions raised in the petitions, including that of calling special elections in the municipalities where Comelec had ordered exclusion of the returns on grounds of their spuriousness and "that there was actually no voting" therein, the Court further required petitioners to implead all the candidates to the Constitutional Convention for the district of Lanao del Sur. Petitioners thereafter filed in due course their respective amended petitions impleading all the other candidates as additional respondents.[5]

Petitioner Basman filed his petition later on July 6, 1971, and the Court, per its resolution of July 8, 1971 ordered the issuance of summons and its consolidation with the first two petitions filed by Bashier and Abbas.

The joint hearing of the three cases was held as scheduled on July 20, 1971. The parties were given further opportunity to submit their respective consolidated memoranda to elucidate on the extent of Comelec's powers in pre-proclamation proceedings and on the Court's jurisdiction over the first three winning candidates who had already been proclaimed and were already discharging their office as members of the Constitutional Convention of 1971, as well as their respective reply memoranda.

The Court will now deal with the conflicting contentions of the protagonists seriatim.

I

Petitioner BASHIER and respondent MAPUPUNO make common cause and restate their legal position as follows:

1. They do not question the rejection and exclusion of all the election returns from Malabang as "obviously manufactured" and spurious.
2. They "only question, (1) the rejection of 18 election returns from Balabagan out of the 29 returns rejected from Balabagan, (2) the rejection of 8 returns from Balindong out of the 17 returns rejected from Balindong. (They) submit that the 18 returns from Balabagan (out of 29 returns), and 8 returns from Balindong (out of 17 returns), must be included in the canvassing of returns because the signatures and 95% of the thumbmarks of the voters who voted are 'blurred, smudged, faint, and illegible' and therefore could not be examined and analyzed, and so they should enjoy the presumption of regularity." [6]
3. They also "question the rejection of 10 returns by respondent Comelec on the ground of 'excess votes' by at least 40%." [7] They contend that these 10 returns must be included in the canvass, or in the alternative that the excess votes should be segregated at random to remove the excess votes and the remaining number of votes counted, in accordance with Comelec's standing instructions to the boards of election inspectors.
4. They uphold Comelec' in its action of not rejecting the Binidayan returns and of rejecting only six out of the sixteen Tubaran returns.

They contend that given the relief prayed for by them, of the three front-runners under the Comelec resolution of June 14, 1971 (Macaraya, Mapupuno and Balindong) only Mapupuno would remain and Bashier and Abbas would replace the two others.

Basically, the challenge is directed against the sufficiency of the evidence relied upon by Comelec for the rejection of the returns in question: 18 out of the 29 rejected Balabagan returns; [8] 8 out of the 17 rejected

Balindong returns;^[9] and 10 returns from various municipalities showing on their face excess votes of 40%. The Court finds no merit in the challenge.

A. Aside from the facts and data recited in the Comelec resolution cited above, justifying its conclusion and ruling that "there was actually no voting in the municipalities of Malabang, Balabagan, and Balindong and in precincts 9, 10, 11, 12, 12-A and 16 of Tubaran" and that the election returns therefrom were "spurious returns or no returns at all", the specifics and particulars cited by Comelec in its answer strengthen Comelec's position that it acted upon substantial evidence and that therefore its findings as a constitutional independent entity will not be disturbed by the Court on appeal or in a special civil action limited to questions of lack of jurisdiction or grave abuse of discretion.^[10]

B. The Comelec answer thus stresses that "(T)he facts disclosed by the examination of the voting records in the precincts involved in this proceedings show a series of serious irregularities of such nature and proportions that preclude the possibility that they were the result of innocent mistakes, mere carelessness or inexperience on the part of the members of the boards of inspectors; on the contrary, the pattern, seriousness, and the massive extent of the irregularities discovered indicated a systematic and determined effort to frustrate the will of the enfranchised citizens".

C. As to the non-election in the 18 Balabagan precincts, the Comelec answer further stated that "(T)he evidences on record show that not a single thumbmark appearing in the voting records from the aforementioned 18 precincts matched with the accepted standard in the corresponding Voter Registration Record. On the contrary, in certain precincts it was discovered that in groups of 225, 34, 21, voting records, the fingerprints appearing therein were found to have been impressed by only one and the same person. In several instances, the voting records with blurred, smudged or faint thumbmarks did not bear the required signatures of the persons who purportedly voted. In Precinct No. 1-C, the voting records were not accomplished at all; no List of Voters Who Voted (CEF 39) was submitted to the Commission on Elections. Viewed from the perspective of the totality, the nature and extent, of the irregularities and frauds discovered, the rational conclusion is that the blurring and smudging of the fingerprints in the voting record was deliberately done to prevent their analysis. It is evident that not a single registered voter in the said 18 precincts succeeded in casting his vote."

D). And as to the non-election in the 8 Balindong precincts, the Comelec answer likewise showed that (E)xamination of the voting records from the 8 precincts of Balindong showed that in Precinct No. 2 only 3 thumbmarks were found to match with the accepted standard in the corresponding Voter Registration Record; in Precinct 2-A only three thumbprints were found to match with the accepted standard in the corresponding Voter Registration Record; in Precinct 3 only 16 thumbprints were found to match with the accepted standard in the corresponding Vote Registration Record; in Precinct 4 only two thumbprints were found to match with the accepted standard in the corresponding Voter Registration Record; Precinct 8 only 9 thumbprints were found to match with the accepted standard in the corresponding Voter Registration Record; in Precinct 9 only 18 thumbprints were found to match with the accepted standard in the corresponding Voter Registration Record. There were 1,648 registered voters in the said 8 precincts of Balindong. The rational inference from the above findings therefore is that out of the 1,648 registered voters only 51 thereof succeeded in casting their votes.

"In addition thereto, in Precinct 2, sixteen persons without Voter Registration Records (CEF 1) purportedly voted. In Precinct 5, thirty-two persons without Voter Registration Record purportedly voted. In Precinct 1-A all the registered voters purportedly voted.

"The voting records of Precinct Nos. 2 and 5 did not bear the signatures of the persons who purportedly voted, thus explaining the failure to submit fingerprint analysis."

E. Election returns are accorded prima facie status as bona fide reports of the result of the count of the votes in a precinct on the underlying presumption that the election inspectors have faithfully complied with their official duty entrusted by the election code of delivering the official ballots only to duly registered voters entitled to cast their votes and of thereafter truly and honestly counting and recording the correct number of votes cast for all the candidates.

The moment such underlying presumption is destroyed by un rebutted clear and convincing evidence before Comelec that not only did the election inspectors not comply with the duty required of them by law but that the serious defects shown by the voting records amounting to falsification thereof could not have happened without the active participation of the inspectors themselves, the election returns thus prepared by the inspectors lose their prima facie status as bona fide reports of the true count of the votes and must be deemed falsified and spurious.

Indeed, what other conclusion can be drawn from the overwhelming illegal and fake votes written on the ballots by just two or three persons, euphemistically referred to by Comelec heretofore as "substitute voters," and the deliberate and intentional smudging and blurring of the thumbprints:

-In Balabagan, per Comelec's resolution, "(R)andom examination made by the members of the Commission during the hearing of the thumbprints in the precinct books of voters showed signs that the smudge or blurred thumbprints were intentionally caused. Some were caused by super-imposition of thumbprints over another. Others by the sliding of the thumbprints blurring impressions of the thumbprints;"

- Whereas, in Balindong, "(I)n the 16 precincts of Balindong with the total of 4,418 registered voters, 162 persons appeared to have voted without any CE Form 1. 704 thumbprints in the voting record of the voters did not match with the thumbprints in CE Form 1. 2,868 thumbmarks could not be analyzed due to blurring or smudging;"

which was but a transparent device resorted to by the malefactors in a vain attempt to frustrate their being uncovered by the examination of fingerprints and signatures on the precinct books and Form 39 availed of by Comelec to expose such falsified and spurious returns?

As expounded in the Sagada case[11] by Mr. Justice Jose B. L. Reyes for the Court, "We are not here dealing with occasional or sporadic irregularities that succeeded in surprising the good faith of the election inspectors. All the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters in Sagada to cast their ballots in all the precincts of Sagada, and to count such spurious ballots and take them into account in the returns. There is thus no alternative but to consider said returns as deliberately prepared with a view to alter the real results of the voting, through either malice or coercion. In either case, the returns must be deemed manufactured or falsified, without any title to be included in the canvass of votes for delegates by the Provincial Board of Canvassers for the Mountain Province."

Similarly, in the Karomatan case,[12] Mr. Justice Fred Ruiz Castro pointed out on the Court's behalf that "(S)everal 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 returns with the indelible mark of falsity and irregularity, and, consequently, of unreliability, and justify their exclusion from the canvass."

With regard to ten precincts whose returns were excluded for showing on their face greatly excessive votes; Comelec multiplied the number of registered voters by six (the number of delegates to be voted for) to compute the maximum number of votes that could be legally cast in one precinct; thereafter, it added together all the votes credited to the 18 candidates and compared the same with the total number of votes that could be legally cast, and

excluded the returns from ten precincts which thus showed a great number of votes in excess of the maximum that could be legally cast, as follows:

"Balabagan

1. Precinct No. 1-A: 595 excess votes or 47% in excess of the maximum votes that could be possibly cast.
2. Precinct No. 3: 433 excess votes or 38% in excess of the maximum votes that could possibly be cast.

"Lumba-Bayabao

3. Precinct No. 1: 596 excess votes or 44% in excess of the maximum that could possibly be cast.
4. Precinct No. 13: 583 excess votes or 45% in excess of the maximum votes that could possibly be cast.
5. Precinct No. 30: 636 excess votes or 53% in excess of the maximum votes that could possibly be cast.

"Madalum

6. Precinct No. 3: 892 excess votes or 62% in excess of the maximum votes that could possibly be cast.

"Lumbatan

7. Precinct. No. 6: 502 excess votes or 56% in excess of the maximum votes that could possibly be cast.
8. Precinct No. 22: 810 excess or 61% in excess of the maximum votes that could possibly be cast.

"Pualas

9. Precinct No. 2-A: 482 excess votes or 56% in excess of the maximum votes that could possibly be cast.

"Tamparan

10. Precinct No. 12: 1,135 excess votes or 88% in excess of the maximum votes that could possibly be cast."[13]

G. Bashier's alternative prayer that the ballots from the ten precincts with greatly excessive returns should be recounted, after segregating the excess ballots at random is not feasible nor proper in the cases at bar.

The situation envisioned by the standing Comelec instructions to segregate at random excess ballots refers to cases where the board of inspectors after the voting but before the counting of the votes finds that the number of ballots exceeds the number of voters who voted. In such cases, the excess ballots are segregated at random after first having been mingled thoroughly and the excess ballots picked at random by the board chairman are then marked as such and placed in a sealed envelope; such excess ballots are not read at all nor included in the counting of the votes.

In the cases at bar, however, Comelec ruled that its standing instructions for segregation of excess ballots were inapplicable, for the number of voters who voted were greatly in excess of the registered voters and hence, the returns were rejected by Comelec not only for such excess votes, but as manufactured and spurious returns "because the great excess of votes per se ruled out the possibility of honest mistake." [14]

Petitioner ABBAS, joined by respondents-frontrunners BALINDONG and MACARAYA, - questions the Comelec resolution only insofar as it did not order the exclusion from the canvass of the returns from Binidayan (13 precincts) as well as the exclusion of all returns from Tubaran (Comelec having ordered the exclusion of only 6 out of the 16 returns therefrom). On this score, petitioner BASMAN also joins ABBAS' petition.

Abbas contends that with the exclusion of all the questioned returns from Binidayan and Tubaran, (where Mapupuno and Bashier obtained sizable votes) he would replace Mapupuno in the "magic circle" and would be proclaimed with the two other frontrunners, Balindong and Macaraya.

Abbas reiterates therefore his prayer for relief before Comelec that the ballot boxes of Binidayan and the ten included ballot boxes of Tubaran should have been ordered opened by Comelec for the purpose of retrieving therefrom all the ballot stubs (where the voters' thumbmarks are affixed) and thereafter matching said ballot stub thumbmarks with the thumbmarks of the voters in the Central File Copies of the precinct book of voters (not the voting record [C.E. Form No. 1] and the List of Voters who Voted [C.E. Form No. 39] actually used in the election) or in the alternative that all the said returns should be excluded as spurious returns.

The Court holds that Comelec's ruling that the evidence of record was not sufficient to overthrow the presumption of 'regularity of the said questioned returns from Binidayan and Tubaran and to order their exclusion was in order and may not be overturned by the present action.

Comelec, after noting that the voting records from Binidayan were not available for examination because they were stolen in 1970 from the house of the vice-mayor, whereas in Tubaran, the precinct books had been stolen in the 1969 elections and the inspectors in 10 precincts did not accomplish CE Form 39, held in its resolution that "there is no sufficient evidence upon which the Commission can base a finding that the returns from Binidayan and the ten precincts Tubaran above mentioned were spurious or that no actual voting by the registered voters had taken place in said municipalities and precincts."

Abbas has not established any strong grounds for this Court to set aside and annul Comelec's own valid appreciation of the evidence before it. In *Lucmanvs. Dimaporo*[15] involving the precinct returns in the 1969 elections from the very same municipality of Tubaran, where the precinct book of voters had been stolen on the very eve of election 'day, but the municipal treasurer testified that he forced open the election registrar's office and caused the precinct lists of voters and copies of CE Form 39 to be furnished each precinct, so that the elections could be held, the Court held that Comelec's factual finding that the elections were actually held, being supported by substantial evidence, was not subject to review by this Court.

The very fact that Abbas persistently insists that Comelec retrieve the ballot stubs from the ballot boxes for matching purposes not with the voting records that were used which are not available, as already stated above — but with the central file copies, bears out the correctness of Comelec's appreciation of the evidence and ruling that it did not have sufficient evidence to declare the questioned returns as spurious or "that no actual voting had taken place in said municipalities and precincts."

Comelec properly ruled that it had no authority to open the ballot boxes in order to retrieve therefrom the ballot stubs and match the thumbprints therein with those of the voters appearing in the central file copies.

The Court has in *Diaz and Usman* and in the present cases sanctioned. Comelec's procedure of conducting on-the-spot investigations in critical areas where fabricated and spurious returns have been the rule rather than the exception and of utilizing its own fingerprint identification division and the services of handwriting experts to examine the voting records and verify the truth of reports or petitions that spurious returns have been manufactured with so-called "massive substitute voting" which really is fake voting done by a handful of persons.

But where the voting records were not accomplished as in the ten Tubaran precincts or the records were stolen as in Binidayan, and substantial evidence has been presented that there was actual voting, in the absence of strong evidence establishing the spuriousness of the returns, the basic rule of their being accorded prima facie status as bona fide reports of the result of the count of the votes for canvassing and proclamation purposes must be applied,

without prejudice to the questions being tried on the merit's with the presentation of all competent evidence, testimonial and real, in the corresponding electoral protest.

Abbas finally questions the "legal incongruity" of Comelec's accepting the inclusion of the questioned returns from Binidayan and Tubaran, when in 'its subsequent Resolution RR-916 of June 25, 1971 in a separate proceeding for the purpose[16] without objection from the Nacionalista and Liberal parties, it found that the precinct books of the five municipalities of Malabang, Balabagan, Balindong, Binidayan and Tubaran, Lanao del Sur, were "tainted with serious irregularities" and accordingly ordered their annulment by virtue thereof as well as by reason of their not having been "prepared in accordance with the provisions of Republic Act 3588, as amended." Comelec likewise directed therein the implementation of a new anomaly-free registration of bona fide voters and the investigation of the anomalies for purposes of prosecution of the responsible parties.

Abbas' point loses force, however, on two counts: first, Comelec, despite the loss of the precinct voters' records in Binidayan and Tubaran, had opted to proceed with the elections there, notwithstanding its authority to postpone the elections under section 17(d) of Republic Act No. 6132, and second, the subsequent annulment of the voting lists (precinct book of voters) in a separate proceeding initiated *motu proprio* by Comelec and in which the protagonists here were not parties, cannot retroactively and without due process result in nullifying accepted election returns in a previous election simply because such returns came from municipalities where the precinct books of voters were ordered annulled due to serious irregularities in their preparation.

III

Petitioner BASMAN questions (1) Comelec's inclusion in the canvass of the Binidayan returns and of the ten Tubaran returns (2) Comelec's denial of a fingerprint and signature examination of the precinct books of voters and C.E. Form 39 of three additional municipalities of Bayang, Lumbatan and Pagayawan and (3) Comelec's inclusion in the canvass of 64 returns from various municipalities where the excess votes did not reach 40%. Basman claims that should his petition be upheld, he would be the one to replace Mapupuno in the "win" column and would be entitled to proclamation with Balindong and Macaraya.

A. Basman's common position with Abbas urging the total exclusion of the Binidayan and Tubaran returns has already been rejected by the Court, *supra*.^[17]

As to the last two questions where Basman now urges that Comelec be required to conduct an examination of the voting records in the three above-named towns and that Comelec should exclude 64 other returns where there where excess voted, though not reaching 40%, Basman's petition suffers from the fatal defect that he seeks to raise for the first time before this Court questions and objections that he either had to raised below before the canvassing board or before Comelec (upon proper referral of the canvassing board or on appeal from the said board's resolution) or which are different from those he had raised below.

B. Thus, on the question of Comelec's denying Basman's last-minute move for examination of the three additional municipalities, Comelec, per its Resolution No. RR-911 dated June 8, 1971, after giving the antecedents, properly and correctly turned down Basman's belated motion- as one that would be unfair to the other candidates after Basman's original objections had been ruled upon and it was shown that he could not overcome the winning margin of the frontrunners, and would in effect unduly prolong the pre-proclamation proceedings which should be expeditiously terminated. As stated in *Lucman, supra*, there should be in pre-proclamation proceedings no encroachment upon, or unnecessary duplication of, "the proceeding peculiar to election protests, with the consequent possibility of having different results and the serious dangers concomitant therewith." The said Comelec resolution thus ruled:

“Before the Commission is an Urgent Motion of candidate ANSARE SACAR BASMAN dated May 31, 1971, praying that this Commission order the examination of the precinct books of voters(CE Form 1) and CE Form 39 of the municipalities of Bayang, Lumbatan and Pagayawan on the ground that the returns from said municipalities were among those questioned by him in his consolidated petition of December 11, 1971 as returns prepared at gunpoint or as manufactured returns. Examination, however, of said consolidated petition shows that candidate BASMAN, contrary to his allegation, has not questioned the returns from Bayan, Lumbatan and Pagayawan as returns prepared at gunpoint or as manufactured returns. In said consolidated petition, he had questioned the returns from Precincts 1, 3, 3-A, 4, 4-A, 5, 6, 7-A, 8, 8-A, 9, 10, 10-A, 11, 13 and 13-A of Bayang, Precincts 6, 8, 11, 17, 18, 20 and 22 of Lumbatan Precincts 1, 5-A and 8 of Pagayawan only on the ground that the Board of Inspectors appointed for said precincts are not public school teachers in violation of the provisions of the 1971 Constitutional Convention Act. He had also questioned the returns from Precincts 6, 7, 10-A, 12-A and 13-A, Bayang, Precinct 19, Lumbatan on the ground of said returns were tampered, from Precincts 2, 3, and 5 of Pagayawan, on alleged lack of signatures of the members of the Board of Inspectors and absence of data on the number of registered voters and from Precincts 7 and 8 on the grounds of greatly excessive votes and failure of elections.

“Neither in his Petition dated November 15, 1970, Supplemental Petition of the same nor Motion of Intervention dated November 23, 1970, had he actually questioned the returns from Bayang, Lumbatan and Pagayawan on the grounds that the returns therein were manufactured or were prepared at gunpoint.

“To allow at this late state of the proceedings any candidate to question the returns from several municipalities on grounds other than those previously raised by him before the Provincial Board of Canvassers and before the Commission because the returns originally questioned by him after the Commission has ruled on most of the returns are not sufficient to overcome or offset the votes of the leading candidates resulting in his eventual failure to be among the presumptive winners would not only be unfair to the other candidates but would in effect unnecessarily prolong the present pre-proclamation proceedings which should be as summary and expeditious as possible. If we grant BASMAN’S motion, other candidates would also ask for the examination of the precinct books from the other towns.”

Comelec’s rejection of Basman’s new posture was but in accordance with the well settled principle that a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.

Since Basman, save for his belated move, advanced no objection below that the returns in question were manufactured or prepared at gunpoint, such as to warrant the examination of the voting records, this question may no longer be raised for the first time before this Court.[18]

C. As per Comelec’s resolutions at the minutes of its sessions of December 15 and 16, 1970, and February 2, 1971,[19] Comelec ruled on all objections to the disputed returns other than “gunpoint returns” and “no election”, which became the two remaining decisive issues, by virtue of which it required affidavits and counter-affidavits of witnesses from the contending candidates as well as directed the fingerprint and signature examination and identification of all the returns from the five municipalities of Malabang, Balabagan, Balindong, Binidayan and Tubaran, *supra*.[20]

The said Comelec rulings bear out the fact that Basman raised objections only to 18 election returns out of 64 returns now sought to be questioned by Basman on the ground of “excessive votes” which were therein overruled by Comelec.[21] The same Comelec rulings show that of the remaining 46 returns, 43 returns were objected to on

grounds other than “excessive votes”, (viz, that inspectors appointed were not public school teachers, that some returns were tampered) while no record appears of the last 3 returns having been questioned at all on any ground, in the proceedings below.[22]

Since Basman failed to object in the proceedings below to the 46 out of 64 returns now sought to be questioned and excluded by him on the ground of “excessive votes”, his present objection may not properly be considered for the first time by this Court in the present action. To allow him to do so would be to convert improperly the present action for review of the Comelec resolution either by certiorari or as an original special action into a new and original proceeding at which entirely new questions may be raised for the first time, without the canvassing board and Comelec ever having passed on the same. Such a procedure is totally impermissible.

As to the 18 precincts to which Basman had properly objected below on the ground of “excessive votes”, the Court is not called upon to review Comelec’s overruling of Basman’s objection, since he has failed to show their materiality in that they would affect the results of the election and give him a winning berth.

D. Withal, Basman’s petition raises an interesting academic issue at bar on whether the standard of 40% excess votes set by Comelec to justify the exclusion of the returns for being “greatly excessive” and “per se ruling out the possibility of honest mistake” is too high and consequently arbitrary, when an excess of 20% or 30% may likewise be argued to be equally “greatly excessive,” which rules out the possibility of honest mistake.

But such an issue is academic insofar as the cases at bar are concerned, and the Court is not here called upon to set up a criterion for the proper exclusion of returns on the ground of “excess votes”. Only Basman has raised the issue of excluding them and he is foreclosed therefrom, for not having raised it in the first instance below, not to mention that he has failed to show that such exclusion would materially affect the results in his favor. Furthermore, other than a general claim that all returns with excess votes, be they an excess of only one vote, should be rejected, Basman has not made out any specifics or particulars that would place the 64 questioned returns within the same category of the ten returns rejected by Comelec for “greatly excessive” votes. It will be recalled that as far as the ten precincts with a great excess of votes of over 40% are concerned, *supra*, [23] the Court found no justifiable basis for setting aside Comelec’s ruling that indeed and in fact, the great excess of votes therein ruled out the possibility of honest mistake and warranted their total exclusion. Basman has made out no such case with the 64 returns questioned by him.

IV

Comelec was split 2 to 1 in its questioned resolution as to whether the canvass could proceed to proclamation of the last three winners or whether a special election should be called and held in Malabang, Balabagan, Balindong and in the six precincts of Tuburan where the returns were excluded, under section 17(e) of the 1971 Constitutional Convention Act.

Bashier alternatively prays for the holding of such election in the 18 precincts of Balabagan and 8 precincts of Balindong, should the exclusion of the returns therefrom be sustained, as it has been herein sustained.

This issue has been resolved in *Usman*, *supra*, wherein Mr. Justice Castro for the Court pointed out that “(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. 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.”

As in *Usman*, Comelec has found that what transpired in the excluded municipalities was not merely a simple case of irregularity in the voting but a case of no voting or no election at all. Hence, *mutatis mutandis*, our rationale in *Usman* against the calling and holding of a special election applies with equal force and effect in the cases at bar thus: “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.”

Comelec properly ruled against the holding of a special election, since there is no proof that no voting was held “because of force majeure, violence or terrorism” (as required by section 17(e) of Republic Act No. 6132), and indications were that “massive fraud” held sway, with intentional smudging and blurring of thumbprints in an obvious attempt to escape detection.

Due to the absence of the first condition of no voting “because of force majeure, violence or terrorism,” it is no longer necessary to inquire into the presence of the second condition that the votes not cast are sufficient to affect the results of the election. Suffice it to state that the law’s excluding the calling of special elections where no voting has been held because of fraud is apparently based on the same premise as in other cases where the manufactured, spurious or gunpoint returns have been simply excluded, that fraud should be dealt such capital penalty of exclusion to the prejudice of the intended beneficiary rather than be rewarded with the perpetrators being given a second chance of carrying out the fraud in perhaps a more effective form at a special election.

V

With the results thus reached, upholding Comelec’s authority in pre-proclamation proceedings to order the exclusion of the questioned returns on the ground that there was actually no voting in the specified municipalities and precincts, in effect confirming Comelec’s advance proclamation of delegates Alonto, Guro and Pangandaman (who have duly qualified as such and since June 1, 1971 entered upon the discharge of their duties as enrolled delegates to the 1971 Constitutional Convention), with the overruling of all other objections raised by contenders at bar, and particularly the reiteration herein of the ruling in *Usman* that section 17(e) of Republic Act No. 6132 does not authorize the calling of a special election in places where no voting has been held because of fraud, the issue of whether the Court may exercise jurisdiction by virtue of the cases at bar over the said three delegates who had been proclaimed in advance as the first three winning candidates, has become moot and academic.

VI

One final matter remains to be cleared up. Insofar as Comelec’s rulings at the previous hearings of December 15 and 16, 1970 and of February 2, 1971 for the admission or rejection of certain disputed returns are concerned, and which are now likewise questioned by the parties in the present action instituted after Comelec issued its questioned final resolution of June 14, 1971 resolving the two remaining decisive issues of gunpoint returns and no elections, Comelec has objected and presented as a defense that since petitioners did not timely appeal from the said rulings of December 1970, and February 1971, within the reglementary 10-day period, petitioners are now barred from seeking a review by this Court of such rulings in the present case.

Among such earlier rulings questioned by petitioners and reviewed by the Court despite Comelec’s said objection, are Bashier’s contention that the ten returns with 40% excess votes should not be excluded but

instead recounted after segregating at random the excess ballots and Basman's contrary submittal that 64 more returns besides the said ten excluded returns should likewise have been excluded by Comelec for the same ground of excess votes.

In all said questions, Comelec has submitted that since they were resolved by Comelec in open session in the presence of parties' counsels at its sessions in December, 1970 and February, 1971, *supra*, Comelec's rulings thereon have "long acquired final and definitive character for failure of petitioner to seasonably appeal therefrom." [24] Comelec cited in support of its contention the last paragraph of section 5 of the Revised Election Code [25] and the reglementary 10-day period fixed in Rule 43, section 4, of the Rules of Court, for appealing from Comelec to this Court.

The flaw in Comelec's contention is that it fails to take note of the cardinal rule set forth in Rule 43, section 1 that such appeals may only be taken "from a final order, ruling or decision" of Comelec, by a petition for certiorari or review thereof.

In other words, such earlier rulings of Comelec may not be elevated on appeal until after the final order or resolution of Comelec shall have been issued, resolving all the issues in the controversy and directing that the canvass be accordingly completed and the winning candidate(s) proclaimed. Any appeal from the earlier rulings which do not put an end to the controversy would be clearly premature and futile, for the decisive final resolution might be in favor of the prospective appellant.

As has been stressed time and again the purpose of the rule [26] requiring that only final judgments or orders are subject to appeal, and that interlocutory and incidental rulings shall not be the subject of appeal until final judgment or order is rendered for one party or another, "is to avoid multiplicity of appeals in a single case. If each interlocutory order or judgment may be appealed from, and the appeal shall stay the progress of the action, there will be numberless appeals in a single case, and the delay in the final disposition of the case will be such that, in many instances; the parties may not survive it." [27] Such proliferation of appeals certainly would be disastrous in pre-proclamation election controversies.

WHEREFORE, the petitions at bar are dismissed; the resolution of the Commission on Elections dated June 14, 1971 and its earlier related rulings are affirmed; and the restraining orders dated June 30, 1971 issued by the Court in L-33692 and L-33699 are lifted and set aside. The Commission on Elections is directed to order the canvassing board of Lanao del Sur to reconvene without delay and forthwith proceed with and complete the canvass in accordance with its said resolution herein affirmed, and thereafter proclaim accordingly the winning candidates for the three (3) remaining seats for the Constitutional Convention allotted to the said province of Lanao del Sur. In view of the urgency of the matter, this judgment is hereby declared immediately executory. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, concur.

[1] This is the figure given by the Comelec and by the parties, save for petitioner Basman in L-33728 who avers that "there were 20 candidates." The discrepancy is of no moment and does not affect the issues.

[2] Comelec Res. RR-913: notes in parentheses supplied.

[3] Division of items furnished.

[4] *Idem*.

[4-a] Idem.

[4-b] Idem.

[5] Besides the six original parties-contenders for the last three winning spots, the twelve other candidates thus impleaded as respondents were: Domocao Alonto, Mangontawar Guro, Lininding Pangandaman, Macabanggit Lanto, Atidul Aguam, Saadudin Alauya, Sultan Bato Ali, Dimacaling Balt, Mamarinta Lao, Sambitory Lucman, Manalo Mindalano and Muslimen Tahir.

[6] Joint Memorandum of Bashier and Mapupuno, p. 3.

[7] Idem, p. 3.

[8] The 18 precincts of Balabagan whose returns are sought to be included are: Nos. 1, 1-B, 1-C, 3-A, 4-A, 4-B, 4-C, 5, 5-A, 6, 6-A, 6-B, 7, 9, 10, 12, 13, and 16.

[9] The 8 precincts of Balindong whose returns are sought to be included are Nos. 1-A, 2, 2-A, 3, 4-A, 5, 8, and 9.

[10] See *Pungutan vs. Abubakar*, L-33541, Jan. 20, 1972, citing *Lucman vs. Dimaporo*, 33 SCRA 387 (May 29, 1970).

[11] *Diaz vs. Comelec*, L-33378, Nov. 29, 1971.

[12] *Usman vs. Comelec*, L-33325 & L-34043, Dec. 29, 1971: See also *Pungutan vs. Abubaka*, supra, fn. 10.

[13] Comelec answer in L-33692, Rollo, pp. 278-279.

[14] Comelec Resolution RR-884-A, Annex B of Bashier's petition.

[15] Supra, fn. 10.

[16] Annex D, Basman's petition.

[17] See Heading 11.

[18] See *Moore vs. Comelec*, 31 SCRA 60 (Jan. 23, 1970); *Lucman vs. Dimaporo*, supra, fn. 10; *Nacionalista Party vs. Vera*, 85 Phil. 127.

[19] Annexes A, B and C, Basman's memorandum.

[20] At pages 280-284.

[21] The said 18 precincts thus questioned were: Bayang – Precinct No. 1; Bubong – Precinct Nos. 8-A, 11, 12 and 13; Madamba – Precincts Nos 1, 5, 7, 8 and 9; Marantao – Precincts Nos. 6, 7, 10*A, 15-A and 21; Piagapo – Precinct No. 1-A; Poona Bayabao Precinct No. 8; and Tyaga – Precinct No. 5-A.

[22] See Comelec answer to Basman's petition, pp. 3-5; 12-13: Comelec Res. RR-911 of June 8, 1971, supra.

[23] At pages 301-302.

[24] Comelec's answer to Bashier's petition, pp. 4-6; Comelec's answer to Basman's petition, pp. 8-11.

[25] Now substantially reproduced in the penultimate paragraph of section 6 of the 1971 Election Code (R.A. 6388), which reads: "(A)ny decision, order or ruling of the Commission on Elections controversies may be reviewed by the Supreme Court by writ of certiorari in accordance with the Rules of Court or such laws as may be enacted."

[26] Rule 41 section 2, Rules of Court.

[27] 2 Moran's Comments, 1970 Ed., p. 398, cit. *Sitchon vs. Sheriff*, 80 Phil. 397; *People vs. Doriquez*, 24 SCRA 167 (1968).

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