

ROGELIO O. TIGLAO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, CORNELIO SANGA AND BOARD OF CANVASSERS OF PAMPANGA, RESPONDENTS.

G.R. No. L-31566. February 29, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

These proceedings are the final sequel of our judgment of February 18, 1970 in Case L-31566, as amended by our resolution of August 31, 1970 in Cases L-31566 and L-31847.

In our first judgment of February 18, 1970 in Case L-31566,[1] the Court set aside the Comelec resolution of January 26, 1970 which would have resulted in the proclamation of respondent Sanga as the winner of the 1969 election for member of the House of Representatives for the second district of Pampanga with a margin of 247 votes over petitioner Tiglao. As therein stated, in six out of seven petitions for judicial correction of election returns under section 154 of the Revised Election Code filed on January 27, 1970 by the boards of inspectors, the Pampanga Court of First Instance had granted the petitions and ordered that petitioner Tiglao be credited with 292 additional votes in precincts 9, 21, 20, 19, 16 and 15 of San Luis, Pampanga, which were sufficient to overcome Sanga's erstwhile margin of 247 votes. The Pampanga court's orders were still being questioned then by Sanga.

The Court further noted the pendency before the Pampanga court of several pending judicial petitions filed by Tiglao which required the holding in abeyance of the proclamation proceedings.

On the questioned return from precinct 6, San Simon, where Comelec had directed that the figures "75" written over the figure "0" for Sanga be counted for Sanga, the Court set aside the Comelec ruling, as follows:

"3. We now take up the question raised as to Precinct 6, San Simon. There, it will be recalled that all copies of the returns bear a superimposition as to the votes of respondent Sanga. The figures '75' were clearly written over the figure '0'. So it is, that instead of Sanga appearing to have received no vote in said precinct, he is now credited with 75 votes in the return therefrom. The tally sheet retrieved from the ballot box is no help because it is not now before us, aside from the fact that averment is made that it is unsigned.

"There is testimony before Comelec that it was the chairman of the board of inspectors who wrote in the 75 votes but who forgot to initial the change. It was because of this that Comelec ruled that such change was not a tampering but simply a correction. Thus did Comelec give Sanga the 75 votes.

"This brings to mind the case of Balindong vs. Commission on Elections, L-29610, March 28, 1969, 27 SCRA 567, 584, 585.

"The following pertinent passages therein are significant:

'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 the '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. * * *

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'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 inspectors, or any person for that matter, the fortunes of 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.'

"Hewing to the line drawn by Balindong, we cannot give our imprimatur to Comelec's view. The correction having been made without the positive authority of the other members of the board and such correction not having been initialed by them, the original entry for Sanga may not be considered as altered.

"The foregoing thus funnels us down to the conclusion that as to Precinct 6, San Simon, respondent Sanga should not be favored with 75 votes. The return for him should remain as it originally was zero."

On still two other questioned returns from precincts 35-A and 36, Apalit, where the name of Tiglao had been left out, the Court held that "Comelec should have ordered the boards of inspectors of precincts 35-A and 36, Apalit, to open the ballot boxes, count the votes for petitioner Tiglao, if any, and make new returns."

The Court thus handed down the following judgment:

"FOR THE REASONS GIVEN, the petition for certiorari is hereby granted; the temporary restraining order issued by this Court is hereby superseded; the resolution of respondent Commission on Elections of January 26, 1970 ordering the proclamation of 'the presumptive winner for Member of the House of Representatives for the 2nd District of Pampanga' is hereby set aside; the proclamation of the winning candidate shall be held in abeyance until after the questions affecting the same as hereinabove discussed, pending in the Pampanga court, are determined with finality; and respondent Commission on Elections is hereby directed to credit no vote for respondent Cornelio Sanga in Precinct 6, San Simon, and to order the boards of inspectors of Precincts 35-A and 36, Apalit, to open, in the presence of all parties concerned, the ballot boxes for said precincts, count the votes therein, and make new returns therefore. No costs allowed. So ordered."

Respondent Sanga moved for reconsideration of the said judgment per his motion of March 7, 1970, specifically limiting the same to the rulings on precinct 6, San Simon, and precincts 35-A and 36, Apalit, and praying "that the decision of this Honorable Court as above mentioned be reconsidered and set aside to credit the seventy-five (75) votes in favor of respondent Sanga in Precinct 6, San Simon, Pampanga; and with respect to Precincts 35-A and 36, Apalit, the order for the opening of the ballot boxes and the recanvass of votes be set aside."

The Court denied reconsideration in its resolution of March 19, 1970, as follows:

"In L-31566 (Rogelio O. Tiglao vs. Commission on Elections, et al.), upon consideration of petitioner's motion and supplemental motion to declare decision immediately executory, and respondent Sanga's motion for reconsideration of decision and petitioner's opposition thereto, the Court RESOLVED to deny respondent Sanga's motion for reconsideration and to grant petitioner's motions.

"In denying respondent Sanga's motion for reconsideration, the Court deemed it unnecessary to pass upon the question therein raised that the alteration in the return for Precinct 6, San Simon, crediting said respondent with 75 votes (instead of zero vote as originally written) and disauthorized in the Court's decision, was made 'during the preparation of all copies of the returns and before the publication of the results in the polling place.' This question has become moot, taking into consideration that the Pampanga Court of First Instance, in its

Resolution dated March 10, 1970 (Annex 'A', petitioner's supplemental motion), denied said respondent's motion for reconsideration of said Court's decision, whereby petitioner has been credited with 292 additional votes from the six precincts concerned, where the returns were judicially authorized to be corrected, which votes are sufficient to offset respondent's overall margin of 247 votes before the correction, and hence the disputed 75 votes (which are already included in said margin of 247 votes) would not affect the results of the election.

"The Court, *motu proprio*, resolved to clarify the portion of the dispositive part of its decision referring to Precincts 35-A and 36, Apalit, (at page 9), to read as follows:

"* * * and to order the boards of inspectors of Precincts 35-A and 36, Apalit, to open, in the presence of all parties concerned, the ballot boxes for said precincts, count the votes therein for petitioner Tiglao, and make new returns therefor' (clarification italics)

to make the same consistent with the statement in the paragraph immediately preceding the same, and to avoid any misconception that the votes therein obtained by and credited to respondent Sanga, which have not been questioned, should be counted anew.

"As to said Precincts 35-A and 36, Apalit, the Court has likewise noted that the determination of the votes, if any, obtained by petitioner therein (as against the omission of his name from the returns and no statement of whether or not he received any votes therein) would not affect the results of the election, because it would not decrease the majority of petitioner.

"Accordingly, the Court's decision of February 18, 1970 is declared to be now executory. Respondent Commission on Elections is directed to immediately convene the Board of Canvassers with instructions to said board to conclude its canvass within three (3) days, in accordance with the said decision and this resolution, and proclaim forthwith the winning candidate for Member of the House of Representatives for the second district of Pampanga."

Respondent Sanga immediately filed his urgent motion for reconsideration of March 19, 1970, alleging that his motion for retrial and recall of petitioners and witnesses was still pending before the Pampanga court and reiterating his previous motion for reconsideration of the Court's judgment on the three questioned returns from San Simon and Apalit, *supra*. The Court required petitioner Tiglao's answer thereto and thereafter handed down its resolution of March 23, 1970 denying reconsideration, thus:

"Prescinding from the fact that the Motion for new trial filed by respondent Sanga with the Pampanga Court appears to be pro forma (since the three principal grounds thereof, per paragraph (5) of his present motion, were fully considered already by said Court in its resolution of March 10, 1970, denying said respondent's motion for reconsideration of its decision of February 7, 1970; see *Estrada vs. Sto. Domingo*, L-30570, July 29, 1969), a court order granting or denying the board of inspectors' unanimous petition for correction of the election return is unappealable and the summary proceeding comes to an end with the Court's ruling. (*Aguila vs. Navarro*, 55 Phil. 898).

"Such orders, which are merely 'part of the electoral administrative process,' as explained in *Villalon vs. Arrieta*, L-29177, September 30, 1969, referring to similar judicial recount proceedings, are immediately executory and there is no appeal therefrom; '(I)f at all, only question of jurisdiction and of law may be brought to the Supreme Court in appropriate instances by certiorari, prohibition or mandamus with a request for the issuance of the corresponding writ of preliminary injunction, if necessary. As further held in the cited case, upon the issuance of the lower court's decision for correction and its Resolution of March 10, 1970, maintaining its decision, after threshing out the factual and legal questions raised by respondent, in his Motion for reconsideration (filed belatedly only on the 18th day after said decision was rendered), the summary proceeding became *functus officio*."

Respondent Sanga filed, inter alia, still another urgent motion for reconsideration dated March 24, 1970, assailing the judicial correction proceedings resulting in Tiglao's thereby overcoming his slim margin of 247 votes (actually 172 votes, since the Court ordered the striking out of the 75 votes credited to him in precinct 6, San Simon) and complaining that "the (six San Luis) returns as corrected would show that the total of the votes cast in favor of all the candidates for congressman would far exceed the total number of voters who actually voted (by 244 votes), and even the total voters registered (by 92 votes.)"[2]

The Pampanga court denied Sanga's motion for new trial per its resolution of March 25, 1970 and the Court finally disposed of and denied Sanga's various motions per its Resolution of March 30, 1970, as follows:

In L-31566 (Rogelio O. Tiglao vs. Commission on Elections, et al.), upon consideration of respondent Sanga's Urgent Motion for Reconsideration and Supplemental Motion for Reconsideration both dated March 24, 1970 and Manifestation of March 30, 1970, wherein said respondent prays for reconsideration of the Court's Resolutions of March 19, 1970 and March 23, 1970, and that in the event of an adverse resolution, the effects thereof be held in abeyance in order to give him an opportunity to elevate by certiorari the Pampanga Court's decision in the correction cases, and of petitioner's opposition and Supplemental Opposition thereto both of March 30, 1970, the Court resolved to DENY the said respondent's motions and the prayers in his manifestation.

"A period of more than a month and half has elapsed since the Court's Decision of February 18, 1970, and the electoral administrative processes which are mandated by law to be summary in nature in order to determine expeditiously the outcome of the elections and which have been fully availed of by the parties must come to an end. It is in consonance with this principle that such administrative electoral processes as judicial correction and judicial recount proceedings are not generally made available when they would not affect the results of the election, the proper remedy being an electoral protest.

"Accordingly, no further motion to hold in abeyance the effectivity of the Court's resolution of March 19 and 23 will be entertained. The suspension, by resolution of March 25, 1970, of the effectivity of the Court's Resolution of March 23, 1970 is now lifted, and the respondent Commission on Elections is directed anew to immediately convene the Board of Canvassers with instructions to conclude its canvass and to proclaim forthwith the winning candidate for the second congressional district of Pampanga."

Further complications ensued nevertheless when the Comelec by its split 2 to 1 resolution of April 7, 1970, upon Sanga's instance, ordered the canvassing board not to include in the canvass the judicially corrected returns for the six San Luis precincts resulting in 292 additional votes for Tiglao "for being mathematically improbable as shown by the great excess of votes appearing thereon for congressional candidates,"[3] and in effect to proclaim Sanga as the winner by April 13, 1970.

Petitioner Tiglao accordingly filed on April 9, 1970 his "Motion to Enforce Judgment (alternatively) Petition for Certiorari," challenging the authority of Comelec to review and vacate the Pampanga court's correction decisions above adverted to. The motion-petition was docketed as Case L-31847 and the Court required respondents to answer the same. Enforcement of the Comelec's proclamation order was restrained, as prayed for.

The Court heard the parties in oral argument on April 23, 1970 and at a rehearing on July 16, 1970. The Comelec majority resolution, in ordering the exclusion from the canvass of the 292 additional votes for Tiglao from the six judicially corrected San Luis returns held that "where, as in this case, the excess votes were the result of judicial correction made one day after the Commission has promulgated its decision (Case No. RR-695), and the winner already known, based solely on sworn petitions of the corresponding boards of inspectors, and the returns as corrected contained excess votes materially affecting the result of the election, then the only explanation that could be derived therefrom is that said boards had submitted false or inaccurate data to the Court," and that it "cannot countenance the use of election returns that are 'obviously' invalid." It held further that "the court merely

sustained the sworn petitions of said board without considering other factors on the probable consequences thereof," viz, the alleged excess votes which in its view made the six corrected returns "mathematically improbable."

The Court thereafter handed down its amendatory Resolution of August 31, 1970.[4] We ordered the setting aside of the Comelec majority resolution, ruling that:

"1. It is evident that no matter how worthy the respondent Comelec's motives may be, the Comelec lacks jurisdiction and authority to review the judicial correction ordered by the Pampanga court as the court of competent jurisdiction under section 154 of the Revised Election Code. Much less may Comelec set aside the judicially corrected returns, which is a foreclosed question as it itself admits. Assuming in gratia argumenti that the Pampanga court grossly erred in ordering the corrections on the basis of patently false testimony of the inspectors resulting in the excess votes now shown on the corrected returns, Comelec may not collaterally attack and discard the Pampanga court's ruling as correctly stated in Commissioner Patajo's dissenting opinion. The judicial resolution of the inspector's petition for correction of returns is final and executory for the purpose of the canvass solely, and with the court's order of approval or denial, as the case may be, in the exercise of its sound discretion, the proceeding comes to an end, giving way to the proclamation and the proper electoral protest."

The Court however noted "that the vexing question at bar or excess votes emerging despite, and in tact as result of the judicial correction proceedings would not have arisen, had due notice of the petition for correction been properly given to the affected candidates, with the questioned returns sought to be corrected duly submitted to the lower court, and hence, the testimony of the inspectors in support of their petition would not have been heard by the court without benefit of cross-examination * * *." The Court further noted that:

"In our decision of February 18, 1970, we had directed that the proclamation of the winning candidate between the contending rivals be held in abeyance 'until after the questions affecting the same, pending in the Pampanga court, are determined with finality. The challenged Comelec resolution now before us has perforce laid open the question of finality, of the Pampanga court's correction ruling — not because of Comelec's resolution beyond its jurisdiction to exclude the corrected returns and thus review and set aside the Pampanga court's ruling — but because of grave question of due process by virtue of lack of notice of the proceedings on the parties affected, as motu proprio noted by the Court, and which bears heavily on the validity or nullity of the correction proceedings, as hereinafter discussed. Besides, prescinding from the fact that the Pampanga court's ruling was not directly elevated to the Court, it is a settled principle in the administration of justice that 'it is always in the power of the Court to suspend its own rules or to except a particular case from its operation whenever the purposes of justice require it.' "

Under these premises, the Court issued two new rulings, expressly overruling previous doctrines enunciated in past jurisprudence.

The first ruling now expressly required as a matter of due process that notice of the correction proceedings be given to all candidates affected just as such notice is required under section 163 of the Revised Election Code governing recount proceedings, thus:

"Considering that the difference in votes between the rival candidates in the cited cases, as in the case at bar, is marginal, such that the judicial correction by unanimous petition of the inspectors of one or a few precincts would materially affect the results of the election and spell victory or defeat, the Court has felt constrained to re-examine thoroughly the question and after due deliberation has arrived at the conclusion that due process, as guaranteed by the Constitution, requires in order that jurisdiction may be properly acquired over the parties affected and exercised by courts of first instance in correction proceedings under section 154 of the Revised Election Code that (1) notice of the correction proceedings be given to all candidates affected just as it is

required under section 163 thereof governing recount proceedings and (2) copy of the return sought to be corrected must be ordered by the court to be duly submitted to it by the provincial or municipal treasurer, as the case may be, or by the chairman of the board of canvassers concerned who had received the same for the canvassing, without prejudice to availing of other official copies of the return such as the Comelec's copy and that deposited in the ballot box.

"The demands of procedural due process that a party affected must be given notice and an opportunity to be heard must be fulfilled together with the law's policy for prompt proclamation of the true winner in the elections. The summary character, of the proceedings, if implemented with a firm hand so as to rule out impertinent and irrelevant questions and dilatory tactics, would normally not cause any undue delay in the ensuing proclamation. And if some measure of delay were entailed, nevertheless the due process requirement may not be dispensed with.

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"For the foregoing reasons, the Court accordingly expressly overrules the previous doctrine enunciated by it in the cited cases of Gumpal vs. Court of First Instance of Isabela and Cuenco vs. Laya, supra, and all other cases inconsistent with the doctrine now enunciated that notice of the correction proceedings must be given to all candidates affected and that copy of the election return sought to be corrected should be ordered by the court to be duly submitted to it by the custodian thereof. The Court therefore declares the correction proceedings in the Pampanga court null and void."

The second ruling now expressly required in contested correction proceedings, upon the court's finding of a prima facie case and that the integrity of the ballot box and of its contents has been duly preserved, that it open the ballot box and conduct a summary recount of the ballots themselves as in judicial recount proceedings under section 163 of the Revised Election Code, thus:

"3. With the Court's declaration of nullity of the Pampanga court's decision in the correction proceedings for lack of notice to the candidates affected, specifically petitioner Tiglao, respondent Sanga and candidate Federico Taruc (to whom the additional 292 votes now sought to be credited to Tiglao per the correction were erroneously credited, according to the April, 1970 affidavits of the inspectors, supra), said court will have to hear anew the inspectors' petitions for correction, with due notice to the candidates affected, and render anew its resolution on the basis of the evidence that may be submitted to it.

"The Court therein expressly discards the previous doctrine of Benitez vs. Paredes and Dizon vs. Provincial Board of Canvassers and all subsequent cases uniformly ruling that in correction proceedings, where the court after hearing the inspectors is satisfied as to the veracity of their petition or affidavits and of the error alleged to have been committed, it shall, without any need of opening the ballot boxes, order the corresponding correction of such error in the election return. In lieu thereof, the Court now sets the procedure that in all such correction proceedings, the court of first instance upon being satisfied at the hearing that a prima facie case has been made out, must furthermore, — unless the correction sought is indubitable or unopposed and may therefore be summarily ordered — in all cases where it finds that the integrity of the ballot box and its contents has been duly preserved, go to the real evidence, open the ballot box and conduct a summary recount of the ballots themselves as in judicial recount proceedings under section 163 of the code.

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"(i) The condition herein required that the trial court make a preliminary finding that the integrity of the ballot box and its contents has been duly preserved is, of course, a necessary one, since a new count of the ballots found in a ballot box that has been tampered with would serve no legitimate purpose and would defeat the very objective of the recount to determine from the real evidence of the ballots the true result thereof. In such a case, the trial court must content itself with all other secondary evidence available to satisfy itself of the merit of the petition, such as the inspectors' testimonies, the tally board and tally sheet, minutes of voting, etc., without

regard to the contents of the tampered ballot box."

The Court thus amended its previous judgment of February 18, 1970, as follows:

"ACCORDINGLY, the Court has resolved: (a) to annul and set aside respondent Comelec's resolution of April 7, 1970, and (b) to likewise annul and set aside all proceedings, as well as the 'decision' of the Court of First Instance of Pampanga dated February 7, 1970 and its resolutions of February 25, 1970 and March 25, 1970 affirming its said 'decision', in the correction proceedings, Elections Cases Nos. 3653, 3654, 3655, 3656, 3657 and 3659 thereof, with instructions as discussed above particularly in paragraphs 2 and 3 hereof, to hear the same anew with due notice to the candidates affected; to have before it the copies of the election returns sought to be corrected; upon being satisfied prima facie of the errors alleged to have been committed by the boards of inspectors concerned and upon its preliminary finding that the identity and integrity of the ballot boxes have been duly preserved, order the opening thereof and after likewise satisfying itself that the integrity of the ballots therein has been also duly preserved, conduct a summary and arithmetical recount of the ballots themselves; and thereafter to render anew the appropriate resolution on the basis of the evidence before it."

It may be duly noted that these innovative rulings of the Court have now been substantially incorporated in the corresponding provisions of the Election Code of 1971 (Republic Act No. 6388) approved on September 2, 1971, particularly section 194 thereof governing correction proceedings[5] formerly provided in section 154 of the old code, and section 206 on recount proceedings formerly provided in section 163 of the old code.

With the Court thus having ordered hearing anew by the Pampanga court of the correction proceedings, with due notice to the candidates affected and the lower court's conducting of a summary and arithmetical recount of the ballots themselves upon its being satisfied prima facie of the commission of the alleged errors and that the identity and integrity of the ballot boxes and their contents have been duly preserved, a number of questions and incidents in connection therewith were raised anew with the Court. On February 1, 1971, the Court issued its resolution summarizing the incidents and directing the parties to move in the premises and "to consolidate all motions and petitions with regard to matters still under dispute, to the end that these cases may be finally terminated and closed," as follows:

"* * * The Court has been furnished with copy of (a) the order dated December 2, 1970 of Judge Sarmiento of Branch I of the Court of First Instance of Pampanga in its rehearing of Election Cases Nos. 3653, 3654, 3655, 3656, 3657 and 3659; (b) its supplemental order dated January 12, 1971 in said cases; and (c) the order dated January 15, 1971 of Judge H. Romero of Branch III of the said court in Election Cases Nos. 3758, 3759 and 3760 (formerly Election Cases Nos. 3658, 3671 and 3672 for correction of the returns in Precincts 18, 3 and 8 of San Luis.)

"Pending before the Court also are (d) petitioner Tiglao's motion for clarification dated October 20, 1970 praying that the Pampanga court be directed to rehear Election Cases Nos. 3658, 3671 and 3672 in pursuance of the court's Resolution of August 31, 1970, (in case 3658, petitioner claims 80 votes vice 36 votes credited to him); and (e) respondent Sanga's petition for clarification dated December 12, 1970, involving five (5) additional votes for respondent Sanga in Precincts 35-A and 36 of Apalit; action on both of said pending motions having been deferred until the Court shall have been advised by the Pampanga court of the results of the rehearing of the six election cases specified in its said Resolution of August 31, 1970, per the Court's Resolutions of November 16, 1970 and December 18, 1970.

"Likewise, pending before the Court is (f) respondent Comelec's petition for clarification dated December 28, 1970 covering Precinct No. 6 of San Simon, Pampanga, where the Court in its decision of February 18, 1970 directed the Comelec 'to credit no vote (vice 75 votes) for respondent Cornelio Sanga', which is pending the required comment from petitioner due on this date, February 1, 1971 per the Court's resolutions of January 5, and January 26, 1971.

"The Court RESOLVED to require the parties to move in the premises, within 10 days from notice hereof and to consolidate all motions and petitions with regard to matters still under dispute, to the end that these cases may be finally terminated and closed."

The parties accordingly filed their respective "consolidated petition, motion, answer and/or comments on all pending incidents," and submitted therein their respective stands on the following pending issues:

- (a) Re precincts 35-A and 36, Apalit: whether as per the Court's decision of February 18, 1970 as clarified by its resolution of March 19, 1970, *supra*,^[6] the boards of inspectors should count only the votes for Tiglao (whose name had been left out from the original returns), as contended by Tiglao, or whether Sanga's votes should also be recounted and resulting additional votes (besides the 95 votes originally returned for him in the two precincts) credited to him, as contended by Sanga;
- (b) Whether the Pampanga court should give due course to the three correction cases for precincts 3, 8 and 18, San Luis, which were refiled with it;
- (c) Re precinct 6, San Simon. In this precinct, the Court's decision of February 18, 1970 expressly ordered that "respondent Sanga should not be favored with 75 votes. The return for him should remain as it originally was — zero," *supra*. It now first came to light with Comelec's filing on December 29, 1970 of its petition for clarification that notwithstanding the pendency of these proceedings and without this Court being apprised, the precinct's inspectors had filed with the Pampanga court their petition for correction dated April 1, 1970 (i.e. two days after this Court's final resolution of March 30, 1970 ordering immediate execution of its judgment of February 18, 1970 and that the canvassing board conclude its canvass and proclaim the winner in accordance therewith). The Pampanga court, through Judge Sarmiento, issued its decision dated April 11, 1970 granting the correction as prayed for and authorizing the inspectors to initial the election returns where the chairman had super-imposed "75" over the figure "0", which original superimposition had been rejected as improper in this Court's judgment of February 18, 1970;

The Comelec, alleging that it anticipated that the canvassing board "will in all probability consult the Commission on how to canvass precinct No. 6, San Simon particularly whether or not to read for Sanga in said precinct 75 votes as his votes in the corrected returns or '0' vote in accordance with the previous instructions of the Commission issued in compliance with the decision of this Honorable Court ordering the Commission to credit no vote for respondent Sanga in precinct 6 of San Simon," informed the Court for the first time of the correction proceeding eight months earlier and furnished the Court with a copy of the Pampanga court's correction decision. The Comelec thus asked the Court in its petition of December 29, 1970 for clarification of the Court's judgment of February 18, 1970:

"* * * Does the decision of this Honorable Court of February 18, 1970 ordering the Commission to credit no vote for CORNELIO SANGA in Precinct 6 of San Simon rule out subsequent correction of the return and, thereafter, the decision of the Court of First Instance authorizing the correction of the return resulting in SANGA obtaining 75 votes in said precinct was in excess of the Court's jurisdiction for it amended a final adjudication of this Honorable Court on how much vote to credit SANGA in Precinct No. 6, San Simon, so much so that for the Commission to direct the Board of Canvassers to give effect to the decision of the Court of First Instance of Pampanga make the canvass on the basis of the corrected return would be tantamount to a violation of the instruction of this Honorable Court not to credit any vote for SANGA in Precinct No. 6, San Simon;"

- (d) Whether the Pampanga court erred in denying on January 12, 1971 correction of the return in precinct 20, San Luis, by crediting Tiglao with 49 votes instead of 9 votes appearing in the return, after it had found *prima facie* the commission of the error alleged by the inspectors, because the ballot box contained no ballots which fact was alleged in the correction petition itself, as the inspectors therein recounted that the armed men had destroyed the ballots?

This question was also the object of the special action for certiorari filed on February 4, 1971 by the board of inspectors of the precinct against Judge Sarmiento as respondent judge. The case was docketed as Case L-33105 and the Court, per its resolution of February 9, 1971, ordered the impleading of Tiglao and Sanga as the contending candidates and required them to answer the petition. The Court also ordered the consolidation of the case with Cases L-31566 and L-31847 in view of its intimate relation to the questions pending resolution in said cases; and

(e) Should the 44 votes for Sanga as per the summary recount of the ballots in the five other San Luis precincts (resulting in 34 additional votes for Sanga as against the total 10 votes credited to him in the original returns) be credited in favor of Sanga, as against Tiglao's contention "that only the correction of the returns with respect to the votes cast in favor of petitioner (Tiglao) was sought"?

After the parties had filed their respective rejoinders by the end of April, 1971 and after the Court had again heard the parties in oral argument, on May 11, 1971, the Court issued its resolution of May 18, 1971, directing further action on the first three issues within ten days and for the Court to be immediately informed thereafter of the results and of the decisions as may be rendered by Judges Romero and Sarmiento of the Pampanga court, and deferring action on the last two issues, as follows:

" x x x Without prejudice to an extended resolution upon determination of all pending issues, the Court, taking into consideration the special circumstances of the cases at bar and with a view of fully setting at rest all doubts as to the true and correct results of the election in the disputed precincts, RESOLVED as follows:

'(a) With respect to precincts 35-A and 36, Apalit, where pursuant to the Court's decision of February 18, 1970 and resolution of March 19, 1970, the ballot boxes were opened and three votes for Tiglao were counted in precinct 36 (as against the complete omission of his name and votes in the original returns) and duly entered by the board of inspectors in the corrected and completed return thereof — to order the boards of inspectors of said precincts to reopen the ballot boxes thereof, to recount the ballots therein cast for Sanga and to enter the result thereof in the corrected and completed returns thereof, in lieu of the votes credited to him in the original returns, such proceedings to be under the supervision of the Comelec;

'(b) With respect to precincts 3, 8 and 18, San Luis, to order the Pampanga court of first instance presided by Judge Honorio Romero, to give due course and proceed with the hearing of the three correction cases refiled with it and now docketed as Election Cases Nos. 3758, 3759 and 3760, strictly in accordance with the procedure set out for correction proceedings in the dispositive part of the Court's resolution of August 31, 1970; and

'(c) With respect to precinct 6, San Simon, to annul and set aside Judge Sarmiento's decision in Election Case No. 3697, ordering the correction of the return in said precinct so as to credit Sanga with seventy-five (75) vice zero (0) votes therein, and to order said judge to hear anew the said correction case, proceeding strictly in accordance with the procedure set out for correction proceedings in the dispositive part of the Court's resolution of August 31, 1970.'

The Court further RESOLVED that the boards of inspectors of precincts 35-A and 36, Apalit, and Judges Romero and Sarmiento of the Pampanga court of first instance, take the corresponding action as above directed within ten (10) days from notice hereof, and thereafter immediately notify this Court of the results by filing with this Court duly certified copies of the official election returns accomplished in the case of precincts 35-A and 36, Apalit, and duly signed copies of the decisions as may be rendered by said judge in the respective correction cases before them. The Court finally RESOLVED to defer action meanwhile on the dispute between the parties involving the Order dated December 2, 1970 and Supplemental Order dated January 12, 1971 of Judge Sarmiento in the election cases below, with regard to the claimed 49 votes for Tiglao in Precinct 20, San Luis (Election Case No. 3655) and with regard to the claimed 44 votes for Sanga in the five other precincts Nos. 9, 15, 16, 19 and 21, San

Luis (Election Cases Nos. 3653, 3654, 3656, 3657 & 3659)."

The correction proceedings were thus held after the Court's resolution of August 31, 1970 radically prescribing a new procedure for correction proceedings by requiring as a matter of due process notice of the correction proceedings to all the affected candidates and requiring further in contested correction proceedings that the court first find that petitioners have made out a prima facie case and that the integrity of the ballot box and of its contents has been duly preserved and thereafter conduct a summary recount of the ballots themselves. As above stated, this procedure has now been substantially adopted in the new Election Code of 1971, with the imposition of a time limit in Section 194 thereof, supra, that the inspectors must file the petition for correction "within five (5) days from the date of the elections or twenty-four hours from the time a copy of the election return concerned is opened by the board of canvassers, whichever period is earlier."

The results of the correction-recount proceedings may be seen from the following:

Tabulation of Additional Votes after Recount in Correction Proceedings

Precinct

For Tiglao

For Sanga

9, San Luis

19 (26 vice 7)

9 (11 vice 2)

15, San Luis

28 (vice 0)

11 (vice 0)

16, San Luis

25 (vice 0)

6 (vice 0)

19, San Luis

86 (vice 0)

0 (5 original votes unchanged)

21, San Luis

26 (31 vice 5

8 (11 vice 3)

20, San Luis (pending)

0 (9 original votes unchanged, as court denied correction to 49)

0 (0 original votes unchanged)

Total additional votes

184 – 21 original

34 – 10 original

-205[7]

-447 [7]

35-A & 36, Apalit

3 (vice 0)[8]

1 (96 vice 95)[8]

3, San Luis

0 (13 original votes 2 (20 vice 18)[9]

unchanged)[9]

8, San Luis

15 (20 vice 5)[9]

14 (15 vice 1)[9]

18, San Luis

36 (72 vice 36)[9]

0 (13 original votes unchanged)[9]

Grand total

additional votes

238

51

The Pampanga court, per Judge Sarmiento's order of June 28, 1971, forwarded to this Court on July 12, 1971, likewise proceeded to the recount of the ballots in precinct 6, San Simon, over the objection of Tiglao's counsel who questioned that the integrity of the ballots had been preserved, and authorized the inspectors to make the correction "with their proper initials on the basis of the actual number of votes during the recount — Cornelio Sanga, 75, and Rogelio O. Tiglao, O."

Tiglao, per his opposition filed also on July 12, 1971 prayed that the findings of Judge Sarmiento's order of June 28, 1971 be rejected and/or reversed, with Tiglao therein manifesting that "11. This Opposition to the Order of the Trial Court dated June 28, 1971 is being filed in the present form as the same may be considered as a Report to

this Honorable Court. In the event that this Honorable Court considers that the Order is otherwise, petitioner prays that this Opposition be considered a Petition for Certiorari."

Upon the submittal by Judges Romero and Sarmiento of the Pampanga court of their respective resolutions and orders pursuant to the Court's resolution of May 18, 1971 on the issues pending between the parties, the Court ordered the parties per its resolution of July 12, 1971 to file their respective comments. The Court therein further resolved "(b) to require the petitioner to comment, within ten (10) days from notice hereof, on the urgent motion of respondent Cornelio Sanga for resolution of all issues involved herein and for the proclamation of the presumptive winner; (c) to require respondent Cornelio Sanga to comment, within ten (10) days from notice hereof, on the opposition of the petitioner to the order dated June 28, 1971, of the Court of First Instance of Pampanga, Branch I, in Election Case No. 3697 x x x."

Various other pleadings and incidents were still submitted thereafter, as dealt with in the Court's resolutions of August 2, 1971, August 11, 1971 and September 27, 1971, as follows:

"x x x The Court NOTED: (a) the Answer dated July 20, 1971 of petitioner board of inspectors of precinct 20, San Luis, Pampanga; (b) respondent Sanga's consolidated Comment dated July 21, 1971; and (c) petitioner's motion to resolve undecided issues; comments; and supplementary opposition with counter-petition, all dated July 24, 1971.

"The Court RESOLVED (1) to grant the contending parties a period of one week from notice to file their respective replies; and (2) to require respondent Sanga to comment specifically, within the same period, on petitioner Tiglao's allegations that 'Atty. Jovito P. Barreras was the 1969 Election Supervisor for Pampanga and as such is directly charged by the Comelec to oversee all election proceedings before it and the custody of election documents including ballot boxes and their contents which are in its care. In the course of discharge of his office, he took (respondent) Cornelio Sanga * * * as godfather of his son, Augustus Ashley Barreras on December 14, 1969' (Petitioner's opposition, par. 7).

"The Court FURTHER RESOLVED: to require (3) respondent Comelec, within the same one-week period, to elevate and deliver to the custody of the clerk of this Court the ballot box of precinct 6, San Simon, Pampanga, with its contents subject-matter of the correction proceedings in Election Case No. 3697 conducted in the Comelec office on June 22, 1971, and (4) respondent Judge Sarmiento, likewise within the same one-week period, to elevate and deliver to the custody of the clerk of this Court all the records of said Election Case 3697 together with all the exhibits presented therein." (Resolution of August 2, 1971)

x x x

"* * * The Court RESOLVED: (a) to note (1) the compliance by Judge Malcolm G. Sarmiento with the resolution of August 2, 1971, forwarding to this Court the whole record of election case No. 3697 and the transcripts of hearings on April 10, 1970 and June 22, 1971; (2) the opposition of respondent Cornelio Sanga to the counter-petition of petitioner Rogelio Tiglao with reference to Precinct 27 of Arayat, Pampanga, and to the petition to resolve the issues with respect to Precincts Nos. 4 and 23 of San Luis, Pampanga; (3) the reply of respondent Sanga to petitioner's supplementary opposition with counter-petition; and (4) the correction of respondent Sanga on certain matters in his aforesaid reply; and (b) to grant the motion of the petitioners for an extension of three (3) days or until August 12, 1971 to file a reply to respondent's comments of July 21, 1971." (Resolution of August 11, 1971)

x x x

"* * * The Court RESOLVED to open and examine the contents of the ballot box of Precinct 6, San Simon, Pampanga, (subject matter of the correction proceedings in Election Case No. 3697 conducted in the Comelec Office on June 22, 1971) on September 30, 1971 at 9:30 a.m., and to require the appearance on said date and

hour of Atty. Jovito P. Barreras of the Commission on Elections, besides that of the parties and/or their counsel." (Resolution of September 27, 1971)

The hearing to open and examine the contents of the ballot box of precinct 6, San Simon, was held on September 30, 1971, as scheduled and the Comelec representative was required to submit further to the Court the following documents: "(a) the Mission Order of Atty. Jovito Barreras and Joaquin Isaac, Jr. to proceed, on April 8 or 10, 1970, to San Fernando, Pampanga; (b) the originals of Annexes '4' and '4-A' to the reply of respondent Sanga, with a statement as to who has official custody thereof; (c) the receipt and counter-receipt for the said ballot box, signed on April 10, 1970, by Jovito Barreras and Joaquin Isaac, Jr., respectively; (d) the minutes of the proceedings before the COMELEC in January, 1970, in connection with the opening of the ballot box of Precinct No. 6, San Simon, Pampanga; and (e) the records showing who requisitioned the self-locking metal seals in the COMELEC, including the serial numbers of said metal seals, used, on April 10, 1970, in sealing the ballot box of Precinct 6, San Simon, Pampanga; and, (2) as soon as possible, (a) the serial number of the self-locking metal seal given to the members of the Board of Inspectors of Precinct No. 6, San Simon, Pampanga; (b) the records showing the number of the self-locking metal seals delivered by the Municipal Treasurer of San Simon, Pampanga, to the Board of Inspectors of Precinct No.6; and (c) the records of the COMELEC regarding the self-locking metal seals given to the Municipal Treasurer of San Simon, Pampanga." (Resolution of September 30, 1971)

Compliance was submitted by the Comelec on October 6, 1971, except for item 1(e), as to which Comelec requested "that the same be submitted as soon as Mr. Clemente Masiluñgan, Assistant Chief, Supply Division, Administrative Services Department, Commission on Elections, reports to office, who is on leave and has custody of the records on releases of metal seals. Mr. Masiluñgan is reported to be in Batangas now." However, as far as the records show, this last item has not been submitted by Comelec.

Before proceeding to the final determination of the pending issues, two new issues sought to be injected by Tiglao, aside from the five pending issues disputed by the parties in their respective "consolidated petitions" filed pursuant to the Court's resolution of February 1, 1971, should be preliminarily disposed of:

The first concerns Tiglao's belated petition for the opening and recounting of the ballots in precincts 4 and 23, San Luis, on the ground that the returns were gunpoint returns, although admittedly, the inspectors "did not file the corresponding petitions for correction." (Tiglao's motion to resolve undecided issues dated July 24, 1971).

The second likewise involved another belated petition of Tiglao seeking to reverse Comelec's resolution of December 27, 1969 declaring a failure of election in precinct 27 of Arayat (as no returns were prepared since the ballot box was snatched by armed men and abandoned in the middle of the fields, before any count could be made by the board of inspectors) and to count the ballots upon determining that the ballots found in the ballot box are the same ballots used in the election of November 11, 1969. (Tiglao's supplementary opposition with counter-petition dated July 24, 1971).

The Court finds Sanga's objections well taken: as to precinct 27, Arayat, there is actually no proceeding pending at the Comelec or in any court regarding this precinct which could properly and timely be brought to this Court for review. This portion of the Comelec resolution of January 26, 1970 (declaring a failure of election in this precinct) was not raised on appeal by Tiglao in the basic case, L-31566, wherein the Court in its judgment of February 18, 1970 mostly sustained Tiglao in the points raised by him and set aside the Comelec resolution insofar as it would have prematurely resulted in the proclamation of Sanga, *supra*.^[10] Sanga's further observation that assuming that Comelec's declaration of a failure of election in this precinct was legally untenable, still no correction proceeding could be entertained "because there is no election return to be corrected, nor under section 163 because there are no legal ballots to be counted and because the integrity of the ballot box has not been

preserved, a requisite required by the decision of this Honorable Court of August 31, 1970"[11] is likewise well taken.

As to precincts 4 and 23, San Luis, it is conceded that no petition for correction or recount was ever filed respecting these precincts. The Court's judgment of February 18, 1970 expressly pointed out as to these precincts that "their respective boards of inspectors should have petitioned the court for correction of the returns." [12] It is too late now to inject this question as an issue at this late stage, and goes against the admonition at the last hearing in Baguio City on May 11, 1971 that there should be no further proliferation and injection of new issues which would otherwise render interminable the present pre-proclamation proceedings which should be summary in nature and must come to an end when they have timely been fully availed of by the parties, supra. [13] The three cases at bar have already reached six thick volumes with several thousand pages of pleadings, documents and transcripts.

Now for the resolution of the five pending issues between the parties.

I. With respect to precincts 35-A and 36, Apalit, the Court's decision of February 18, 1970 and resolution of March 19, 1970 expressly ordered that the ballot boxes be opened and only the votes for Tiglao should be counted and new returns therefor accomplished (as against the complete omission of his name and votes in the original returns), so as "to avoid any misconception that the votes therein obtained by and credited to Sanga which have not been questioned should be counted anew." Accordingly, the boards of inspectors counted three votes for Tiglao instead of the blank in the original returns and prepared new returns reflecting the same.

Sanga alleged that his representative took advantage during the counting of Tiglao's votes, of "noting down the votes for Sanga" and he noted down 100 votes instead of 95 votes in the original returns, representing 5 additional votes, which he claimed should be likewise reflected in the new returns.

Upon referral of the question by the inspectors to the Comelec, the commission denied Sanga's claim 'ruling in its resolution of December 8, 1970 that

" x x x SANGA should have, therefore, addressed his present petition to the Supreme Court for the Commission cannot amend the instructions of the Supreme Court on what is to be done during the reopening of the two ballot boxes.

"The Commission, therefore, RESOLVED to deny the petition of SANGA without prejudice to such petition he may file with the Supreme Court for the amendment of its resolution of February 1970, as amended by its Resolution of March 1970 in regard to the recounting of the votes cast for TIGLAO in Precincts Nos. 35-A and 36, Apalit."

The Court, however, per its resolution of May 18, 1971 ordered "with a view of fully setting at rest all doubts as to the true and correct results of the election in the disputed precincts" directed the inspectors to reopen the ballot boxes, recount the ballots for Sanga, and enter the result thereof in the corrected and completed returns in lieu of those credited to him in the original returns. The recount of Sanga's votes resulted in 1 additional vote for him (instead of five additional votes claimed by him) which shall be credited in his favor, as per the above tabulation of additional votes, supra. [14]

The Court premises this ruling on its resolution of August 31, 1970 discarding past procedures and radically requiring now that in all correction proceedings, due notice must be given all affected candidates and that in contested correction proceedings that the court first find that petitioners-inspectors have made out a prima facie case and that the integrity of the ballot box and of its contents has been duly preserved and thereafter conduct a summary recount of the ballots themselves.

Since the ballot box is being opened anyway and each ballot has to be read to find out the votes for the candidate whose name and votes have been omitted from the original return or for the candidate(s) in whose favor the petition for correction has been filed, the Court deems it in consonance with the spirit of the law to allow the recounting of the votes of the candidates affected and thereby "to restore public tranquility by dispelling all doubts as to the true number of votes cast in a given precinct." [15] This is likewise in accord with the provisions of section 194 of the new Election Code of 1971, *supra*, substantially adopting the Court's innovative rulings in its Resolution of August 31, 1970, which ordain that "(A)fter satisfying itself that the integrity of the ballots therein has also been duly preserved, the Court shall order the recounting of the votes of the candidates affected and the proper correction made on the election returns x x x."

The Court had indeed said as much in its Resolution of August 31, 1970, when it pointed out that. "The (new) procedural and evidentiary rule of opening the ballot box and summarily recounting the votes would readily bear out the fact of such honest error (claimed by the inspectors) and no prejudice will have been caused; in the contrary case, however, the falsity of the alleged honest error would just as readily be exposed and irreparable prejudice to the intended victim will have been avoided" and that a recount of the votes would thereby "satisfy himself (the judge) as well as all the parties — more than a hundred affidavits of the inspectors — of the true and actual result of the count of the votes cast in the precinct concerned." [16] This amounted to a *pro tanto* modification of the February 18, 1970 judgment and March 19, 1970 resolution invoked by petitioner against Sanga's position.

It should be noted that this ruling that the votes of the affected candidates should all be recounted in such correction proceedings could work conversely against a party in the position of Sanga in other cases, where the recount results in a decrease in the votes originally credited to him. For the rule should be consistently applied. Hence, if the recount in these two precincts showed a total of, say, only 45 votes for Sanga instead of 96 votes as actually recounted (as against the original 95 votes credited to him), then only the actual 45 votes recounted for him would be taken into account, resulting in a 50-vote decrease for him.

2. For the same reasons as stated hereinabove, the additional 34 votes obtained by Sanga in the recount of the ballots cast in precincts 9, 15, 16 and 21 of San Luis plus 16 additional votes in the recount of the ballots cast in precincts 3 and 8 of San Luis, in the corresponding correction proceedings covering these precincts (making a total of 51 additional votes gained by Sanga, including the additional 1 vote credited to him in the above Apalit precincts) [17] should be credited to Sanga. Tiglao's opposition citing the facts that correction of Sanga's votes has not been sought and that he has instead opposed the petitions for correction and would now seek to benefit therefrom by having the returns reflect the additional votes resulting in his favor from the recount has to be overruled. The object of the correction proceeding and the recount of the ballots was to determine the true and actual balloting and to have a total and complete return reflective of the true count of the votes and the true results of the election held, whether they result in the increase (or decrease) of votes of both affected candidates, as in these cases, or in an increase for one and a decrease for the other. Singling out the additional votes cast for petitioner and disregarding those obtained by respondent is no longer possible with the Court's discarding of the old procedure where a correction of returns in favor of only one favored candidate could be effected upon the mere unanimous sworn petition of the inspectors, without need of opening the ballot box and recounting the ballots, assuming that the integrity of the ballot box and its contents has been duly preserved. Now that the new procedure of opening the ballot box and conducting a recount has been established, all the ballots have to be recounted insofar as the affected candidates are concerned, so as to have a true return reflective of the actual results of the election and of the true will of the electorate.

3. The correction proceedings for precincts 3, 8 and 18, San Luis, as refiled by the boards of inspectors and

re-docketed as Cases 3758-3760, resulted in 16 additional votes for Sanga and 51 additional votes for Tiglao, per Judge Romero's Resolution — Report of July 6, 1971. Sanga has in effect withdrawn his original objection to the refile of said cases.[18] In his urgent motion for resolution of all issues of June 7, 1971, and in his summary of votes attached thereto, Sanga claimed the 16 additional votes in his favor in these precincts. Anti in his later "consolidated comment" of July 21, 1971, Sanga justified Judge Romero's actuations in the said cases in rejecting Tiglao's objections to the counting of two ballots in his favor as well as rejecting his own objections to the counting of two ballots in Tiglao's favor (both during the arithmetical recount of the ballots in precincts 8) and in sustaining his objection to crediting two stray votes for Tiglao in precinct 18.

The 16 additional votes for Sanga in these precincts have been ordered credited in his favor, per the preceding paragraph, crediting Sanga with a total gain of 51 additional votes in all the precincts recounted, *supra*. [19] The 51 additional votes gained by Tiglao in the correction recount proceedings in these precincts should accordingly be credited in turn to Tiglao.

At any rate, Tiglao was justified in seeking the inclusion of the results of the correction proceedings in these precincts, as refiled as a consequence of the Court's Resolution of August 31, 1970 setting aside its judgment of February 18, 1970 recognizing the correction decisions in the first six San Luis precincts (which gave Tiglao a total additional 292 votes sufficient to overcome Sanga's overall margin of 172 per the Court's judgment of February 18, 1970) wherefore he did not pursue anymore the other correction proceedings in these three precincts and in the Apalit precincts as they would no longer affect the results of the election, as noted by the Court itself in its Resolution of March 19, 1970.[20] With the issuance of the Resolution of August 31, 1970 setting aside these six corrected returns, and calling for new hearings, Tiglao then rightfully could pursue the proper remedies in these other precincts are reserved to him in the judgment of February 18, 1970.

4. Thus far, then, the tabulation of additional votes after the recount in the now uncontested correction proceedings, *supra*, shows that Tiglao obtained a total of 238 additional votes as against Sanga's total of 51 additional votes,[21] or a net gain of 187 additional votes.

These 187 net additional votes of Tiglao suffice to overcome Sanga's lead of 172 votes as per the Court's judgment of February 18, 1970, ordering the striking out of the 75 votes credited to him by unilateral and unauthorized act of the chairman of the board of inspectors in precinct 6, San Simon, thereby reducing his over-all margin of 247 votes by 75 to 172, *supra*. [22] The Court's amendatory Resolution of August 31, 1970, did not set aside the judgment of February 18, 1970, insofar as it ordered that Sanga be credited with 0 vote vice 75 votes in said precinct. What it did set aside were only the six specific correction proceedings covering the six San Luis precincts, which it declared as null and void for lack of due process and ordered to be heard anew with due notice to the candidates affected and a summary and arithmetical recount of the ballots to be conducted upon prior finding that the integrity of the ballot box and their contents had been duly preserved, *supra*. [23]

Crucial then is the issue with regard to the admission or rejection of Judge Sarmiento's correction order of June 28, 1971, allowing the inspectors to correct and initial the returns for precinct 6, San Simon, and to credit Sanga with 75 votes vice 0 vote over Tiglao's counsel's objection to the recounting of the ballots on the ground that the August 31, 1970 pre-condition that the integrity of the ballots has been duly preserved, had not been met.

If the correction is admitted, Sanga would emerge the winner by sixty (60) votes, whereas if the correction is rejected, Tiglao would win the proclamation by fifteen (15) votes, per the following tabulation:

238 additional votes of Tiglao

51 additional votes of Sanga

187 net additional votes of Tiglao

If the correction of 75 votes for Sanga is admitted:

172 excess of Sanga per judgment of Feb. 18, 1970 and resolution of August 31, 1970

+ 75

247 total excess margin of Sanga

- 187 net additional votes of Tiglao

60 net overall margin of Sanga

If the correction of 75 votes for Sanga is rejected:

187 net additional votes of Tiglao

- 172 overall margin of Sanga

15 net overall margin of Tiglao

Tiglao promptly filed his opposition of July 12, 1971 (alternatively, a petition for certiorari, *supra*[24]) to the inclusion of Judge Sarmiento's correction order of June 28, 1971, Sanga in turn filed his comment thereon of July 21, 1971, followed by Tiglao's supplementary opposition of July 24, 1971, to which Sanga filed his reply of August 9, 1971. The Court issued various resolutions in connection therewith and held still another hearing on September 30, 1971 to open and examine the contents of the ballot box of said precinct 6, San Simon, and required the attendance of Atty. Jovito P. Barreras, as 1969 Comelec election supervisor of Pampanga charged with overseeing the election proceedings in the province and the custody of election documents.

After reviewing the mass of facts, circumstances and documents of record, the Court cannot satisfy itself that the condition precedent set by it in its Resolution of August 31, 1970 for conducting a recount in correction proceedings, viz, that the integrity of the ballot box and of its contents has been duly preserved, has been met and fulfilled. Accordingly, the Court holds that Judge Sarmiento's correction order of June 28, 1971 should be set aside and the 75 additional votes sought thereby to be credited to Sanga should be rejected.

(a) To begin with, the return in question first came to the Court's attention because of a congenital infirmity patent on its face. As pointed out by Justice Sanchez in our decision of February 18, 1970, *supra*,[25] "the figures '75' were clearly written over the figure '0'. So it is, that instead of Sanga appearing to have received no vote in said precinct, he is now credited with 75 votes in the return therefrom." The excuse was given that the chairman of the board of inspectors wrote in the 75 votes, upon his attention being called to the alleged error by the poll clerk, but that he, (as well as the poll clerk and the other inspectors), "forgot to initial the change." Hence, the Court overruled Comelec's ruling that such superimposition "was not a tampering but simply a correction," holding that this was in violation of section 154 of the election code then in force and ordering the Comelec in the judgment "to credit no vote for respondent Cornelio Sanga in precinct 6, San Simon." The Court cited the relevant passage

from *Balindong vs. Comelec*,^[26] that "(T)he inspectors could not plead ignorance (to the requirements of section 154 of the election code, prohibiting any alteration in the returns, unless it be ordered by a competent court), on the assumption that they really discovered the 'mistake.' Such 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." Thus, from the beginning, the "correction" of the return to credit Sanga with 75 votes instead of zero was placed under grave doubt, if not discredited, and places a great burden on Sanga and/or the inspectors to establish the legitimacy or validity of any subsequent attempts at "correcting" the return.

(b) The Court's judgment of February 18, 1970 specifically deferred the completion of the canvass as per Comelec's questioned resolution of January 26, 1970, whereunder "petitioner Tiglao would receive 13,794 as against respondent Sanga's 14,041 votes, a difference of 247 votes in favor of the latter," and ordered specifically that "the proclamation of the winning candidate shall be held in abeyance until after the questions affecting the same as hereinabove discussed, pending in the Pampanga court, are determined with finality; and respondent Commission on Elections is hereby directed to credit no vote for respondent Cornelio Sanga in precinct 6, San Simon * * *."^[27]

The questions affecting the proclamation, which the Court ordered should first be resolved before the canvass could be completed and proclamation made, were specifically limited to the precincts enumerated in the decision resolving Tiglao's petition, as follows:

"1. As prayed for by petitioner Tiglao, proclamation really cannot be had under the circumstances. There are still questions pending before the Court of First Instance of Pampanga involving the election returns. Specifically, there is the petition to recount the votes in Precinct 38, Candaba, and Precincts 8 and 18, San Luis. And the February 7, 1970 order of the Pampanga court authorizing the correction of returns from Precincts 9, 21, 20, 19, 16 and 15, San Luis, is the subject of a motion for reconsideration by respondent Sanga.

"We believe it to be the duty of the Court of First Instance of Pampanga to act on this pending motion promptly to the end that canvass may be completed without delay.

"The remedy as to the remaining precincts (Precincts 3 and 4) of San Luis may not be had in Comelec. Because, following the course of action in the six precincts just mentioned (Precincts 9, 21, 20, 19, 16 and 15), their respective board of inspectors should have petitioned the court for correction of the returns."^[28]

(c) Two days after the Court's judgment of February 18, 1970 was declared final and executory on March 30, 1970, *supra*,^[29] the precinct's inspectors filed with Judge Sarmiento of the Pampanga court their petition for correction of the same rejected return alleging their mistake in crediting Sanga with zero vote. The Pampanga court, per its decision dated April 11, 1970, granted the correction as prayed for and authorized the inspectors to initial the returns where the chairman had superimposed "75" over the "0" originally written thereon, without any recount, but solely on the basis of the ballot box copy of the return and the tally sheet which were taken from the ballot box (which had only one padlock instead of three padlocks required by law, the key to which was missing and hence had to be forced open with a hammer by Comelec representative Jovito B. Barreras; and on the sole testimony of the poll clerk (and not that of the poll chairman, who admittedly made the superimposition.)

All these proceedings and the condition of the ballot box were at no time made known to this Court by Sanga. Much less was any authority sought from this Court for the institution of said correction case of April 2, 1970, notwithstanding that as this Court's final judgment of February 18, 1970 stood, no correction order issued by the Pampanga court could overturn and prevail over this Court's judgment "to credit no vote for respondent Cornelio Sanga in precinct 6, San Simon."

Judge Sarmiento made no mention either in his correction decision of April 11, 1970 as to the anomalous condition of the ballot box and the steps taken to force it open. He should have exercised extra care, considering that the hearing was ex-parte, since inadequate notice was served through Sanga at Tiglao's counsel's residence, on a holiday April 9, 1970, and the server was duly informed and so advised the judge at the hearing that Atty. Mendoza was in Baguio[30] (in fact attending to the filing a Case L-31847). Instead, Judge Sarmiento merely stated the following

"The record discloses:

"That the election return which was retrieved from the ballot box by Atty. Jovito B. Barreras, duly authorized representative of the Commission on Election to deliver said ballot box to Court, bears the same error of alteration, as found in Exhibits A, A-1 and B. This election return retrieved from the ballot box is identified as Exhibit C, the same entry namely, after the words, 'Cornelio Sanga', candidate for Congress in the last election in the Second District of Pampanga 'under the column word 'Zero' was first entered, as well as the figure '0' and later on the words 'Seventy five' were superimposed by the word 'zero' and the figures '75' were superimposed by the figure '0'.

"The Poll Clerk, Miss Fe Roniero, explained that when the Chairman of the Board of Inspectors, Mr. Orlando Ingal, prepared the election returns for Precinct No. 6, he committed this error putting the word 'zero, as well as the figure '0' after the name of Cornelio Sanga, but in the tally sheet which was retrieved from the ballot box of said precinct, which is identified as Exhibit C, there is no correction, nor alteration. The tally sheet is clear on its face that Cornelio Sanga obtained seventy five (75) in the last election in this Precinct No. 6. * * * When she saw that after the name Sanga in election return for the Commission on Election, Municipal Treasurer and Provincial Treasurer, identified as Exhibit A, A-1, and B, that Cornelio Sanga obtained zero (0) she called the attention of the Chairman, Mr. Orlando Ingal, who readily agreed to such an error and made the proper correction, meaning to superimposing the word 'seventy five' in the entries found in those tally sheets above mentioned, as well as the figures '75' found therein, and so the members of the Board of Inspectors who were preparing the election return concurred to the actuations of the Chairman of the Board of Inspectors, Mr. Orlando Ingal, who made the corresponding correction, although they inadvertently failed to initial said correction, hence the confusion arising from said correction."[31]

(d) After resolution of the questions pending with the Pampanga court affecting the proclamation, the provincial canvassing board reconvened on April 6, 1970 to discharge its function of completing the canvass and proclaiming the winner. As far as the records show, the only question raised by Sanga before the canvassing board was to move that it disregard the 292 additional votes for Tiglao on the ground that the six judicially corrected San Luis precincts (specified in our decision of February 18, 1970) were "mathematically improbable" as shown by the excess votes cast for congressional candidates. The canvassing board then resolved to refer the issue to Comelec, which issued its split 2 to 1 resolution of April 7, 1970 ordering the canvassing board to exclude from the canvass the said judicially corrected returns which resolution, upon being elevated here, was in turn set aside in the Court's amendatory Resolution of August 31, 1970, supra.[32]

Neither before the Comelec nor before this Court did Sanga make mention of the correction proceedings for the precinct 6, San Simon return filed on April 2, 1970 nor of Judge Sarmiento's decision of April 11, 1970, granting the same much less, petition of this Court that it authorize or allow the correction order of Judge Sarmiento seeking to credit Sanga with 75 votes as against this Court's judgment of February 18, 1970 to credit no vote for Sanga in the said precinct.

Hence, when the Court rendered its amendatory resolution of August 31, 1970, it declared the correction proceedings in the six San Luis precincts null and void and ordered that only these six correction proceedings be heard anew, with due notice to the candidates affected and for the lower court to conduct an arithmetical recount

of the ballots themselves upon its being satisfied prima facie of the commission of the alleged errors and that the identity and integrity of the ballot boxes and of their contents have been duly preserved, supra.[33]

The original judgment of February 18, 1970 to credit no vote for Sanga in precinct 6, San Simon, was maintained, notwithstanding the Court's innovative amendatory Resolution of August 31, 1970. Indeed, there was no question in this precinct of infirmity for lack of notice and due process and this portion of the basic judgment became final and executory as of March 30, 1970. Besides, no petition by Sanga to reopen the same was ever presented, since Judge Sarmiento's correction decision of April 11, 1970, had been kept sub rosa all the while, despite two hearings in oral argument on April 23, 1970 and on July 16, 1970.

(e) Were it not then for the Comelec split resolution of April 7, 1970, ordering in excess of its authority and jurisdiction the exclusion from the canvass of the 292 additional votes for Tiglao per the judicially corrected returns in the six San Luis precincts, Tiglao as per the deadline of April 13, 1970 set by Comelec[34] would have been proclaimed by then.

But the Court's amendatory Resolution of August 31, 1970 set aside the six judicially corrected returns on basic grounds of due process and ordered the rehearing of only the same six correction cases under the strict and restrictive conditions set forth therein.

The proceedings to count the omitted votes for Tiglao in Precincts 35-A and 36 Apalit, and to correct the returns in precincts 3, 8 and 18, San Luis, were therefore revived, since they were among those expressly recognized in the judgment of February 18, 1970, as pending and which should be determined with finality, before proclamation could be made.

Re the proceedings concerning precincts 35-A and 36 Apalit, the Comelec upon the inspectors' referral of Sanga's claim that his votes should be counted also, notwithstanding this Court's express injunction in its judgment of February 18, 1970, and resolution of March 19, 1970 that "only the [omitted] votes of Tiglao should be counted," denied Sanga's claim in its resolution of December 8, 1970, stating that it had no power to amend this Court's instructions and that Sanga should address his petition to this Court. Sanga accordingly filed with this Court his petition for clarification dated December 12, 1970, reiterating the same claim.

Re the correction proceedings for precincts 3, 8 and 18, San Luis, as refiled, Tiglao filed with this Court his motion for clarification praying that the Pampanga court be directed to rehear the cases, since they were no longer moot and academic by virtue of the Court's amendatory Resolution of August 31, 1970. Judge Romero of the Pampanga court, issued his order of January 15, 1971, properly holding in abeyance its action on the three cases "until after a resolution of the Supreme Court is handed down regarding the same" in pursuance of this Court's earlier resolution of November 16, 1970, deferring action on Tiglao's motion and directing it "meanwhile to proceed with the rehearing of the six election cases * * * specified in the dispositive part of the Court's Resolution of August 31, 1970 and to advise the Court of the results thereof."

The recount of the six precincts (except precinct 20, infra)[35] resulted in 184 additional votes for Tiglao and 34 additional votes for Sanga, which Sanga claimed should be likewise credited to him, per the tabulation thereof above.[36]

As to precinct 6, San Simon, even at this late stage, Sanga made no move nor filed any motion for this Court to allow or authorize the correction decision issued on April 11, 1970 by Judge Sarmiento crediting Sanga with 75 votes instead of 0 in direct contravention of the order in the Court's final judgment of February 18, 1970 to credit Sanga with no vote therein.

Peculiarly, it was the Comelec counsel who filed *motu proprio* at year's end on December 29, 1970 Comelec's

"petition for clarification" dated December 28, 1970 apprising this Court for the first time of the "correction decision" issued 8 months earlier by Judge Sarmiento and anticipating that the canvassing board "will in all probability consult the Commission on how to canvass precinct No. 6, San Simon, particularly whether or not to read for Sanga in said precinct 75 votes [as] his votes in the corrected return or "0" vote (as if seemingly the "corrected" return had been brought to the attention of the canvassing board at the reconvening of the said board on April 6, 1970, although the record shows the contrary, *supra*,^[37] albeit acknowledging that Judge Sarmiento's court had no jurisdiction to "amend a final adjudication of this Honorable Court on how much to credit Sanga in precinct No. 6., " *supra*.^[38]

This year's-end "petition for clarification" directly filed by Comelec with respect to this precinct 6 was in direct contrast to Comelec's action of December 8, 1970 on Sanga's claim that the votes for him in the Apalit precincts should also be counted, wherein it denied his claim on grounds of lack of authority, without prejudice to Sanga addressing his petition to this Court, *supra*.

(f) As stated above, the Court issued its interlocutory resolution of May 18, 1971 after the hearing of May 11, 1971,^[39] and ordered the reopening of the ballot boxes of precincts 35-A and 36, Apalit and the recounting of the ballots cast therein for Sanga. It also therein ordered Judge Romero to proceed with the hearing of the correction cases involving precincts 3, 8 and 18, San Luis, strictly in accordance with the procedure for correction proceedings set out in the Court's Resolution of August 31, 1970.

Likewise, the Court therein annulled and set aside Judge Sarmiento's correction decision of April 11, 1970 re precinct 6, San Simon and ordered the judge "to hear anew the said correction case, proceeding strictly in accordance with the procedure set out for correction proceedings in the dispositive part of the Court's resolution of August 31, 1970."

The Court ordered implementation within ten days from notice and that it be immediately notified and furnished with signed copies of the results and decisions as may be rendered by the judges of the Pampanga court.^[40]

It was after Judge Sarmiento submitted on July 12, 1971, his second correction order of June 28, 1971, after proceedings conducted at the Comelec office on June 22, 1971, whereafter Tiglao filed his oppositions thereto and other subsequent pleadings as countered by Sanga's replies and after the rehearing held by the Court on September 30, 1971 and submittal on October 6, 1971 by Comelec of the documents required by the Court at said rehearing, that the Court learned of the totally exposed condition in which the ballot box of precinct 6, San Simon, and its contents have long been left since Comelec first opened the same on January 5, 1970 to retrieve therefrom the election return and tally sheet, as will be shown anon.

Indeed, such total exposure only then belatedly known to the Court and establishing that the ballot box and its contents thereby could no longer pass the essential test of integrity at the latest since the first correction case in April, 1970; suffices per se for recall by the Court of its Resolution of May 18, 1971, insofar as it ordered the hearing anew of the correction case involving said precinct 6.

(g) The most important of many particulars that strongly stress Sanga's failure to discharge the great burden of showing that the essential integrity of the ballot box and of its contents has been duly preserved, springing from the congenital infirmity of illegal alteration patent on the face of the return,^[41] may be briefly summarized as follows:

The ballot box of precinct 6, San Simon, was first opened by the Comelec at its hearing of January 5, 1970 to retrieve therefrom the ballot box copy of the return and the tally sheet;

Inexplicably, the transcript of the said hearing of Comelec furnished by Comelec per its compliance dated

October 2, 1971 failed to note whether the ballot box was duly locked with the required three padlocks at the time of opening and who furnished the keys, if any, to open the padlocks, nor to duly record per standard operating procedure at the time of closing whether outside and inside self locking metal seals were placed anew and whether the required three padlocks were used to relock the ballot box; no special notation was made of the condition of the envelope for valid ballots, hence, presumably, the same was in good order;

The transcript recites that "(T)he tally sheet was also retrieved from the ballot box with paper seal bearing SN 097191. The certification is signed only by the party inspector (sic) and it is blank insofar as the signature corresponding to the chairman and poll clerk is concerned; the same is true with the certification on the seal." [42] The Comelec minutes at its session of the same day, January 5, 1970, furnished the Court with its Compliance dated October 2, 1970, in turn recites that "(T)he tally sheet was resorted to but although it was clean, it did not bear the signatures of the Chairman and poll clerk." [43]

These Comelec findings of fact do not tally with Judge Sarmiento's first correction decision of April 11, 1970 in its findings per the sole testimony of the poll clerk, Fe Romero, that she called the attention of the chairman as to the alleged error and that "the chairman, Mr. Orlando Ingal, (who) readily agreed to such an error and made the proper correction, meaning to superimposing the word 'seventy five' in the entries found in those tally sheets above mentioned, as well as the figures '75' found therein, and so the members of the board of inspectors who were preparing the election return consented to the actuations of the chairman * * * who made the correction, although they inadvertently failed to initial said correction * * *." [44] As per Judge Sarmiento's said decision, the poll chairman made the superimposition of "75" over "0" in the tally sheet as well, as retrieved also from the ballot box on April 10, 1970, and conveys the impression that the tally sheet was duly signed by the board of inspectors although not initialed, as contrasted with the earlier Comelec finding that the tally sheet was "signed only by the party inspector (sic)."

The transcript of the hearing shows that when the poll clerk was directly asked by Sanga's counsel, Atty. Navarro, on direct examination to explain the superimpositions she could give no answer thus:

"ATTY. NAVARRO:

Q There appear here superimpositions of the words and figures '75' for the votes corresponding to Cornelio Sanga in these three copies of the election returns, the Comelec's copy, the ballot box copy Exhibits A, A-1, and B, can you explain those superimpositions? (No answer)" [45]

and had to be guided gently thereafter by the lower court and afterwards by Atty. Navarro to state that the poll chairman "overlooked it" and "put '0' when Sanga obtained '75' votes." [46]

--It was to be discovered later after Judge Sarmiento's second correction order of June 28, 1971 (carried out after his first correction order of April 11, 1970 had been declared null and void by the Court's resolution of May 18, 1971) that:

--At the ex-parte hearing of April 10, 1970, Atty. Jovito Barreras as Comelec representative with Joaquin Isaac, Jr., Comelec custodian of the armory (who incidentally could not produce any mission order from Comelec to accompany Barreras to San Fernando) had brought the same ballot box from the Comelec office in Manila to Judge Sarmiento at San Fernando, Pampanga; the ballot box was thus transported by Barreras without prior notice to Tiglaog who of course was vitally interested in safeguarding and preserving its integrity and contents.

--The ballot box, as presented to the court, bore an outside self-locking metal seal bearing No. 009375 [47] which does not tally with any of the 3,554 pieces of self-locking metal seals officially furnished on August 20,

1969 by Comelec to the provincial treasurer for use in the November 11, 1969 elections, per the list thereof furnished to the Court.[48]

--The ballot box as thus presented furthermore bore only one padlock instead of the three padlocks required by law, and its origin could not be traced;

--It is noteworthy that at this first hearing of April 10, 1970, no special notation was likewise made in the record (just as in the first opening of the ballot box on January 5, 1970 by Comelec) of the condition of the envelope for valid ballots, hence, presumably, the same was in good order.

--Comelec supervisor Barreras informed the Court from the witness stand at the first hearing of April 10, 1970 that "I do not have the keys, but we cannot find it now because it had been misplaced in the office"[49] but that he was authorized to forcibly open the ballot box by hammering the padlock with a hammer brought by him.

--At the second correction case hearing over a year later on June 22, 1971, Barreras this time informed the court that the padlock was forced open at the first hearing of April 10, 1970 "because the keys were not produced by the respective custodians of the keys to the padlocks at the time the case was heard." [50]

--At the said hearing on June 22, 1971 of the second correction case, two of the keys properly in the custody of the provincial commander and the provincial treasurer were produced by said officials, but could no longer be used, since as early as the first case hearing of April 10, 1970, the padlocks had somehow disappeared with the exception of a single one which was then forcibly broken with a hammer.

--Barreras took custody of the ballot box after the first case hearing of April 10, 1970 at San Fernando, Pampanga and brought it back with him to the Comelec office at Manila. He was to claim a year later at the second case hearing of June 22, 1971 that he had placed at the end of the first hearing on April 10, 1970, self-locking metal seals, which only upon the third opening of the ballot box on June 22, 1971, at the Comelec offices in Manila was noted to bear serial Nos. D-71046 and D-70913. The fact is that the record of the first hearing makes no mention at all of any such seals having been placed at the end of the hearing nor the serial number thereof. And none of these seals tally with any of the 3,554 pieces of self-locking metal seals officially furnished by Comelec to the Pampanga treasurer for use in the November, 1969 elections.

--The circuitous procedure followed by Barreras at the second hearing of June 22, 1971 of trying to cure this fatal defect of the April 10, 1970 record and now retroactively recording as of the first hearing April 10, 1970 that said metal seals were the ones allegedly placed by him in San Fernando is plainly unacceptable. The transcript of the second hearing thus shows the following:

"ATTY. BARRERAS:

"If Your Honor please, we want to make of record that the outside self-locking metal seal, which we placed the last time in San Fernando, Pampanga, during the last hearing on April 10, 1970, is the same self-locking metal seal, still attached to the ballot box.

"COURT:

"How can we determine that now?

"ATTY. BARRERAS:

"We can manifest and state the serial number of the self-locking metal seal.

"COURT:

"Please read.

"ATTY. BARRERAS:

"This one reads D-71046. The Ballot box number is 69CE-1336 for San Simon, Pampanga, Precinct No. 6."

* * * * *

"ATTY. BARRERAS:

"If Your Honor please, be it remembered that during the hearing at San Fernando, Pampanga, on April 10, 1970, we forced open all the padlocks before the Honorable Court and the padlocks to this ballot box were in Manila.

"COURT:

"Why did we force open the padlocks during the hearing in San Fernando, Pampanga?

"ATTY. BARRERAS:

"Because the keys were not produced by the respective custodians of the padlocks at the time the case was heard and that is the standard operating procedure in the Comelec in order not to delay the proceedings to break the padlocks.

"COURT:

"And these padlocks now found in the ballot box were placed where?

"ATTY. BARRERAS:

"In the Commission on Elections and these were brought here from San Fernando, Pampanga."

x x x x x

"COURT:

"And I think you will agree further on the basis of your manifestation that when the ballot box arrived at the office of the Comelec, you took the necessary precaution of putting the present padlocks.

"ATTY. BARRERAS:

"Yes, Your Honor.

"COURT:

"Now, where are the keys?

"ATTY. NAVARRO:

"May we know from Atty. Barreras where and when those padlocks were placed in the ballot box, in San Fernando, Pampanga or not?

"ATTY. BARRERAS:

"No, here in Manila.

"COURT:

"You mean to say, all the way from San Fernando, Pampanga, to Manila the ballot box did not have any padlock?

"ATTY. BARRERAS:

"But we have the self-locking metal seal.

"COURT:

"You put the self-locking metal seal in San Fernando, Pampanga?

"ATTY. BARRERAS:

"Yes, Your Honor.

"COURT:

"And it is the same self-locking metal seal you placed in San Fernando, Pampanga, that you found now this morning?

"ATTY. BARRERAS:

"Yes, Your Honor."[51]

--Barreras perforce had to admit, per the above quoted transcript that the three padlocks on the ballot box were not placed in San Fernando but "here in Manila" and that "all the way from San Fernando, Pampanga, to Manila, the ballot box did not have any padlock" Reason: the record shows that ever since the ballot box was brought back by him from San Fernando to Manila on April 10, 1970, it had been left for 1 year and 2 months in the Comelec offices without any padlocks and without any special safeguards. Hence, it was only on June 14, 1971 (one week before the second hearing of June 22, 1971) that the parties requested Barreras in a letter dated June 14, 1971 that the ballot box of precinct 6, San Simon, be properly secured with three padlocks, and that same be kept inside the vault of the said commission for safekeeping."[52]

--Barreras pointedly failed to inform the lower court at the said hearing of June 22, 1971, that indeed, the padlocks were placed "here in Manila" but not on the same date that they were brought back from San Fernando on April 10, 1970 (as was the lower court's impression) and shockingly, only one year and two months afterwards on June 14, 1971.

--The poll chairman, Orlando Ingal, who in the first place supposedly "overlooked" the votes for Sanga and made the superimposition of "75" over "0" in the returns unexplainably (except for the allegation that he had moved to Candaba) never appeared nor testified at any of the three separate hearings, the first on January 5, 1970 before the Comelec and the second and third at the two correction hearings before Judge Sarmiento on April 10, 1970 at San Fernando, Pampanga and on June 22, 1971 at the Comelec offices, respectively.

--In the light of these massive facts and circumstances, the fact that Barreras took Sanga as sole godfather of his son, Augustus Ashly Barreras, (born on August 18, 1966) on December 14, 1969 at Sampaloc, Manila right in the midst of the controversy between the contending parties unfortunately acquires relevance as against his above-cited questionable actuations.

--Sanga in his comment on this matter as specifically required by the Court, submitted his affidavit and stated that at a "pasalamat party" given by Barreras in his house and attended by Sanga; "(T)aking advantage of the occasion,

Atty. Barreras before noon, announced that he would also want to have one of his children baptized and there and then requested Sanga to be the sponsor. Sanga naturally could not refuse, and so he became the compadre of Atty. Barreras."[53]

--Barreras' claim that his work as Pampanga and Angeles City supervisor was already finished as of December 14, 1969 and that the only incidents remaining had already been referred to the Comelec itself for decision is not borne out by the record: the provincial canvassing being supervised by him continued functioning until December 17, 1969, on which date it submitted its referral of the same date to Comelec.[54] In said referral, the board reported that it had ruled on 41 controversial returns (including that for precinct 6, San Simon, wherein it upheld the superimposition of 75 votes vice zero for Sanga) and was referring to the Comelec to determine for appropriate action the controversy involving principally the San Luis precincts and several other precincts. The record further shows the active intervention of Barreras throughout the multifarious incidents in these cases, up to the last hearing held by this Court on last September 30, 1971.

-- In fact, at the Comelec hearing of January 14, 1970 to receive the sole testimony of the poll clerk, Fe Romero, Tiglao's counsel questioned Barreras' actuations at the proceedings and requested the Comelec to relieve Barreras as supervisor of the board of canvassers, which request the commission undertook to consider (but the record shows no action taken by it). Said counsel further made an offer of evidence that if the witness were allowed to answer his questions, "she will say that she did talk to Atty. Barreras and discussed what she is going to testify here." The transcript of the hearing (Annex "14", Sanga's consolidated petition of February 25, 1971) records the incidents, thus:

"ATTY. AMOR

Q What particular copy of the return did he make these impressions, if you remember which was the original?

A The one on top.

"ATTY. AMOR (to Atty. Barreras).

Will you please Mr. Barreras keep away from this, (Interruption)

"ATTY. BARRERAS

I am just picking it up (referring to the copy of the election return).

"ATTY. AMOR

At this juncture I am compelled now; I have been (interruption)

"COM. PATAJO

I observed that the witness did not see the return when there was some movement on the part of Mr. Barreras to pick up the return.

* * * * *

"ATTY. AMOR (continues questioning)

Q Before I called the attention of Atty. Barreras picking up this copy, will you tell us where was this copy (interrupted)

"ATTY. DATUIN

I object Your Honor, the question is irrelevant.

"ATTY. AMOR

Why irrelevant when this copy was right on the knees of the witness when it was picked up? Now I am compelled whether I like it or not; against my wishes; against my desire; against my respect for another lawyer; to request this Commission to relieve Atty. Barreras as supervisor of the board of canvassers. We cannot get justice from him. We request that he be relieved of his detail.

"COM. PATAJO

The Commission will consider your request. You may proceed with your cross examination." (at pp. 12-13)

* * * * *

"ATTY. AMOR

Alright. Did you talk to Atty. Barreras before you came and testified here?

"ATTY. DATUIN

Immaterial.

"COM. PATAJO

Sustained.

"ATTY. AMOR

Before you came into this room, were you at any time in front of the table of Atty. Barreras?

"ATTY. DATUIN

Immaterial.

"COM. PATAJO

Sustained.

"ATTY. AMOR

At anytime while you were supposed to be there in the table, did Atty. Barreras talk to you?

"ATTY. DATUIN

Immaterial.

"COM. PATAJO

We sustain the objection and ask counsel to refrain from pursuing with that line of examination.

"ATTY. AMOR

We abide by the ruling of this Honorable Commission, but I would like to make of record Your Honor that if this witness will be asked and will be allowed to testify, I am almost certain that she will say that she did talk to Atty. Barreras and discussed what she is going to testify here. We offer that as an offer of evidence.

"ATTY. DATUIN

That can never be done under the Rules of Court; that can never be an offer of evidence under any rule * * *.

"COM. PATAJO (to Atty. Amor)

Next question." (at pp. 22-23)

The comments of Barreras e. g. that Comelec armorian Joaquin Isaac, Jr. and not he, had sole custody of the ballot box to the extent that they executed on one sheet of paper two mutual "Ballot Box Release Receipt(s)"[55] on the same date, April 10, 1970, one purportedly executed at 6:00 A.M. (by Barreras in favor of Isaac) when they went together on that day to bring the ballot box to San Fernando and another purportedly executed at 6:00 P.M. of the same day (by Isaac in favor of Barreras) when they returned together from San Fernando with the ballot box, fail to persuade the Court or gain its acceptance. Another item: Barreras' allegedly having brought on that occasion self-locking metal seals to seal the ballot box, (whose origin was not traced by Comelec, notwithstanding the Court's directive)[56] when the only other instrument he brought with him were neither the key for the single padlock on the ballot box nor padlocks to relock it after the hearing, but a hammer to break open the single padlock. Still another item: per the Comelec resolution of August 5, 1971 in response to petitioner's official queries on the circumstances affecting the ballot box when it was brought to San Fernando, "3. (T)he identity of the custodian of one of the keys to the padlock could not be pinpointed by Atty. Barreras. It is provided in the law that the keys to the ballot box are kept by the Provincial Fiscal, Provincial Treasurer and the Provincial Commander."[57]

(h) Judge Sarmiento's action of proceeding to authorize the correction of 75 votes vice zero for Sanga in the said precinct per his order of June 28, 1971 and overruling Tiglao's timely objection that this Court's essential prerequisite that the integrity of the ballot box and of its contents must be duly preserved has not been met, and of disregarding the above-recited mass of facts and documents militating against an affirmative finding of due preservation of the essential integrity of the ballot box and its contents, must accordingly be set aside. The judge failed even to make mention in his said order of the "torn and open" condition of the envelope for valid ballots and of Tiglao's counsel's timely objection to any recounting of ballots, since the ballots had not been preserved intact and safeguarded. The lower court itself at the hearing had readily noted the "torn and open condition of the said envelope but arrived at a different conclusion that the tearing "must be due to the forcing of the ballots inside the envelope."

"ATTY. VILLANUEVA:

"Your Honor please; I would like to make of record that from here, without touching, I can see the envelope, which is containing the ballots, is already torn.

"COURT:

"Not only torn, but open.

"ATTY. VILLANUEVA:

"And the ballots can be withdrawn already from the torn envelope.

"COURT:

"And that they are only held by rubber bond that the torn envelope referred to by counsel is supposed to contain 106 counted valid ballots, as shown in the label.

"ATTY. NAVARRO:

"We believe that we cannot state that this envelope containing the ballots has been torn, because * * *

"ATTY. VILLANUEVA:

"It is torn and it is open.

"ATTY. NAVARRO:

"Because it could not have been closed tightly in view of the bulky part of the ballots therein contained; as a matter of fact, the portion of the envelope at the mouth is bulging and it is very impossible to seal it in the ordinary way that it could have been sealed.

"COURT:

"From the observation of the Court, the envelope was never closed and the torn part, as observed by counsel for Mr. Tiglao, must be due to the forcing of the ballots inside the envelope, because the ballots are quite bulky, so much so that the envelope is smaller in size than the ballots. What more?"[58]

It should be noted that it was only at the third and last hearing of June 22, 1971 that this torn and open condition of the envelope was immediately noted upon the opening the ballot box in contrast to the first two hearings when the said box was likewise opened and no such defect was noted.

(i) At the hearing of September 30, 1971 held by this Court to open anew and examine the contents of the ballot box, this serious defect in the condition of the said envelope was thus noted:

"* * * But it appears here that the flap which has some glue was never actually sealed, that the glue was never used, it was intact and had not been wet. Furthermore, this red paper seal which should be attached to the body of the envelope and half thereof to the flap was never so attached. That the flap apparently was open all the time and furthermore that this side of this envelope was slit and broken open almost more than halfway. On the right side, facing the signatures, and the breakage going about 1/4 obliquely into the reverse side, dorsal side of the envelope."[59]

(j) It cannot be contended that Tiglao failed timely to question Judge Sarmiento's second correction order of June 28, 1971 to credit Sanga nevertheless with 75 votes vice zero. As already stated above, supra,[60] Tiglao per his opposition on July 12, 1971 (on the same day that Judge Sarmiento submitted a copy of his said order) promptly prayed of this Court to reject and/or reverse said order praying that if necessary, his said opposition be "considered a petition for certiorari." The Court took due cognizance of the opposition/petition and gave the parties full opportunity to discuss the issue, ending with its hearing of September 30, 1971 to_ open and examine the ballot box and its contents.

Actually, there were two previous similar precedents. Pursuant to the Court's resolution re the hearing of May 11, 1971 giving the parties "five (5) days from today to file their formal motions respecting their alternative prayers during the course of the argument."

Accordingly, Sanga was permitted to file his motion of May 11, 1971 to have his "petition for clarification dated December 12, 1970 "praying that his additional votes in the precincts 35-A and 36, Apalit, "be treated or considered a petition for the correction of the election returns of precincts Nos. 35-A and 36 of Apalit, Pampanga,

dispensing - in the process - with the usual proceedings therefore in the Court of First Instance." And the additional single vote that he garnered in the recount has been herein credited to him.

Tiglao likewise was permitted to file his motion of May 17, 1971 praying that "petitioner's 'Motion for Clarification' dated October 20, 1970 be considered as a petition for mandamus and/or certiorari brought under Sections 3 and 1, respectively, of Rule 65 of the Rules of Court and that pursuant to the prayer in said motion, the Court of First Instance of Pampanga (Judge Honorio Romero) be directed to rehear Election Case No. 3658 (refiled as Election Case No. 3759) pertaining to precinct 18, San Luis, Election Case No. 3671 (refiled as Election Case No. 3760) pertaining, to precinct 3, San Luis and Election Case No. 3672 (refiled as Election Case No. 3758) pertaining to precinct 8, San Luis." The motion was accordingly considered a separate petition, the prayer was granted and the additional votes resulting in favor of both Tiglao and Sanga from the correction/recount proceedings of these three precincts, 3, 8, and 18, San Luis, have been herein credited to them, supra.[61]

5. With the result thus reached in the preceding paragraph 4,[62] showing Tiglao to be entitled to proclamation as winner by 15 votes with the rejection of Judge Sarmiento's order of June 28, 1971 (187 net additional votes of Tiglao exceed Sanga's overall margin of 172 votes by 15 votes, supra)[63] the fifth and last remaining issue on the correctness of Judge Sarmiento's supplemental order of January 12, 1971 denying the petition to correct the return so as to duly credit Tiglao with 49 votes instead of 9 (an additional 40 votes) despite his declaration In his previous order of December 2, 1970 that "(T)he Court is convinced a prima facie case for correction exists" and awareness from the beginning as stated by the inspectors that armed men had destroyed the ballots, and Sanga had presented no contrary evidence to contradict or rebut the poll inspectors' sworn statements and testimony (as challenged in Case L-33105) has become moot and academic. It would no longer affect the results of the election and would only increase Tiglao's winning margin by 40 more to 55 votes.

6. It should finally be noted that the recount of the ballots themselves in correction proceedings in accordance with the innovative procedure, given the preservation of the essential integrity of the ballot box and its contents, as adopted in the cases at bar, per the Court's amendatory Resolution of August 31, 1970, has contrary to the usual experience, served to substantiate the petitions for correction.

Assuming that Tiglao's votes had been counted as of February 18, 1970 when the Court's first decision was rendered, and going by the tabulation of additional votes resulting from such recount, supra,[64] we would have the following:

238 additional votes were actually recounted for Tiglao

plus 40 granting Tiglao these additional votes in precinct 20, San Luis

278 Tiglao's total additional votes (Only 14 votes less than the 292 uncounted additional votes credited to him in the first correction proceedings.)

less 247 Sanga's overall margin, including the 75 votes in precinct 6, San Simon rejected in the judgment of February 18, 1970

31 Tiglao's winning margin

or

278 Tiglao's total additional votes

less 172 Sanga's margin per judgment of February 18, 1970 (rejecting the 75 votes for him in precinct 6, San Simon)

106 Tiglao's winning margin

plus 51 Even crediting to Sanga the total addition votes obtained by him in the correction/recount procedures

55 Tiglao's net winning margin. (This amounts to substantially the same margin computed in the Court's resolution of March 19, 1970[65] whereunder even maintaining intact Sanga's overall margin of 247 votes [including the 75 rejected votes in SanSimon] Tiglao's additional 292 votes would give Tiglao a net winning margin of 45 votes.)

ACCORDINGLY, the Court, in consonance with its resolution of all the pending controversial issues between the contending candidates as above set forth[66] declares petitioner Rogelio O. Tiglao as the winning candidate entitled to proclamation as having been elected member of the House of Representatives for the second district of Pampanga (pursuant to the tabulation of additional votes on pages 20 and 29-30 hereof) and directs the Commission on Elections to order the provincial board of canvassers forthwith to reconvene at the most convenient site as the Comelec may fix and complete the canvass in accordance with the resolution of the issues herein made and proclaim petitioner Rogelio O. Tiglao as the duly elected member of the House of Representatives for the second district of Pampanga at the November 11, 1969 elections. In view of the urgency of this matter and of the fact that the parties have had full opportunity to raise practically every conceivable issue which has been thoroughly discussed and resolved in the Court's judgment of February 18, 1970, its Amendatory Resolution of August 31, 1970 and finally in this decision, and there should be no further delay in having the duly elected representative for the second district of Pampanga assume his seat in Congress, the Court declares this decision immediately executory. No pronouncement as to costs.

Reyes, J. B. L., Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., joins this opinion as well as that of Justice Barredo insofar as they are predicated on the finality of the opinion of this Court in Tiglao vs. Commission on Elections, L-31566, February 18, 1970, 31 SCRA 719.

Concepcion, C.J., did not take part.

[1] Reported in 31 SCRA 719.

[2] Vol II, Rollo in Case L-31566, p. 638, emphasis copied; Notes in parentheses furnished.

[3] This was the same objection of excess votes raised in Sanga's motion for reconsideration of March 24, 1970 and denied in the Court's resolution of March 30, 1970, as earlier mentioned.

[4] Reported in 34 SCRA 456.

[5] "SEC. 194. Alterations and corrections in the election returns. — Any correction or alteration made in the election returns by the board of inspectors before the announcement of the results of the election in the polling place shall be duly initialed by all the members thereof.

"After the announcement of the results of the election in the polling place has been made,, the board of

inspectors shall not make any alteration or amendment in any of the copies of the election returns unless so ordered by a competent court upon petition of the members of the board of inspectors within five (5) days from the date of the elections or twenty-four (24) hours from the time a copy of the election return concerned is opened by the board of canvassers, whichever period is earlier. The petition shall be accompanied by proof of service upon all candidates affected. If the petition is by all the members of the board of inspectors and the results of the election would not be affected by said correction and none of the candidates affected objects thereto, the court, upon being satisfied of the veracity of the petition and of the error alleged therein, shall order the board of inspectors to make the proper correction on the election returns.

"However, if a candidate affected by said petition objects thereto, whether the petition is filed by all or only a majority of the members of the board of inspectors, or if the results of the election would be affected by the correction sought to be made, the Court shall proceed summarily to hear the petition. If it finds the petition meritorious and there are no evidences or signs indicating that the identity and integrity of the ballot box have been violated, the Court shall order the opening of the ballot box. After satisfying itself that the integrity of the ballots therein has also been duly preserved, the Court shall order the recounting of the votes of the candidates affected and the proper correction made on the election returns, unless the correction sought is such that it can be made without need of opening the ballot box." (R.A. 6388). See also secs. 204 and 205 of the new code.

[6] At PP 332-334.

[7] These totals tally with figures of Judge Sarmiento's supplemental order of January 21, 1971 in the corresponding correction cases, Annex D, Tiglao's consolidated petition. The total additional votes of 184 for Tiglao does not tally with the 175 figure in Annex E of Sanga's urgent motion for resolution of all issues dated June 7, 1971, since Sanga deducted the whole 21 original canvass votes of Tiglao for these six San Luis precincts from the total 196 votes of only five precincts, excluding the original 9 canvass votes in precinct 20. The total of these 6 precincts for Tiglao is 205, and subtracting the original canvass votes of 21 (including 9 votes in precinct 20) leaves a net gain of 184 votes for Tiglao from these 6 precincts (not 175 as erroneously computed by Sanga in his said pleading).

[8] Per Comelec compliance of June 14, 1971.

[9] Per Judge Romero's Resolution-Report to the Supreme Court of July 6, 1971 covering his decision on precincts 3, 8 and 18, San Luis.

[10] At page 329.

[11] Sanga's opposition to counter-petition, dated Aug. 9, 1971.

[12] 31 SCRA 719, 726.

[13] Resolution of March 30, 1970, at page 7.

[14] At page 353.

[15] Albano vs. Prov. Bd. of Canvassers, 5 SCRA 13 (May 10, 1962).

[16] Notes in parentheses and emphasis supplied.

[17] See tabulation of additional votes, supra.

[18] In his basic "consolidated petition" of February 25, 1971.

[19] See paragraph 2, (at page 27) and tabulation of additional votes (at page 353).

- [20] Supra, at pages 333-336.
- [21] Herein credited to him over Tiglao's objections, supra, paragraphs 1 and 2.
- [22] At pp. 329-331, and 333.
- [23] At p.344.
- [24] At page 354.
- [25] At pages 329-333.
- [26] 27 SCRA 567, 584: note in parentheses supplied.
- [27] 31 SCRA 719, 730; emphasis supplied.
- [28] Idem at page 726.
- [29] At page 348.
- [30] T.s.n. April 10, 1970 hearing in Election Case 3697, pp. 2-3; Annex A of petitioner's supplementary opposition of July 24, 1971.
- [31] Annex 18, Sanga's "Consolidated Petition" of Feb. 25, 1971, emphasis furnished.
- [32] At pages 344.
- [33] At pages 344.
- [34] Supra, at page 338.
- [35] Conducted by Judge Sarmiento who took over after Judge Romero inhibited himself.
- [36] Supra, at page 353.
- [37] At page 372.
- [38] At page 349.
- [39] At pages 350-352.
- [40] Idem.
- [41] Supra par. 4 (a) at pages 367-368.
- [42] Emphasis furnished.
- [43] Idem.
- [44] See supra at page 367-368, italics supplied.
- [45] T.s.n. April 10, 1970 hearing in Election Case 3697, Annex A of petitioner's supplementary opposition of July 24, 1971, page 23; emphasis furnished.
- [46] Idem, at pp. 23-24.
- [47] Idem, at page 12.
- [48] With Comelec's compliance dated October 2, 1971.

[49] T.s.n. hearing of April 10, 1970, *supra*, fn. 45, pp. 5-6, emphasis furnished.

[50] T.s.n. hearing of second case on June 22, 1971, pp. 11-12, emphasis furnished, *see infra*.

[51] T. s.n. hearing of June 22, 1971, Annex B, petitioner's supplementary opposition of July 24, 1971, pp. 8-9, pp. 11-12 and pp. 13-15, emphasis furnished.

[52] The document evidencing this is Annex C of petitioner's supplementary opposition of July 24, 1971 and reads as follows:

"June 14, 1971

"TO WHOM IT MAY CONCERN:

"The undersigned, Nardo Y. Simeon, representative of Candidate Rogelio Tiglao, and MARCIANO PINEDA, representative of Cornelio Sanga, hereby request that the ballot box of Precinct 6 of San Simon, Pampanga, which is in the custody of the Commission on Elections, be properly secured with three padlocks, and that same be kept inside the vault of the said Commission for safe-keeping.

"It appears that the said- ballot box is not provided with any padlocks, ever since same was brought to Court of First Instance of Pampanga ; when it was ordered to be brought before it by Judge Malcolm Sarmiento by the representatives of the Commission on Elections in connection with the petition for correction of the election returns by the Board of Inspectors sometime in April, 1970.

"Anticipating your favorable action on this matter, we are.

s/t NARDO Y. SIMEON
Representative of Rogelio Tiglao

s/t MARCIANO PINEDA
Representative of Comelio Sanga

"1 padlock - SN 138

"1 padlock - SN 083

"1 padlock - SN 017

"WITNESSES:

s/t JOVITO P. BARRERAS

JOAQUIN T. ISAAC, JR."

(Emphasis furnished)

NOTE: The contents of this document have not been directly disputed nor repudiated by respondent or by Atty. Barreras in the latter's 3-page affidavit of August 9, 1971 submitted as Annex "5" of Sanga's reply dated August 9, 1971 to Tiglao's supplementary opposition of July 24, 1971, to which the document was attached as Annex "C".

[53] Sanga's reply of August 9, 1971 to Tigalo's supplementary opposition of July 24, 1971 at pages 2-4.

[54] Annex "A", petition in Case 31566.

[55] Annex "4", Sanga's reply of August 9, 1971 to Tiglao's supplementary opposition of July 24, 1971.

[56] See Item 1 (e) of Court's Resolution of September 30, 1971 requesting Comelec "records showing who requisitioned self-locking metal seals in Comelec including the serial numbers of said metal seals, used on April 10, 1970 in sealing the ballot box of precinct 6, San Simon, Pampanga; supra, at page 23.

[57] Annex "3", Sanga's reply of August 9, 1971.

[58] T.s.n. hearing of June 22, 1971. pp. 17-19.

[59] T.s.n. Supreme Court hearing of September 30, 1971, p. 3.

[60] At pages 354-366.

[61] See tabulation of additional votes, page 353.

[62] Supra from page 365 et seq.

[63] At pp. 29-30.

[64] At page 353.

[65] supra, at pp. 333-339.

[66] From page 358 et seq.

CONCURRING OPINION

BARREDO, J.:

The detailed and logical discussion made by Mr. Justice Teehankee of the varied aspects of these cases amply justifies the resolution in the main opinion of the issues discussed and rediscussed by the parties in the volumes of memoranda and manifestations they have filed within the two years that these cases have been bouncing back and forth to this Court since soon after the elections of 1969. It is indeed a faithful and comprehensive articulation of the consensus among the members of the Court, except as to the matters relative to the election return for Precinct 6 of San Simon, regarding which some of our colleagues do not feel inclined to agree with the holding that the decision of Judge Sarmiento ordering that 75 votes be credited to respondent Sanga cannot be sanctioned by this Court because the judge proceeded to recount the votes in the ballot box of said precinct notwithstanding that the condition precedent set by (the Court) in its resolution of August 31, 1970 for conducting a recount in correction proceedings, viz., a previous satisfactory showing of the integrity of the ballot box and of its contents has been duly preserved, has not been met and fulfilled.

The only purpose, therefore, of this separate opinion is to express my own individual views regarding this particular controversial return for Precinct 6 of San Simon, for I am convinced that all the circumstances revealed in the record considered, it is best to maintain the original decision of this Court ordering that "no vote" be credited to respondent Sanga in this precinct.

In the later course of Our deliberations, I remember having pointed out that this particular return was first brought to this Court precisely because it was tainted with the congenital infirmity consisting of the uninitialed alterations of the votes of respondent Sanga from 0 to 75 in all the examined copies thereof, including the copy retrieved by Comelec after opening of the ballot box, and that it was for this very reason that in Our unanimous decision of February 18, 1970 penned by Mr. Justice Sanchez, We ruled in no uncertain terms that such alteration "was unauthorized by and contrary to the provisions of Section 154 of the Election Code," and that "the inspectors

could not plead ignorance to this, on the assumption that they really discovered the 'mistake'. Such a stratagem, We are not prepared to legitimize. For, the dispiriting lesson in past elections is that the election returns are tampered to favor a candidate. * * * Tampering, falsification, spoliation of returns or making spurious returns must have to be discouraged." More explicitly, Mr. Justice Sanchez held for the Court that "The tally sheet retrieved from the ballot box is no help because it is not now before Us, aside from the fact that averment is made that it is unsigned," as, in fact, when said tally sheet was ultimately examined, it did show that the Chairman of the board of inspectors and the poll clerk had not signed it. Accordingly, I explained that as far as I am concerned, under these circumstances, the question of whether or not Sanga actually got 75 votes in this precinct is at the least controversial and any speculation that he did get them could not rest on firm legal ground and since the only fact clear to Us, then was that the figures in the impugned re turn had been unauthorizedly altered, indicating possibility, as suggested by Justice Sanchez, of tampering, I saw no reason why Our decision that "respondent Commission on Elections is hereby directed to credit no vote for respondent Cornelio Sanga in Precinct 6, San Simon" should be altered, considering particularly that it had already become final and executory.

True it is that respondent Sanga moved for the reconsideration of Our decision, insisting that the alteration in question be authorized, upon the ground that the same was made before the publication or announcement of the results in the precinct, but We denied said motion, albeit We additionally observed in Our denial resolution that the issue over the disputed 75 votes had by then become moot and academic in view of the results of the other correction proceedings which appeared to have given petitioner Tiglao a majority over respondent which could not be affected anymore by the outcome in Precinct 6. Be that as it may, what is important is that before Our decision became final and executory as far as this particular precinct was concerned, respondent, whether in his motion for reconsideration or in any other pleading, never asked for the alternative remedy that instead of Our ordering definitely that "no vote" be credited to him, he be allowed to seek judicial authority to have the return in question corrected, but tenaciously insisted, instead, that the said return, as is, be given legal effect.

To my mind, it cannot be denied that these alternatives were well within the compass of the subject matter and cause of action in that proceeding, and consequently, since respondent wanted it resolved, only his way, it is elementary that any proceeding subsequent to the finality of Our decision for the purpose of giving him the chance to change his choice must be considered as already barred by *res adjudicata*. It should be borne in mind that the proceeding involved is supposed to be a summary one in order to expedite the proclamation of the ostensible winner in the election, and it is inconsistent with its very nature, to allow any of the parties to engage in a hit or miss procedure that would enable him to go back to the court after his chosen remedy of insisting on the acceptance of the return as is has been terminated adversely to him in a decision which has already become final.

From this point of view, and overlooking already the fact that for unexplained reasons, the petition for judicial authority to correct which was subsequently filed with the Court of First Instance of Pampanga by the board of inspectors was thus filed without leave of nor notice to this Court or to the Comelec and, as a matter of fact, its result was never earlier brought to Our attention nor to that of the Comelec nor even to that of the board of canvassers, which attitude of silence has meritedly gained emphatic stricture in the main opinion of Mr. Justice Teehankee, albeit, it could be that respondent was just keeping the outcome of said proceedings in reserve in order that he might be able to utilize it should the other proceedings result in a margin in favor of petitioner Tiglao that would make those supposed 75 votes in Precinct 6 decisive, I feel that, when, upon Our discovering that such a move had been taken by respondent, which was only when the Comelec came to Us to inquire as to how it would deal with the "correction" of the returns for Precinct 6 ordered by Judge Sarmiento on April 10, 1970, We took official cognizance of said "correction" and ordered its being set aside, with instructions to remand the matter to the lower court for further proceedings, Our action was not altogether in accordance with the prevailing rules, if only because by it, We virtually set aside a decision already final and executory, with no purpose than to allow

respondent to resort to a remedy which as a matter of law and procedure, We would ordinarily consider as already foreclosed because he could and ought to have adopted it before such finality, considering that the matter therein involved as already explained, was well within the scope of the subject matter of Our decision.

Of course, I am aware that We opted nevertheless to bend a little backward in Our desire to take a deeper look into the case, which We felt was a more pragmatic, If not exactly a legal orthodox approach, namely, to consider the correction proceeding void, along the line of Our resolution of similar petitions for correction in the returns for the other precincts, and order, under the same conditions, the account of the votes, (Resolution of August 31, 1970) Our idea being to find out once and for all what the ballots themselves would show and thus eliminate all debates, conjectures and speculations. To me Our action was at best in the nature of an interlocutory step which, if further developments and the interests of justice would require, We could utilize to make our final decision. And so, it must be emphatically pointed out in this connection, that in thus virtually reopening the case and remanding it to Judge Sarmiento, We explicitly imposed the same conditions for the new correction proceedings to be conducted by him that We set down as regards the other precincts. We laid down these conditions precisely because of Our firm determination that even as a pragmatic approach is naturally more practical, expedient and closest to being conclusive, at the same time We want to make it sure that the proceeding is insulated as much as possible from any tinge of unfairness, by requiring that all the interested parties be duly notified and given an opportunity to be heard; that it is removed further from speculative features that attended the old procedure, by making it indispensable that the presiding judge should see personally enough copies of the return sought to be corrected and thereby better have a more factual and comprehensive basis for his resolution; and that it be avoided, on the other hand, that the courts fall into the trap, commonly employed by unscrupulous parties, of stuffing the ballot box with ballots adjusted to the contents of the tampered return, by directing that, whenever the evidence aliunde leaves room for doubt as to the accuracy of the actual number of votes received by the candidates concerned, the court order the opening of the ballot box for the sole purpose of mechanically counting the votes of the contending candidates as in a proceeding for judicial recount, i.e., without appreciating or determining the legality or illegality of any of the ballots or votes. Very importantly, in connection with this possible recount, We made it very clear that consistently with the procedure in judicial recounts, before proceeding to any counting of the votes, the court must satisfy itself first, as a condition sine qua non, that the integrity of the ballot box has been duly preserved. As Justice Teehankee has pointed out, as a matter of fact, both the Comelec and Congress have seen the wisdom of Our ruling, for upon Comelec's recommendation, Congress incorporated the same virtually verbatim in the Election Code of 1971. Indeed, unless such integrity is assured, what good would it do to look into the contents of the ballot box? When there is reason to believe that the ballot box could have been tampered with, what guarantee can there be that the ballots found therein, despite the fact that they may appear clear and regular on their faces, have not been accordingly adjusted?

It is argued that in Our resolution of August 31, 1970, We referred to the integrity not only of the ballot box but also of its contents, in the latter, principally the ballots, but precisely, that only means that the satisfaction only as to the integrity of either is not enough, for everyone familiar with the mysterious ways how election frauds are committed knows, the apparent integrity of the ballot box is no guarantee of the integrity of the ballots and, therefore, logic ordains that the integrity of the ballots should be important only if the integrity of the ballot box is shown to have been duly preserved, for in the vice-versa situation, that is, where the condition of the ballot box emits suspicion of possibility that it has been opened, the appearance of integrity of the ballots would naturally be also suspect, and so, to avoid further delay in making a proclamation, since, as already observed, the experience of this Court in election cases tells Us that the apparently clean and regular appearance of ballots is often deceiving and, on the other hand, the proof of their integrity is rather cumbersome process involving the reception of oral, documentary and expert evidence, the better policy in such a case should be to leave the determination of

the true and legal result of the elections in the precinct concerned to the more fulsome and comprehensive procedure of an electoral protest.

As I see it then, this is exactly the problem now before Us in this case: We ordered Judge Sarmiento to conduct correction proceedings relative to the return for Precinct 6 with express admonition that he should determine, as a pre-requisite thereto, whether or not the integrity of the ballot box had been duly preserved; and the precise issue for Our resolution is, whether or not Judge Sarmiento has complied with this instruction within the contemplation of Our resolution of August 31, 1970. To my mind, if We are convinced that Our instruction has not been so observed, it would be too much already for Us to again bend backward, virtually accommodating respondent once more and, rendering as nothing but empty rhetoric Our instruction, subverting thereby Our innovative ruling of August 31, 1970.

Anent the observation of some of Our colleagues who say that they have observed the condition of some of the ballots herein involved (not all of them) on the occasion when I We ordered the opening of the ballot box for Us to see the, envelop containing said ballots, the condition of which was the subject of dispute between the parties and, according to them, said ballots do not appear to have been tampered with, what I can say is that my understanding of Our ruling imposing the condition sine qua non that the court must first satisfy itself of the integrity of the ballot box before ordering its opening is that said ruling correspondingly precludes the examination of the ballots until after such condition precedent has been complied with, and, as a matter of fact, it was for this reason that 1, for one, and perhaps the majority of the members of the Court did not examine said ballots. For my part, I am not satisfied that the integrity of the ballot box herein involved has been properly preserved and the contrary finding of Judge Sarmiento is not only plain error of judgment but a grave abuse of discretion. It can also be considered as an excess of jurisdiction, considering that he went ahead with the counting of the votes without complying with sufficient degree of carefulness and thoroughness with the instructions and conditions embodied in Our resolution of August 31, 1970.

The Election Code as well as the Comelec's instructions to the board of inspectors imperatively require that after the counting of the votes and the announcement of the results of the election to the people in and around the precinct, the ballot box must be sealed with three padlocks, apart from the corresponding self-locking metal seals securing the cover as well as the inner compartment for valid ballots. The specific identity of these padlocks and self-locking metal seals, by their make and serial numbers, are supposed to be duly recorded in the minutes of voting and other documents to be prepared by the board of inspectors. Accordingly, when this ballot box in question was opened upon orders of the Comelec on January 5, 1970, all of these details regarding the existence, proper closing or locking of these padlocks and seals should have been made of record, in order that the identifying details could be checked and reconciled with the central records of the Comelec and those of the provincial and municipal treasurers who are supposed to keep a record of them. It is truly unfortunate that in the case at bar, none of these details appear to have been taken note of by those who took part in .that proceeding. Considering that the contents of the return in this precinct were being disputed by the parties there should have been utmost care in recording these details I have mentioned.

This sad state of things is even more deplorable because, as far as the records of this case show, no notes were taken of the Comelec proceedings, of January 5, 1970, whereby it could have been determined whether or not the ballot box was duly closed and properly sealed and padlocked at the end of the proceedings held on that day. Consequently, all that is known now is that when the ballot box was taken to the Court of First Instance of Pampanga on April 10, 1970 for that "sub-rosa" correction proceeding of that date, to use the language of Mr. Justice Teehankee, it had only one padlock and did not have the usual self-locking metal seal inside, and as if to make matters worse, no one in the Comelec seemed to know the whereabouts of the key of the sole padlock. At

least, that is what Atty. Jovito B. Barreras, the Comelec representative, of whom much still remains to be said anon, manifested in the court below and before Us when We required his appearance here.

Indeed, I consider it relevant to quote Atty. Barren's testimonies on this point because they bother my conscience, making it difficult for me to have a definite picture of the exact truth as to what really happened in the court in Pampanga on April 10, 1970. According to the transcript of his testimony on that day, he testified thus:

"ATTY. NAVARRO:

"Q Are you the representative of the Comelec who was sent to bring the ballot box for precinct 6 of San Simon, Pampanga; the Provincial Treasurer's copy of the election return for Precinct No. 6 of San Simon, Pampanga, as well as the Comelec copy of the said return, pursuant to the subpoena duces tecum issued by this Court?

"A Yes, sir.

"Q Do you have those documents and articles with you?

"A I have here with me in my possession election return's copy for the Commission on Elections, the election return's copy for the Provincial Treasurer and the ballot box for Precinct No. 6 of San Simon, Pampanga.

"Q Do you have the keys to that ballot box?

"A I do not have the keys, but we cannot find it now, because it has been misplaced in the office, but I am ordered and authorized by the Commission to have the locked padlock, as well as the metal seals to be broken in open court.

"Q What is the authority?

"A That is the verbal authority from our Chief, and that has been the standard procedure in operation when we don't have the keys.

"Q And you have the equipments to brake (sic) forcibly the lock?

"A A nail hammer." (pp. 4-6, T.S.N. Election Case No. 3697, April 10, 1970)

Towards the end of this testimony, Atty. Lorenzo P. Navarro, counsel for respondent, and the court made the following manifestation:

"ATTY NAVARRO:

"May we make of record that the ballot box has only one (1) padlock which the witness said the key is missing, and that he was authorized by the Comelec to forcibly open the same by means of a hammer.

"COURT:

"Make of record that the witness is now hammering the padlock to forcibly open the ballot box.

"WITNESS:

"The outer cover is sealed with sealed locking metal No. 009375, (which is now being broken by the witness.)

"COURT:

"Make of record that the witness was able to open the ballot box.

"WITNESS:

"There is no scaled locking metal placed inside the door of the ballot box." (pp. 11-12, T.S.N. Election Case

No. 3697, April 10, 1970.)

As against this testimony, at the hearing in the Comelec of June 22, 1971, Atty. Barreras gave the following seemingly contrary declarations:

"ATTY. BARRERAS:

"If your Honor please, be it remembered that during the hearing at San Fernando, Pampanga, on April 10, 1970, we forced open all the padlocks before the Honorable Court and the padlocks to this ballot box were in Manila.

"COURT:

"Why did we force open the padlocks during the hearing in San Fernando, Pampanga?

"ATTY. BARRERAS:

"Because the keys were not produced by the respective custodians of the keys to the padlocks at the time the case was heard and that is the standard operating procedure in the Comelec in order not to delay the proceedings to break the padlocks.

"COURT:

"And these padlocks now found in the ballot box were placed where?

"ATTY. BARRERAS:

"In the Commission on Election and these were brought here from San Fernando, Pampanga." (pp. 11-12, T.S.N. Election Case No. 3697, June 22, 1971.)

It would appear then that, according to the recollection of Judge Sarmiento and Atty. Barreras as of June 22, 1971, on April 10, 1970 apparently there was more than one padlock and the reasons why they were forcibly opened was because the respective custodians of the corresponding keys did not produce them, whereas, per the record of the proceedings of April 10, 1970, the number of padlocks and the reason for the force used upon it were different.

The next significant development took place on June 14, 1971, more than fourteen (14) months after the hearing of April 10, 1970 in San Fernando. On this date first mentioned, it was discovered that the ballot box of Precinct 6 in the custody of the Comelec was without a single padlock, "ever since same was brought before it by (sic) Judge Sarmiento by the representatives of the Commission on Elections -- sometime in April, 1970." (Annex C of the Supplementary Opposition of petitioner dated July 24, 1971.) What are specially notable in this exhibit are that (1) whereas it indicates the serial numbers of the padlocks which were then and there supposed to have been placed to secure the ballot box, SN 138, SN 083 and SN 017, nothing is mentioned of any self-locking metal seal having been seen or placed whether outside or inside; (2) that the ballot box was not "kept inside (therefore, outside) of the vault of the (Comelec) for safe keeping"; and (3) that, relatedly, during the proceedings held on June 22, 1971, the record does not show if a verification of the identity of the padlocks and whatever self locking metal seal there was then, thru their serial numbers was made, and yet seemingly careful note was made by the same Atty. Barreras that the ballot box was sealed with self-locking metal seals Nos. 009407 inside and No. 009408 outside. In this connection, anent the observation that petitioner Tiglao's representative made no protest as to the lack of integrity of the ballot box on that occasion, suffice it to say that, precisely, the request to have the ballot box thus properly padlocked was in itself an emphatic protest, albeit, in a sense, the remedy requested might have been already too late because "the horses had already gone when the barn was closed."

Again, in the same hearing of June 22, 1971, it was the same Atty. Barreras who produced all the keys with which all three padlocks were opened without any explanation of any kind as to how he happened to be in the possession of all of them, when for security reasons, they should have been kept separately by different persons. To be recalled, at this point, must be the fact that it was this same Atty. Barreras who took this box to Pampanga on April 10, 1970, forcibly opened the same in court and returned it later to the Comelec without any padlock and outside of the vault until June 14, 1971.

I am not overlooking the fact that, according to Atty. Barreras, (and nobody else because the record of the hearing of April 10, 1970 contains nothing on the matter), the ballot box was sealed with self-locking metal seal No. 71046 on the outside right there in the courtroom of Judge Sarmiento. Indeed, it can be said that this is the only possible proof respondent can possibly cite of the integrity of the ballot box since April 10, 1970, proof of such integrity before that being most unsatisfactory as already demonstrated earlier. But again, I cannot help having serious doubts regarding this self-locking metal seal. No official record has been presented, despite the requirement of this Court that it be produced, showing where it came from, how Atty. Barreras came to have it and what official receipts there are covering the same. Sight must not be lost of the fact that these details are of extreme importance, since it is only by these records that possible tampering with and substitution of this kind of seals can be detected. These seals have been precisely devised in order to augment the security of the padlocks, considering that once they are broken they can no longer be put back, hence the importance of their serial numbers and their sources and the corresponding authority of their holders being duly recorded to the last detail.

The purported receipts, Annexes 4 and 4-a, of respondent Sanga's reply of August 9, 1971, which Atty. Barreras and one Joaquin Isaac, Jr., alleged armorian of the Comelec, issued to each other in one single sheet of paper does not impress me at all. Of course, it appears to be proof of the transfer of the custody of the ballot box in question from Isaac to Barreras in the morning of April 10, 1971 and the return of said custody by Barreras to Isaac in the afternoon the same day, but when it is considered that Isaac allegedly went anyway with Barreras to the court in Pampanga, although there is nothing in the court's records of that day's proceedings to that effect, it is beyond comprehension why Isaac had to part officially or otherwise with the custody of the ballot box and why Barreras still had to take custody thereof. When it is further considered that if Isaac had mission papers for the purpose, proof of which has not again been submitted despite this Court's requirement, how can it be explained that Barreras had to issue a receipt to Isaac who was supposedly with him all the time? Besides, it strikes me as rather too unusual to be readily believable, that, per this exhibit, Barreras took delivery of the ballot box from Isaac at exactly 6:00 o'clock in the morning of April 10, so the receipt states, and returned the same at exactly 6:00 o'clock in the afternoon of the same day, and Atty. Apostol, an official of the Comelec happened to be in the premises to note the same also on April 10.[67]

But what to me is most revealing is that the receipt signed by Isaac specifies not only the 'serial number of the self-locking metal seal outside of the box as 71046 but also that of the seal inside as D-70913. How did Isaac know the serial number of the inside seal? Did Barreras tell him? Respecting the contrary opinion of some members of the Court, I consider this receipt as an absurd imposition upon the good faith of this Court. I feel very strongly that it bears badges of an antedated fabrication and falsehood. To give credence to it is to dignify a brazen attempt to misrepresent facts before this Court. In conscience, I cannot give any value to this receipt. If I were to be asked why it was prepared, I would readily say that this is the only link that could serve as some sort of *res gestae* evidence that when Barreras returned from Pampanga on April 10, 1971, the ballot box was already sealed outside with a self-locking metal seal, even if it cannot be proof of what might have happened between Pampanga and Manila, there being nothing in the records of the court on that day that it was duly sealed in the presence of the court then, although of course, something of it appears in the records of the proceedings already of June 22, 1971, but a cursory reading of which, to say the least, is to my mind, the best proof of how Barreras has

really the genius to give his actuations the appearance of regularity, dubious as they are. It is a cause for wonderment that Judge Sarmiento seemingly just took for granted everything Barreras manifested and never made of record his own recollection of what happened before him then.

Moreover, it intrigues me no end why of the three persons who allegedly went to Pampanga, only Mr. Santos Barbosa the driver had a written directive of the Executive Officer of the Comelec, Atty. Emilio J. Aguila. Indeed, Barreras claimed that his going to Pampanga was purely coincidental, because when the Comelec received the subpoena for the hearing of April 10, 1970, it was already past 4:00 o'clock in the afternoon of April 8 and practically all the lawyers of the Comelec had already left and, of all people, only Barreras happened to have been delayed in leaving the office, so there was no other one to whom the subpoena could be referred for compliance. That is why his mission order was no more than a handwritten marginal note of Atty. Apostol saying, "Atty. Barreras, please comply." But if Atty. Aguila was able to prepare a formal typewritten mission order for Santos, why not for Barreras and Isaac?

It may not be amiss to state, at this juncture, that I was the last member of the Court to give my assent to the innovative procedure set down in Our resolution of August 31, 1970. My hesitation was, as I explained to the Court, due mainly to the fact that as a practitioner handling election cases before this Court for years and years, I used to be invariably rebuffed with the ruling that pre-proclamation proceedings are supposed to be summary and that doubts about the real outcome of the election may after all be resolved in an electoral protest and that the opening of ballot boxes is a serious matter which may not be resorted except in very extraordinary cases. Luckily, in the Sambo vs. Chiongbian case, despite the fact that the court had already ordered the opening of the box and recounted the ballots, when I called the attention of the court to the fact that the integrity of the ballot box did not look convincing, Judge Ceniza set aside the recount and ruled that under the circumstances, the recount was unauthorized. Happily, this Court gave its stamp of approval to Judge Ceniza's resolution, I remember distinctly that in that case, Congressman Chiongbian had already taken the oath by virtue of the premature proclamation by the provincial board of canvassers, but still he was not able to assume any seat in Congress. Here in the case at bar, unlike in the Sambo case, We priorly and explicitly admonished the lower court to satisfy itself first that the integrity of the ballot box has been preserved before proceeding to a recount of the votes. I have already explained at length the circumstances why I feel very strongly that Judge Sarmiento's inquiry into this condition precedent leaves much to be desired. And if in addition to the above discussion, it is taken into account that on December 14, 1969, while Barreras was having under his charge, as Comelec representative, the dispute between petitioner Tiglao and respondent Sanga regarding who of them should be proclaimed as the duly elected Representative of the second district of Pampanga, Barreras, under peculiar circumstances, according to the record, became the compadre of respondent Sanga; in other words, Sanga became the god-father of his son, how can Barreras' representations be given weight as evidence of the regularity of the preservation and safekeeping of the ballot box and ballots in question, when, on the contrary, the circumstances I have discussed would rather destroy the usual presumption of regularity accorded to the acts of a public official? And withal, I have read carefully Barreras testimonies, affidavits and manifestations and I heard and saw him make confusing inconsistent and half-true statements when he appeared during the hearing of September 30, 1971, in this Court, and, indeed, I would consider myself very naive, if I were to give faith and credit to the representations of this pivotal witness which happen to be the only thin threads on which a resolution in favor of respondent Sanga in this case could hang.

Indeed, what I personally observed during the proceedings had in this Court on September 30, 1971 has practically confirmed my suspicions about what could have been done with the contents of the ballot box in question. The findings of Judge Sarmiento on the matter notwithstanding, and having seen the condition of the envelope containing the valid ballots which was the subject of controversy between the parties, I must say that I am not ready to believe the explanation that the cause of the unusual condition of said envelope was the number

of ballots that had to be accommodated therein, if only because the said envelope is of the standard size furnished by the Comelec to all precincts and necessarily the same must be suitable for the intended purpose, as otherwise all similar envelopes for all the other precincts throughout the country would not be as secure as they must be. At this juncture, I reiterate that the condition of the ballots themselves cannot be conclusive, since none of us has seen all of them anyway, and if We are to order their re-examination at this late stage, these cases will never end, for, in equity at least, We would have to also accede to Tiglao's own petitions as to other precincts, the circumstances of which cannot be in principle different from the subject of Sanga's petitions.

Finally, I would like to emphasize that the hearing on April 10, 1970 was *ex parte*. The record reveals that Judge Sarmiento was properly informed of the circumstances under which service was attempted to be made upon Tiglao's counsel, Atty. Mendoza,[68] and considering that April 9 was a public holiday, I find Judge Sarmiento's resolution to proceed with the hearing, under the circumstances, without Tiglao being represented therein rather hasty. Besides, it is to be noticed that in that hearing, it was not the Chairman of the board of inspectors who testified but only the poll clerk who, naturally, strictly speaking, does not exactly come up to the category of being the best evidence the matter was susceptible of.

By and large, since We must put an end to these cases now, for the sake of giving the people of the second district of Pampanga a chance to be represented in the last two remaining regular sessions of Congress, the foregoing considerations compel me in conscience to concur in the vote that Our decision of February 18, 1970, ordering that no vote be credited to respondent Sanga in Precinct 6 of San Simon, Pampanga, instead of the 75 votes for him which Judge Sarmiento claims to have found in the ballot box for said precinct, stand, not to mention my conviction that even as to Precinct 20 of San Luis, Pampanga, Judge Sarmiento's holding that only 9 votes instead of 49 votes should be credited to petitioner Tiglao is unwarranted by many of the facts found by him and the applicable law.

Reyes J. B. L., and Makasiar, JJ., concur.

[67] Strangely, the original of this receipt appears to have been misplaced, I have never seen it. The Comelec certifies it was filed with our docket; our Clerk of Court certifies it is not with Us. What is in the record are simple copies thereof only, including one in the original rollo, which is surprising, because if the original were submitted with the compliance of Comelec, no simple copy is needed to be attached to said compliance.

[68] The service was not made by the regular Sheriff of the Court but, it seems, by someone connected with respondent's counsel or respondent himself. When service in the office could not be made, perhaps because it was a holiday on April 9, the server tried to make the service on Atty. Mendoza late in the afternoon, and he was then informed that Atty. Mendoza was in Baguio to attend to incidents of these cases precisely and there would be on more opportunity for him to be notified and be present at the hearing on April 10.

DISSENTING OPINION

ZALDIVAR, J.:

I regret that I cannot agree with the view, expressed in the main opinion and in the concurring opinion, prepared respectively by my worthy colleagues, Mr. Justice Teehankee and Mr. Justice Barredo, that respondent Cornelio C. Sanga should not be credited with seventy five (75) votes in Precinct 6 of San Simon, Pampanga.

It can be gathered from a reading of the main opinion, and of the concurring opinion, that the question of whether

or not to credit respondent Sanga with 75 votes is the decisive point in the present cases. If respondent Sanga is credited with 75 votes in Precinct 6 of San Simon he would obtain a margin of 60 votes over petitioner Rogelio Tiglao. On the other hand, if respondent Sanga is not credited with the 75 votes, petitioner Tiglao would have a margin over him of 15 vote.

It is my view that an objective appraisal of the circumstances and the evidence extant in the record of these cases cannot but make an open mind reach the finding, and the conclusion, that respondent Sanga had really obtained 75 votes in Precinct 6 of San Simon and in accordance with the settled doctrines in election cases he should be credited with 75 votes and should be proclaimed the duly elected Representative for the second district of Pampanga in the elections of November 11, 1969. I earnestly invite attention to the facts and circumstances which I relate in the following paragraphs.

During the canvass by the provincial board of canvassers of Pampanga of the results of the elections for Representative in the second representative district of Pampanga in the elections of November 11, 1969 — which, canvass began on December 7, 1969 — said canvassing board counted for respondent Sanga 75 votes as written in the provincial treasurer's copy of the election return for Precinct 6 of San Simon. Petitioner Tiglao objected to the use of said provincial treasurer's copy because it appeared thereon that opposite the name of Cornelio Sanga the words "seventy five" were superimposed over the word "zero" and the figures "75" were superimposed over the figure "0". Petitioner Tiglao contended that the election return was a tampered return and, as such, it should not be used in the canvass. This matter was subsequently brought to the Comelec for a ruling. The Comelec caused to be brought before it the Comelec copy and the municipal treasurer's copy of the election return of Precinct 6 of San Simon, and upon examination of the three copies the Comelec copy, the provincial treasurer's copy and the municipal treasurer's copy - it was seen that in all these three copies the words "seventy five" were superimposed over the word "zero" and the figures "75" were superimposed over the figure "0". It was noted, however, that the superimpositions appearing on the three copies were uniformly done, because the copies were prepared with the use of carbon paper- one was the original and the other two were carbon (duplicate) copies. The Comelec ordered the opening of the ballot box of Precinct 6 of San Simon in order to retrieve and examine the ballot box copy of the return. This was done on January 5, 1970. In its resolution, of January 5, 1970 the Comelec said:

"Considering that after examining the provincial treasurer's copy, the Comelec copy and the municipal treasurer's copy of the returns of this precinct, it appeared that they contain the same alterations, the Commission resorted to the ballot boxes (sic) copy of said election return which was retrieved from the ballot box in open session in the presence of counsels of opposing parties and which ballot box copy was also found to contain the same alterations as those in the other three copies first examined. The tally sheet was resorted to but although it was clean, it did not bear the signatures of the Chairman and Poll Clerk. In view of these findings, the Commission therefore RESOLVED to reserve the ruling on this particular return and to refer the Comelec copy, the provincial treasurer's copy, the municipal treasurer's copy and the ballot box copy of the election return of Precinct 6, San Simon, Pampanga, to the NBI for examination and determination of the true entries of votes for the candidates which appeared to have been altered."

The copies of the election return were accordingly submitted to the NBI for examination, and in the NBI report it is stated:

"3. Opposite name 'Sanga Cornelio'

"In column 'Total Votes Obtained (In Words)' 'Zero' is superimposed with 'Seventy' of 'Seventy five'.

"In column 'Total Votes Obtained (In Figures)' '0' (Zero) is superimposed with '7' of '75' "

The NBI expert who examined the copies of the election return, and who submitted the report to the Comelec,

testified before the Comelec that the superim-position stated in the report was a possible correction and not a tampering of the election return.

The poll Clerk of Precinct 6 of San Simon testified before the Comelec and declared that when the Chairman of the board of inspectors was preparing the election return she noted that opposite the name of candidate Sanga the chairman wrote the word "zero" and the figure "0"; that she called the attention of the chairman to his error and referred him to the tally sheet and to the tally hoard where it appeared that there were 75 tallies for Sanga; that the chairman recognized his mistake and he corrected his mistake by writing the word "seventy five" over the already written word "zero" and the figures "75" over the already written figure "0"; that the corrections were made before the copies of the election return were signed by the members of the board of inspectors such that when all the members of the board of inspectors signed the election return the corrections or superimpositions made by the chairman were already on the face of the election return, but that by oversight they failed to initial those parts where the corrections or superimpositions were made. The poll clerk further testified that the corrections or superimpositions made by the chairman were done before the board of inspectors had announced the result of the elections in that precinct.[69]

In this connection the Comelec, in its resolution of January 14, 1970, stated.

"1. MISS FE ROMERO, Poll Clerk of Precinct 6, San Simon, Pampanga (the Chairman of said precinct failed to appear) who testified that the entries under the columns "Total Votes Obtained" in words and figures for congressional candidates Jose Fausto, Jr., and Cornelio Sanga in the provincial treasurer's copy of the election returns for Precinct 6, San Simon Pampanga, were corrections made by the Chairman in her presence after referring to the Tally Board and Tally Sheet, which correction were not initialed by them due to oversight."

And so in its resolution of January 6, 1970 the Comelec among others, ruled as follows:

"5) To hold that with respect to Prec. No. 6, San Simon, the superimposition appearing in the votes of SANGA are corrections made by the Board and not tampering and to sustain the action of the Board of Canvassers in its canvass of said return."

Petitioner' Tiglao came up to this Court on a petition for certiorari to review the rulings of the Comelec as embodied in its resolution of January 26, 1970[70] which, among others, sustained the action of the board of canvassers in including in its canvass the election return of Precinct 6 of San Simon. This Court in its decision, penned by Mr. Justice Conrado Sanchez, now retired, on February 19, 1970, among others, reversed the ruling of the Comelec regarding the election return of Precinct 6 of San Simon. In that decision this Court held that because the superimpositions or corrections appearing in the election return for precinct 6 of San Simon were not initialed by the members of the board of inspectors as required by law that election return should not be included in the canvass of the results of the elections for representative in the second representative district of Pampanga in the elections of November 11, 1969. In so holding this Court invoked the ruling in the case of Balindong vs. Commission on Elections, L-29610, March 28, 1969 27 SCRA, 657.[71]

On March 7, 1970 respondent Sanga filed a timely motion for reconsideration of the decision of February 18, 1970, especially referring to the ruling of this Court regarding the election return of Precinct 6 of San Simon, contending vigorously that the rulings laid down in the Balindong case were not applicable to the case of the election return of Precinct 6 of San Simon, because the facts and circumstances obtaining in the Balindong case were different from the facts and circumstances attending the election return of Precinct 6 of San Simon. In its resolution of March 19, 1970, this Court denied Sanga's motion for reconsideration, and in particular reference to Precinct 6 of San Simon this Court said:

"In denying respondent Sanga's motion for reconsideration, the Court deemed it unnecessary to pass upon the

question therein raised that the alteration in the return for Precinct 6, San Simon, crediting said respondent with 75 votes (instead of zero vote as originally written) aid disauthorized in the Court's decision was made 'during the preparation of all copies of the returns and before the publication of the results in the polling place.' This question has become moot, taking into consideration that the Pampanga Court of First Instance, in its Resolution dated March 10, 1970 (Annex 'A', petitioner's supplemental motion), denied said respondent's motion for reconsideration of said Court's decision, whereby petitioner has been credited with 292 additional votes from the six precincts concerned, where the returns were judicially authorized to be corrected, which votes are sufficient to offset respondent's overall margin of 247 votes before the correction, and hence the disputed 75 votes (which are already included in said margin of 247 votes) would not affect the results of the election."

Right on March 19, 1970 respondent Sanga immediately filed an urgent motion for reconsideration of this resolution of March 19, 1970. On March 20, 1970 this Court issued a resolution suspending the effectivity of its resolution of March 19, 1970 and required petitioner Tiglao to answer respondent Sanga's motion for reconsideration not later than 9:00 a.m. on March 23, 1970. On March 23, 1970, this Court issued a resolution denying respondent Sanga's motion for reconsideration of this Court's resolution of March 19, 1970 and lifted the suspension of the effectivity of said resolution of March 19, 1970 as ordered in its resolution of March 20, 1970. The resolution of this Court of March 23, 1970 had the effect of simply maintaining its ruling of March 19, 1970 that the question regarding the 75 votes in Precinct 6 of San Simon had already become moot because the Court of First Instance of Pampanga had ordered the correction of the election returns in six precincts of San Luis which resulted in petitioner Tiglao's obtaining 292 additional votes that were enough to offset the original margin of 247 votes in favor of respondent Sanga, even without deducting the 75 votes of San Simon. This Court, in its, resolution of March 23, 1970, did not resolve the points raised by respondent Sanga in his motion for reconsideration of March 7, 1970. This Court ruled only that the motion for new trial filed by respondent Sanga in the proceedings for the correction of the election returns in six precincts of San Luis, in the Court of First Instance of Pampanga, had become moot, because the matters alleged in the motion for new trial had already been passed upon by said court, and the order of the lower court granting the unanimous petitions of the boards of inspectors of those six precincts for the correction of the election returns was unappealable, such that the summary proceeding had come to an end.[72]

On March 24, 1970 respondent Sanga filed another urgent motion for reconsideration calling the attention of this Court that the correction proceedings in the Court of First Instance of Pampanga involving the six precincts of San Luis (Precincts 9, 15, 16, 19, 20, 21) were not yet decided with finality, because immediately after he learned of the decision of the Court of First Instance of Pampanga ordering the correction, (after proceedings which were held ex-parte) he filed a petition for intervention questioning the legality and the propriety of the proceedings upon the ground that he was not notified of the hearings and that the court had no jurisdiction or competence to entertain the petitions for correction because those petitions were filed more than two months after the elections and after a tentative canvass had been conducted wherein he (respondent Sanga, was shown to have a plurality of 247 votes over Tiglao. Respondent Sanga alleged in his urgent motion for reconsideration (before this Court) that the Court of First Instance of Pampanga overruled his contention and after his motion for reconsideration was denied[73] he, without waiving or abandoning his right to pursue his theory of lack of jurisdiction, filed a petition for retrial or reopening of the cases, which petition for retrial was argued by his counsel on March 19, 1970 and counsel for Tiglao was given time until March 24, 1970 to answer in writing the oral argument of his (Sanga's) counsel; such that as of March 24, 1970 (the date of the filing of the urgent motion for reconsideration before this Court and after this Court's resolution of March 23, 1970) the correction cases in the Court of First Instance of Pampanga had not yet been decided with finality.[74] In the urgent motion for reconsideration it is also alleged that the order of correction of the Court of First Instance of Pampanga, which was still being questioned by

respondent Sanga in the court below, brought about an anomalous situation, and so the corrected returns should not be used in the canvass, because "the returns as corrected would show that the total of the votes cast in favor of all the candidates for Congressman would far exceed the total number of voters registered." The urgent motion for reconsideration (before this Court) further alleges that "To allow the acceptance of these anomalies after the actual canvassing and after the results of the elections had become known, would open the flood-gates to losing candidates to defeat the canvassing by instigating election inspectors to belatedly file petitions for correction of election returns intended to add enough votes in favor of losing candidates to offset the majority of the winning candidate." Respondent Sanga, in his urgent motion for reconsideration, also called attention to the fact that in the decision of this Court of February 18, 1970 the pendency in the Court of First Instance of Pampanga of the proceedings regarding the election precincts of San Luis should first be determined with finality before any canvass leading to the proclamation should be held. It is, therefore, prayed in said urgent motion for reconsideration that the resolution of this Court of March 23, 1970 be reconsidered and that the order of suspension of the Court's resolution of March 19, 1970 be revived "until the incidents in the Pampanga court shall have been decided with finality." [75]

Also on March 24, 1970, respondent Sanga filed a supplemental motion for reconsideration alleging specifically that the motion for new trial that he filed in the Court of First Instance of Pampanga in the correction cases was not pro forma, as declared by this Court in its resolution of March 23, 1970, because even petitioner Tiglao himself, in his opposition to his urgent motion for reconsideration in the court below stated that "the motion for retrial alleges ground not alleged in previous motion for reconsideration * * * ", and so contrary to what is stated in the resolution of this Court of March 23, 1970, the grounds alleged in respondent Sanga's motion for retrial were not fully considered by the Court of First Instance of Pampanga in its resolution of March 10, 1970.

On March 25, 1970 this Court issued a resolution suspending the effectivity of the resolution of March 23, 1970, and required petitioner Tiglao to answer the urgent motion for reconsideration and the supplemental motion for reconsideration of respondent Sanga, both dated March 24, 1970, not later than 9:30 a.m. on March 30, 1970.

On March 30, 1970 respondent Sanga filed a manifestation alleging, among others, that in the resolution of this Court of March 19, 1970, the matter regarding the 75 votes in Precinct 6 of San Simon was not definitely ruled upon, but that in view of the conflicting claims of both petitioner Tiglao and respondent Sanga in the correction cases in the Court of First Instance of Pampanga, the question regarding the 75 votes in Precinct 6 of San Simon had become decisive and a definite ruling on the points raised in the motion for reconsideration of March 7, 1970 regarding those 75 votes was imperative. Respondent Sanga, therefore, reiterated the prayer contained in his motion for reconsideration of March 7, 1970, as repeated in his urgent motion for reconsideration of March 19, 1970, for the resolution on the merits of his first motion for reconsideration of the original decision of this Court of February 18, 1970 regarding those 75 votes in Precinct 6 of San Simon. Respondent Sanga also prayed that the order of this Court directing the Comelec to reconvene immediately the board of canvassers to canvass and proclaim the winning candidate be held in abeyance until the cases for correction pending in the Court of First Instance of Pampanga shall have been determined with finality as was ordered in this Court's decision of February 18, 1970. Respondent Sanga further prayed that should the resolution of this Court on the incident in question be adverse to him, the effects thereof be held in abeyance so he could have an opportunity to elevate by certiorari to this Court whatever final decision might be rendered by the Court of First Instance of Pampanga on the pending incidents therein which are relevant or material to the issue in these cases. [76]

On March 30, 1970 petitioner filed a supplemental opposition to respondent Sanga's urgent motion for reconsideration and supplemental motion for reconsideration, both dated March 24, 1970, giving notice to this Court that on March 25, 1970 the Court of First Instance of Pampanga denied respondent Sanga's motion for

retrial etc. in the correction cases in said court.[77]

On March 30, 1970 this Court issued a resolution denying respondent. Sanga's urgent motion for reconsideration and supplemental motion for reconsideration, both dated March 24, 1970, as well as the prayer in his manifestation of March 30, 1970. This Court ordered that no further motion to hold in abeyance this Court's resolution of March 19 and 23 would be entertained, and that the suspension of the effectivity of the Court's resolution of March 23, 1970 as stated in the resolution of March 25, was thereby lifted. The Court ordered the Comelec to immediately convene the board of canvassers of Pampanga with instructions to conclude its canvass and to proclaim forthwith the winning candidate.[78]

Let it be noted that in this Court's resolution of March 30, 1970 there is no definite ruling on the points raised by respondent Sanga in his motion for reconsideration (dated March 7, 1970) of this Court's decision of February 18, 1970. And yet, respondent Sanga, in his manifestation of March 30, 1970, specifically prayed that the points raised by him in said motion for reconsideration be definitely ruled upon. This Court's resolution of March 30, 1970 simply maintained the resolution of March 23, 1970 which in turn maintained the resolution of March 19, 1970. As I have adverted to, this Court's resolution of March 19, 1970 did not rule squarely on the allegation in respondent Sanga's motion for reconsideration of March 7, 1970 that the ruling in the Balindong case, which was relied upon by this Court in its decision of February 18, 1970 in ordering that no vote should be credited to Sanga in Precinct 6 of San Simon, is not applicable to the case of the election return of precinct 6 of San Simon. This Court's resolution of March 30, 1970 simply had the effect of denying respondent Sanga's motions for reconsideration of March 19, 1970 and March 24, 1970 which prayed for the reconsideration of this Court's resolution of March 19, 1970 that in turn denied respondent Sanga's motion for reconsideration of March 7, 1970 which sought the reconsideration of the decision of this Court of February 18, 1970. I repeat that this Court's resolution of March 19, 1970 denied respondent Sanga's motion for the reconsideration of the decision of February 18, 1970, by simply saying that the matter regarding the 75 votes for Sanga in Precinct 6 of San Simon had become moot because the result of the cases for correction of the returns in six precincts of San Simon showed that Tiglao obtained 292 additional votes enough to offset the original lead of 247 votes credited by the board of canvassers to Sanga. I also repeat that this Court did not resolve the point raised by respondent Sanga that the ruling in Balindong was not applicable to the case of the 75 votes in question.

As I will hereinafter show, this Court in its resolution of August 31, 1970 had nullified all the correction proceedings in the Court of First Instance of Pampanga which gave those 292 additional votes to Tiglao. It follows that the basis of this Court's denial of the motion for reconsideration of respondent Sanga, dated March 7, 1970, was not correct because petitioner Tiglao was not legally and finally credited with the 292 additional votes. It also follows that as of March 30, 1970 the decision of this Court regarding the 75 votes in Precinct 6 of San Simon had not yet become final, and it continued to be pending resolution, specially, as I will hereinafter show because subsequent supervening incidents involving these 75 votes in Precinct 6 of San Simon had taken place, which incidents were acted upon by this Court, thereby indicating that this Court had not considered the matter regarding the 75 votes in Precinct 6 of San Simon as foreclosed and definitely settled by this Court's decision of February 18, 1970.

On March 31 and April 2, 1970, all the members of the boards of inspectors, in the six precincts of San Luis where the election returns were authorized to be corrected by the Court of First Instance of Pampanga, came to the Comelec and made the authorized corrections of the election return in their respective precincts. On April 6, 1970 the corrected returns were delivered to the board of canvassers so that they may be included in the canvass. In the proceedings before the board of canvassers respondent Sanga objected to the use of these corrected returns in the canvass upon the ground "that said returns on their face are mathematically improbable and were obviously

manufactured as it clearly appears that the votes cast for the congressional candidates are very much in excess of the registered voters in the respective precincts:"[79] The Board of Canvassers referred the matter to the Comelec for resolution on April 6, 1970. In its resolution of April 7, 1970 the Comelec pointed out that in these six precincts the total votes for the congressional candidates exceed by 79 the number of registered voters, and exceed by 273 the number of votes actually cast. In ordering the board of canvassers not to include in the canvass these "corrected" returns the Comelec, in its resolution of April 7, 1970, said:

"Settled is the rule that excess votes per se may not invalidate the election returns, for any plausible explanation may be accepted to sustain their validity, in order not to outrightly disenfranchise voters. But where, as in this case, the excess votes were the result of judicial correction made one day after the Commission has promulgated its decision (Case No. RR-695), and the winner already known, based solely on sworn petitions of the corresponding boards of inspectors, and the returns as corrected contained excess votes materially affecting the result of the election, then the only explanation that could be derived therefrom is that said boards had submitted false or inaccurate data to the Court.

* * * * *

"The Commission, in the interest of clean, orderly and honest elections, cannot countenance the use of election returns that are 'obviously' invalid. In fact, it is its 'primary duty' to see to it that only genuine or authentic election returns are used by the canvassing boards. There is no other alternative, therefore, except to enforce or administer the settled rule of the case that any election return showing great excess of votes, like excesses ranging from 25 to 100 votes, should not be given any prima facie value for purposes of canvassing.

* * * * *

"ACCORDINGLY, adhering to the sound policy that abhors 'mere pyrrhic victory' of candidates and that the holding of elections must, at all times and at any cost, be free, orderly and honest, the Commission RESOLVED to order the provincial board of canvassers of Pampanga not to include in the canvass the election returns for Precincts Nos. 9, 15, 16, 19, 20 and 21 of San Luis, Pampanga, for being mathematically improbable as shown by the great excess of votes appearing thereon for congressional candidates."

Upon notice of the foregoing resolution of the Comelec, petitioner Tiglao, on April 9, 1970, filed before this Court a "Motion to Enforce Judgment (alternatively) Petition For Certiorari (by way of appeal from the Commission on Elections)." This motion-petition was considered by this Court as an appeal from the resolution of the Comelec of April 7, 1970, and was docketed as G. R. No. L-31847. This Court, on April 10, 1970, required respondents Comelec and Cornelio Sanga to file their answers to the motion-petition on or before April 14, 1970, and at the same time issued an order restraining the Comelec from enforcing its resolution of April 7, 1970 and the provincial board of canvassers of Pampanga from acting in accordance with the said resolution of the Comelec. The Comelec and the board of canvassers were also restrained from taking further action on the proceedings regarding the canvassing of votes and proclamation of the winning candidate for representative of the second district of Pampanga.

After the parties were heard on oral argument on two occasions on April 23, 1970 and on July 16, 1970 — and were allowed to file memoranda, this Court, on August 31, 1970, issued a resolution ordering the annulment of all the proceedings in the Court of First Instance of Pampanga in connection with the petitions for correction of the election returns of the six precincts in San Luis. Pertinent portions of the resolution read as follows:

"In our decision of February 18, 1970, we had directed that the proclamation of the winning candidate between the contending rivals be held in abeyance until after the question affecting the same, pending in the Pampanga court, are determined with finality. The challenged Comelec resolution now before us has perforce laid open the question of finality of the Pampanga court's correction ruling — not because of Comelec's resolution beyond

its jurisdiction to exclude the corrected returns and thus review and set aside the Pampanga court's ruling — but because of the grave question of due process by virtue of lack of notice of the proceedings on the parties affected, as *motu proprio* noted by the Court, and which bears heavily on the validity or nullity of the correction proceedings, as hereinafter discussed. Besides, prescinding from the fact that the Pampanga court's ruling was not directly elevated to the Court, it is a settled principle in the administration of justice that 'it is always in the power of the Court to suspend its own rules or to except a particular case from its operation whenever the purposes of justice require it.' "

* * * * *

"ACCORDINGLY, the Court has resolved: (a) to annul and set aside respondent Comelec's resolution of April 7, 1970, and (b) to likewise annul and set aside all proceedings, as well as the 'decision' of the Court of First Instance of Pampanga dated February 7, 1970 and its resolution of February 25, 1970 and March 25, 1970 affirming its said, 'decision,' in the correction proceedings, Election Cases Nos. 3653, 3654, 3655, 3656, 3657 and 3659 thereof with instructions as discussed above particularly in paragraphs 2 and 3 hereof, to hear the same anew with due notice to the candidates affected; to have before it the copies of the election returns sought to be corrected; upon being satisfied *prima facie* of the errors alleged to have been committed by the boards of inspectors concerned and upon its preliminary finding that the identity and integrity of the ballot boxes have been duly preserved, order the opening thereof and after likewise satisfying itself that the integrity of the ballots therein has been also duly preserved, conduct a summary and arithmetical recount of the ballots themselves; and thereafter to render anew the appropriate resolution on the basis of the evidence before it." [80]

The main opinion considers the resolution of this Court of August 31, 1970 in G.R. No. L-31847 as amendatory of the decision of this Court of February 18, 1970 in G.R. No. L-31566. This is one reason why I say that the decision of February 18, 1970 never became final. Let it be noted that this Court's resolution of August 31, 1970 annulled and set aside the decision of the Court of First Instance of Pampanga in the six correction cases which gave petitioner Tiglao the additional 292 votes. This Court's resolution of August 31, 1970 also annulled and set aside the two resolutions (of February 27 and March 25, 1970) of the Court of First Instance of Pampanga denying respondent Sanga's motion for reconsideration of the decision and his motion for a new trial. In other words, this Court itself had removed, or nullified, the basis of the March 19, 1970 resolution which denied respondent Sanga's motion for reconsideration of the decision of February 18, 1970 upon the ground that the question regarding the 75 votes in respondent Sanga's favor had become moot because by decision (of February 7, 1970) of the Court of First Instance of Pampanga petitioner Tiglao had obtained 292 additional votes which were sufficient to offset respondent Sanga's lead of 247 votes.

Complying with the order embodied in the above-mentioned resolution of this Court of August 31, 1970, the Court of First Instance of Pampanga re-heard anew the cases relating to the correction of the election returns in the six precincts of San Luis, namely Precincts Nos. 9, 15, 16, 19, 20 and 21. This Court likewise, subsequently, authorized the hearing of the petitions for correction of the election returns in three additional precincts of San Luis, namely Precincts Nos. 3, 8 and 18. Also this Court authorized the correction of the returns in two precincts of Apalit, namely, Precincts Nos. 35-A and 36. As a result of the recount-correction proceedings in the original six precincts of San Luis, in the three additional precincts of San Luis, and two precincts of Apalit, it was reported to this Court, and this Court accepted, that petitioner Tiglao had obtained 238 additional votes and respondent Sanga 51 additional votes.[81]

Many incidents had to be resolved by this Court, however, before the final reports (decisions) on the correction-recount in the eleven precincts that I have herein mentioned were submitted to this Court. It was not until about August of 1971 when the proceedings regarding the correction-recount in these eleven precincts could

be considered as having been decided with finality by the lower court. Besides acting on the decisions-reports on the correction-recount proceeding in the eleven precincts I have mentioned, however, this Court had also to act on the correction-recount proceedings in the Court of First Instance of Pampanga affecting Precinct 6 of San Simon.

I have endeavored to make a detailed narration of the incidents relating to precincts other than Precinct 6 of San Simon because it was the election returns in those precincts which were referred to in this Court's decision of February 18, 1970 that were the subjects of correction proceedings pending in the Court of First Instance of Pampanga. In the dispositive portion of that decision of February 18, 1970 it was clearly stated that "the proclamation of the winning candidate shall be held in abeyance until after the questions affecting the same as herein above discussed, pending in the Pampanga court are determined with finality." That decision of February 18, 1970 did not actually determine who of the two opposing candidates — petitioner Tiglao or respondent Sanga — could be proclaimed as the winning candidate. A supplemental decision would yet have to be rendered based on the final determination of the correction proceedings then pending. As finally determined in the correction recount proceedings, not including in the meantime the correction-recount proceeding affecting the election return in Precinct 6 of San Simon, petitioner Tiglao had obtained 283 additional votes while respondent Sanga obtained 51 additional votes. And so, what this Court declared in its resolution of March 19, 1970, that petitioner Tiglao had obtained 292 additional votes which were sufficient to offset the 247 votes that respondent Sanga was originally credited as his lead over petitioner Tiglao, was not true. The truth is that as a result of the recount-correction in the six precincts of San Luis, petitioner Tiglao had only obtained 184 additional votes, but respondent Sanga had also obtained additional 34 votes. Here is where I stress that the resolution of this Court of March 30, 1970, denying respondent Sanga's motion for reconsideration of the February 18, 1970 decision was based on an incorrect premise, and so that resolution did not preclude respondent Sanga from asserting that if the 75 votes in San Simon would be credited to him he would have a winning margin over petitioner Tiglao.

And so I now come to the question of whether or not respondent Sanga should be credited with 75 votes in Precinct 6 of San Simon.

On April 1, 1970 all the members of the Board of Election Inspectors of Precinct 6 of San Simon, namely Orlando Ingal as Chairman, Fe Romero as Poll Clerk, Leonardo Tayag as NP inspector, and Restituto Guinto as LP inspector, filed in the Court of First Instance of Pampanga a petition for correction of the election return of Precinct 6 of San Simon. Pertinent allegations of the petition read as follows:

"3. That in the preparation of the election return for the said precinct, the Chairman Orlando Ingal — who actually accomplished the same committed an honest or unintentional mistake by writing 'zero' for the votes obtained by Congressional candidate Cornelio Sanga when in truth and in fact the said candidate garnered seventy-five (75) votes in Precinct No. 6 of San Simon, Pampanga; that when the Poll Clerk noticed the error, she called the attention of the Chairman and the other members of the board of inspector to the said mistake; and that, upon unanimous consent or agreement of all the members of the board, the Chairman made the necessary correction by superimposing with one stroke and at one time the word 'seventy-five' over the word 'zero' originally written on the election return and the figure '75' over the figure '0' originally written on the election return in the space for the votes cast for candidate Cornelio Sanga; but that the petitioners herein, through oversight, forgot to initial the said correction made on the election return;

"4. That yesterday the petitioners were informed that the correction made on the election return was declared not valid by the Supreme Court, thereby causing candidate Cornelio Sanga to lose the seventy-five (75) cast for him in Precinct No. 6 of San Simon;

"5. That there being no proclamation yet of the winning candidate for Congressman in the second district of Pampanga and in order not to frustrate the will of the electorate in Precinct No. 6 of San Simon, the petitioners are coming to court for the necessary correction of the election return in question or for a confirmation of the

correction made in the manner hereinabove set forth, as the case may be."

The petition prayed that they be authorized by the court to correct the election return for Precinct 6 of San Simon "by writing anew if necessary the word "seventy-five" and the figure "75" on the space of the said return for the votes cast for congressional candidate Cornelio Sanga or by merely initialling the corrections therein made on the same election return as herein-above indicated, if this is sufficient in law, and to confirm said correction." The petition was subscribed and sworn to by all the four petitioners. The petition was docketed as Election Case No. 3697.

On April 3, 1970 Judge Malcolm G. Sarmiento presiding Branch 1 of the Court of First Instance of Pampanga issued an order which reads as follows:

"The petitioners having filed in Court a petition to the correction of the election returns in Precinct No. 6 of San Simon, Pampanga, and to give Mr. Rogelio Tiglao his day in court, let the said petition be set for hearing on April 8, 1970 at 8:30 o'clock in the morning.

"The Deputy Sheriff is authorized to serve a copy of this order together with a copy of the petition upon Mr. Tiglao and a copy of this Order upon the petitioners at San Simon, Pampanga."

On April 8, 1970 petitioner Tiglao filed a motion to intervene and to dismiss the petition.

On April 8, Judge Sarmiento set the case for hearing for April 10, 1970 at 8:30 o'clock in the morning and at the same time issued a subpoena duces tecum upon the Commission on Elections for delivery to the Court of First Instance of Pampanga of the ballot box for Precinct 6 of San Simon on or before April 10, 1970. Judge Sarmiento granted the petition of Rogelio Tiglao to intervene but held in abeyance the resolution of the motion to dismiss until after the hearing of the evidence. On the day of the hearing petitioner Tiglao, as intervenor in the case, failed to appear. The hearing however, proceeded. In this connection Judge Sarmiento, in his decision dated April 11, 1970, states:

" * * * Copy of the notice of hearing on said date, as well as copy of order, were furnished to Atty. Estelito Mendoza by special sheriff in the person of Mr. Honorato Figueroa who went to the residence, as well as to the law office, of said Atty. Estelito Mendoza. Persons in said law office refused to receive said order and notice. He proceeded to his residence. He tendered copies of said orders to the wife, Mrs. Estelito Mendoza who also refused to acknowledge receipt of said order and notice."

In his decision of April 11, 1970, Judge Sarmiento said:

"That the election return which was retrieved from the ballot box by Atty. Jovito B. Barreras, duly authorized representative of the Commission on Elections to deliver said ballot box to Court, bears the same error or alteration, as found in Exhibits A, A-1 and B. This election return retrieved from the ballot box is identified as Exhibit C, the same entry namely, after the words 'Cornelio Sanga', candidate for Congress in the last election in the Second District of Pampanga under the column word 'zero' was first entered, as well as the figure '0', and later on the words 'seventy five' were superimposed by the word 'zero' and the figure '75' were superimposed on the figures '0'.

"The Poll Clerk, Miss Fe Romero, explained that when the Chairman of the Board of Inspectors, Mr. Orlando lngal, prepared the election returns for Precinct No. 6, he committed this error putting the word 'zero', as well as the figure '0' after the name of Cornelio Sanga, but in the tally sheet which was retrieved from the ballot box of said precinct, which is identified as Exhibit C, there is no correction nor alteration. The tally sheet is clear on its face that Cornelio Sanga obtained seventy five (75) in the last elections in this Precinct No. 6. This was shown by the vertilines and diagonal lines under his name in fifteen (15) columns, five (5) in each column, as

well as the entry in figure '75'; and the error was discovered by Miss Romero when she was about to sign her name in the election return, because she knew, according to her on the witness stand, that the number of votes found in the black board or tally board corresponding to Cornelio Sanga was seventy-five. When she saw that after the name Sanga in election return for the Commission on Election, Municipal Treasurer and Provincial Treasurer, identified as Exhibits A, A-1 and B, that Cornelio Sanga obtained zero (0) she called the attention of the Chairman, Mr. Orlando Ingal, who readily agreed to such an error and made the proper correction, meaning to super imposing the word 'seventy five' in the entries found in those tally sheets abovementioned, as well as figure '75' found therein, and so the members of the Board of Inspectors who were preparing the election return concurred to the actuations of the Chairman of the Board of Inspector, Mr. Orlando Ingal, who 'made the corresponding correction, although they inadvertently failed to initial said correction, hence the confusion arising from said correction.

"The Court is aware that such correction was done in good faith and in compliance to the law to embody the express will of the electorates in said Precinct No. 6; that it is just fair and valid to give course to this petition.

"WHEREFORE, the petition for correction is granted, and the petitioners are hereby authorized to initial said Election returns, Exhibits A, A-1 and B at the Commission on Election Office, Manila, including that copy of the Provincial Treasurer which was not presented in this Court, in order to give force and effect to the will of the electorates in Precinct No. 6, within a period of twenty-four (24) hours from receipt of this order."

The record of Election Case No. 3697 of the Court of First Instance of Pampanga, which had been forwarded to this Court, shows that counsel for petitioner Tiglao was furnished with copy of the foregoing decision of Judge Sarmiento on April 13, 1970. The record shows that petitioner Tiglao did not appeal from said decision, nor did he move before this Court to have that decision annulled. Petitioner Tiglao did not ask for the reconsideration of the decision, nor did he ask for the reopening of the case on the ground which he much later raised before this Court in his memorandum of February 3, 1971 - that he was not properly notified of the hearing.

The record of G.R. No. L-31847 shows that on April 10, 1970 this Court issued a restraining order directed to the Comelec and the Provincial Board of Canvassers of Pampanga which, among others, states:

" * * * You (COMELEC AND BOARD OF CANVASSERS) are hereby restrained from taking any further action or proceeding regarding the canvassing of votes and proclamation of the winning candidate for representative of the second district of Pampanga."

The foregoing restraining order would explain why in the meantime no action had been taken, by either the Board of Canvassers of Pampanga nor the Comelec, regarding that decision of Judge Sarmiento of April 11, 1970.

I have taken the pains of going over the voluminous records of the three cases now before this Court, and I have noted that since April 10, 1970 up to sometime in May, 1971 so many incidents had arisen and had to be resolved by this Court, and all these incidents necessarily had to be brought up for consideration by this Court through petitions, motions, answers, reply and counter-reply, memoranda, etc., not to mention about hearings which were conducted before this Court several times; and all these culminated (in the meantime) in the issuance by this Court of the herein oft-repeated resolution of August 31, 1970 which annulled all the proceedings heretofore conducted in the Court of First Instance of Pampanga and which ordered the rehearing of the cases that involved the six precincts of San Luis, and later three more precincts in San Luis, and to these were added two precincts of Apalit. Necessarily, the Board of Canvassers of Pampanga and the Comelec had to await the results of all the proceedings that took place not only before this Court but also in the Court of First Instance of Pampanga. Both the main opinion and the concurring opinion insinuate that respondent Sanga had deliberately kept quiet about that decision of Judge Sarmiento, that he kept the matter sub-rosa, as if to lie in wait and used it as a surprise weapon against his opponent. I consider this insinuation as most unfair to respondent Sanga and to his lawyers, one of them being

a former member of this Court. The insinuation is tantamount to attributing to respondent Sanga and his counsel the rank stupidity of keeping only to themselves something of decisive usefulness for them in these cases. It is like saying that respondent Sanga and his counsel had maliciously done something and kept quiet of what they had done. How could it be said that respondent Sanga kept decision of Judge Sarmiento sub-rosa when that decision was a matter of public record? The counsel for petitioner Tiglao had notice of that decision two days after it was rendered. Respondent Sanga did not report to this Court that decision of Judge Sarmiento because in the meantime there was no necessity for him to bring up that matter to this Court. After all, the Comelec and the Board of Canvassers Could not act on any matter regarding the canvass because of the restraining order of this Court. It should have been petitioner Tiglao, who was aware of that decision, that should have brought that matter before this Court if he wanted that decision annulled or set aside. But, as I have adverted to, petitioner Tiglao did not even ask for the reconsideration of that decision nor for a new trial. When the board of canvassers met on April 6, 1970 respondent Sanga could not yet bring to the attention of the board the corrected return of Precinct 6 of San Simon because at that time the petition for correction was not even heard yet. The hearing took place on April 10 and the decision was rendered on April 11, 1970. But respondent Sanga had brought up the matter regarding the decision of Judge Sarmiento to the Comelec, as I will hereinafter show.

The main opinion and the concurring opinion would stress on the fact that respondent Sanga did not even secure an authority from this Court to seek the correction of the election return on Precinct 6 of San Simon in the Court of First Instance of Pampanga. I believe that it was not necessary for respondent Sanga to secure first an authority from this Court before seeking a correction of the election return in question. I believe that the decision of this Court of February 18, 1970 did not preclude any move on the part of respondent Sanga to secure the correction of the election return in the manner provided by law. It is my view that when this Court, in the decision of February 18, 1970, ordered to credit no vote to respondent Sanga in Precinct 6 of San Simon it was because the election return of that precinct was unacceptable due to the fact that the corrections appearing on its face were not initialed by the members of the board of inspectors. I do not see anything in the decision which would warrant the conclusion that the election return could not be corrected any more, or that if correction was to be sought there was need for an authority from this Court.

Anticipating that the matter regarding the election return of Precinct 6 of San Simon that was ordered corrected by the Court of First Instance of Pampanga would surely come up before the provincial board of canvassers, and in the expectation, presumably, that the provincial board of canvassers would soon be ordered by this Court to resume the canvass, the Comelec, on December 28, 1970, filed before this Court a "Petition for Clarification;" which, among others, posed the following query:

" * * * Does the decision of this Honorable Court of February 18, 1970 ordering the Commission to credit no vote for Cornelio Sanga in Precinct 6 of San Simon rule out subsequent correction of the return and, thereafter, the decision of the Court of First Instance authorizing the correction of the return resulting in Sanga obtaining 75 votes in said precinct was in excess of the Court's jurisdiction for it amended a final adjudication of this Honorable Court on how much vote to credit Sanga in Precinct No. 6, San Simon, so much so that for the Commission to direct the Board of Canvassers to give effect to the decision of the Court of First Instance of Pampanga to make the canvass on the basis of the corrected return would be tantamount to a violation of the instruction of this Honorable Court not to credit any vote for Sanga in Precinct No. 6, San Simon? "

Because of the number of incidents relating to other precincts that were the subject of pending correction proceedings at the time, along with the Comelec petition for clarification, that this Court had to resolve, this Court issued a resolution on February 2, 1971 enumerating the matters or incidents pending before it, and then resolved "to require the parties to move in the premises, within ten days from notice hereof and to consolidate all motions and petitions with regard to matters still under dispute, to the end that these cases may be finally terminated and

closed."

The parties accordingly filed their consolidated petitions, motions and/or comments regarding the pending incidents. Likewise, the parties filed their corresponding answers and/or replies as the case may be. Finally, on May 18, 1971 this Court issued a resolution; the pertinent portions of which read as follows:

" ' * * * Without prejudice to an extended resolution upon determination of all pending issues, the Court, taking into consideration the special circumstances of the cases at bar and with a view of fully setting at rest all doubts as to the true and correct results of the election in the disputed precincts, RESOLVED as follows:

* * * * *

" '(c) With respect to precinct 6, San Simon, to annul and set aside Judge Sarmiento's decision in Election Case No. 3697, ordering the correction of the return in said precinct so as to credit Sanga with seventy-five (75) vice zero (0) votes therein, and to order said judge to hear anew the said correction case, proceeding strictly in accordance with the procedure set out for correction proceedings in the dispositive part of the Court's resolution of 'August 31, 1970.' "

At this juncture I want to make this observation: If my worthy colleagues who have prepared the main opinion and the concurring opinion, and those who now agree with them, are of the view that the decision of this court of February 18, 1970 was already final, or if that decision was already res judicata as far as the seventy five (75) votes for Sanga in Precinct 6 of San Simon were concerned, why did they not say so then when that resolution was before this Court on May 18, 1971? So much time, efforts, energy, not to say expenses, would have been saved by all parties concerned. These cases would have been decided much earlier than now, as should be the case, because these are election cases that involve the public interest.

In compliance with the above-mentioned order of May 18, 1971, Judge Malcolm Sarmiento, the presiding Judge of Branch I of the Court of First Instance of Pampanga, heard anew on June 22, 1971 Election Case No. 3697 — the correction case involving the election return of Precinct 6 of San Simon. After hearing, Judge Sarmiento issued on June 28, 1971 an order, the pertinent portions of which read as follows:

"On June 22, 1971, at the hearing in the Office of the Comelec, parties have agreed that they will dispense with the presentation of evidence to substantiate petitioners' allegation of alleged mistake, but agreed to proceed with the recounting of the ballots in Precinct No. 6, San Simon, Pampanga, if and when the integrity of said ballots is not in question.

"The Court examined the ballot box and the contents of the same in open court in the presence of the lawyers of both parties. The Court observed that the ballot box and the contents to be in good order, no sign of tampering, mutilation or any trace to suspect that the ballots were tampered.

"The election return, Comelec's copy, Exhibit A, and the Provincial Treasurer's copy, Exhibit AA, as well as the ballot box copy of the election return, have the same characteristics, to wit: That over and above the word 'zero' on the line for Candidate Representative, Cornelio Sanga obtained '75' votes, which were superimposed over the word 'zero' and on the figure '0' on the same line, the figures '75' were also superimposed; the tally sheet found inside the ballot box, marked as Exhibit C, is clean on its face; that Cornelio obtained seventy-five (75) votes and that Rogelio O. Tiglao obtained zero (0) in said precinct.

"The record further discloses that the total number of registered voters in said precinct 'is '133' and that out of this number of registered voters, only '107' voted on the election day of November 11, 1969.

"The Court ordered the counting of the exact number of valid ballots. The number is one hundred and six (106) valid ballots, because one ballot to complete the total number of '107' was considered spoiled by the Board of Inspectors on the ground that the name 'Sanga' was written on the space intended for President. This vote

should have been considered a stray vote, not a spoiled ballot. Counsel for Cornelio Sanga, Atty. Lorenzo P. Navarro, identified this ballot as Exhibit D and claimed that this vote should be credited for Sanga.

"The Court refrains from resolving the question raised by counsel. The recount was ordered and Atty. Porfirio Pineda, the Legal Researcher in Branch I, CFI, was the one reading the ballots, and Miss Irene T. Galura, Branch Clerk in the same Branch, was the one writing on the blackboard to tally the number of votes for Candidates Cornelio Sanga and Rogelio Tiglao.

"The result of the recounting clearly established the following: 'That Cornelio Sanga obtained '75' votes and Rogelio O. Tiglao, zero.'

"Out of the seventy-five votes for Sanga, counsel for Tiglao, Attys. Francisco Villanueva and Octavio de Callar, questioned two votes, Exhibits 1 and 2, of Precinct No. 6, San Simon, on the ground that the name Esteban Manansala appears on the space intended for Senator, when such man was not a candidate for Senator; in other words, they are assailing that these two ballots are marked ballots. On the other hand, counsel for Cornelio Sanga was also claiming one more ballot, Exhibit D-1, wherein the name Sanga was also written at the wrong space, as a valid vote for Sanga.

"The Court has allowed these objections and manifestations of counsels for Tiglao and Sanga to appear on record, but refrains to pass on the validity of the ballots, especially Exhibits 1 and 2. The Court believes that the proper forum for determining these questioned ballots is in the election protest.

"The Court's jurisdiction in this case is limited only to recount a mathematical process without delving on the validity of the votes.

"The original of the election returns, Comelec's copy, 'Exhibit A', and the Provincial Treasurer's copy, 'Exhibit AA', are kept in the Office of the Comelec and that xerox copies thereof are substituted by the Comelec in lieu of the original.

"WHEREFORE, the Court allows the petitioners to make the necessary corrections, which they did on all the election returns submitted to the proper authorities for Precinct No. 6, San Simon, Pampanga, with their proper initials on the basis of the actual number of votes during the recount — Cornelio Sanga, 75, and Rogelio O. Tiglao, O."

The main opinion, and the concurring opinion, would not now give validity to the judgment of Judge Sarmiento. It is the thrust of the view, expressed both in the main opinion and in the concurring opinion, that the condition prescribed in this Court's resolution of August 31, 1970, before recounting the ballots, had not been complied with. That condition is this: "Upon its (court's) preliminary finding that identity and integrity of the ballot box [es] have been duly preserved, order the opening thereof and after likewise satisfying itself (the court) that the integrity of the ballots therein has been also duly preserved." I do not agree with that view, as expressed in the main and in the concurring opinion. I have carefully read and assessed the evidence in the record, and I have come to the conclusion that the identity and the integrity of the ballot box of Precinct 6 of San Simon, and the integrity of the ballots and other documents contained in said ballot box, had been duly preserved. In this Connection I reproduce here portions of the record of the proceedings before Judge Sarmiento on June 22, 1971, as follows:

"COURT:

We now stipulate on Precinct No. 6 of San Simon, Pampanga. The 'Court wants to know the observation of Counsel.

"ATTY. BARRERAS:

If Your Honor please, we want to make of record that the outside self-locking metal seal, which we placed the last time in San Fernando, Pampanga, during the hearing on April 10, 1970, in the same self-locking metal

seal, still attached to the ballot box.

"COURT:

How can we determine that now?

"ATTY. BARRERAS:

We can manifest and state the serial number of the self-locking metal seal.

"COURT:

Please read.

"ATTY. BARRERAS:

This one reads D-71046. The ballot box number is 69CE-1336 for San Simon, Pampanga, Precinct No. 6.

"COURT:

No observation on the part of counsel for Mr. Tiglao as to the outward appearance of the ballot box?

"ATTY. VILLANUEVA:

The box appears to be in good condition, Your Honor please.

"ATTY. NAVARRO:

We join the observation of Counsel.

"COURT .

Make that of record and the three padlocks are still intact."

(pp. 8-10, June 22, 1971. Italics supplied)

"COURT:

Now, where are the keys?

"ATTY. NAVARRO:

May we know from Atty. Barreras where and when those padlocks were placed in the ballot box, in San Fernando, Pampanga or not?

"ATTY. BARRERAS:

No, here in Manila.

"COURT:

You mean to say, all the way from San Fernando, Pampanga, to Manila, the ballot box did not have any padlock?

"ATTY. BARRERAS:

But we have the self-locking metal seal.

"COURT:

You put the self-locking metal seal in San Fernando, Pampanga."

"ATTY. BARRERAS:

Yes, Your Honor.

"COURT:

And it is the same self-locking metal seal you placed in San Fernando, Pampanga, that you found now this morning?

"ATTY. BARRERAS:

Yes, Your Honor.

"COURT:

We will now open the ballot box. Make of record that Atty. Jovito Barreras, an Officer of the Comelec, opened the three padlocks and breaking the self-locking metal seal.

"ATTY. BARRERAS:

The self-locking metal seal placed inside the ballot box is serial No. D-70913.

"ATTY. NAVARRO:

That was also placed there in San Fernando'

"ATTY. BARRERAS:

Yes, sir, during the hearing on April 10, 1970, in San Fernando, Pampanga."

(pp. 14-16, t.s.n., June 22, 1971)

"COURT:

All right, we will authorize the poll clerk to get the contents and then you open the contents; get first the election returns and then the tally sheets. We make of record that everything is intact, the ballots, the stabs and the other documents.

"ATTY' VILLANUEVA:

Your Honor please, I would like to make of record that from here, without touching, I can see the envelope, which is containing the ballot, is already torn.

"COURT:

Not only torn, but open.

"ATTY. VILLANUEVA:

And the ballots can be withdrawn already from the torn envelope.

"COURT:

And that they are only held by rubber band; that the torn envelope referred to by counsel is supposed to contain 107 counted valid ballots, as shown in the label.

"ATTY. NAVARRO:

We believe that we cannot state that this envelope containing the ballots has been torn, because * * *

"ATTY. VILLANUEVA:

It is torn and it is open.

"ATTY. NAVARRO:

Because it could not have been closed tightly in view of the bulky part of the ballots therein contained; as a matter of fact, the portion of the envelope at the mouth is bulging and it is very impossible to seal it in the ordinary way that it could have been sealed.

"COURT:

From the observation of the Court, the envelope was never closed and the torn part, as observed by counsel for Mr. Tiglao, must be due to the forcing of the ballots inside the envelope, because the ballots are quite bulky, so much so that the envelope is smaller in size than the ballots. What more?

"POLL CLERK ROMERO, handing to the court the election return)

"COURT:

The envelope is already opened. This is the election return, which was formerly marked as Exhibit B-1 during the trial at San Fernando, Pampanga. We will just remove all the contents. These are the stubs on the ballots tied by rubber band. This is the envelope of excess ballots; it is not open; it is still intact, as well as the envelope for marked ballots still unopened. This is the tally sheet; it is already open and marked as Exhibit C at the hearing at San Fernando and as Exhibit C-1, the envelope for the minutes of voting, not yet opened. What is left in the ballot box are the stubs only. Counsels may make the necessary manifestations before we recount the ballots.

"ATTY. VILLANUEVA:

For the respondent Tiglao, Your Honor please we would like to make of record our objection to the recounting of these ballots on the ground that under the decision of August 31, 1970, it must be shown before the recounting that the ballots have been preserved intact. In this particular case, the envelopes supposedly containing the counted valid ballots, under the regulation of the Comelec, must be duly sealed, not only by the flap of these envelopes, but over and above the flap should be the red paper seal duly signed. We believe the requirement of the controlling decision has not been produced.

"ATTY. NAVARRO:

We beg to disagree. As observed by this Honorable Court, there is no tampering of ballots nor of the envelope containing the same and the only reason that the envelope could not have been closed is because of the bulk of the ballots therein contained and the tearing of the envelope was caused by the force applied in attempting to insert the ballots as they are rolled into the envelope itself.

"COURT:

You submit?

"COURT:

The Court wants to make it of record, because counsel for the respondent, Mr. Tiglao, was absent during the former hearing at San Fernando, Pampanga that in that hearing at San Fernando, Pampanga; we never touched the ballots for purposes of recounting. The court did not order this envelope containing the valid ballots to be taken or removed from the ballot box and we did not even examine the status or condition of the envelope. It is just now that the Court observed the condition, as manifested by respondent's counsel. It should be made of record that the seal, which is supposed to be placed on top of the opening or at the opening of this envelope, is

placed on the side; no tampering on the seal, duly signed by the Poll Clerk, Chairman, Inspectors, etc., bearing the number 0987185; at the bottom in the seal of the Republic with the heading Commission on Election, November 11, 1969. The Court has already manifested and has made of record the reason why the left side of the envelope is now opened and broken, because of the circumstances that the contents (sic) of the ballots are bigger than the size of the envelope, causing the envelope to break. As it is, the Court finds no tampering and we can further examine whether tampering has been made on these ballots contained in this envelope when we examine them individually. Before ordering the recounting the Court will make an order to examine the election return inside the ballot box to see what appears there. Make of record that the envelope containing the election return is now open."

(pp. 17-24 t.s.n., June 22, 1970).

"COURT:

Before we go further, we want also to make of record that during the hearing at San Fernando, Pampanga, what the Court retrieved from the ballot box were the election return and the tally sheets, nothing more. I think we marked already the election return inside the ballot box for identification purposes as Exhibit B.

"ATTY. BARRERAS:

The votes cast for Sanga.

"ATTY. NAVARRO:

We want to make of record that the word seventy-five for the entry of votes for Sanga was superimposed on the word zero and the figure '75' on the same line was superimposed over the figure '0' on the ballot box copy of the election return marked as Exhibit B in the first hearing of this case before this Honorable Court.

"COURT:

We maintain the same marking?

"ATTY. NAVARRO:

Yes, Your Honor.

"COURT:

How about the counsel for Tiglao?

"ATTY. VILLANUEVA:

We agree to the observation of counsel; as a matter of fact, there is superimposition also in word and figure.

"ATTY. NAVARRO:

The word zero is superimposed over the word one, and the figure '0' was superimposed on the figure '0' on the same line, ha, no, on the word one on the column 'Total Votes Obtained' (in figures). We want to make of record that, according to the election return, Exhibit B, the number of voters that registered in said Precinct No. 6 is one hundred thirty-three (133) and the number of voters who actually voted is one hundred seven (107).

"COURT:

Registered voters, how many?

"ATTY. NAVARRO:

One Hundred and thirty-three. The number of voters who voted is 107 and that it is duly signed by the Board

of Inspectors.

"COURT:

How many votes for respondent Tiglao?

"ATTY. NAVARRO:

It appears here to be zero, Your Honor, both in word and figure.

"COURT:

How about the tally sheets?

"ATTY. NAVARRO:

The tally sheet, which has already been marked as Exhibit C in the first hearing of this case contains the number of votes garnered by the respective candidates indicated by means of four vertical line and it was also by vertical line to indicate the number 5, and according to the tally sheet, there are fifteen such individual sets of '5, meaning to say, '75', whereas, the petitioner Tiglao, according to the tally sheet, got no entry, meaning, zero.

"COURT:

Make of record also the entry as manifested by Atty. Navarro, which corresponds to Sanga Cornelio, is already identified as Exhibit C-1 in Exhibit C and that the face of Exhibit C is clean; no alteration or correction. For purposes of record, we also mark the entry for the no entry for respondent Tiglao, as Exhibit C-2 in Exhibit C, and in Exhibit B, which is the election return, the entry there for respondent, Mr. Tiglao, for identification purposes, be marked as Exhibit B-3-Tiglao in Exhibit B. Now, with this as basis, we now proceed to recounting." (pp. 25-29, t.s.n., June 22, 1971. *Italics supplied*)

The ballot box of Precinct 6 of San Simon was opened before this Court on September 30, 1971, and I saw the torn envelope and the ballots as found by Judge Sarmiento. I noted that the big envelope that was supposed to contain the used ballots was torn, and I consider plausible the observation of Judge Sarmiento that the ballots used during the voting were so folded in a bulky manner that when placed inside the envelope the sides of the envelope would be torn. I also saw that the wax at the flap of the envelope appeared not to have been wetted in order to close the envelope. I examined some thirty ballots and I was satisfied that those ballots were not tampered, because I noted that the handwriting appearing on each and every ballot that I examined did not appear to me as having been done by one hand, indicating that those ballots were prepared by as many voters as the number of ballots that I examined. I did not notice that there was any ballot where a name had been erased and another name is written in the same space by a hand different from the hand that wrote the other names in the ballot. It is my belief that the rest of the ballots, based on my observation of the ballots I examined, were also prepared by as many voters as the number of ballots, that I did not examine. For the ballots to be considered tampered it must appear on the face of the ballots that either all the ballots, or groups of them, are written by one and the same hand; or that it would appear on the face of the ballots that there are erasures or names already written and superimposed by another name written by a hand different from that which wrote the other names on the ballots. Of the about thirty ballots that I examined I did not see any sign of tampering, Let it be remembered that the counsel for petitioner Tiglao had seen the ballots as they were read during the recount, and necessarily he had fixed his attention to them as they were recounted, because he even objected to two ballots (where respondent Sanga was voted for Representative) upon the ground that they were marked ballots. The marks pointed by counsel for petitioner Tiglao consisted in the word "Manansala," the name of a candidate for member of the provincial board in the special election, was written on the space for senator in each of those two ballots. Surely,

if all the ballots were written by one hand, or groups of ballots were written by one hand for every group, or that there were ballots that bore erasures and names were superimposed over the erased names, the counsel for petitioner Tiglao would at least have made of record his observation if not his objection, as he did regarding two ballots which he impugned as marked. But nothing is shown in the record that counsel for petitioner Tiglao made any such observation nor objection. Let it be noted that, as found by Judge Sarmiento, the envelope containing the unused ballots was closed and sealed, indicating that there was no attempt at all to use the unused ballots to substitute for the ballots that were actually cast by the voters and read during the canvass by the board of inspectors. There is no observation at all by any body that ballots intended for other precincts were found inside this ballot box of Precinct 6 of San Simon. We make all these comments because if the ballots inside the ballot box were tampered in order to favor respondent Sanga, some indications of tampering, or ballot substitutions, could have been noted. A malevolent person who would "work" on the contents of the ballot box to favor a candidate would either substitute the ballots already placed therein with ballots prepared by one hand or a few hands, using the unused ballots in the precinct concerned, or using ballots intended for other precincts, or write the name of the candidate to be favored by erasing the name of his opponent and writing the name of his candidate over the erased name. Indeed, there is not an iota of evidence in the record which would even suggest that the ballots found inside the ballot box of Precinct 6 of San Simon had been tampered. The main opinion, and the concurring opinion, simply tried to foist the assumption, nay the speculation, that the ballots inside the ballot box had been tampered because it was shown that at one time the ballot box had only one padlock, and at another time it had no padlock at all but only a self-locking metal seal. But there is no evidence at all that someone had taken advantage of that condition of the ballot box, to open it and change the ballots, or tamper the ballots inside the ballot box. I am afraid my colleagues who wrote the main opinion and the concurring opinion have indulged unduly on presumptions and speculations in asserting that the integrity of the ballot box was not preserved. The best indication that the integrity of the ballot box was violated is when it is shown that the contents of the ballot box indicate signs of having been subjected to some manipulation by human hands. No such indication has been shown. The fact that the envelope which should contain the used ballots was torn on its sides had been satisfactorily explained by Judge Sarmiento after he had made his observation of the said envelope and the ballots inside it when the ballot box was opened before him. If someone had "worked" on the contents of the ballot box he would have made efforts to do a "fine" job by putting the ballots inside the envelope in good order. Any one who would tamper with the contents of a ballot box would do it in preparation for the time when the ballot box would be opened, and so he would see to it that the things inside the ballot box are so placed or arranged as to avoid suspicion that the contents of the ballots had been tampered with, or manipulated, after the board of inspectors had done their job. The fact that the big envelope that should contain the used ballots was torn, and the ballots were so placed in such a bulky way, to my mind, would only indicate that the situation of the envelope and the ballots was not the result of the work of guilty hands, but, rather, of innocent hands. And this assertion of mine is borne by the sworn statement of the chairman of the board of inspectors of Precinct 6 of San Simon, corroborated by the poll clerk and the other two election inspectors. This is what the chairman and the other members of the board of inspectors said:

"That we were the members of the board of inspectors of Precinct 6 of San Simon, Pampanga in the general election of November 11, 1969; I, ORLANDO C. INGAL, being the chairman; I, FE ROMERO, the poll clerk; I, LEONARDO TAYAG the NP inspector; and I, RESTITUTO GUINTO, the LP inspector; and that we all served as such in the said election;

"That on the night of November 11, 1969, after the canvassing and tallying of the votes cast in our precinct wherein Cornelio Sanga actually obtained seventy-five (75) votes and Rogelio Tiglao zero (0), the Coleman

lamp lighting the polling place ceased to function for lack of petroleum; so we had to use candles in order to be able to finish our work;

"That after the light from the Coleman lamp went out the watchers and other persons inside the polling place who were watching the proceedings left the place; that since we were left alone, and fearing that evil-minded persons might come and commit untoward acts against us or to the election paraphernalia in our possession, we hurried up the work which remained to be undone;

"That I, ORLANDO C. INGAL, was the one who placed the used ballots inside the corresponding envelope; that in the process I first inserted some of the said ballots lengthwise inside the envelope; that since I was in a hurry, as it was already getting late, I did not do the same thing with the rest of the used ballots, but instead I rolled them in one hunch and quite forcibly inserted them inside the envelope which was thereby accidentally broken by reason of the force applied by me because the opening of the envelope was quite small for the bulk of the rolled ballots; and that thereafter the corresponding paper seal was placed on the envelope and rubber band tied around the broken portion in order to hold the ballots inside, after which the same envelope containing the used ballots and other election paraphernalia were placed inside the ballot box which we closed permanently with two (2) self-locking metal seals and three (3) padlocks;

"That We, FE ROMERO, LEONARDO TAYAG, and RESTITUTO GUINTO, were all present when the chairman ORLANDO INGAL placed the used ballots inside the corresponding envelope which was broken accidentally in the manner hereinabove described; and that we actually saw him do the same."[82]

The main opinion, and the concurring opinion, make capital of the following circumstances; that on April 10, 1970, the ballot box was brought from the Comelec Bodega in Manila to San Fernando, Pampanga by one Atty. Jovito P. Barreras, a compadre of respondent Sanga, who was a trial attorney in the law enforcement division of the Commission on Elections and who was the supervisor of elections in the province of Pampanga in the elections of November 11, 1969; that when the ballot box was brought to San Fernando it had only one padlock which had no key, so that to open that padlock before the Court of First Instance Atty. Barreras had to use a hammer; that the ballot box was opened before the Court of First Instance on April 10, 1970 and the ballot box copy inside the box and the tally sheet were examined by Judge Malcolm Sarmiento before whom Election Case No. 3697 for the correction of the election return of Precinct 6 of San Simon was pending; that when the ballot box was closed it had no padlock, but was only secured by a self-locking metal seal; that when the ballot box was brought back to Manila it had no padlock at all and it was deposited in the bodega of the Comelec without any padlock until June 14, 1971 when it was secured with three padlocks. The main opinion and the concurring opinion would assume that because the ballot box did not have any padlock when it was brought from San Fernando and deposited in the bodega of the Comelec without padlock until June 14, 1971, the integrity of the ballot box and its contents was thereby violated.

I wish to emphasize, however, that there is no evidence which would show that Atty. Jovito Barreras, or any other person, had opened that ballot box from the time it was brought from San Fernando to Manila on April 10, 1970 and until June 22, 1971. Much less is there evidence which would show that Atty. Jovito Barreras, or any other person, had any thing to do with the contents of the ballot box from the time it was brought from San Fernando on April 10, 1970 until the time when that ballot box was opened before Judge Sarmiento on June 22, 1971.

On the other hand, there is an uncontradicted evidence in the record that this ballot box of Precinct 6 of San Simon was first opened before the Comelec on January 5, 1970 for the purpose of retrieving therefrom the ballot box copy of the election return and the tally sheet, for examination. As to why the ballot box was secured by only one padlock after it was opened before the Comelec, there is no explanation in the record. The ballot box was brought to San Fernando on April 10, 1970, in compliance with the sub-poena duces tecum of the Court of First Instance of Pampanga, by Atty. Jovito Barreras, accompanied by Joaquin Isaac who was the person in charge of

the safe-keeping of the ballot box at the armory or bodega of the Comelec in Manila. Barreras and Isaac went to San Fernando on a jeep driven by the Comelec driver named Santos Barbosa. These were the same three persons that brought the ballot box back to Manila. Upon arrival at the Comelec offices in Manila the ballot box was turned over to Joaquin Isaac who was in charge of the same, and the ballot box was deposited at the Comelec bodega in Manila. True it is that the ballot box had no padlock when it was delivered to Joaquin Isaac for deposit in the Comelec bodega on April 10, 1970, and it remained without padlock until June 14, 1971, but it was secured by self-locking metal seals both inside and outside. On June 14, 1971 the representative of petitioner Tiglao and the representative of respondent Sanga, probably having become aware that the ballot box of Precinct 6 of San Simon was deposited in the bodega of the Comelec with no lock, and having known that the ballot box would be opened before Judge Sarmiento June 22, 1971, requested the Comelec to put padlocks thereon, and so three padlocks were placed on the ballot box. The evidence shows that when the ballot box was opened before Judge Sarmiento on June 22, 1971, it was still secured by the same self-locking metal seals both inside and outside as the ones that were placed when the ballot box was closed in San Fernando on April 10, 1970. If on June 14, 1971 petitioner Tiglao, or his counsel, had already an inkling that the integrity of the ballot box was not preserved, as they later claimed, instead of having the ballot box secured with three padlocks they should have complained to the Comelec that the integrity of the ballot box was not preserved as of then.

While the main opinion, and the concurring opinion, dwell on assumptions and speculations in asserting that the integrity of the ballot box and its contents was not preserved, I believe, on the other hand, that there is ample evidence in the record which clearly show that the integrity of the ballot box and the ballots was preserved. If the ballot box had only one padlock after it was opened before the Comelec on January 5, 1970, and was deposited with only one padlock in the Comelec bodega, and it was brought to San Fernando on April 10, 1970 with only one padlock, there must have been some non-compliance of standing rules and regulations of the Comelec by some official or employee of the Comelec. If that ballot box had no padlock after it was opened in San Fernando on April 10, 1970, and it was deposited in the bodega of the Comelec without any padlock until June 14, 1971, although it had self-locking metal seals inside and outside it, certainly the non-compliance by the personnel of the Comelec of the rules and regulations of the Comelec should not be counted against respondent Sanga, unless it is shown by clear and positive evidence that the non-compliance of the rules and regulations was part of a scheme to commit an irregularity to favor respondent Sanga. Why should respondent Sanga be penalized for the fault or omission of some persons in the Comelec who did not comply strictly with the standing rules and regulations of the Comelec? The fact that Atty. Jovito Barreras was a compadre of respondent Sanga certainly is not enough basis to conclude that Atty. Barreras served as an instrument of respondent Sanga to commit an irregularity in order to favor him, in the absence of clear and positive evidence that Atty. Barreras had done some anomalous acts to favor respondent Sanga. As I have pointed out, there is absolutely no evidence to show that Atty. Barreras, or any confederate of his, had done anything which would link his, or their, acts, to the existence of the 75 ballots, and the tally sheet which recorded 75 votes for respondent Sanga, that were found inside the ballot box of Precinct 6 of San Simon.

It is my firm belief that the ballots as found inside the ballot box of Precinct 6 of San Simon, and as examined by Judge Sarmiento and recounted before him during the hearing on June 22, 1971, constitute mute, but eloquent, evidence that respondent Sanga had obtained 75 votes in that precinct. Judge Sarmiento had made the finding that those ballots were not tampered at all. My own examination of some thirty of those ballots convinced me that the integrity of all those ballots inside the ballot box had been preserved. The findings of Judge Sarmiento must be given weight, as against assumptions and speculations. It is a settled rule that the findings of facts of a trial judge should not be disturbed by the appellate court unless it is shown that the trial judge had grossly overlooked facts and circumstances of weight and influence in the record and their significance misapplied -- which is not so in the

present cases.[83] And more so, because the ballots were brought before this Court. Those ballots are the realities that have met the eyes of this Court. It is also the settled rule in election cases, which involve public interest, that the court should not close its eyes to the realities before it, and that technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials.[84]

If this court would not give value to those ballots that were examined and recounted by Judge Sarmiento, and actually brought before Us, this Court may as well say that those ballots are illegal ballots and should not be counted for respondent Sanga. But if this Court is not prepared to declare those ballots illegal, then in the interest of justice I believe that We should give respondent Sanga the benefit of the doubt by declaring that he obtained 75 votes in Precinct 6 of San Simon, while petitioner Tiglao had obtained no vote. The findings of Judge Sarmiento, and what I actually found when the ballots were brought before this Court, are but confirmations of the original finding and conclusion of the Comelec that the superimpositions found in the election return of Precinct 6 of San Simon were simply a case of correction and not tampering of the return. The findings and conclusion of Judge Sarmiento, and my own observation of the ballots, are but confirmations of the correctness of the tally sheet in Precinct 6 of San Simon that was first observed by the Comelec when the ballot box was opened before it on January 5, 1970. Certainly it can not be said that as early as before January 5, 1970 the ballot box of Precinct 6 of San Simon was tampered by Atty. Barreras and his confederates in order to favor his compadre Cornelio Sanga; and certainly that tally sheet could not have been manufactured by Atty. Barreras or his confederates in preparation for the opening of the ballot box and the examination of the election return therein contained on January 5, 1970.

In sum, I say that respondent Sanga had really obtained 75 votes in Precinct 6 of San Simon, Pampanga, in the elections of November 11, 1969, and the Provincial Board of Canvassers of Pampanga should credit him with those 75 votes.

Lastly, I can not give my conformity to that part of the dispositive portion of the main opinion which declares the decision in these cases immediately executory. Why should the door be immediately shut against respondent Sanga and prevent him from coming to this Court and make such further move in defense of his right and the rights of the electorate of the second representative district of Pampanga that voted for him in the elections of November 11, 1969, if the interest of justice so demands? When the decision in this case is promulgated petitioner Tiglao will surely lose no time in securing his proclamation by the Provincial Board of Canvassers of Pampanga, and once he is proclaimed respondent Sanga has no other recourse but to file a protest before the Electoral Tribunal of the House of Representatives. Why can not We leave the decision in these cases to take its regular course to its finality, as is ordinarily allowed by this Court under the Rules of Court and the law?

Makalintal and Castro, JJ., concur.

[69] See Annex 1 to Motion for reconsideration of respondent Sanga, dated March 7, 1970, pp. 511-550, Record, Volume I, of L-31566.

[70] G. R. No. L-31566.

[71] See pages 331 of the main opinion.

[72] See page 335-336 of the main opinion.

[73] Denied by the Court of First Instance of Pampanga in its resolution of March 10, 1970.

[74] On March 25, 1970, the Clerk of Court of the Court of First Instance of Pampanga certified that as of that date the motion for retrial and recall of petitioners (election inspectors) and witnesses (filed by respondent Sanga) had not yet been resolved. See page 655, Record of L-31566, Vol. II.

[75] Pages 635-639, Record, Vol. II.

[76] Pages 650-654, Record, Vol. II.

[77] Note that in footnote, Gante, We stated that as of March 25, 1970 the Clerk of Court certified that as of that day the motion for retrial, etc. was not yet resolved. It could have happened that the Judge resolved the matter on the same day (March 25, 1970) but after the certification was made by the Clerk of Court. This shows that when the March 23 resolution of this Court was made, the Pampanga CFI had not yet passed upon the motion for new trial, etc.

[78] Page 699, Record of L-31566, Vol. II. See page 337 of main opinion.

[79] Referral of the Board of Canvassers, Annex D of Petition in G.R. No. L-31847. Record of L-1847, Vol. I, pages 56-57.

[80] See pages 340-344 of the main opinion. Italics supplied.

[81] Page 353, main opinion.

[82] See joint affidavit of Orlando Ingal, Fe Romero, Leonardo Tayag and Restituto Guinto, attached as Annex 6 to Respondent Sanga 's Reply to Petitioner's Supplementary Opposition, etc., Record of L-31566, Vol, III, no paging.

[83] Sharp & Co. Inc. vs. Commissioner of Customs, 22 SCRA 760, 760, 763. See also Vinzons vs. Comelec, 73 Phil. 247; and Sotto vs. Comelec, 76 Phil. 516.

[84] Juliano vs. Court of Appeals, L-27477, July 28, 1967, 20 SCRA 808, 820; See cases cited therein.

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