

**SOTERO OLFATO, MAURO V. BARADAS, CIRIACO L. PADILLA,
MANUEL S. GONZALES, CECILIO F. HERNANDEZ, LUCIO P,
MENDOZA, JR., BENEDICTO C. MAGSINO, AND BIENVENIDO P.
TRINIDAD, PETITIONE...**

G.R. No. L-52749. March 31, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari and prohibition with prayer for the issuance of preliminary prohibitory injunction and temporary restraining order.

In the local elections held last January 30, 1980, petitioner Sotero Olfato was the official candidate of the Nacionalista Party (NP) for Mayor of Tanauan, Batangas. The other petitioners were the official NP candidates for Members, Sangguniang Bayan, in the same municipality. Respondent Francisco E. Lirio, on the other hand, was the official candidate of the Kilusang Bagong Lipunan (KBL) for mayor of said town.

In the canvass of votes cast in Tanauan, Batangas by the Tanauan Municipal Board of Canvassers, petitioner Olfato and respondent Lirio obtained the following votes:

Sotero Olfato ----- 15,293

Francisco E. Lirio ----- 13,714

The other petitioners obtained the plurality of the votes cast for Members, Sangguniang Bayan over their rival KBL candidates, 'to wit:

1. Mauro W. Baradas

16,746

2. Ciriaco L. Padilla

13,637

3. Manuel S. Gonzales

13,540

4. Cecilio F. Hernandez

13,171

5. Lucio P. Mendoza, Jr.

13,096

6. Benedicto C. Magsino	12,786
7. Bienvenido P. Trinidad	12,521
*8. Melquiades F. Salisi	12,111
9. Leonor L. Infante	11,389
10. Roman L. Tenorio	10,807
11. Francisco S. Panghulan	10,471
12. Francisco P. Laurel	10,057
13. Isidro C. Villa	9,409
14. Tomas M. Magsino	9,229
15. Ricardo C. Carandang	8,940
16. Rosendo C. Encarnacion	8,606

(Certificate of Canvass and Proclamation, pp. 21-22, rec.).

On the basis of the results of its canvass of votes, the Municipal Board of Canvassers of Tanauan, Batangas, proclaimed on February 5, 1980 petitioner Olfato and the rest of the petitioners as the duly elected Mayor and Members of the Sangguniang Bayan, respectively.

On February 6, 1980, petitioners took their oaths of office as Mayor and as Members, Sangguniang Bayan of Tanauan, Batangas, before Notary Public. Roberto P. Laurel.

Earlier, on February 2, 1980 or three (3) days, before petitioners were proclaimed, respondent Lirio, together with the candidates on his ticket for Vice Mayor and Members of the Sangguniang Bayan of Tanauan, Batangas, filed with respondent Commission on Elections (COMELEC) a petition for suspension of canvass and of proclamation of "winning candidates" for the elective positions of Tanauan, which was docketed as Pre-Proclamation Case No. 118, entitled "Francisco E. Lirio, et al. vs. The Municipal Board of Canvassers, et al." (pp. 23-30, rec.).

Invoking Section 2, paragraphs 1, 2 and 8, of Article XII (C) of the Constitution and Section 175 of the 1978 Election Code as well as the ruling of this Court in the case of Aratuc, et al. vs. COMELEC, et al. (G.R. Nos. 49705-09, February 8, 1979, 88 SCRA 251) respondent Lirio and the members of his KBL ticket vigorously pressed for the suspension of canvass and the proclamation of the aforesaid "winning candidates" for the position of Mayor, Vice Mayor and Members of the Sangguniang Bayan of Tanauan, Batangas.

To justify their petition for the suspension of the canvass and of proclamation, they alleged as grounds the following:

- 1) Disenfranchisement of voters who were not allowed to vote although their names were in the official list of voters;
- 2) Terrorism of voters;
- 3) Voters with fake ID's who were not in the voters' list were allowed to vote without being certified by the corresponding election committee; and
- 4) Flying voters.

Thus, in said petition, Lirio alleged that around 3,000 fake voters using forms allegedly misinterpreting paragraph 2 of Section 13 of Resolution No. 1410 of the COMELEC (General Instructions for the Citizens Election Committee, Exh. "B" thereof) and allegedly mimeographed by the NP headquarters in Batangas, were able to cast their votes. Hence, Lirio averred in said petition the following:

"In the particular case of Tanauan, the following novel, sophisticated but effective way of cheating occurred;

"(a) Upon representation of a certain Atty. Trinidad of the Laurel Law Offices, the election registrar in Tanauan by the name of Atty. Quirino Opeña, issued a circular misinterpreting par. 2 of Section 13 of Resolution No. 1410 of the COMELEC, General Instructions for the Citizens Election Committee, which reads:

'SEC. 13. Who may vote.-

x x x x x x

'Any registered voter whose name has been omitted in the list of voters of the voting center shall be allowed upon presentation of his certificate of registration or upon showing through his registration record or any document that he is a registered voter, or if he is identified under oath by any of the committee or by any watcher, or upon order of a court directing the committee to allow him to vote.'

---- Sec. 13, par. 2, COMELEC Resolution No. 1410: Underlining supplied.

"(b) The instruction, a xerox copy of which is attached hereto and made a part hereof as Exh. A, reads:

'OFFICE OF THE ELECTION REGISTRAR

Tanauan, Batangas

'TO ALL ELECTION COMMITTEE:

'Any voter whose name cannot be found in the master list may be allowed to vote provided:

'a. He swears under oath that he was a voter and duly identified.

'Any member of the Committee may swear the voter.

'Their names will be in a separate list.

(Sgd) Quirino Opeña

QUIRINO OPEÑA

Registrar

'January 30, 1980.'

"(c) This is an erroneous instruction because par. 2 refers to a registered voter whose name is in the master list or book of voters but omitted in the list of voters in the voting center. And the oath must be not by the person who claims to be a voter but by 'any member of the committee or by any watcher.'

"(d) Taking advantage of this instruction, the headquarters of the NP in Batangas mimeographed forms, a xerox copy of which is hereto attached and made a part hereof as Exh. B, and which reads:

'COMMISSION ON ELECTIONS

OFFICE OF THE ELECTION REGISTRAR

Tanauan, Batangas

'Res. 1410 Sec. 13

'--- If he is identified under oath by any member of the committee ---'

'AKO, si _____ ay sumusumpa na ako dating botante sa Barangay _____.

'SAKSI:

Member-Committee of watcher Lagda

Diit na kanang hinlalaki

'SINUMPAAN SA HARAPAN KO NGAYONG IKA 30 Ng Enero, 1980.

Chairman: Election Committee'

"e) Then the leaders of the NP in Tanauan brought truckloads of electors from voting center to another voting center, and have them filled up forms like Exh. B hereof, and the election committees wittingly or unwittingly allowed the persons who claimed to be voters to vote" (pp. 25-27, rec.).

Consequently, respondent urged for the suspension of the canvass of election returns prior to the identification and the segregation of the alleged fake ballots from the genuine ballots.

Lirio further alleged that the number of voters affected by all the aforesaid irregularities is estimated to be not less than 10,000 votes which therefore will materially affect the results of the votes for the positions of Mayor, Vice Mayor and Councilors of Tanauan.

Hence, Lirio prayed inter alia that an order be issued for the suspension of the canvass of the votes and the proclamation of "winning candidates" for the positions of Mayor, Vice Mayor and Councilors of Tanauan, Batangas; that respondent therein, particularly private respondent Olfato, et al., be required to answer said petition

and that after hearing, a new election be held for Tanauan allowing particularly the electors who were illegally disenfranchised, to vote.

On February 9, 1980, respondent Lirio filed with respondent Commission a supplementary petition which averred, among others "x x x x that these election irregularities involving fake voters and massive disenfranchisement (sufficient in number to affect the results of the election, as in this case), are proper grounds for a pre-proclamation controversy (although they may also be grounds for a protest), because they affect the very integrity of the election return; in other words, the election returns, insofar as these fake voters and disenfranchised electors are concerned, do not speak the truth; to say the least, they are incomplete expression of the people's will through the ballots. We understand that this is the first time that this question is being raised; and we hope that this Honorable Commission will sustain our contention in order to prevent the 'grabbing' of proclamation as in this case, and to make the sovereign will of the people triumph" (pp. 5-6, Supplementary Petition, pp. 34-35, rec.).

Noteworthy at this point is the allegation of Lirio in said supplementary petition mentioned in a letter they had addressed to the Minister of Justice, Ricardo Puno, dated February 8, 1980 (Annex "A", Supplementary Petition, p. 33, rec.), that the aforesaid fake voters have been quantified to be 2,776 persons in 68 out of the 102 voting centers of Tanauan. Thus, the pertinent paragraph of their letter to Minister Puno on the matter reads:

"We have identified a total of 2,776 persons who were thus allowed to vote but whose names do not appear in the masters registration list of voters, with the help of three lawyers. This number is only partial since it covers only 68 out of 102 voting centers of Tanauan. The lists of these persons are attached hereto with their respective voting centers and marked as Annexes "D", "D-1" to "D-67".

Hence, respondent Lirio prayed for the annulment of the proclamation of herein petitioners and further prayed that the matters raised in the petition for suspension of canvass and of proclamation filed on February 2, 1980, reiterated in said supplementary petition be set for hearing after respondents of said petition, Municipal Board of Canvassers and Sotero Olfato have filed their answers (Supplementary Petition, pp. 31-36, rec.).

In a related development, on the same date February 9, 1980, J. Antonio Leviste, KBL gubernatorial candidate filed with respondent COMELEC a petition to suspend proclamation of NP gubernatorial candidate Jose C. Laurel V on the following grounds, namely:

- 1) Fake voters;
- 2) Electors with fake identification cards;
- 3) Flying voters;
- 4) Substitute voters;
- 5) Massive disenfranchisement; and
- 6) Falsification of election returns particularly in the towns of Lobo and Tuy.

J. Antonio Leviste in said petition prayed, among others, for a joint hearing with the petition for annulment of proclamation filed by respondent Lirio against herein petitioners. Thus:

"In the present one, we are incorporating by reference the petition for annulment of proclamation just filed before this Honorable Commission by Mayor Francisco Lirio of Tanauan, Batangas against the Municipal Board of Canvassers of said town and the NP official candidate for Mayor, Sotero Olfato. We respectfully suggest a joint hearing of these two petitions (pp. 41-45, rec., underscoring supplied).

On February 13, 1980, respondent Commission issued Minute Resolution No. 9092 in P. P. Case No. 118, suspending the effects of the proclamation of herein petitioners as duly elected Mayor and Members, Sangguniang Bayan of Tanauan, Batangas, and requiring the therein respondents (petitioners herein) to file their answer to the aforementioned supplementary petition of herein respondent Lirio and the other KBL candidates, within five (5) days of said resolution (p. 20, rec.).

On February 15, 1980, respondent Lirio filed with the Court of First Instance of Batangas an election protest *ex abundante ad cautela* against petitioner Olfato on the following grounds, namely:

- a) Fake voters;
- b) Electors with fake identification cards;
- c) Flying voters;
- d) Substitute voters;
- e) Massive disenfranchisement;
- f) Vote-buying;
- g) Terrorism of voters;
- h) Ballots prepared by one or more hands;
- i) Marked ballots; and
- j) Erroneous appreciation of ballots (pp. 106-110, rec.).

On February 16, 1980, respondent Commission promulgated Minute Resolution No. 9119 denying the petition of KBL gubernatorial candidate of Batangas, J. Antonio Leviste (P.P. Case No. 360) for the suspension of the proclamation of NP gubernatorial candidate Jose C. Laurel V. Thus:

"xxx xxx xxx xxx

"9119. (PP No. 360). In the matter of the petition to Suspend Proclamation and the Supplement thereto filed thru counsel by Governor J. Antonio C. Leviste of Batangas, praying among others, for the suspension of proclamation of the winning candidates for Governor of said province on grounds of fake voters, fake I.D. cards, flying substitute voters, falsification of election returns. Considering that the issues ventilated have been sufficiently discussed in the petitioner's other previous petitions, which matters should have been raised before the Provincial Board of Canvassers of Batangas, the Commission, on proper motion, duly seconded, RESOLVED to deny the petition, and to refer the complaints contained therein to the Joint Task Force of the Commission on Elections and the Ministry of Justice for possible criminal pro-secution" (p. 40, rec., underscoring supplied).

Hence, in view of the promulgation by respondent Commission of Minute Resolution No. 9119, herein petitioners filed with respondent Commission on February 18, 1980, an urgent motion for reconsideration of Minute Resolution No. 9092 (pp. 51-57, rec.). Petitioners claimed that the grounds averred by Leviste in the latter's petition for the suspension of the proclamation of NP gubernatorial candidate for Governor of Batangas, were the same as those relied upon by respondent Lirio. The said "Urgent Motion for Reconsideration" maintained that considering that respondent Commission on Minute Resolution No. 9119, denied the Leviste petition in P.P. Case No. 360, it should reconsider its stand in P.P. Case No. 118, by revoking and setting aside Minute Resolution No. 9092. It further maintained that the grounds relied upon by therein petitioners (respondents herein) were not among those explicitly mentioned by Secs. 172, 173 and 174 of the 1978 Election Code. Petitioners argued that

the grounds relied upon by therein petitioners (respondents herein) were proper grounds for an election protest which fails under the exclusive jurisdiction of the Court of First Instance of Batangas, the officials involved being elective municipal officials.

On February 20, 1980, respondent Lirio and his co-petitioners in P.P. Case No. 118 filed with respondent Commission an opposition to the urgent motion for reconsideration (p. 5, Respondent Lirio's Memorandum).

In said opposition, it was pointed out that P.P. Case No. 118 is different from P.P. Case No. 360 (Leviste petition) because in the former, the quantification of the votes was complete and sufficient to alter the results of the election while in the latter case the quantification of the votes was incomplete; that the main basis of the petition in P.P. Case No. 118 is the fact that fake voters with fake ID's and/or fake identification slips were allowed to vote; that Sections 172, 173 and 174 of the 1978 Election Code are not the only grounds for annulment and/or suspension of proclamation (citing the cases of Diaz, Sr. vs. COMELEC, 42 SCRA 426; Sinsuat vs. Pendatun, 36 SCRA 613; Kibag vs. COMELEC, 23 SCRA 588; Antonio vs. COMELEC, 22 SCRA 319; and Villalon vs. COMELEC, 5 SCRA 594). It prayed that respondents' (petitioners herein) motion for reconsideration be denied and that "this case be set for hearing and the reception of such evidence as the parties may decide."

On February 23, 1980, after the lapse of the five (5) day period within which therein respondents (petitioners herein) were required to answer as per Resolution No. 9092, and after their failure to do so, respondent Commission, in a telegram-notice dated February 23, 1980, to respondent Lirio's counsel, granted the prayer in the opposition to the motion for reconsideration when it set the case "FOR HEARING ON 5 MARCH 1980 AT 10:00 A.M. AT THE SESSION HALL COMELEC MANILA."

Hence, at about 11:55 A.M. of February 26, 1980, petitioners filed with this Court the present petition wherein it is alleged inter alia that respondent Commission has acted with grave abuse of discretion in refusing to act on petitioners' urgent motion for reconsideration dated February 18, 1980 and in adopting, approving and promulgating Minute Resolution No. 9092.

Significantly, on the same date, February 26, 1980 at about 1:00 P.M., acting on said urgent motion for reconsideration filed by petitioners, respondent Commission issued Minute Resolution No. 9306. Thus:

"xxx xxx xxx

"9306. (PP No. 118). In the matter of 'FRANCISCO E. LIRIO, ET AL., vs. THE MUNICIPAL BOARD OF CANVASSERS TANAUAN, BATANGAS and SOTERO OLFATO, ET AL.'" Con-sidering the grounds alleged in the Supplementary Petition of February 9, 1980 and respondents' Motion for Recon-sideration and the Opposition thereto, and after re-evaluation (sic) the grounds which are summarized as follows:

'a) Disenfranchisement of voters who were not allowed to vote although their names were in the official list of voters;

'b) Terrorism of voters;

'c) Voters with fake IDs who were not in the voters list were allowed to vote without being certified by the corresponding election com-mittee; and

'd) Flying voters

are proper grounds for an election protest, the Commission, on proper motion, duly seconded, RESOLVED AS IT HEREBY RESOLVES to dismiss the petition and to reinstate the proclamation made by the Provincial Board of Canvassers in favor of the respondent and his entire ticket, without prejudice to other legal remedies under the Election Code of 1978, including the prosecution of the criminal offenses, if warranted" (p. 99, rec.,

underscoring supplied).

Likewise, on the same date, February 26, 1980, this Court dismissed the Leviste petition in G.R. No. L-52687.

On February 27, 1980, Guillermo L. Roxas and Melquiades Salisi, NP candidates for Vice Mayor and Member, Sangguniang Bayan, respectively, were proclaimed as duly elected officials in their respective positions. On February 28, 1980, they took their oaths of office.

On February 28, 1980, this Court in a resolution required respondents to comment and not to file a motion to dismiss within ten (10) days from notice.

On the same date, February 28, 1980, petitioners' counsel filed a manifestation alleging inter alia: that the instant petition was filed at about 11:00 o'clock in the morning of February 26, 1980; that at around 6:00 o'clock in the afternoon of the same date, they (petitioners) were informed that respondent Commission at its session held at 1:00 o'clock in the afternoon, promulgated Minute Resolution No. 9306 reinstating the proclamation of petitioners as winning candidates of Tanauan, Batangas; that at about 9:00 A.M. of February 27, 1980, they (petitioners) were officially furnished a certified xerox copy of said resolution (p. 61, rec.).

Also, on February 28, 1980, respondent Lirio filed with COMELEC an urgent motion for reconsideration of said Resolution No. 9306 pointing out, among others, that in their (respondents') opposition to herein petitioners' urgent motion for reconsideration, they prayed that said motion be denied and that the case be set for hearing; that said prayer was actually granted by respondent Commission when it set the case for hearing on March 5, 1980 as per telegram to respondents' counsel dated February 23, 1980; that said notice of hearing was made after the lapse of five (5) day period within which respondents (petitioners herein) were required to answer and upon their failure to do so; that when Minute Resolution No. 9306 was issued respondents (petitioners herein) may already be considered to have been in default and their motion for reconsideration already impliedly denied (pp. 100-102, rec.).

On February 29, 1980, petitioner Olfato filed with respondent Commission an opposition to respondent Lirio's urgent motion for reconsideration (pp. 103-105, rec.).

Thus, on the same date, February 29, 1980, petitioners filed with this Court an "Urgent Manifestation Ad Cautelam" stating among other things: that at 5:30 P.M. of February 28, 1980, they received private respondent Lirio's urgent motion for reconsideration of respondent Commission's Minute Resolution No. 9306; that should respondent Commission act favorably on said urgent motion for reconsideration, petitioners will pursue the petition for certiorari and prohibition with prayer for temporary prohibitory injunction and restraining order with the corresponding amendments (p. 65, rec.).

On March 1, 1980, respondent Commission heard the parties in oral arguments, after which respondent Lirio's urgent motion for reconsideration and petitioners' opposition thereto were deemed submitted for resolution.

On March 3, 1980, petitioners assumed their respective offices pursuant to Section 2 of Batas Pambansa Blg. 52.

On March 10, 1980, respondent Lirio filed with this Court a manifestation alleging that the present petition has become moot and academic in view of COMELEC Resolution No. 9306 dated February 26, 1980, allowing petitioners to be proclaimed (p. 67, rec.).

On March 11, 1980, respondent Commission filed with this Court a manifestation with motion to suspend the period for filing its comment in view of the like-lihood that the case may indeed become moot and academic (pp. 69-72, rec.).

On March 12, 1980, respondent Commission adopted, approved and promulgated Minute Resolution No. 9558,

subject of the present amended petition. Thus:

"xxx xxx xxx xxx

"9558. This is a petition for recon-sideration of Comelec Resolution No. 9306 dated February 26, 1980, the dispositive portion of which reads as follows:

"RESOLVED AS IT HEREBY RESOLVES to dismiss the petition and to reinstate the proclamation made by the Municipal Board of Canvassers in favor of the respondent and his entire ticket, without prejudice to other legal remedies under the Election Code of 1978, including the prosecution of the criminal offenses, if warranted.

"After considering the comments of the respondents, as well as the oral arguments of both parties at the hearing held on March 1, 1980, the Commission, on proper motion, duly seconded, RESOLVED as it hereby RESOLVES to amend Resolution No. 9306 as follows:

"1. To reinstate the petition of Francisco Lirio, et al. by requiring the respondents to file their answer (not a motion to dismiss) within ten (10) days from receipt of this order.

"2. To consider the proclamation made in favor of SOTERO OLFATO and his ticket as one made in accordance with Comelec Reso-lution No. 9440, dated March 6, 1980, in that said proclamation is temporary in nature as it is subject to the final outcome of P.P. No. 118" (p. 98, rec., underscoring supplied).

On March 21, 1980, petitioners filed with this Court the instant amended petition seeking to review and set aside Minute Resolution No. 9558, adopted by respondent Commission on March 12, 1980 (pp. 77-97, rec.).

On March 24, 1980, petitioners filed their answer in P.P. Case No. 118, with respondent Commission (p. 8, Respondent Lirio's memorandum).

On April 10, 1980, this Court adopted a resolution which admitted the amended petition of petitioners, required the respondents to answer the same and not to file a motion to dismiss and issued a temporary restraining order, enjoining, respondent Commission from:

"a) enforcing its Minute Resolution No. 9558 in P.P. Case No. 118;

"b) taking any further action or proceeding in said P.P. Case No. 118; and

"c) performing any act or taking any action or proceeding of whatever nature that may prevent or obstruct the lawful exercise and discharge by petitioners of their powers and functions as duly elected municipal officials of Tanauan, Batangas" (pp. 111-112, rec.).

On April 25, 1980, private respondent Francisco E. Lirio filed his answer to the amended petition of, petitioners (pp. 121-134, rec.).

On May 8, 1980, this Court in a resolution, ordered the parties to file their respective memoranda.

On May 9, 1980, respondent Commission on Elections filed its answer to the amended petition (pp. 135-145, rec.).

Thus, upon the filing by the parties of their respective memoranda, the instant petition is now before US for resolution.

Basically, the main objection of the petitioners is the alleged want of jurisdiction of respondent Commission on Elections over P.P. Case No. 118, entitled "Francisco E. Lirio, et al. vs. The Municipal Board of Canvassers, et al."

Petitioners contend that while Pre-Proclamation Case No. 118, was filed by respondent Lirio, et al. as a pre-proclamation controversy, the grounds relied upon by Lirio are not proper grounds in a pre-proclamation controversy but proper grounds in an election protest.

To reiterate, the petition of respondent Lirio, docketed as Pre-Proclamation Case No. 118, alleges the following grounds for the suspension of petitioners' proclamation:

1. Disenfranchisement of voters who were not allowed to vote although their names were in the official list of voters;
2. Turncoatism of voters;
3. Voters with fake IDs who were not in the voters' list were allowed to vote without being certified by the corresponding election committee;
4. Flying voters.

In paragraph 6 of the supplementary petition dated February 9, 1980 filed by respondent Lirio, he averred, among others, that:

"6. It is respectfully submitted that these irregularities involving fake voters and massive disenfranchisement (sufficient in number to affect the results of the election, as in this case), are proper grounds for a pre-proclamation controversy (although they may also be grounds for a protest) because they affect the very integrity of the election returns, insofar as these fake voters and disenfranchised electors are concerned, do not speak the truth; to say the least, they are incomplete expressions of people's will through the ballots. We understand that this is the first time that this question is being raised; x x x x" (pp. 34-35, rec., broken underscoring supplied).

Likewise, page 11 of respondent Lirio's memorandum states:

"At the outset, we would wish to state that the main basis of private respondent Lirio's petition and Supplemental Petition in P.P. Case No. 118 for the annulment/suspension of the proclamation of petitioners Olfato, et al. is the fact that fake voters with farce IDs and/ or with fake identification slips were allowed to vote and their spurious votes were reflected in the election returns, all authored by NP candidate Olfato, his leaders and henchmen. The other grounds of massive disenfranchisement, substitute voters, flying voters and terrorism of voters are only corollary matters (sic) and included therein only for the purpose of showing the extensiveness of the fraud committed in the Municipality of Tanauan, Batangas in the January 30, 1980 elections. Hence, it is immaterial that the said other grounds are proper only for election protest" (broken underscoring supplied).

Hence, from the foregoing averments of respondent Lirio, petitioners contend that the same amount to an admission on Lirio's part that the grounds adduced by him (Lirio) with the exception of fake voters with false IDs and fake identification slips, as Lirio claims, are all proper in an election protest and not in a pre-proclamation controversy.

Petitioners strongly assert that the grounds for a pre-proclamation controversy under the present applicable laws are those expressly enumerated in Section 175 of the 1978 Election Code. Thus, they say:

"The crucial question now left to be resolved and upon which the jurisdiction of respondent Commission hinges is whether the respondent Commission has power and authority to inquire into the allegation of fake voters, with fake IDs and fake identification slips in a pre-proclamation controversy pursuant to its power vested by law under Section 175 of Presidential Decree 1296 more popularly known as the 1978 Election Code.

"It is our contention that respondent Commission has no jurisdiction to determine, in a pre-proclamation controversy, whether indeed there had been fake voters and thereafter, to annul a proclamation already made, for Section 175 is a delimitation on the broad powers vested by law in the Commission on Elections" (p. 9, Petitioners Memorandum).

Section 175 of the 1978 Election Code reads:

"Section 175. Suspension and annulment of proclamation. - The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, *motu proprio* or upon written petition, and after due notice and hearing, order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof" (underscoring supplied).

Petitioners further assert that "nowhere in the 1978 Election Code are other grounds, similar or analogous, enumerated or provided for the suspension or annulment of the proclamation other than those in Sections 172, 173 and 174."

Section 172 provides:

"Section 172. Material defects in the election returns. - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board shall return them by the most expeditious means, to the corresponding election committee for correction. Said election returns, however, shall not be returned for a recount of the ballots or for any alteration of the number of votes set forth therein: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the election committee concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission after satisfying itself that the identity and integrity of the ballot box have not been violated, and also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the committee to count the votes for the candidate affected, or his representative and thereafter complete the returns."

Section 173 provides:

"Section 173. When election returns appear to be tampered with or falsified. -If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after it has left the hands of the election committee, the board shall use the other authentic copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 163 hereof. If the other copies of the returns are like-wise tampered with, altered, or falsified, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicates that its identity and integrity have been violated, order the opening of the ballot box and likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the election committee to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass" (underscoring supplied).

And Section 174 provides:

"Section 174. Discrepancies in election returns. - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a voting center or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved and once satisfied thereof, shall order the opening of the ballot box to recount

the votes cast in the voting center solely for the purpose of determining the true result of the count of votes of the candidates concerned: Provided, however, That if upon the opening of the ballot box it should appear that there are evidences or signs of replacement or tampering of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping."

It is therefore clear from the above-quoted provisions that Section 172 speaks of material defects in the election returns, Section 173 speaks of tampered, altered or falsified returns and Section 174 speaks of discrepancies of election returns.

Hence, petitioners further averred that "it is clear that fake voters, fake IDs and fake identification slips are fraudulent election practices which may not be entertained by the respondent Commission in a pre-proclamation controversy" (p. 17, Petitioners' Memorandum, underscoring supplied).

Petitioners in defending the alleged authenticity of the returns argued that "even assuming *arguendo* that voters with fake IDs and false identification slips, were able to vote in the January 30, 1980 elections, the election returns prepared on the basis of the ballots cast and counted cannot be classified as spurious or manufactured. Had no elections taken place and yet, returns were made and submitted by the election committee, no doubt these returns would be spurious. But where votes are cast, counted and returns prepared, the latter cannot be considered as manufactured or falsified."

"The genuineness of the election returns is there-fore unquestionable. What may probably be questioned are the ballots themselves and this cannot be done in a pre-proclamation controversy where petitioners seek to nullify a proclamation validly made for pre-proclamation controversies, being summary in nature, must be disposed of with little or no delay" (p. 13, Petitioners' Memorandum, underscoring supplied).

Respondent Lirio, in vehemently refuting the alleged want of jurisdiction of respondent Commission, on page 12 of his memorandum states:

"It is now our submission that the respondent COMELEC has jurisdiction over the nature of P.P. Case No. 118.

"The Constitution grants respondent COMELEC the general power to 'enforce and administer all laws relative to the conduct of elections;' makes it the sole judge of all contests relating to the elections, returns, and qualification of elections x x x provincial and city officials, and mandates it to 'perform such other functions as may be provided by law' (Sec. 1, pars. 1, 2 and 8, Art. XII, Constitution).

"The 1978 Election Code, which Batas Pambansa Blg. 52 expressly made applicable to the January 30, 1980 local elections, provides that 'the Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory' (Sec. 175) and that it shall 'have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly and honest elections' (1st par., Sec. 185), with power and authority to 'enforce and execute the decisions, directives, orders and instructions on any matter affecting the conduct of any electoral process' (Sec. 185[c])."

The previous rule that the Comelec cannot go beyond the election returns in canvassing the same (NP vs. Comelec, 85 Phil. 149, 157-158; Dizon vs. Provincial Board, 52 Phil. 47, 57-59) had been eroded in subsequent cases since 1966.

Thus in the 1966 case of Lagumbay vs. Comelec (L-25444, Jan. 31, 1966, 16 SCRA 175), this Court empowered the Commission on Elections to nullify certain contested returns on the ground of "statistical improbabilities", when WE sustained the authority of the Commission to examine voting records, the number of ballots and the number of votes reportedly cast and tallied for each and every candidate, when the returns are obviously false or

fabricated. In said case, WE adopted "a practical approach to the Commission's mission to insure a free and honest elections" by denying prima facie recognition to the election returns on the ground that they were manifestly manufactured or falsified.

In the Lagumbay case, this Court further-stated:

"In Mitchell vs. Stevens supra, the returns showed a noticeable excess of votes over the number of registered voters, and the court rejected the returns as obviously 'manufactured'. Why? The excess could have been due to the fact that, disregarding all pertinent data, the election officers wrote the number of votes their fancy dictated; and so the return was literally a 'manufactured', 'fabricated' return. Or maybe because persons other than voters, were permitted to take part and vote; or because registered voters cast more than one ballot each, or because those in charge of the tally sheet falsified their counts. Hence, as the Mitchell decision concluded, the returns were 'not true returns x x x but simply manufactured evidences of an attempt to defeat the popular will.' All these possibilities and/or probabilities were plain fraudulent practices, resulting in misrepresentation of the election outcome. 'Manufactured' was the word used. 'Fabricated' or 'false' could as well have been employed."

"xxx xxx xxx xxx.

"Of course we agree that frauds in the holding of the election should be handled - and finally settled - by the corresponding courts or electoral tribunals. That is the general rule, where testimonial or documentary evidence, is necessary; but where the fraud is so palpable from the return itself (res ipsa loquitur - the thing speaks for itself, there is no reason to accept it and give it prima facie value.

"At any rate, fraud or no fraud, the verdict in these fifty precincts may ultimately be ascertained before the Senate Electoral Tribunal. (This answers the erroneous claim that our decision usurps functions of the Senate Electoral Tribunal). All we hold now, is that the returns show 'prima facie' that they do not reflect true and valid reports of regular voting. The con-trary may be shown by candidate Climaco -in the corresponding election protest.

"The well-known delay in the adjudication of election protests often gave the successful contestant a mere pyrrhic victory, i.e., a vindication, when the term of office is about to expire, or has expired. And so the notion has spread among candidates for public office that the 'important thing' is the proclamation; and to win it, they or their partisans have tolerated or abetted the tampering or the 'manufacture' of election returns just to get the proclamation, and then let the victimized candidate to file the protest, and spend his money to work for an empty triumph.

"It is generally admitted that the practice has prevailed in all previous elections. Never was the point pressed upon us in a more clear-cut manner. And without, in any way modifying our stand as outlined in the Nacionalista Party vs. Commission decision, we feel the mores of the day require application - even extension - of the principle in the Mitchell decision, which is realistic and common sensical even as it strikes a blow at such pernicious 'grab-the -proclamation-prolong-the-protest' slogan of some candidates or parties.

"xxx xxx "(16 SCRA, 178, 179?180).

Likewise, in the 1971 case of Diaz, Sr. vs. Commission on Elections (L-33378, Nov. 29, 1971, 42 SCRA 426, 435), WE reiterated the above doctrine. In said Diaz case, the petitioner's petition for the amendment of all the election returns from the municipality of Sagada, Mountain Province, in connection with the 1970 elections for delegate of said Province to the Constitutional Convention, and for the exclusion from the canvass of all the returns aforesaid, for being spurious, fabricated and/or fictitious, was dismissed by the respondent Comelec. Petitioner therein charged that many election inspectors in Sagada had been improperly appointed (because they had been previously found by the House Electoral Tribunal to have deliberately tolerated and abetted the

commission of frauds in Sagada in connection with the 1961 elections), and that the elections for convention delegates (3) in said municipality were tainted with fraud and terrorism, and other irregularities. It prompted the Comelec to order the bringing to Manila of the precinct book of voters and CE form 39 for all precincts of Sagada and had the same examined by the fingerprint and handwriting experts of the Commission and the NBI. While the Comelec discovered the existence of fraudulent practices and commission of other election irregularities such as illegal voting, nevertheless it sustained the validity of the returns from Sagada, on the ground that more than one-half of those who voted were the registered voters in said precincts (underscoring supplied).

This Court in overruling the Commission on Elections anchored its conclusion on the reports of the finger-print experts on their examination of the precinct books of voters and other voting records. In effect, this Court sanctioned the Comelec's procedure, upon establishment of a strong prima facie case, of causing the examination by fingerprint and handwriting experts and analysis of the signatures and fingerprints of the precinct books of voters and the CE 39's and voting records, in order to determine whether the reported elections were a sham amounting to no election at all and accordingly accord no prima facie value to the election returns and reject them as manufactured or false returns.

Thus, this Court concluded that where all the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters to cast their ballots in all the precincts of a certain municipality and to count such spurious ballots and take them into account in the returns, there is no alternative but to consider said returns as deliberately prepared with a view to alter the true results of the voting, through either malice or coercion. The returns thereby become false or falsified.

In the Diaz vs. Comelec case, this Supreme Tribunal, through Mr. Justice J. B. L. Reyes, stressed:

"Thus the analysis of the returns for the six precincts validated by the Commission leads to the same conclusion as that derived from a consideration of all the returns from Sagada, to wit: that even if all the votes cast by persons identified as registered voters were to be added to the votes cast by persons who can not be definitely ascertained as registered or not, and granting, ad arguendo, that all of them voted for respondent Daoas, still the resulting total is much below the number of votes credited to the latter in the returns for Sagada. Plainly, the said returns cannot be relied upon and should be regarded as fictitious or manufactured and excluded from the canvass of the votes cast for the different candidates in the district. This conclusion becomes all the more imperative when account is taken of the additional circumstances that (a) of the 2,188 ballots cast in Sagada in the 1970 election for convention delegates, nearly one-half (1,012) were cast by persons definitely identified as not registered therein, and this number may even increase because some of the 399 thumbprints and/or signatures that could not be identified may have been cast by non-registered persons; (b) that such wholesale illegal voting could not have taken place without the connivance of the inspectors, either maliciously or through intimidation, as found by COMELEC in its resolution and the true results can not be ascertained; (c) that 16 of the inspectors and poll clerks who acted as such in the 1970 elections in Sagada had been found by the House Electoral Tribunal to have 'deliberately tolerated and abetted the commission of frauds' in the 1961 elections (H.E.T. Case No. 145); (d) that Sagada has been notorious for massive and large scale frauds in the past, as found by COMELEC itself; and (e) that the resolution of the COMELEC in this case contradicts that which it adopted in connection with the returns from Karomatan, Lanao, all of which were rejected and excluded from canvass on account of similar anomalies (Usam vs. Comelec, C.R. No. L-33325), when justice and equity imperatively demand that there should be no discrimination in the application of the rules by COMELEC.

"xxx xxx xxx.

"In the leading case of Gardiner vs. Romulo, 26 Phil. 521, this Court quoted with approval from a similar case, Russel vs. State;

"Russell vs. State (11 Kan. 236), the court said in part: 'Now comes the contestant and says that the record (of the election board) is a lie, and proves that 127 of the names so recorded as the names of legal voters are fictitious, and that 127 spurious ballots were cast into the ballot box. In other words, he proves absolutely that nearly one-fourth of this record is false. And this falsehood cannot have been the result of ignorance or mistake. It is not possible that this could have happened without the knowledge, consent, and connivance of both the clerks, and some, at least, if not all, of the judges. Surely, there was criminal culpability if not actual, intentional wrongdoing on the part of all the officers of that election board. But, says the contestee, the whole record is not shown to be false. Reject the 127 votes proved to have been spurious, and accept the balance not thus proven, In other words, accept all the re-cord not proved untrue. If the falsehood resulted from mere mistake, there would be great force in this demand. So also, if the falsehood resulted from the fraud or wrong-doing of others than the board. But where the recording officers are proved to have knowingly made a largely false and fraudulent record, how can we place reliance on any of the record? Falsus in uno, falus in omnibus.

"It doubtless happens that some legal voters are by this decision deprived of the benefit of their votes. Perhaps there were honest votes cast, enough to have given the majority to Fredonia. A large majority of the citizens of Fredonia are honest men, and are doubtless as much grieved as we at this terrible trespass on the purity of the ballot box. May this example preach its lesson, not alone to them, but equally to every citizen of the State. They who in Rome watched and kept the sacred fire were vestal virgins. Equally pure should they be who watch and guard that which is far more to us than mystic altar fires." (Gardiner vs. Romulo, 26 Phil. 521, 559-560).'

"And this Court concluded:

"In concluding this extremely disagreeable task, we desire to state that we are aware of the seriousness of disenfranchising the innocent electors of a whole precinct for acts done by others. We are not unmindful of the force of the argument that if courts set aside the returns from a precinct for light and trifling causes, it will encourage the unscrupulous to seek profit by the honest mistakes of election officers committed in the conscientious performance of their duties. On the other hand we appreciate the importance to the people of enforcing those statutory provisions which the legislature have provided to insure a free and undefiled expression of the popular will at the polls, to the extent that fraud may not flourish under the guise of honesty. The right of suffrage is of comparatively recent origin in this country. If at this early stage of its existence, the courts are to countenance such bold disregard of the law as was exhibited in the Municipality of Camiling at the last general election, representative government will soon become a farce; a mere catchword or an empty illusion. Regardless of the political unrest engendered by such deplorable litigation as the present and its enormous expense to the contestants, we are of the opinion that a firm stand against fraudulent elections must now be taken, once for all. If no encouragement is offered to vicious practices, they will, at least, never grow larger" (Gardiner vs. Romulo, 26 Phil. 521, 565-566).'

"xxx xxx xxx.

"As already observed, WE are not here dealing with occasional or sporadic irregularities that succeeded in surprising the good faith of the election inspectors. All the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters in Sagada to cast their ballots in all the precincts of Sagada, and to count such spurious ballots and take them into account in the returns. There is thus no alternative but to con-sider said returns as deliberately prepared with a view to alter the real results of the voting, through either malice or coercion. In either case, the returns must be deemed manufactured or falsified, without any title to be included in the canvass of votes for delegates by the Pro-vincial Board of Canvassers for the Mountain Province" (supra, pp. 432-434, 435).

Incidentally, the 1971 Diaz ruling was reiterated on the same date (November 29, 1971) the Diaz case was

resolved, in the case of *Estaniel vs. Commission on Elections* (L-334453, Nov. 29, 1971, 42 SCRA 436).

In the *Estaniel* case, Mr. Justice Teehankee, speaking for the Court, invoked the *Diaz* ruling and emphasized:

"In the *Sagada* case resolved just now by the Court in *Diaz vs. Comelec*, L-33378, and likewise involving a delegate seat (from the Mountain Province) for the Constitutional Convention under Republic Act No. 6132, the Court sanctioned the Comelec's procedure, upon establishment of a strong prima facie case, of causing the examination and analysis of the signatures and fingerprints of the precinct books of voters and the CE 39's and voting records, in order to determine whether the reported elections were sham and tantamount to no election at all and accordingly accord no prima facie value to the election returns and reject them as manufactured and false returns.

"The Court, however, therein, emphasized through Mr. Justice Reyes that 'justice and equity imperatively demand that there should be no discrimination in the application of the rules by Comelec.'

"xxx xxx xxx.

"Much as the Court wishes to pronounce finis to this contest (which must have been likewise the Comelec's well-meaning but erroneously implemented motivation for its questioned resolution), it is therefore constrained to remand the case to the Comelec, in the interest of the electorate of Cotabato as well as of the contending candidates, for the carrying out of the examination and analysis by Comelec's own and deputized fingerprint and handwriting experts of the voting records in the four municipalities of Pikit, Pagalungan, Maganoy and Dinaig, and for the questioning of the chairmen of the boards of inspectors in said four towns, during the November, 1970 elections for Constitutional Convention delegates, to the extent necessary for Comelec to determine whether or not the elections therein were sham and the corresponding election returns should be rejected and excluded as manufactured returns and insofar as the results for tenth place winner would be affected thereby " (supra, pp. 446, 447).

Moreover, a month later, in the case of *Usman vs. Comelec* (Dec. 29, 1971, 42 SCRA 667), Mr. Chief Justice Castro, then Associate Justice, spoke for the Court, thus:

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

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

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

"xxx xxx xxx.

"On November 24, 1970, the Comelec petitioners, joined by another candidate, Petri Ali Pacasum, amended their petition, asking for the exclusion of the election returns from the precincts of the barrios of Kapatagan,

Salvador, Lala, and Kauswagan; except those from precincts 16 and 24 of Kapatagan and precincts 14 and 14-A of Salvador, and repeating their allegation that no elections actually took place in the questioned precincts,

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

and adding that the election returns from the said precincts

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

"xxx xxx xxx.

"Thus, Usman, on March 22, 1971, filed the present petition for review, (1) challenging the jurisdiction of the Comelec in resolving the issue relating to the genuineness and authenticity of the disputed election returns, and in inquiring into the regularity or irregularity of the thumbmarks and signatures of the voters who voted; (2) questioning the regularity of the proceedings adopted by the Comelec in relation to the exercise of its jurisdiction; and (3) assailing the probative value of the findings made regarding the signatures and thumbmarks of the voters who voted in the 42 precincts of Karomatan. Usman prayed for (1) the issuance of a writ of preliminary injunction restraining the Comelec from enforcing its resolution dated March 25, 1971; (2) the setting aside of the Comelec resolution dated March 12, 1971 and the inclusion of the results from the 42 precincts of Karomatan in the canvass of the election returns and his proclamation as the winning candidate; and (3) in case this Court sustains the aforesaid Comelec resolution, the calling of a special election in all the 42 precincts of Karomatan, pursuant to section 17(e) of Republic Act 6132 (Section 17[e] states: 'Whenever the Commission determines, after notice and hearing, that no voting has been held or that voting has been suspended before the hour fixed by law for the closing of the voting in any precinct or precincts because of force majeure, violence or terrorism, and the votes not cast therein are sufficient to affect the results of the election, the Commission may call for the holding or continuation of the election in the precinct or precincts concerned. Pending such call, no candidate whose election may be affected by the holding or continuation of the election, shall be proclaimed elected.')

"xxx xxx xxx.

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

"xxx xxx xxx.

"The broad power of the Comelec, conferred upon it by the Constitution, to enforce and administer 'all laws relative to the conduct of elections' and to decide all administrative questions affecting elections 'for the purpose of insuring free, orderly and honest elections,' has been the key in the resolution of many pre-proclamation controversies involving the integrity and authenticity of election returns. Invoking the aforesaid power of the Comelec, we justified the action and upheld the authority of the Comelec to order the exclusion of 'obviously manufactured' returns (*Lagumbay vs. Climaco and Comelec*, 16 SCRA 175), or tampered returns (*Cauton vs. Comelec and Sanidad*, 19 SCRA 911), or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity (*Pacis vs. Comelec*, 25 SCRA 391; *Antonio, Jr. vs. Comelec, et al.*, 32 SCRA 319), emphasizing the duty of the Comelec to see to the use and

inclusion in the canvass of only genuine elections.

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

"xxx xxx xxx.

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

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

"1. The very high percentage of voting in the 42 precincts of Karomatan -- with 100% voting in 7 precincts where the number of votes exceeded the number of registered voters -- in the whole town of Karomatan, there appeared an excess of 138 votes over the number of registered voters;

"2. The day before the elections, the members of the boards of inspectors of Karomatan were summoned to the office of the mayor where they were 'asked' to 'cooperate' by making some candidates win in their respective precincts;

"3. The members of the boards of inspectors of Karomatan, either out of fear due to terrorism or in connivance with those responsible for the election anomalies, allowed voting by persons other than those registered as voters in their respective precincts;

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

"5. xxx xxx xxx.

"6. We fully agree with the Comelec that the totality of all the foregoing circumstances, taken together with the findings of the Fingerprint Identification Division of the Comelec and of the Questioned Documents experts of the NBI, more than suffices to completely overcome the prima facie value of the 42 election returns from Karomatan, strongly belying their integrity and authenticity. These circumstances definitely point, not merely to a few isolated instances of irregularities affecting the integrity and authenticity of the election returns, but to an organized, well-directed large-scale operation to make a mockery of the elections in Karomatan. We find and so hold that the election returns from the 42 precincts in question were prepared under circumstances conclusively showing that they are false, and are so devoid of value as to be completely unworthy of inclusion in the canvass. We have no alternative but to affirm the Comelec's finding that they are spurious and manufactured.

"xxx xxx" (supra, pp. 670-671, 672, 678, 683, 686, 687-689).

Thus, it becomes clear from the above rulings that respondent Commission on Elections has the power and authority to inquire into the allegation of fake voters, with fake IDs and fake identification slips in a pre-proclamation controversy in order to determine the authenticity or integrity of the election returns or whether such election returns faithfully record that only registered or genuine electors were allowed to vote.

This ruling was further underscored in the case of *Abes vs. Comelec* decided on December 15, 1967 (21 SCRA 1252, 1255-1256), where this Court held: "... Neither Constitution nor statute has granted Comelec or the board of canvassers the power, in the canvass of election returns, to look beyond the face thereof, once satisfied of their authenticity." Thus, it is noted that before the canvass the Comelec must first determine the genuineness and integrity of the election returns. If on the face of the election returns the authenticity, thereof is not patent, then the Comelec can go beyond the face thereof to satisfy itself of their authenticity or integrity.

While admittedly the Commission on Elections has no jurisdiction over election contests involving municipal or municipal offices (Sec. 190, 1978 Election Code), WE must not lose sight of the fact that the instant suit involved a pre-proclamation controversy filed by the private respondent before the respondent Commission. Indeed, it is immaterial if some of the grounds adduced by the private respondent (petitioner therein) are grounds for an election contest rather than grounds for a pre-proclamation controversy.

Section 175 (first sentence) of the 1978 Election Code explicitly provides that "the Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory" (emphasis supplied).

The law says "all", and therefore covers all pre-proclamation controversies involving national, provincial, city and municipal elective officials. The law does not distinguish nor contain qualifications.

Although the second sentence of Section 175 of the 1978 Election Code provides that suspension or annulment of a proclamation may be made if based on the grounds mentioned in Sections 172, 173 and 174, WE are not prepared to declare that the enumeration is exclusive. The enumeration made in Section 175 only emphasizes the old rulings of this Court and statutory provisions on the matter affirming the power of the Comelec to suspend or annul a proclamation based on material defects in the election returns, tampered, altered, falsified election returns or in case of discrepancies in the election returns.

It may not be amiss to state also that Sections 172, 173 and 174 of the 1978 Election Code are substantially a reproduction of Sections 204, 205 and 206 respectively of the 1971 Election Code.

Section 204 provides:

"Section 204. Material defects in the election returns. - If it should clearly appear that some requisite in form or data had been omitted in the election returns, the board shall return them by the most expeditious means, to the corresponding boards of inspectors for correction. Said election returns, however, shall not be returned for a recount of the ballots or for any alteration of the number of votes set forth therein: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted to be placed in the return cannot be ascertained by other means except by recounting the ballots, the Commission on Elections after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of inspectors to open the ballot box, and also after satisfying itself that the integrity of the ballots therein has been duly pre-served, order the board to count the votes for the candidate whose votes have been omitted in the presence of the candidate affected, or his representative and thereafter complete the return.

Section 205 provides:

"Sec. 205. When election returns appear to be tampered or falsified. -If the copy of the election return submitted to the board of canvassers appears to be tampered, altered or falsified after it has left the hands of the board of inspectors, the board of canvassers shall use the other authentic copies of said election return, except the copies furnished the political parties, and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section one hundred ninety-seven hereof. If all copies of said returns are equally tampered, altered or falsified and cannot be used in the canvass, the board or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicates that its identity and integrity have been violated, order the opening of the ballot box and likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass."

And Section 206 provides:

"Sec. 206. Recounting of votes. -In case it appears to the board of canvassers that there exists discrepancies in two or more authentic copies of election returns, other than the copies furnished the political parties from an election precinct or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the result of the election, the proper Court of First Instance, upon motion of the board or of any candidate affected and after due notice to all candidates concerned shall proceed summarily to determine whether the integrity of the ballot box had been preserved and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the precinct solely for the purpose of determining the true result of the count of votes of the candidates concerned: Provided, however, That if upon the opening of the ballot box it should appear that there are evidences or signs of replacement or tampering of the ballots, the Court shall not recount the ballots but shall forthwith seal the ballot box and deliver the same to the Commission on Elections for safekeeping."

To give a strict interpretation of Section 175 (second sentence) of the 1978 Election Code would be to limit the grounds in pre-proclamation controversies to matters purely affecting election returns. WE believe that to revert to the old doctrine prohibiting the Comelec from looking behind the election returns as to the existence of election irregularities is not consistent with the very purpose of the law. Clearly, Sections 172, 173 and 174 only speak of irregularities committed in the preparation of election returns themselves. WE cannot see any difference however if the Comelec be allowed to suspend a canvass or suspend or annul a proclamation of a candidate-elect on the ground that irregularities or mistakes in the preparation of the returns such as tampering, altering, falsifying of returns, material defects or discrepancies of election returns exist and deny said authority to the Comelec if based on grounds not apparent on the face of the election returns but indirectly affecting their integrity. Certainly, it would be ridiculous to deny the Comelec the authority to suspend a canvass or suspend or annul a proclamation if based on grounds of election irregularities committed during the election which would necessarily also vitiate or affect the integrity of the election returns such as fake voters whose votes cast and included during the canvass would inevitably be reflected in the election returns themselves, although not apparent upon the face. Seemingly genuine returns based on fake votes are equally spurious as tampered election returns. To sustain the validity of election returns despite a prima facie showing of the commission prior to the voting of election irregularities independent of the subsequent act of preparing the election returns is to stamp our approval on making said election returns as an impenetrable shield in the perpetration of election anomalies.

Hence, once there is a prima facie showing of the commission of other election irregularities which will ultimately be reflected in the election returns, the Comelec should in a pre-proclamation controversy, with due observance of due process of course, be also authorized to suspend canvass, suspend or annul a proclamation of a

candidate-elect, for it smacks of absurdity to proscribe the commission of one kind of irregularity and yet countenance another kind of irregularity, when both irregularities make a mockery of suffrage.

In the case of *Aratuc vs. Commission on Elections* (February 8, 1979, 88 SCRA 251), the issue as to the enlargement of the powers of the Comelec has been foreclosed. Thus:

"Correspondingly, the Election Code of 1978, which is the first legislative construction of the pertinent constitutional provisions, makes the Commission also the 'sole judge of all pre-proclamation controversies' and further provides that 'any of its decisions, orders or rulings (in such controversies) shall be final and executory', just as in election contests, 'the decision of the Commission shall be final, and executory and inappealable' (Section 193).

"It is at once evident from these constitutional and statutory modifications that there is a definite tendency to enhance and invigorate the role of the Commission on Elections as the independent constitutional body charged with the safeguarding of free, peaceful and honest elections (emphasis supplied).

Justice Pacifico de Castro in a separate opinion in the *Aratuc* case affirming the enlarged powers of the Comelec as envisioned by the framers of the 1973 Constitution, said:

"x x x With the conferment of exclusive authority on the electoral process upon it, the Commission may be said to have been given full discretionary authority, the exercise of which would give rise to a controversy involving a political question.

"xxx xxx xxx.

"If the Commission has the power to suspend *motu proprio* the proclamation of a candidate-elect, it must have the power to conduct inquiry into the cause for which it ordains the suspension of the proclamation, such as making its own examination of the integrity of election returns, or inquiring into any relevant matter affecting the purity of the ballot (88 SCRA 290, 291, underscoring supplied).

"The Commission on Elections has been granted powers under the Constitution which, under the old Constitution, belonged either to the legislative body (Electoral Tribunals) or to the courts. This is evident from the provision of the new Constitution which reads:

'(2) Be the sole judge of all contents relating to the elections, returns, and qualification of all Members of the National Assembly and elective provincial and city officials' (Section 2, Article XII, Constitution).

"The Commission is thus envisioned to exercise exclusive powers on all electoral matters except the right to vote, such as the enforcement and administration of laws relative to the conduct of elections deciding administrative questions affecting elections, except those involving the right to vote, but also those that heretofore have been regarded, as matters for strictly judicial inquiry, such as the hearing and disposition of election contests, as is doubtlessly shown by the transfer thereto of the powers previously conferred upon the Electoral Tribunal of Congress and the Courts (see section 2, par. 2, Article XII, New Constitution). x x x" (supra, pp. 288-289).

The aforesaid enlarged powers of the Comelec under the 1973 Constitution become more apparent under Section 174 of the 1978 Election Code wherein the authority to recount the votes cast in a voting center, formerly vested upon the Court of First Instance, is now exercised by the Commission on Elections. Thus Section 163 of the Revised Election Code (R.A. No. 180, as amended by R.A. Nos. 599, 867, 2242, 3036, 3522, 3588, and 4074) provides:

"Sec. 163. When statements of a precinct are contradictory. - In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election,

the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected (C.A. 357-158)" [underscoring supplied].

The Election Code of 1971 (R.A. No. 6388) also provides:

"Sec. 206. Recounting of votes. - In case it appears to the board of canvassers that there exists discrepancies in two or more authentic copies of election returns, other than the copies furnished the political parties from an election precinct or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the result of the election, the proper Court of First Instance, upon motion of the board or of any candidate affected and after due notice to all candidates concerned shall proceed summarily to determine whether the integrity of the ballot box had been preserved and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the precinct solely for the purpose of determining the true result of the count of votes of the candidates concerned: Provided, however, That if upon the opening of the ballot box it should appear that there are evidences or signs of replacement or tampering of the ballots, the Court shall not recount the ballots but shall forthwith seal the ballot box and deliver the same to the Commission for safekeeping" (underscoring supplied).

Whereas, Section 174 of the 1978 Election Code provides:

"Section 174. Discrepancies in election returns. - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a voting center or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved and once satisfied thereof, shall order the opening of the ballot box to recount the votes cast in the voting center solely for the purpose of determining the true result of the count of votes of the candidates concerned: Provided, however, That if upon the opening of the ballot box it should appear that there are evidences or signs of replacement or tampering of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping" (underscoring supplied).

Petitioners in asserting the non-applicability of the Aratuc case, supra, and the Diaz case, supra, pointed out that in the above cases cited by private respondent Lirio, "massive substitution of voters, failure of actual voting and almost 100% voters turn out in certain voting centers impelled the Supreme Court to issue the guidelines for the canvass of votes" (Petitioners' Memorandum, p. 18).

Suffice it to reiterate that in the petition and supplementary petition filed by respondents Lirio, et al., they charged, among other things, that fake voters numbering about 2,776 persons in 68 voting centers out of the 102 voting centers of Tanauan (approximately 66%), allegedly with fake IDs and/or with fake identification slips, were allowed to vote in the January 30, 1980 elections, and that these votes have been reflected in the returns. As correctly advanced by respondent Commission, said election returns would not reflect the true will of the electorate. And considering that the difference in the number of votes garnered by petitioner Sotero Olfato over private respondent Francisco E. Lirio is only about 1,579, the number of votes in the afore-said questioned returns could materially affect the result of the elections. That the precariousness of the alleged winning margin of petitioner Olfato over respondent Lirio can be gleaned from the totality of the votes contested is therefore beyond doubt.

An examination of the official list of registered voters in the remaining 34 voting centers may reveal additional fake voters allowed to vote, to aggravate the election irregularity.

Petitioners also argued that private respondent cannot now raise for the first time in a petition to annul proclamation the alleged spuriousness or falsity of the election returns since no objection to the canvass of the election returns had ever been made before the Municipal Board of Canvassers.

Much reliance has been made by the petitioners on the ruling of this Court declaring that "all questions regarding the returns should be initially raised before the Board of Canvassers, subject to appeal from its decision to the COMELEC" (Anni vs. Rasul, No. L-34904, Aug. 30, 1972, 46 SCRA 758, 769; citing Moore vs. COMELEC, 31 SCRA 60, 67 [1970]).

But there was compliance with the aforesaid rule, when respondent Lirio filed with the Comelec on February 2, 1980, three days before the proclamation of petitioners on February 5, 1980, the petition (P.P. No. 118) to suspend the canvass and proclamation of petitioners, making the Municipal Board of Canvassers a respondent, which was then notified of the challenge raised by respondent Lirio.

It may be appropriate to note here that said ruling applies to cases where the irregularities of the election returns are patent upon their faces, which makes it incumbent upon the aggrieved candidates to raise their objection before the Board of Canvassers. The rationale of the above doctrine has been aptly explained by this Court through Justice Conrado Sanchez in the case of Abrigo vs. COMELEC (No. L-31374, Jan. 21, 1970, 31 SCRA 26, 35, 36. Thus:

"x x x After the preparation of the election returns by the board of inspectors, the next step outlined by the law is the canvass thereof by the canvassing board. It is before this body that a candidate must present any question regarding the election returns. x x x The law envisions that while the board is doing its work in canvassing the election returns and tallying in the results, its attention should be called to any question which could affect its work. The board should be given an opportunity, as Section 163 (now Section 174) plainly directs, to decide whether -- on the existence or non-existence of discrepancy -- to defer the canvass or to continue with it. After all, it is upon this body that the duty to canvass is reposed. This function, it would seem to us, complements its authority to canvass only election returns which are in due form and to exclude those which are 'obviously manufactured or palpably irregular' (underscoring supplied).

It is only then after the Board of Canvassers has passed upon the objection when the Comelec will exercise its appellate jurisdiction.

It must be observed further, that there is no plausible reason to prohibit an aggrieved candidate from filing an objection regarding the election returns directly before the Comelec itself if the election irregularities that vitiate the integrity of the election returns are not apparent upon their faces. What is therefore involved is the original jurisdiction of the Comelec rather than its appellate jurisdiction for precisely the objection is filed not before the Board of Canvassers because the irregularities are not apparent upon the face of the election returns.

The reason is obvious -- "the board of canvassers exists for a specific function -- that is, to canvass the result of the election as shown in the election returns and to proclaim the winning candidates. Once this specific function had been performed the existence of the board of canvassers is ended or terminated" (Aquino vs. COMELEC, L-28392, Jan. 29, 1968, cited in Pelayo, Jr. vs. COMELEC, No. L-28869, June 29, 1968, 23 SCRA 1374, 1386).

And it is more within the powers of the Comelec, being the "sole judge of all pre-proclamation contro-versies", to determine the circumstances that stamp the election returns with the indelible mark of falsity.

At any rate, as heretofore stated, private respondent Lirio filed his petition for suspension of canvass and of proclamation against the Municipal Board of Canvassers of Tanauan and the petitioners on February 2, 1980 or three days before petitioners were proclaimed and before the termination of the canvass. The same may therefore be considered as a formal objection to the integrity of the election returns based on fake votes.

Not even the rule of "expresio unius est exclusio alterius" will, carry the day for the petitioners.

"Where a statute appears on its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow, by not so including them, the maxim 'expresio unius est exclusio alterius', should not be invoked" (Blevins, vs. Mullaly, 135 p. 307, 22 Cal. App. 519, cited in People vs. Manantan, No. L-14129, July 31, 1962, 115 Phil. 657, 668-669).

"The rule of 'expresio unius est exclusio alterius' shall be applied only as a means of discovering the legislative intent which is not otherwise manifest and shall never be permitted to defeat the plainly indicative purpose of the legislature" (82 C.J.S. p. 668).

Moreover, "the cardinal rule of statutory construction requires the court to give effect to the general legislative intent if that can be discovered within the four corners of the Act. When the object intended to be accomplished by the statute is once clearly ascertained general words may be restrained to it and those of narrower import may be expanded to embrace it, to effectuate the intent" (Borromeo vs. Mariano, 41 Phil. 322, cited in Martin, G.R. Statutory Construction, Revised Ed., p. 46).

"The Courts should give the statute a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it (82 C.J.S., p. 593) even though such construction is not within 'the strict literal interpretation of the statute (In re Marshall, 69 A. 2d, p. 619, cited in Martin, G.R., Statutory Construction, Revised Ed., p. 67).

"Thus, cases will frequently be found enunciating the principle that the intent of the legislature will govern (U.S. vs. Corbet, 215, U.S. 233). It is to be noted that a strict construction should not be permitted to defeat the policy and purposes of the statute (Ash Sheep Co. vs. U.S. 252 U.S. 159). The court may consider the spirit and reason of a statute, as in this parti-cular instance, where a literal meaning would defeat the clear purpose of the law makers (Crawford, Interpretation of Laws, Sec. 78, p. 294, cited in People vs. Manantan, supra, p. 665).

Finally, petitioners, in assailing the jurisdiction of respondent Comelec, argue that the electoral protest filed by respondent Lirio before the Court of First Instance of batangas deprived the Comelec of its juris-diction over P.P. Case No. 118.

But the records amply show that private respondent's petition for suspension of canvass and of proclamation was earlier filed on February 2, 1980, whereas the electoral protest was filed before the Court of First Instance of Batangas on February 15, 1980. Evidently the electoral protest was filed by Lirio to preserve his right in the event the prayers he sought in P.P. Case No. 118 would not be granted as said electoral protest bore the character of an ex abundante ad cautela. Thus the footnote of said electoral protest reads:

"Protestant has petition with the COMELEC for the annulment of the proclama-tion of the protestee. Because the COMELEC has only suspended the effects of the proclamation, this protest is being filed ex abundante ad cautela" (p. 106, rec.).

The second issue raised by petitioners is that Comelec acted in excess of its jurisdiction and with grave abuse of discretion in reinstating respondent Lirio's petition for the annulment of petitioners' proclamation.

WE cannot fault respondent Commission if in the course of its search for the solutions to the problems posed by the numerous cases brought before it, characterized by multifarious and oftentimes confusing charges and counter-charges, it committed a mistake in its choice of solutions. Respondent Commission cannot be charged with being guilty of an "omission to weigh pertinent considerations" nor the blunder of rendering a "decision arrived at without rational deliberation". Precisely, the reinstatement of respondent Lirio's petition, affords the

parties full hearing on the issues raised by said petition to avoid any injustice to either party. Certainly, the error, if any, does not amount to grave abuse of discretion.

Petitioners likewise charged that respondent Commission is guilty of discrimination in the application of its rules. The charge is anchored on the alleged conflicting decisions made by respondent Comelec in the Leviste petition and the Lirio petition, notwithstanding the alleged identity of circumstances in both cases.

WE do not agree, for aside from the claim of private respondent Lirio that the fake voters involved in their (private respondents') petition were quantified unlike the Leviste petition, it would be improper to presume irregularity in the performance of official acts on the part of the Comelec. It must be noted that not only did respondent Lirio and his co-petitioners in P.P. Case No. 118 charge alleged election irregularities but also adduced evidence to prove the existence of said election irregularities. Hearing with due notice to the parties was conducted on March 1, 1980, after which respondent Commission "after considering the comments of the respondents, as well as the oral arguments of both parties at the hearing" promulgated the questioned resolution (Resolution No. 9558, amending Resolution No. 9306). Respondent Commission therefore, had the occasion to exercise its discretion in both petitions and it has not been shown that it committed such a capricious and whimsical exercise of discretion amounting to lack of jurisdiction or to grave abuse of discretion.

"x x x [I]n the performance of its constitutional duty of insuring free, orderly and honest elections the COMELEC possess wide latitude of discretion which, unless shown to have been exercised in an arbitrary or improvident manner, will not be interfered with by this Court" (Ligot vs. COMELEC, No. L-31380, Jan. 21, 1970, 31 SCRA 45, 47).

WE are more inclined to presume that respondent Commission, in proceeding summarily with the Leviste petition and the Lirio petition, acted regularly or indiscriminately in the application of its rules. In the aforesaid Resolution No. 9558, although silent as to what transpired during the hearing, it can be safely presumed that with due observance of the basic rules of due process, respondent Commission indeed heard the basic contentions of both sides, which includes necessarily the contention of respondent Lirio that election irregularities affecting the authenticity and integrity of the election returns were committed. That respondent Commission issued the questioned resolution with due consideration on the matter, is a presumption that would be in accord with the basic rules on presumption of regularity of official acts. Thus, as aptly stated by this Court through Justice Antonio Barredo in the above-cited case of Aratuc vs. COMELEC, supra:

"Such, to Our mind, is the consti-tutional scheme relative to the Commission on Elections. Conceived by the charter as the effective instrument to preserve the sanctity of popular suffrage, endowed with independence and all the needed concomitant powers, it is but proper that the Court should accord the greatest measure of presumption of regularity to its course of action and choice of means in performing its duties, to the end that it may achieve its designed place in the democratic fabric of our government. Ideally, its members should be free from all suspicions of partisan inclinations, x x x" (underscoring supplied).

The last issue raised by petitioners during the hearing is that respondent Commission on Elections in questioning the alleged fake voters with fake IDs and/or fake identification slips violated the consti-tutional provision prohibiting said Commission to decide questions involving the right to vote.

It is true that questions involving the right to vote is not within the ambit of the Comelec as mandated by the Constitution. Thus, paragraph 3, Section 2, Article XII(c) of the 1973 Constitution, specifically provides:

"Sec. 2. The Commission on Elections shall have the following powers and functions:

"(1) x x x .

"(2) x x x .

"(3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors and the registration of voters" (under-scoring supplied).

Likewise, it was held in the case of *Nacionalista Party vs. Comelec*, supra, that "x x x the power to decide questions involving the right to vote is provided in the Election Law, the enforcement and administration of which is placed in the exclusive charge of the Commission" (85 Phil. 149, 156).

WE cannot agree with petitioners that respondent Commission has trodden into the forbidden scope of questions involving the right to vote. It must be observed that preparation of election forms or documents such as registration records and the issuance of voters' IDs or identification slips are functions exercised by the Commission on Elections in the enforcement and administration of election laws. If unscrupulous individuals however, resorted to election anomalies such as issuance of fake voter's IDs and/or fake identification slips or resorted to misrepresentation before the election registrar to subvert the will of the electorate, an inquiry conducted by the Comelec as to the commission of such election anomalies does not violate the above-said constitutional prohibition. It is well within the powers of the Commission on Elections. If, however, in the course of its inquiry conducted to determine the commission of election anomalies regarding the preparation of false or fake election documents, persons possessed with such spurious documents and who participated in the voting are identified or their number determined, the Commission on Elections does not thereby pass upon the right to vote of a duly registered and genuine voter.

It is significant to note that Resolution No. 9558 is not final and definitive in character as it only considered the proclamation in favor of petitioners as temporary in nature as it was made subject to the final outcome of P.P. Case no. 118.

The resultant delay that may be caused by the remand of this case to the respondent Commission is eclipsed by its paramount purpose of ascertaining the true will of the electorate in P.P. Case No. 118; so that one of the contending parties may be duly proclaimed and thereafter assume office, subject only to the outcome of the regular election protest that the losing party may, after the proceedings before the Comelec, pursue.

WHEREFORE, THE PRESENT PETITION IS HEREBY DISMISSED. RESPONDENT COMMISSION ON ELECTIONS IS HEREBY ORDERED TO PROCEED IN P.P. CASE NO. 118 WITH DISPATCH. NO COSTS.

SO ORDERED.

Barredo, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs and dissents in a separate opinion.

Teehankee, J., dissents in a separate opinion.

Aquino, J., see concurrence.

Abad Santos, J., no part.

* Guillermo L. Roxas and Melquiades F. Salisi, who were NP official candidates for Vice Mayor and Member, Sangguniang Bayan, respectively, also won but were not proclaimed because of the pendency of a petition to disqualify them on the ground of "turn-coatism", subject matter of a restraining order of this Court in G.R. No. L-52404.

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CONCURRING OPINION

AQUINO, J.:

Sotero Olfato was proclaimed by the municipal board of canvassers on February 5, 1980 as the elected mayor of Tanauan, Batangas. He allegedly obtained 15,293 votes while his opponent, Francisco E. Lirio, the candidate of the Kilusan ng Bagong Lipunan, obtained 13,714 votes.

On February 9, 1980, Lirio filed with the Commission on Elections a supplementary petition praying that Olfato's proclamation be annulled on the grounds that fake voters took part in the elections on January 30, 1980 and that there was massive disenfranchisement (Pre-Proclamation Case No. 118).

On February 15, 1980, Lirio filed an election protest *ad cautelam* against Olfato in the Court of First Instance of Batangas, citing as grounds (1) fake voters, (2) fake voter's identification cards, (3) flying voters, (4) substitute voters, (5) massive disenfranchisement, etc.

On March 3, 1980, Olfato assumed the office of mayor. On March 12, 1980, the Comelec issued Resolution No. 9558 in Case No. 118 declaring that Olfato's proclamation is temporary in nature and is subject to the final outcome of the said case.

On March 21, 1980, Olfato and his co-petitioners filed in this Court an amended petition praying that Resolution No. 9558 be annulled and that Case No. 118 be dismissed.

The issue is whether in a pre-proclamation controversy, like Case No. 118, the Comelec can annul the proclamation on grounds other than those indicated in section 175 of the 1978 Election Code.

Section 175 provides that the Comelec may annul the proclamation on any of the grounds mentioned in sections 172, 173 and 174 Of the Election Code which refer to material defects in the election returns, tampering with or falsification of the election returns and discrepancies in the election returns.

I agree with Justice Makasiar that considering the vast powers of the Comelec under the Election Code and in the light of the rulings cited in his opinion, it may determine in a pre-proclamation controversy whether fake voters with fake identification cards and slips took part in the elections. That inquiry may be made for the purpose of determining the integrity of the election returns or whether the votes recorded therein were cast by authentic and qualified voters.

It is in consonance with the Comelec's primordial task of insuring free, orderly and honest elections.

Hence, I concur in the dismissal of the amended petition and the continuation of the proceedings in Case No. 118 of the Comelec.

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CONCURRING AND DISSENTING OPINION

FERNANDO, C.J.:

It would not be difficult to yield concurrence to the opinion of the Court, both scholarly and comprehensive, penned with such painstaking care by Justice Makasiar, with its meticulous appraisal of previous decisions. There

is, however, an obstacle posed by the doctrine, now accepted as our basic policy in resolving controversies arising from the 1980 elections enunciated in a unanimous decision, *Aguinaldo v. Commission on Elections*.^[1] Thus: "Since *Venezuela v. Commission on Elections*, this Court has invariably adhered to the principle that after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed with this Court after January 30, 1980, arising from a pre-proclamation contro-versy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such consti-tutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the matter then elevated to this Court before such election, the issue thus presented should be resolved."^[2] It is true that this principle has been followed mostly in suits seeking for-disqualification of a candidate who had changed his political party affiliation within six months immediately preceding an election. It was first announced in *Venezuela v. Commission on Elections*.^[3] Then came *Potencion v. Commission on Elections*,^[4] *Arcenas v. Commission on Elections*,^[5] and *Singco v. Commission on Elections*.^[6] The latest case, *Agcaoili v. Commission on Elections*,^[7] was decided after *Aguinaldo*. All of them involved such an issue. In two proceedings however, *Arcenas v. Commission on Elections*, already referred to, and thereafter *Laguda v. Commission on Elections*,^[8] the same principle was applied even if the grievances alleged would ordinarily call for an election protest. Except for *Singco*, I was the ponente in all such cases. Under the circumstances, I am unable to join the majority of my brethren in the approach followed, even with due recognition of the high persuasive quality of Justice Makasiar's opinion. None-theless, conformity by the Commission on Elections to the doctrine in the cited cases therein, namely, *Lagumbay v. Commission on Elections*,^[9] *Diaz, Sr. v. Commission on Elections*,^[10] *Estaniel v. Commission on Elections*,^[11] and *Aratuc v. Commission on Elections*,^[12] precludes a finding that there was a grave abuse of discretion on the part of respondent Commission, especially so as the assailed resolution was issued, on March 12, 1980, four months before our decision in *Venezuela*. Hence my concur-rence in the result.

A word more on the *Aguinaldo* principle. No single formulation, of course, can capture the essence of, much less inevitably call for application in, each and every case, in view of the multiplicity of situations that give rise to litigations in any branch of the law. It is not surprising therefore that the *Aguinaldo* ruling, sufficient-ly broad and flexible as it is, did not necessarily call for automatic adherence. A month after its promulgation, in the first decision handed down by this Court in February, *Omar v. Commission on Elections*,^[13] there was, if not a retreat from, a qualification, to application. The reliance by the majority of the Court was on a 1941 landmark decision, *Sumulong v. Commission on Elections*,^[14] with its recognition of the realities and complexities of the broad discretion conferred on the Commission on Elections. Thus the assailed resolution of the Commission on Elections was sustained, as against the view that our holding in *Aguinaldo* should be controlling. I would view our decision as susceptible to an interpretation of the need for critical and sustained analysis of the peculiar facts and circumstances of each case: The *Aguinaldo* principle should not be turned into a dogma, but, with due respect, I submit that it should not be stripped of its authoritative character.

There is not much more to add, except to reaffirm that were it not for the norm thus consistently followed, I would not have limited my concurrence in the result. I find highly persuasive the view that Section 175 of the 1978 Election Code should be given a broad interpretation. To my mind, the power of the Commission on Elections "to suspend a canvass or suspend or annul a proclamation of a candidate-elect on the ground that irregularities or mistakes in the preparation of the returns such as tamper-ing, altering, falsifying of returns, material defects or discrepancies of election returns exist [even] if based on grounds not apparent on the face of the election returns but indirectly affecting their integrity."^[15] The Commission on Elections is a constitutional creation. It is entrusted with functions so essential to the democratic process. The 1973 Constitution increased the scope of its

authority. It is now the sole arbiter of election contests involving legislators as well as provincial and city officials.[16] It would not be in consonance with the principle consistently adhered to by this Court, where a constitutional agency is involved, one moreover expected to live up to the ideal of independence, that the statutory competence conferred on it be viewed restrictively. A niggardly construction lacks justification. Since the leading case of *Gomez v. Ventura*,^[17] a 1930 decision, the maxim, *expressio unius est exclusio alterius* has not been interpreted so narrowly, for it is, to quote from its ponente, Justice Romualdez, "applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the Legislature."^[18]

One last point. The Constitution empowered the Commission On Elections to decide all administrative questions except' the right to vote.^[19] So it was under the 1935 Constitution.^[20] All that it signified then was that it was not the Commission on Elections that can determine whether an individual should be included in or excluded from the list of voters. So it is now. The right to vote in that sense had a literal connotation, an elector going to the polling place and casting his vote because under the Constitution and the Election Code he is entitled to do so: It cannot be construed as a restriction on the power of the Commission on Elections in any appropriate proceeding thereafter to ascertain whether or not anomalies were committed and who were responsible for the same. Its power under the present Constitution is broader. It can decide all election contests.^[21] It appears to me then that there is even less persuasiveness to the contention of petitioner as to the scope of such limitation.

As set forth at the outset, I concur in the result reached by the Court, dissenting, however, from its failure to apply the Aguinaldo principle.

[1] G.R. No. 53953, February 5, 1981. There was a concurring opinion by Justice Teehankee.

[2] *Ibid*, 2.

[3] G.R. No. 53532, July 25, 1980.

[4] G.R. No. 52527, September 4, 1980.

[5] G.R. No. 54039, November 28, 1980.

[6] G.R. No. 52830, November 28, 1980.

[7] G.R. No. 52791, February 26, 1981, Makasiar, J., in the result.

[8] G.R. No. 53747, February 20, 1981.

[9] L-25444, January 31, 1966, 16 SCRA 175.

[10] L-33378, November 29, 1971, 42 SCRA 426.

[11] L-33453, November 29, 1971, 42 SCRA 436.

[12] L-49705, February 8, 1979, 88 SCRA 251.

[13] G.R. No. 53962, February 3, 1981. Justices Teehankee and Abad Santos dissented. My concurrence was limited to the lack of necessary votes in favor of the petition.

[14] 73 Phil. 247 (1941)

[15] Opinion of the Court, 41.

[16] According to Article XII, C, Section 2, par. (2) of the Constitution, it shall be "the sole judge of all contests

relating to the elections, returns, and qualifications of all Members of the National Assembly and elective pro-vincial and city officials."

[17] 54 Phil. 726.

[18] Ibid, 733. Outside of *People v. Manantan*, reported in 115 Phil. 657 (1962) and referred to extensively in the opinion of the Court, mention may like-wise be made of *Tavora v. Gabina*, 79 Phil. 421 (1947); *Manabat v. De Aquino*, 92 Phil. 1025 (1953) and *Escribano v. Avila*, L-30375, September 12, 1978, 85 SCRA 245.

[19] According to Article XII, C, Section 2, par. 3 of the Constitution: "The Commission on Elections shall have the following powers and functions: * * * (3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters."

[20] Cf. Article X, Section 2 of the 1935 Constitution.

[21] According to Article XII, C, Section 2, par. 2 of the Constitution: "The Commission on Elections shall have the following powers and functions: (2) Be the sole judge of all contests relating to the election, returns, and qualifications of all Members of the National Assembly and elective provincial and city officials."

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DISSENTING OPINION

TEEHANKEE, J.:

In the last elections held over a year ago on January 30, 1980 for the mayoralty of the town of Tanauan, Batangas, petitioner Sotero Olfato, oppositionist candidate (NP), with his ticket defeated the KBL ticket led by then incumbent mayor-respondent Francisco E. Lirio with a margin of 1, 579-votes out of 29, 007 votes cast. Olfato with his co-petitioners were proclaimed on February 5, 1980. Lirio filed on February 2, 1980 and February 9, 1980 his original and "supple-mentary" petitions with the Comelec for suspension or annulment of canvass and proclamation of the winners on the grounds of alleged "terrorism and massive disenfranchisement," and use of "fake and flying voters." On February 9, 1980, the defeated KBL incumbent governor of the province, J. Antonio Leviste, had filed a similar petition against the proclamation of the winner NP candidate. Jose C. Laurel V for governor-ship of the entire province of Batangas on the same grounds and prayed among others for a "joint hearing" of the two petitions, Leviste's and Lirio's.

The Comelec on February 13, 1980 suspended the effects of the proclamation of Olfato and required him to answer Lirio's supplementary petition (which be it noted was filed only after Olfato's pro-clamation on February 5, 1980). Lirio filed on February 15, 1980 an election protest ex cautela against Olfato with the Batangas CFI, stating as grounds therefor the very same grounds alleged in his Comelec petition.

On February 16, 1980, the Comelec denied Leviste's petition for suspension/annulment of Laurel's proclamation, ruling that the questions raised were "matters (which) should have been raised be-fore the Provincial Board of Canvassers" but were not. Olfato invoked with Comelec the same treatment of denial of Lirio's petition, since the

grounds alleged in both petitions were the very same. At first, the Comelec refused prompting Olfato to file on February 26, 1980 his original petition in this case to stop further proceedings on Lirio's petition in the Comelec but on the same date, February 26, 1980, it ruled Lirio's grounds for annulment of Olfato's proclamation "are proper grounds for an election protest" and resolved "to dismiss Lirio's petition and to reinstate the proclamation made by the [municipal] board of canvassers in favor of the respondent [Olfato] and his entire ticket.

Olfato and his ticket were once again proclaimed on February 27, 1980, took their respective oaths of office and duly assumed their office on the scheduled date of commencement of their term on March 3, 1980.

With reference to Olfato's original petition filed with this Court, Lirio filed on March 10, 1980 his manifestation that "since the petitioners [Olfato, et al] were allowed to be proclaimed" in the Comelec February 26, 1980 resolution, "the present petition has become moot and academic;" and on March 11, 1980, the Solicitor General on behalf of the Comelec filed its manifestation for suspension of the period to comment "since it is likely that this case may indeed become moot and academic," in view of Olfato's proclamation and assumption of office.

Earlier, Leviste's petition with this Court in G. R. No. 52687, questioning the dismissal by Comelec of his petition for annulment of the proclamation of Governor-elect Laurel was given short shrift and dismissed on February 26, 1980. But Olfato's travails were to be far from over. The Comelec was to issue on the very next day, March 12, 1980, one of its "flip-flopping resolutions" - to borrow a phrase from Mr. Justice Abad Santos in his dissent in *Omar vs. Comelec*[1] - granting Lirio's motion for reconsideration of its Resolution of February 26, 1980 reinstating Olfato's proclamation which had terminated the pre-proclamation controversy, reinstating Lirio's petition for annulment of proclamation and "considering the proclamation made in favor of Sotero Olfato and his ticket as temporary in nature as it is subject to the final outcome of P. P. No. 118."

Hence, the amended petition at bar filed by Olfato on March 21, 1980 to annul the aforesaid Comelec resolution. We issued on April 10, 1980 our temporary restraining order restraining the Comelec from "(a) enforcing its Minute Resolution No. 9558 in P. P. Case No. 118; (b) taking any further action or proceeding in said P. P. Case No. 118; and (c) performing any act or taking any action or proceeding of whatever nature that may prevent or obstruct the lawful exercise and discharge by petitioners of their powers and functions as duly elected municipal officials of Tanauan, Batangas."

I dissent from the majority decision sustaining the questioned Comelec resolution for the following principal reasons:

1. Pursuant to the Comelec's earlier resolution of February 26, 1980 correctly ruling that Lirio's grounds in his petition "are proper grounds for an election protest" and reinstating Olfato's February 5, 1980 proclamation, Olfato was proclaimed once again on February 27, 1980 and duly assumed the office of Tanauan mayor to which he had been elected and has discharged the functions thereof since March 3, 1980 to date. His title to the office thereby became an accomplished fact and there is no longer any pre-proclamation case, the same having become moot. Indeed, Lirio himself manifested that this case "has become moot and academic" with Olfato's proclamation (*supra*, at page 2).
2. Under Section 175 of the 1978 Election Code, the decisions, orders or rulings of the Comelec in pre-proclamation controversies are final and executory. Its February 26, 1980 resolution dismissing Lirio's petition and reinstating Olfato's proclamation was executed with Olfato's oath and assumption of office and can no longer be undone as a *fait accompli* at this late stage more than one year after the elections.
3. The majority decision at bar is thus in disharmony and conflict with our latest decision in *Laguda vs. Comelec*[2] issued just this month wherein the Chief Justice, speaking for a unanimous Court, held that "the

question at issue has become moot and academic as apparently the Mayor-elect had assumed his position. No useful purpose would thereby be served by granting the remedy sought to enjoin the canvassing in certain precincts," particularly in the case at bar, wherein Lirio's prayer in his original petition with the Comelec was that "a new election be held for Tanauan allowing particularly the electors who were illegally disenfranchised to vote"[3] while he prayed in his supplementary petition of February 9, 1980 that "after hearing and the deductions (sic) of votes of the fake voters and voting by the disenfranchised voters and inclusion of their votes which we allege will materially affect the results of the election in favor of the herein movant Francisco E. Lirio, that the latter be the one declared Mayor-Elect of Tanauan, Batangas in the elections of last January 30, 1980." [4]

4. There is no beast nor fowl as a "temporary proclamation" as the Comelec would belatedly term its February 26, 1980 proclamation of Olfato in its "flip-flopping" March 12, 1980 resolution. One can search the codes and statute and decree books in vain for any such creature. The basic and cardinal rule of elections is that the canvass and proclamation be terminated once commenced "not later than seven o'clock in the evening of election day, [the board] shall meet continuously from day to day until the canvass is completed (and) shall prepare a certificate of canvass and on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast....." [5] since the outcome of the election is of the utmost public interest and should be immediately announced.[6]

5. Thus, pre-proclamation controversies are summary proceedings that are just as summarily resolved. Here, the Comelec did so summarily resolve the same, dismissing Lirio's petition and correctly ruling that his grounds of alleged terrorism and cheating were grounds proper for an election protest. The Court's unanimous ruling and rationale in the latest case of Laguda, supra, that "an inquiry on the grounds relied upon to enjoining the canvassing of election returns would necessarily entail the presentation of conflicting testimony. To pass on such a complex matter in a summary proceeding would be to run the risk that the decision arrived at would not reflect the realities of the situation. It could even be susceptible to the charge that the whole truth did not come to light. Under the circumstances, an election protest clearly is the more appropriate remedy," [7] is fully applicable and controlling here, mutatis mutandis. It is quite obvious that what Lirio wants, a "new election" or the exclusion of votes of alleged fake or flying voters and inclusion of votes of his alleged disenfranchised voters which require extensive full-dress hearing and reception of evidence, testimonial and documentary, and expert witnesses can be done, not in a pre-proclamation summary proceeding but in an election protest, if at all.

6. This is but to reaffirm the doctrine and ruling firmly adopted by the Court since the case of Arcenas vs. Comelec wherein the Chief Justice as ponente for a unanimous Court held that "It is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable" and "resort (must) be had to the remedy of an election protest or a quo warranto, whichever is proper." [8]

7. What Lirio is seeking is to identify the alleged fake votes, exclude them, and have a "new election" to allow his allegedly "disenfranchised voters" to vote. This can be done, if at all (at least the exclusion of alleged fake votes), only in an election protest over which the Comelec has no jurisdiction since Section 190 of the 1978 Election Code vests exclusive original jurisdiction over election protests for municipal offices "with the proper Court of First Instance" and requires their filing "within ten days after the proclamation of the election."

8. This is not a case of failure of elections whereby under Section 7 of the 1978 Election Code or Section 5 of Batas Blg. 51 "when the election for a local office has failed to take place on the date fixed by law, or is suspended, or such election results in a failure to elect" because of "force majeure, violence, terrorism or fraud" the Comelec may "after due notice and hearing, call for the holding or continuation of the election as soon as practicable," [9] as in the aborted election for Davao City mayor which "continuation" has not been called by

Comelec notwithstanding our Resolution of May 16, 1980 therein for the continuation of the election therein by the Comelec upon 15 days notice on all candidates.[10] No such claim has been made by Lirio. The elections in Tanauan were duly held and the results proclaimed with Olfato thereafter having been re-proclaimed as the duly elected mayor by force of Comelec's own February 26, 1980 resolution. So how can Lirio ask for a "new election"?

9. In fact and in law, Lirio did file since February 15, 1980 his election protest with the Batangas Court of First Instance within the mandatory 10-day period. The "ex cautela" notice made by Lirio in his said protest was in a mere footnote stating that "Protestant has a Petition with the COMELEC for the annulment of the proclamation of the protestee. Because the COMELEC has only suspended the effects of the proclamation, this protest is being filed ex abundante ad cautela." [11] It is at once obvious that the notice was a limited one - "because the Comelec has only suspended the effects of [Olfato's] proclamation" and that upon the Comelec's issuance of its February 26, 1980 resolution dismissing Lirio's petition for annulment and reinstating Olfato's proclamation and the case at bar having become moot as per Lirio's own manifestation, the "ex cautela" notice became functus officio.

10. Prescinding from the foregoing and assuming that the Comelec could declare its own February 26, 1980 proclamation of Olfato as a "temporary proclamation" in its "flip-flopping" March 12, 1980 Resolution, still the said Resolution must be set aside since to allow further proceedings in the Comelec on Lirio's petition as a pre-proclamation case, when he has already his pending election protest in the Court of First Instance, would be an exercise in futility. Section 175 of the 1978 Election Code now explicitly specifies three cases exclusively, under Sections 172, 173 and 174 thereof, namely, only in cases of incomplete returns, tampered or falsified returns or discrepant returns, when the Comelec may order the suspension or annulment of the proclamation of a candidate-elect.[12]

11. The present case wherein Lirio claims alleged "terrorism and massive disenfranchisement" and use of "fake and flying voters" is patently not a case of incomplete, discrepant or tampered or falsified returns wherein the Comelec may annul the proclamation of Olfato which it itself had ordered, after finding correctly that they were "proper grounds for an election protest." More so is this when these grounds are not backed by on-the-spot reports on election day itself considering the vast resources at Lirio's disposal as the then incumbent mayor-official candidate of the dominant KBL.

12. While it may be, as stated by the majority decision, that "the enumeration made in Section 175 only emphasizes the old rulings of this Court and statutory provisions on the matter affirming the power of the Comelec to suspend or annul a proclamation based on material defects in the election returns, tampered, altered, falsified election returns or in case of discrepancies in the election returns" (with Sections 172-174 of the present 1978 Code corresponding to Sections 204-206 of the 1971 Code), there is this one big difference. The 1971 Election Code contained no exclusive enumeration of the specific cases in which the Comelec could suspend or annul a proclamation, whereas now the 1978 Election Code filled the void and explicitly specified, and limited the Comelec's broad-power as "the sole judge of all pre-proclamation controversies" to the three grounds above mentioned. The enumerated grounds are what have by usage, definition and doctrinal jurisprudence been considered appropriate for pre-proclamation controversies based on what appears on the face of the returns themselves (including obviously manufactured returns as in the Lagumbay, Batanes and notorious Mindanao provinces).

13. *Inclusio unius est exclusio alterius*. The Court is bound by the exclusive enumeration in Section 175 of the Code. The Court cannot legislate and substitute, its judgment for that of the lawmaker and stretch the grounds, wherein the Comelec may summarily suspend or annul the proclamation in pre-proclamation controversies, as the majority decision would, by adding post-proclamation complaints and proper grounds for election protests,

thereby obliterating the distinction between summary and pre-proclamation proceedings in the Comelec and full-dress hearings and reception of complete testimonial and documentary evidence in the post-proclamation election protest in the proper courts of first instance. Contrary then to the majority decision's implication (at page 48) that the exclusive enumeration rule should not apply because "no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow, by not so including them," the great distinction between summary pre-proclamation controversies and post-proclamation full-dress election protests furnishes the reason for the exclusive enumeration; and "no manifest injustice" results therefrom, as Lirio has his pending election protest filed since a year ago on February 15, 1980 which is the proper remedy - as stressed by the Chief Justice in *Arcenas vs. Comelec*, supra[13], "for it would be time-consuming and in the end self-defeating if at this stage the pre-proclamation controversy is not laid to rest." A law that is clear needs no interpretation. As Justice Moreland stressed long ago: "if there were more application and less construction, there would be more stability in the law, and more people would know what the law is."13-a

14. The Comelec can hardly escape the charge of discrimination and applying a double standard in the disposition of the two identical petitions filed with it by the losers Lirio and Leviste against Olfato and Jose C. Laurel V for annulment of their respective proclamations as the duly elected mayor of Tanauan and governor of the province of Batangas, respectively, on the very same grounds and filed by the same counsel who asked in their behalf for "joint hearing" of the two petitions.

The Comelec dismissed Leviste's petition ruling that the questions raised "should have been [but were not] raised before the provincial board of canvassers." [14] And the matter ended there.

But in Olfato's case, despite its correct ruling - at Olfato's instance that the Comelec give him equal treatment and also dismiss Lirio's petition - that Lirio's grounds were proper for an election protest, aside from the fact that they were never originally raised before the canvassing board and therefore could no longer be questioned in the Comelec, it was inexplicably, with grave abuse of discretion and with lack of jurisdiction, to issue its "flip-flopping" Resolution of March 12, 1980 reinstating Lirio's dismissed petition for annulment of proclamation notwithstanding that Olfato's proclamation as confirmed expressly by it and assumption of office since March 3, 1980 to date had rendered the Lirio's petition moot and academic and laid to rest the pre-proclamation controversy.

15. The case of *Aratuc vs. Comelec*, [15] cited as the leading case by the majority decision (at page 42) is precisely authority for the original (correct, and final and executed) February 26, 1980 resolution dismissing Lirio's petition and declaring that his proper remedy is his election protest. The Court therein sustained the Comelec's refusal to examine the questioned returns and voting records of some 1, 659 voting centers in the Region XII (Central Mindanao) April 7, 1978 elections for the Interim Batasang Pambansa and dismissing the petitions (notwithstanding the then Chief Justice Fred Ruiz Castro's vigorous dissent, questioning the said returns which showed a 97% to 100% turnout of voters in several municipalities of the two Lanao provinces despite military operations there and the past election history of which is replete with the perpetration of massive frauds, terrorism and scandalous substitutions of voters [unlike Tanauan or Batangas in the case at bar], the "mysterious disappearance" of the voting records of some 408 voting centers, and questioning likewise the inclusion in the canvass of the returns from some 100 voting centers "when the ballot boxes corresponding there-to were found to be completely empty" and of almost 200 other returns whose "ballot boxes [were] found to be without padlocks.") [16]

In so doing, the Court quoted with approval the Comelec's ratio decidendi as follows:

"First of all this Board was guided by the legal doctrine that canvassing boards must exercise 'extreme caution' in rejecting returns and they may do so only when the returns are palpably irregular. A conclusion that an

election return is obviously manufactured or or false and consequently should be disregarded in the canvass must be approached with extreme cau-tion, and only upon the most convincing proof. Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disenfranchise-ment of those who exercised their right of suffrage. (Anni vs. Isquierdo, et al., L-35918, June 28, 1974; Villalon vs. Comelec, L-32008, August 31, 1970; Tagoranao vs. Comelec, 22 SCRA 978). In the ab-sence of strong evidence establishing the spurious-ness of the return, the basic rule of their being ac-corded prima facie status as bona fide reports of the results of the count of the votes for canvassing and proclamation purposes must be applied, without pre-judice to the question being tried on the merits with the presentation of evidence, testimonial and real, in the corresponding electoral protest. (Bashier vs. Comelec, L-33692, 33699, 33728, 43 SCRA 238, February 24, 1972). The decisive fact or is that where it has been duly determined after investigation and examination of the voting and registration records that actual voting and election by the registered voters had taken place in the questioned voting centers, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters, but must be accorded prima facie status as bona fide reports of the results of the voting for canvassing and proclamation purposes. Where the grievances relied upon is the commission of irregularities and violation, of the Election Law the proper remedy is election pro-test. (Anni vs. Isquierdo, et al., supra). (P. 59, Record, L-49705-09)."[17]

The Court expressly found that the citations of jurisprudence "arose from similar situations in the very venues of the actual milieu of the instant cases, and we are satisfied they do fit our chosen posture" and held that "We find the afore-quoted doctrines compelling as they re-veal through the clouds of existing jurisprudence the polestar by which the future should be guided in delineating and circumscribing separate spheres of action of the Commission as it functions in its equally important dual role just indicated bearing as they do on the purity and sanc-tity of elections in this country." Unfortunately, the polestar of Aratuc - that election protest is the proper remedy of Lirio - has somehow not been followed in the case at bar.

I vote accordingly to grant the amended petition and to set aside the Comelec resolution of March 12, 1980.

[1] G.R. No. 53962, Feb. 3, 1981.

[2] G.R. No. 53747, February 20, 1981; Emphasis supplied.

[3] Lirio's petition of February 2, 1980 in Comelec, Rollo, page 29; emphasis supplied.

[4] Lirio's supplementary petition of February 9, 1980 in Comelec, Rollo, page 35; emphasis supplied.

[5] Section 170, 1978 Election Code.

[6] In the last U.S. presidential elections in November, 1980, the results were known and now President Reagan's victory proclaimed within hours of the closing of the polls.

[7] Emphasis supplied.

[8] G.R. No. 54039, November 28, 1980, citing the precedents of Venezuela, Villegas and Potencion; see also Singco vs. Comelec, G. R. No. 52830, decided also on November 28, 1980.

[9] B.P. Blg. 51, section 5.

[10] G.R. No. 52758, Elias B. Lopez vs. Comelec.

[11] Rollo, at page 106.

[12] "SEC. 175. Suspension and annulment of proclamation. -The Commission shall be the sole judge of all

pre?proclamation controversies and any of its decisions, orders or rulings shall be final and executory. It may, motu proprio or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 thereof. (1978 Election Code).

[13] See footnote 8.

13-a Lizarraga Hnos vs. Yap Tico, 24 Phil. 504,513 (1913).

[14] Supra, at page 2 hereof.

[15] 88 SCRA 251 (1979).

[16] Idem, at pages 284-288.

[17] Idem, at pages 282-283; emphasis supplied.

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