

**EDGAR U. ILARDE, PETITIONER, VS. COMMISSION ON ELECTIONS, MAMINTAL TAMANO AND RAFAEL PALMARES, RESPONDENTS.***G.R. No. L-31446. January 23, 1970*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/96639b66cd93/>**PER CURIAM:**

The Commission on Elections (COMELEC) in its certification of canvass of December 27, 1969 of the votes cast for the office of senator in the regular elections held on November 11, 1969, certified that the following candidates received the highest number of votes cast therein in the order named: Arturo M. Tolentino, Gil J. Puyat, Jose W. Diokno, Lorenzo Sumulong, Ambrosio Padilla, Gerardo M. Roxas and Rene Espina, with votes ranging from 4,826,809 votes for Senator Tolentino as first placer to 3,668,334 for Senator Espina as 7th placer, and accordingly proclaimed them as the first seven duly elected senators in the said elections.

The COMELEC also certified that respondent Mamintal A. Tamano was the eighth winning candidate for senator with 3,458,193 votes, followed by his co-respondent Rafael Palmares in ninth place with 3,393,677 votes, and by petitioner Edgar U. Ilarde in tenth place with 3,154,908 votes.

The COMELEC, however, did not proclaim respondent Tamano pending finality of its unanimous resolution dated December 26, 1969, denying the petition filed with it by petitioner Ilarde to exclude from the canvass the returns from 3,572 precincts from various municipalities all over the Philippines involving 487,323 votes, and likewise denying the petition filed with it by respondent Palmares for the exclusion of the returns from 852 precincts from four provinces in Mindanao involving a difference of 85,138 votes in favor of respondent Tamano, and thereby resulting in Tamano maintaining his eighth position among the winners in the senatorial canvass.

The COMELEC in its resolution dated January 3, 1970 denied petitioner's Motion for Reconsideration but granted petitioner's request for a five-day extension to file a petition with the Court and secure a restraining order against the proclamation of respondent Tamano as the eighth senator-elect.

Hence the present petition wherein it is alleged that the COMELEC acted in excess of its jurisdiction and/or with grave abuse of discretion in depriving petitioner of fair and adequate opportunity to present his evidence and thereby substantiate his objections to the questioned returns and that petitioner has no other adequate or speedy remedy in the ordinary course of law. Petitioner prays that the Court set aside the questioned COMELEC resolutions and order respondent COMELEC "to give (him) the chance to cross-examine the experts whose opinions were relied upon by it, to instruct the different teams to make the reports in compliance with its resolution of December 19, 1969, and thereafter, to receive whatever evidence the petitioner may adduce in support of his Amended Petition (Annex "A"), and to decide thereafter, accordingly."

Respondent Palmares filed in due course his "Answer with Affirmative Relief," joining petitioner's prayer for the setting aside of the questioned COMELEC resolutions and reiterating the prayer in his petition with the COMELEC that the court order the exclusion from the canvas of the votes returned from the 852 precincts questioned by him on the ground of statistical improbability. The Court issued a temporary restraining order, required the respondents to file their answers and heard the parties on January 21, 1970.

In the 3,572 precincts involving 487,323 votes questioned by petitioner, respondents Tamano and Palmares obtained in the senatorial canvass 357,884 votes and 298,403 votes, respectively, with petitioner obtaining 26,578 votes. The difference between eighth place winner Tamano and ninth-placer Palmares is 64,516 votes, while Tamano's margin over tenth-placer Ilarde is 303,285 votes. Petitioner thus claims that if the 3,572 disputed precincts were excluded from the canvass, he would displace Tamano from eighth position, (since Tamano's overall majority of 303,285 votes would be wiped out with the exclusion of Tamano's 357,884 votes and of Ilarde's 26,578 votes in the disputed precincts, or a net deduction of 331,306 votes from Tamano's over-all total votes, leaving a deficiency of 28,021 which would then presumably be petitioner's winning margin, if he could otherwise overcome Palmares's over-all 238,769-vote lead over him). Palmares on the other hand, claims that excluding Tamano's 123,338 votes and his 38,200 votes from 852 precincts in four Mindanao provinces questioned by Palmares would result in his displacing Tamano from the eighth winning position, (since Tamano's over-all winning margin of 64,516 votes would thereby be wiped out by the exclusion of the disputed difference of 85,138 votes,[1] leaving a deficiency of 20,522 votes which would then be Palmares' over-all winning margin).

Petitioner Ilarde classified the disputed 3,572 precinct returns into four categories which shall now be taken up seriatim.

1. Under Categories A, B-1, B-2 and b-3, petitioner seeks the exclusion of the questioned returns for being statistically improbable while admitting that they do not fall squarely within the doctrine of statistical improbability enunciated in the case of *Lagumbay vs. Climaco*, L-25444, January 31, 1966. The Court finds that the COMELEC adhered to its admonition to canvassers in subsequently decided cases of proceeding With extreme caution in rejecting returns as obviously manufactured because of statistical improbability, and of viewing the doctrine restrictively so as not to result in the disenfranchisement of innocent voters, and therefore ruled properly against petitioner's urging to expand the doctrine's application.[2] The thrust of all the subsequent cases is to restrict the doctrine of the *Lagumbay* case to the unique uniformity of tally in favor of candidates belonging to one party and the systematic blanking of the opposing candidates in the same locality, such as to make the fraud "palpable from the return itself...(and) there is no reason to accept it and give it prima facie value", and leading to no other reasonable conclusion than that the returns were obviously manufactured because they were as "utterly improbable and clearly incredible" as "to win the sweepstakes ten times." Here, the citing of certain instances where Tamano obtained 100% of the votes cast or an overwhelming majority thereof in his bailiwicks in Mindanao as against a much lesser number of votes cast for his opponents is inadequate to justify the exclusion of the returns as obviously manufactured for reasons of statistical improbability. The same finding holds true with regard to the instances cited where the COMELEC ruled against the exclusion of some returns questioned by petitioner, since the COMELEC found that the number of votes cast in favor of Tamano were not greatly in excess of the registered number of voters and could be attributed to mistakes or errors of the poll inspectors, while it had rejected other returns where such excess was very great. (*Alonto vs. Comelec*, supra.)

Without passing upon the Court's appellate jurisdiction as to the affirmative relief sought by Palmares, with respect to the 852 Mindanao returns questioned by him, notwithstanding his not having appealed from the December 26, 1969 resolution on the ground that his Motion for Reconsideration is still pending with the COMELEC, this ruling likewise disposes of the issue raised by Palmares. Admittedly, Palmares stakes his claim as winner on the expansion of the application of the *Lagumbay* doctrine, which is herein rejected. The following table compiled by the Court from the COMELEC's canvassed votes, (Annex 4, COMELEC's Answer), showing that the three contenders obtained an overwhelming majority of the votes cast in their respective home bases of Lanao del Sur and Marawi City for Tamano, Iloilo Province and Iloilo City for Palmares, and Camarines Sur and Iriga City for Ilarde, bears out the validity of the Court's restrictive view against any expansion of the *Lagumbay* doctrine of statistical improbability, for otherwise the overwhelming majorities received by the parties would have to be cancelled out, and in Palmares' case, he would be the loser by 56,002 cancelled votes as against Tamano.

## VOTES RECEIVED BY

PLACE

TAMANO

PALMARES

ILARDE

Lanao del Sur

78,922

18,982

11,024

Marawi City

12,631

2,316

2,157

Iloilo

51,343

162,077

66,386

Iloilo City

17,938

33461

22,335

Camarines Sur

46,062

46,460

108,756

Iriga City

3,803

3,840

11,214

2. The Court finds no compelling reason to set aside the COMELEC's ruling dismissing petitioner's objections to the returns under Categories B-4 and B-5. Assistant Director Arsenio Maclan of the Bureau of Printing had examined 51 sample returns in the presence of the parties' representatives and had duly reported to the

COMELEC that they were "genuine as far as the printing and other mechanical entries made on the form are concerned" and that the papers used "were the same papers stored and furnished by the Bureau of Supply." The COMELEC's Chief, Fingerprint Identification Bureau and the Assistant Director of the National Bureau of Investigation Questioned Documents Divisors had examined the specimens of returns alleged to be written by one hand, likewise in the presence of the parties' representatives, and had reported that "they were written by different persons."

Copies of said reports of Team VI were timely furnished the parties on December 23, 1969. (Annex 6, Comelec Answer). Petitioner, on the basis of general objections would insist that he be given the opportunity to cross-examine the experts whose opinions were relied upon by the COMELEC and present his own witnesses, notwithstanding his failure to specify his exceptions to their reports not only before the COMELEC but even here in his petition with this Court and in his Memorandum of January 21, 1970.

Petitioner has not made out a case for deviating from the policy of the election law that "pre-proclamation controversies should be summarily decided, consistent with law's desire that the canvass and proclamation be delayed as little as possible." (Alonto vs. Comelec, supra).

3. The Court finds that petitioner has not substantiated his complaint that the procedure followed by the COMELEC in the canvassing was "very illogical and very unsystematic" and that it acted "with extreme haste." Petitioner makes this charge particularly with reference to the different objections raised by him under Category C showing allegedly fatal defects, as listed in his Amended Bill of Particulars and grouped into five main headings in the COMELEC resolution of December 26, 1969.

When the tabulation of senatorial votes was first started in November, 1969, the parties were represented and interposed their objections and observations on the returns. As stated in the COMELEC resolution, 590 returns were questioned and elevated to the COMELEC for ruling, out of which no less than 81 returns were found to be fatally defective and excluded from the canvass of votes for senator. Annexes 3, 3-1 to 3-6 of the COMELEC answer reproduce the numerous COMELEC resolutions numbering 81 issued continuously by it on December 2, 3, 4, 6, 8, 10 and 24, 1969 in resolving the controversial claims raised by the parties, as recorded therein.

The COMELEC later allowed petitioner to further amend and amplify his bill of particulars and placed at the disposal of the parties the election returns and the facilities of its office. It thereupon created under its December 19, 1969 resolution 6 three-member teams or committees of COMELEC lawyers, later increased to 16 teams, which re-examined for the second time, also in the presence of the parties' representatives 2,590 questioned returns. The reports of these 16 teams are submitted as Annexes 6, 6-1 to 6-15 of the COMELEC answer, and bear the signatures or initials of the three contending parties' representatives acknowledging receipt of copies thereof on December 23 and 24, 1969.

After going over the reports and recommendations of the 16 teams, the COMELEC found that the objections raised by Ilarde and Palmares "are substantiated only with respect to 294 out of the 2,590 returns examined. However, the defects in these 294 cases, involving 28,063 votes for Tamano, 20,264 votes for Palmares and 1,884 votes for Ilarde, are at most formal defects such as –

"Signatures appearing on the return different from those on the envelope.

"Incomplete signatures of members of the board of inspectors.

"Signatures on envelopes incomplete.

"Signatures on return or envelope written illegibly.

"Signatures on envelope appear to have been written by one person.

"Signatures on return appear to have been written by one person.

"Incomplete and/or no entry on data on votes.

"Votes for one senatorial candidate exceeded total actual voters.

"Tampered return containing erasures and alterations.

"Tampered seal on return or envelope."

which do not go into the substance of the manner of the preparation of the return as will affect its integrity or validity to warrant its being set aside and excluded from the canvass ... and even assuming them to be substantial and fatal to the validity of the returns, their totality would not affect the results."

The parties had one day from receipt of the team reports to submit their exceptions thereto. None was filed by petitioner, although he states in his Memorandum that he asked on December 23, 1969 for a 24-hour extension to file his Exception or Memorandum. His Motion for Reconsideration shows the voidness of the charge of prematurity and extreme haste that he makes against the COMELEC. (Annex H, Petition). The grounds that he gives therein, namely, failure of most of the teams to allow his representatives to insert into the minutes their observations and comments, his not being allowed to present his evidence and that his objection under Category D (returns obtained through force and violence) should include not only the 123 precincts specified by him but also all the other unspecified precinct returns with pending congressional contests on similar charges, do not detract from the correctness of the COMELEC resolution. If there were any untranscribed decisive observations that would have altered the COMELEC resolution, petitioner should have specified them with precision in his Motion for Reconsideration, but until now at this late hour he has yet to make them. As already indicated in paragraph 2 hereof, canvass proceedings are administrative and summary in nature, and a strong *prima facie* case backed up by a specific offer of the evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. Otherwise, the paralyzation of canvassing and proclamation proceedings leading to a vacuum in so important and sensitive an office as that of Senator of the Republic could easily be brought about - this time involving the eighth place and next time involving perhaps all the eight places, when it is considered that the position of senator is voted for, nation-wide by all the voters of the 66 provinces and 57 cities comprising the Philippines.

The personal review and initialing by the members of the COMELEC of each of the 3,572 returns involved negate the petitioner's unwarranted charge of "extreme haste."

4. The COMELEC did not err, finally, in ruling that it was not necessary to receive any evidence on the 123 returns questioned by petitioner as having been obtained through violence and force, (Category D) on the ground that the number of votes involved (Tamano - 7,724; Palmares - 12,552; and Ilarde - 1,209), would not affect the result, not to mention that no *prima facie* case to warrant the reception of evidence, e.g. affidavits of the chairmen and poll clerks of the precincts involved, has been presented by petitioner. The general allegation of petitioner that his objections include an unspecified number of precinct returns involved in congressional districts with pending cases due to terrorism and other similar charges is untenable. Aside from being unsubstantiated, the pendency of charges of returns having been obtained through force and violence in congressional districts does not automatically mean their applicability to the national office of senator.[3]

WHEREFORE, judgment is hereby rendered dismissing the petition and dissolving the temporary restraining order issued on January 10, 1969 by the Court. The Commission should therefore forthwith execute its Resolution dated December 26, 1969 and accordingly issue the corresponding Certification of Canvass of the votes cast for

respondent Tamano as the eighth winning candidate for Senator in the November 11, 1969 elections and proclaim him accordingly, not later than noon of Saturday, January 24, 1970. This decision shall be executory upon promulgation.

**NO COSTS.**

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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[1] Not 85,038 votes, as stated by Palmares in his Answer.

[2] Sangki vs. Comelec, L-28359, Dec. 26, 1967; Estrada vs. Comelec, L-28374, Dec. 29, 1967; Demafiles vs. Comelec, L-28396, Dec. 29, 1967; Alonto vs. Comelec, L-28290, Feb. 28, 1968; Tagoranao vs. Comelec, L-28950, March 12, 1968 and Una Kibad vs. Comelec, L-28469, May 7, 1968.

[3] See Alonto vs. Comelec, supra.

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