

TOMATIC ARATUC, SERGIO TOCAO, CISCOLARIO DIAZ, FRED TAMULA, MANGONTAWAR GURO AND BONIFACIO LEGASPI, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, REGIONAL BOARD OF CANVASSERS FO...*G.R. Nos. L-49705-09. February 08, 1979*

Ponente: BARREDO, J.

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Petition in G.R. Nos. L-49705-09 for certiorari with restraining order and preliminary injunction filed by six (6) independent candidates for representatives to the Interim Batasang Pambansa who had joined together under the banner of the Kunsensiya ng Bayan which, however, was not registered as a political party or group under the 1978 Election Code, P.D. No. 1296, namely Tomatic Aratuc, Sergio Tocaο, Ciscolario Diaz, Fred Tamula, Mangontawar Guro and Bonifacio Legaspi, hereinafter referred to as petitioners, to review the decision of the respondent Commission on Elections (Comelec) resolving their appeal from the rulings of the respondent Regional Board of Canvassers for Region XII regarding the canvass of the results of the election in said region for representatives to the I.B.P. held on April 7, 1978. Similar petition in G.R. Nos. L-49717-21, for certiorari with restraining order and preliminary injunction filed by Linang Mandangan, also a candidate for representative in the same election in that region, to review the decision of the Comelec declaring respondent Ernesto Roldan as entitled to be pro-claimed as one of the eight winners in said election.

The instant proceedings are sequels of Our decision in G.R. No. L-48097, wherein Tomatic Aratuc, et al. sought the suspension of the canvass then being undertaken by respondent Board in Cotabato City and in which canvass, the returns in 1,966 out of a total of 4,107 voting centers in the whole region had already been canvassed showing partial results as follows:

"NAMES OF CANDIDATES

NO. OF VOTES

1. Roldan, Ernesto (KB)

225,674

2. Valdez, Estanislao (KBL)

217,789

3. Dimaporo, Abdullah (KBL)

199,244

4. Tocaο, Sergio (KB)

199,062

5. Badoy, Anacleto (KBL)

198,956

6. Amparo, Jesus (KBL)

184,764

7. Pangandaman, Sambolayan (KBL)

183,646

8. Sinsuat, Datu Blah (KBL)

182,457

9. Baga, Tomas (KBL)

171,656

10. Aratuc, Tomatic (KB)

165,795

11. Mandangan, Linang (KB)

165,032

12. Diaz, Ciscolario (KB)

159,977

13. Tamula, Fred (KB)

153,734

14. Legaspi, Bonifacio (KB)

148,200

15. Guro, Mangontawar (KB)

139,386

16. Loma, Nemesio (KB)

107,455

17. Macapeges, Malamatna (Independent)

101,350

(Votes of the independent candidates who actually were not in contention omitted.)" (Page 6, Record, L-49705-09.)

A supervising panel headed by Commissioner of Elections, Hon. Venancio S. Duque had conducted hearings of the complaints of the petitioners therein of alleged irregularities in the election records in all the voting centers in the whole province of Lanao del Sur, the whole City of Marawi, eight (8) towns of Lanao del Norte, namely, Baloi, Karomatan, Matungao, Munai, Nunungan, Pantao Ragat, Tagoloan and Tangcal, seven (7) towns in Maguindanao, namely, Barrira, Datu Piang, Dinaig, Matanog, Parang, South Upi and Upi, ten (10) towns in North

Cotabato, namely, Carmen, Kabacan, Kidapawan, Magpet, Matalam, Midsayap, Pigcawayan, Pikit, Pres. Roxas and Tulunan, and eleven (11) towns in Sultan Kudarat, namely, Bagumbayan, Columbio, Don Mariano Marcos, Esperanza, Isulan, Kalamansig, Lebak, Lutayan, Palimbang, President Quirino and Tacurong, by reason of which, petitioners had asked that the returns from said voting centers be excluded from the canvass. Before the start of the hearings, the canvass was suspended, but after the supervisory panel presented its report, on May 15, 1978, the Comelec lifted its order of suspension and directed the resumption of the canvass to be done in Manila. This order was the one assailed in this Court. We issued a restraining order.

After hearing the parties, the Court allowed the resumption of the canvass but issued the following guidelines to be observed thereat:

"1. That the resumption of said canvass shall be held in the Comelec main office in Manila starting not later than June 1, 1978;

"2. That in preparation therefor, respondent Commission on Elections shall see to it that all the material election paraphernalia corresponding to all the voting centers involved in Election Cases Nos. 78-8, 78-9, 78-10, 78-11 and 78-12 are taken to its main office in Manila, more particularly, the ballot boxes, with their contents, used during the said elections, the books of voters or records of voting and the lists or records of registered voters, on or before May 31, 1978;

"3. That as soon as the corresponding records are available, petitioners and their counsel shall be allowed to examine the same under such security measures as the respondent Board may determine, except the contents of the ballot boxes which shall be opened only upon orders of either the respondent Board or respondent Commission, after the need therefor has become evident, the purpose of such examination being to enable petitioners and their counsel to expeditiously determine which of them they would wish to be scrutinized and passed upon by the Board as supporting their charges of election frauds and anomalies, petitioners and their counsel being admonished, in this connection, that no dilatory tactics should be indulged in by them and that only such records as would support substantial objections should be offered by them for the scrutiny by the Board;

"4. That none of the election returns referred to in the petition herein shall be canvassed without first giving the herein petitioners ample opportunity to make their specific objections thereto, if they have any, and to show sufficient basis for the rejection of any of the returns, and, in this connection, the respondent Regional Board of Canvassers should give due consideration to the points raised in the memorandum filed by said petitioners with the Commission on Elections in the above cases dated April 26, 1978;

"5. That should it appear to the Board upon summary scrutiny of the records to be offered by petitioners that there is sufficient indication that in the voting centers concerned, no election was actually held and/or that election returns were prepared either before the day of the election or at any other time, without counting the ballots or without regard thereto or that there has been massive substitution of voters, or that ballots and/or returns were prepared by the same groups of persons or individuals or outside of the voting centers, the Board should exclude the corresponding returns from the canvass;

"6. That appeals to the Commission on Elections from rulings of the Board may be made only after all the returns in question in all the above five cases shall have been passed upon by the Board and; accordingly, no proclamation shall be made until after the Commission shall have finally resolved the appeal without prejudice to recourse to this Court, if warranted as provided by the Code and the Constitution, giving the parties reasonable time therefor;

"7. That the copies of the election returns found in the corresponding ballot boxes shall be the one used in the canvass;

"8. That the canvass shall be conducted with utmost dispatch, to the end that a proclamation, if feasible, may

be made not later than June 10, 1978; thus, the canvass may be terminated as soon as it is evident that the possible number of votes in the still uncanvassed returns will no longer affect the general results of the elections here in controversy;

"9. That respondent Commission shall promulgate such other directive not inconsistent with this resolution as it may deem necessary to expedite the proceedings herein contemplated and to accomplish the purposes herein intended." (Pp. 8-9, Record.)

On June 1, 1978, upon proper motion, said guidelines were modified:

"x x x in the sense that the ballot boxes for the voting centers just referred to need not be taken to Manila, EXCEPT those of the particular voting centers as to which the petitioners have the right to demand that the corresponding ballot boxes be opened in order that the votes therein may be counted because said ballots unlike the election returns, have not been tampered with or substituted, in which instances the result of the counting shall be the basis of the canvass, provided that the voting centers concerned shall be specified and made known by petitioners to the Regional Board of Canvassers not later than June 3, 1978; it being understood, that for the purposes of the canvass, the petitioners shall not be allowed to invoke any objection not already alleged in or comprehended within the allegations in their complaint in the election cases above-mentioned." (Page 8, Id.)

Thus, respondent Board proceeded with the canvass, with the herein petitioners presenting objections, most of them supported by the report of handwriting and finger-print experts who had examined the voting records and lists of voters in 878 voting centers, out of 2,700 which they specified in their complaints or petitions in Election Cases 78-8, 78-9, 78-10, 78-11 and 78-12 in the Comelec. In regard to 501 voting centers, the records of which, consisting of the voters lists and voting records were not available and could not be brought to Manila, petitioners asked that the results therein be completely excluded from the canvass. On July 11, 1978, respondent Board terminated its canvass and declared the result of the voting to be as follows:

NAME OF CANDIDATE

VOTES OBTAINED

"VALDEZ, Estanislao

436,069

DIMAPORO, Abdullah

429,351

PANGANDAMAN, Sambolayan

408,106

SINSUAT, Blah

403,445

AMPARO, Jesus

399,997

MANDANGAN, Linang

387,025

BAGA, Tomas

386,393

BADOY, Anacleto

374, 933

ROLDAN, Ernesto

275,141

TOCAO, Sergio

239,914

ARATUC, Tomatic

205, 829

GURO, Mangontawar

190,489

DIAZ, Ciscolario

190,077

TAMULA, Fred

180,280

LEGASPI, Bonifacio

174,396

MACAPEGES, Malaman

160,271"

(Pp. 11-12, Record.)

Without loss of time, the petitioners brought the resolution of respondent Board to the Comelec. Hearing was held on April 25, 1978, after which hearing, the case was declared submitted for decision. However, on August 30, 1978, the Comelec issued a resolution stating inter alia that:

"In order to enable the Commission to decide the appeal properly.

"a. It will have to go deeper into the examination of the voting records and registration records and in the case of voting centers whose voting and registration records which have not yet been submitted for the Commission to decide to open the ballot boxes; and

"b. To interview and get statements under oath of impartial and disinterested persons from the area to determine whether actual voting took place on April 7, 1978, as well as those of the military authorities in the areas affected." (Page 12, Record, L-49705-09.)

On December 11, 1978, the Comelec required the parties "to file their respective written comments on the reports they shall periodically receive from the NBI-Comelec team of finger-print and signature experts within the inextendible period of seven (7) days from their receipt thereof". According to counsel for Aratuc, et al.; "petitioners submitted their various comments on the reports, the principal gist of which was that it would appear uniformly in all the reports submitted by the Comelec-NBI experts that the registered voters were not the ones

who voted as shown by the fact that the thumbprints appearing in Form 1 were different from the thumbprints of the voters in Form 5." But the Comelec denied a motion of petitioners asking that the ballot boxes corresponding to the voting centers the records of which are not available be opened and that a date be set when the statements of witnesses referred to in the August 30, 1978 resolution would be taken, on the ground that in its opinion, it was no longer necessary to proceed with such opening of ballot boxes and taking of statements.

For his part, counsel for petitioner Mandangan in G.R. No. L-49717-21 filed with Comelec on December 19, 1978 a Preliminary Memorandum. To quote from the petition:

"On December 19, 1978, the KBL, through counsel, filed a 'Preliminary Memorandum for the Kilusang Bagong Lipunan (KBL) Candidates on the Comelec's Resolution of December 11, 1978,' a xerox copy of which is attached hereto and made a part hereof as Annex 2, wherein they discussed the following topics: (I) Brief History of the Present Case; (II) Summary of Our Position and Submission Before the Honorable Commission; and (III) KBL's Appeal Ad Cautelam. And the fourth topic, because of its relevance to the case now before this Honorable Court, we hereby quote for ready reference:

"IV

"OUR POSITION WITH RESPECT TO THE RESOLUTION OF THE HONORABLE COMMISSION OF DECEMBER 11, 1978

"We respectfully submit that the Resolution of this case by this Honorable Commission should be limited to the precincts and municipalities involved in the KB's Petitions in Cases Nos. 78-8 to 78-12, on which evidence had been submitted by the parties, and on which the KB submitted the reports of their handwriting/finger-print experts. Furthermore, it should be limited by the appeal of the KB. For under the Supreme Court Resolution of May 23, 1978, original jurisdiction was given to the Board, with appeal to this Honorable Commission. Considerations of other matters beyond these would be, in our humble opinion, without jurisdiction.

"For the present, we beg to inform this Honorable Commission that we stand by the reports and findings of the COMELEC/NBI experts as submitted by them to the Regional Board of Canvassers and as confirmed by the said Regional Board of Canvassers in its Resolution of July 11, 1978, giving the 8 KBL candidates the majorities we have already above mentioned. The Board did more than make a 'summary scrutiny of the records' required by the Supreme Court Resolution, Guideline No. 5, of May 23, 1978. Hence, if for lack of material time we cannot file any Memorandum within the non-extendible period of seven (7) days, we would just stand by said COMELEC/NBI experts' reports to the Regional Board, as confirmed by the Board (subject to our appeal ad cautelam)."

"The COMELEC sent to the parties copies of the reports of the NBI-COMELEC experts. For lack of material time due to the voluminous reports and number of voting centers involved, the Christmas holidays, and our impression that the COMELEC will exercise only its appellate jurisdiction, specifically as per resolution of this Honorable Court of May 23, 1978 (in G.R. No. L-48097), we, the KBL, did not comment any more on said reports." (Pp. 5-6, Record, L-49717-21.)

On January 13, 1979, the Comelec rendered its resolution being assailed in these cases, declaring the final result of the canvass to be as follows:

"CANDIDATES

VOTES

VALDEZ, Estanislao

319,514

DIMAPORO, Abdullah

289,751

AMPARO, Jesus

286,180

BADOY Anacleto

285,985

BAGA Tomas

271,473

PANGANDAMAN, Sambolayan

271,393

SINSUAT, Blah

269, 905

ROLDAN, Ernesto

268,287

MANDANGAN, Linang

251,226

TOCAO, Sergio

229,124

DIAZ, Ciscolario

187,986

ARATUC, Tomatic

183,316

LEGASPI, Bonifacio

178,564

TAMULA, Fred

177,270

GURO, Mangontawar

163,449

LOMA, Nemesio

129,450"

(Page 14, Record, L-49705-09.)

It is alleged in the Aratuc petition that:

"The Comelec committed grave abuse of discretion, amounting to lack of jurisdiction:

"1. In not pursuing further the examination of the registration records and voting records from the other voting centers questioned by petitioners after it found proof of massive substitute voting in all of the voting records and registration records examined by Comelec and NBI experts;

"2. In including in the canvass elections returns from the voting centers whose book of voters and voting records could not be recovered by the Commission in spite of its repeated efforts to retrieve said records;

"3. In not excluding from the canvass returns from voting centers showing a very high percentage of voting and in not considering that high percentage of voting, coupled with massive substitution of voters is proof of manufacturing of election returns;

"4. In denying petitioners' petition for the opening of the ballot boxes from voting centers whose records are not available for examination to determine whether or not there had been voting in said voting centers;

"5. In not identifying the ballot boxes that had no padlocks and especially those that were found to be empty while they were shipped to Manila pursuant to the directive of the Commission in compliance with the Guidelines of this Honorable Court;

"6. In not excluding from the canvass returns where the results of examination of the voting records and registration records show that the thumbprints of the voters in CE Form 5 did not correspond to those of the registered voters as shown in CE Form 1;

"7. In giving more credence to the affidavits of chairmen and members of the voting centers, municipal treasurers and other election officials in the voting centers where irregularities had been committed and not giving credence to the affidavits of watchers of petitioners;

"8. In not including among those questioned before the Board by petitioners those included among the returns questioned by them in their Memorandum filed with the Commission on April 26, 1978, which Memorandum was attached as Annex 'I' to their petition filed with this Honorable Court G.R. No. L-48097 and which the Supreme Court said in its Guidelines should be considered by the Board in the course of the canvass (Guidelines No. 4)." (Pp. 15-16, Record, Id.)

On the other hand, the Mandangan petition submits that the Comelec committed the following errors:

"1. In erroneously applying the earlier case of *Diaz vs. Commission on Elections* (November 29, 1971; 42 SCRA 426), and particularly the highly restrictive criterion that when the votes obtained by the candidates with the highest number of votes exceed the total number of highest possible valid votes, the COMELEC ruled to exclude from the canvass the election returns reflecting such results, under which the COMELEC excluded 1,004 election returns, involving around 100,000 votes, 95% of which are for KBL candidates, particularly the petitioner Linang Mandangan, and which rule is so patently unfair, unjust and oppressive.

"2. In not holding that the real doctrine in the *Diaz Case* is not the total exclusion of election returns simply because the total number of votes exceed the total number of highest possible valid votes, but 'even if all the votes cast by persons identified as registered voters were 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 returns for Sagada, 'and that 'of the 2,188 ballots cast in Sagada, nearly one-half (1,012) were cast by persons definitely identified as not registered therein, or still more than 40% of substitute voting which was the rule followed in the later case of *Bashier/Basman* (*Diaz Case*, November 19, 1971, 42 SCRA 426, 432).

"3. In not applying the rule and formula in the later case of *Bashier and Basman vs. Commission on Elections*

(February 24, 1972, 43 SCRA 238) which was the one followed by the Regional Board of Canvassers, to wit:

'In *Basman vs. Comelec* (L-33728, Feb. 24, 1972) the Supreme Court upheld the ruling of the Comelec in setting the standard of 40% excess votes to justify the exclusion of election returns. In line with the above ruling, the Board of Canvassers may likewise set aside election returns with 40% substitute votes. Likewise, where excess voting occurred and the excess was such as to destroy the presumption of innocent mistake, the returns was excluded.

(COMELEC's Resolution, Annex 1 hereof, p. 22),

which this Honorable Court must have meant when its Resolution of May 23, 1978 (G.R. No. L-48097), it referred to 'massive substitution of voters.'

"4. In examining, through the NBI/COMELEC experts, the records in more than the 878 voting centers examined by the KB experts and passed upon by the Regional Board of Canvassers which was all that was within its appellate jurisdiction; its examination of more election records to make a total of 1,085 voting centers (COMELEC's Resolution, Annex 1 hereof, p. 100), being beyond its jurisdiction and a denial of due process as far as the KBL, particularly the petitioner Mandangan, were concerned because they were informed of it only in December, 1978, long after the case has been submitted for decision in September, 1978; and the statement that the KBL acquiesced to the same is absolutely without foundation.

"5. In excluding election returns from areas where the conditions of peace and order were allegedly unsettled or where there was a military operation going on immediately before and during elections and where the voter turn out was high (90% to 100%), and where the people had been asked to evacuate, as a ruling without jurisdiction and in violation of due process because no evidence was at all submitted by the parties before the Regional Board of Canvassers." (Pp. 23-25, Record, L-47917-21.)

Now, before discussing the merits of the foregoing contentions, it is necessary to clarify first the nature and extent of the Supreme Court's power of review in the premises. The Aratuc petition is expressly predicated on the ground that respondent Comelec "committed grave abuse of discretion, amounting to lack of jurisdiction" in eight specifications. On the other hand, the Mandangan petition raises pure questions of law and jurisdiction. In other words, both petitions invoke the Court's certiorari jurisdiction, not its appellate authority of review.

This is as it should be. While under the Constitution of 1935, "the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for "certiorari or review" shall be on the ground that the Commission "has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court" (Sec. 3, Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: "Any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof" (Section 11, Article XII c), even as it ordains that the Commission shall "be the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city officials" (Section 2 (2)).

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, 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. The framers of the new Constitution must be presumed to have definite knowledge of what it means to make the decisions, orders and rulings of the Commission "subject to review by the Supreme Court". And since instead of maintaining that provision intact, it ordained that the Commission's actuations be instead "brought to the Supreme Court on certiorari", We cannot insist that there was no intent to change the nature of the remedy, considering that the limited scope of certiorari, compared to a review, is well known in remedial law.

Withal, as already stated, the legislative construction of the modified pertinent constitutional provision is to the effect that the actuations of the Commission are final, executory and even inappealable. While such construction does not exclude the general certiorari jurisdiction of the Supreme Court which inheres in it as the final guardian of the Constitution, particularly, of its imperious due process mandate, it correspondingly narrows down the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review. We are of the considered opinion that the statutory modifications are consistent with the apparent new constitutional intent. Indeed, it is obvious that to say that actuations of the Commission may be brought to the Supreme Court on certiorari technically connotes something less than saying that the same "shall be subject to review by the Supreme Court", when it comes to the measure of the Court's reviewing authority or prerogative in the premises.

A review includes digging into the merits and unearthing errors of judgment, while certiorari deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous. Certiorari implies an indifferent disregard of the law, arbitrariness and caprice, an omission to weigh pertinent considerations, a decision arrived at without rational deliberation. While the effects of an error of judgment may not differ from that of an indiscretion, as a matter of policy, there are matters that by their nature ought to be left for final determination to the sound discretion of certain officers or entities, reserving it to the Supreme Court to insure the faithful observance of due process only in cases of patent arbitrariness.

Such, to Our mind, is the constitutional 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 concomittant powers, it is but proper that the Court should accord the greatest measure of presumption of regularity 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, but the fact that actually some of them have had stints in the arena of politics should not, unless the contrary is shown, serve as basis for denying to its actuations the respect and consideration that the Constitution contemplates should be accorded to it, in the same manner that the Supreme Court itself which from time to time may have members drawn from the political ranks or even from the military is at all times deemed insulated from every degree or form of external pressure and influence as well as improper internal motivations that could arise from such background or orientation.

We hold, therefore, that under the existing constitutional and statutory provisions, the certiorari jurisdiction of the Court over orders, rulings and decisions of the Comelec is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process. Accordingly, it is in this light that We shall proceed to examine the opposing contentions of the parties in these cases.

THE MANDANGAN CASE

Being more simple in Our view, We shall deal with the petition in G.R. No. L-49717-21 first.

The errors assigned in this petition boil down to two main propositions, namely, (1) that it was an error of law on the part of respondent Comelec to have applied to the extant circumstances hereof the ruling of this Court in *Diaz vs. Comelec*, 42 SCRA 426 instead of that of *Bashier vs. Comelec*, 43 SCRA 238; and (2) that respondent Comelec exceeded its jurisdiction and denied due process to petitioner Mandangan in extending its inquiry beyond the election records of "the 878 voting centers examined by the KB experts and passed upon by the Regional Board of Canvassers" and in excluding from the canvass the returns, showing 90 to 100% voting, from voting centers where military operations were certified by the Army to be going on, to the extent that said voting centers had to be transferred to the poblaciones, the same being unsupported by evidence.

Anent the first proposition, it must be made clear that the *Diaz* and *Bashier* rulings are not mutually exclusive of each other, each being an outgrowth of the basic rationale of statistical improbability laid down in *Lagumbay vs. Comelec* and *Climaco*, 16 SCRA 175. Whether they should be applied together or separately or which of them should be applied depends on the situation on hand. In the factual milieu of the instant case as found by the Comelec, We see no cogent reason, and petitioner has not shown any, why returns in voting centers showing that the votes of the candidate obtaining the highest number of votes exceeds the highest possible number of valid votes cast therein should not be deemed as spurious and manufactured just because the total number of excess votes in said voting centers were not more than 40%. Surely, this is not the occasion, considering the historical antecedents relative to the highly questionable manner in which elections have been held in the past in the provinces herein involved, of which the Court has judicial notice as attested by its numerous decisions in cases involving practically every such election, for the Court to move a whit back from the standards it has enunciated in those decisions.

In regard to the jurisdictional and due process points raised by herein petitioner, it is of decisive importance to bear in mind that under Section 168 of the Revised Election Code of 1978, "the Commission (on Elections) shall have direct control and supervision over the board of canvassers" and that relatedly, Section 175 of the same Code provides that it "shall be the sole judge of all pre-proclamation controversies." While nominally, the procedure of bringing to the Commission objections to the actuations of boards of canvassers has been quite loosely referred to in certain quarters, even by the Commission and by this Court, such as in the guidelines of May 23, 1978 quoted earlier in this opinion, as an appeal, the fact of the matter is that the authority of the Commission in reviewing such actuations does not spring from any appellate jurisdiction conferred by any specific provision of law, for there is none such provision anywhere in the Election Code, but from the plenary prerogative of direct control and supervision endowed to it by the above-quoted provisions of Section 168. And in administrative law, it is a too well settled postulate to need any supporting citation here, that a superior body or office having supervision and control over another may do directly what the latter is supposed to do or ought to have done.

Consequently, anything said in *Lucman vs. Dimaporo*, 33 SCRA 387, cited by petitioner, to the contrary notwithstanding, We cannot fault respondent Comelec for its having extended its inquiry beyond that undertaken by the Board of Canvassers. On the contrary, it must be stated that Comelec correctly and commendably asserted its statutory authority born of its envisaged constitutional duties vis-a-vis the preservation of the purity of elections and electoral processes and procedures in doing what petitioner claims it should not have done. Incidentally, it cannot be said that Comelec went further than even what *Aratuc, et al.* have asked, since said complainants had impugned from the outset not only the returns from the 878 voting centers examined by their experts but all those mentioned in their complaints in the election cases filed originally with the Comelec enumerated in the opening statements hereof, hence respondent Comelec had that much field to work on.

The same principle should apply in respect to the ruling of the Commission regarding the voting centers affected by military operations. It took cognizance of the fact, not considered by the board of canvassers, that said voting centers had been transferred to the poblaciones. And, if only for purposes of pre-proclamation proceedings, We are persuaded it did not constitute a denial of due process for the Commission to have taken into account, without the need of presentation of evidence by the parties, a matter so publicly notorious as the unsettled situation of peace and order in some localities in the provinces herein involved that they may perhaps be taken judicial notice of, the same being capable of unquestionable demonstration. (Sec. 1, Rule 129)

In this connection, We may as well, perhaps, say here as later that regrettably We cannot, however, go along with the view, expressed in the dissent of our respected Chief Justice, that from the fact that some of the voting centers had been transferred to the poblaciones there is already sufficient basis for Us to rule that the Commission should have also subjected all the returns from the other voting centers of the same municipalities, if not provinces, to the same degree of scrutiny as in the former. The majority of the Court feels that had the Commission done so, it would have fallen into the error precisely alleged by petitioner Mandangan about denial of due process, for it is relatively unsafe to draw adverse conclusions as to the exact conditions of peace and order in those other voting centers without at least some prima facie evidence to rely on considering that there is no allegation, much less any showing at all that the voting centers in question are so close to those excluded by the Commission as to warrant the inescapable conclusion that the relevant circumstances found by the Comelec as obtaining in the latter were identical to those in the former.

Premises considered, the petition in G.R. Nos. L-49717-21 is hereby dismissed, for lack of merit.

THE ARATUC ET AL. PETITION

Of the eight errors assigned by herein petitioners earlier adverted to, the seventh and the eighth do not require any extended disquisition. As to the issue of whether the elections in the voting centers concerned were held on April 7, 1978, the date designated by law, or earlier, to which the seventh alleged error is addressed, We note that apparently petitioners are not seriously pressing on it anymore, as evidenced by the complete absence of any reference thereto during the oral argument of their counsel and the practically cavalier discussion thereof in the petition. In any event, We are satisfied from a careful review of the analysis by the Comelec in its resolution now before Us that it took pains to consider as meticulously as the nature of the evidence presented by both parties would permit all the contentions of petitioners relative to the weight that should be given to such evidence. The detailed discussion of said evidence is contained in not less than nineteen pages (pp. 70-89) of the resolution. In these premises, We are not prepared to hold that Comelec acted wantonly and arbitrarily in drawing its conclusions adverse to petitioners' position. If errors there are in any of those conclusions, they are errors of judgment which are not reviewable in certiorari, so long as they are founded on substantial evidence.

As to eighth assigned error, the thrust of respondents' comment is that the results in the voting centers mentioned in this assignment of error had already been canvassed at the regional canvassing center in Cotabato City. Again, We cannot say that in sustaining the board of canvassers in this regard, Comelec gravely abused its discretion, if only because in the guidelines set by this Court, what appears to have been referred to is, rightly or wrongly, the resumption only of the canvass, which does not necessarily include the setting aside and repetition of the canvass already made in Cotabato City.

The second and fourth assignments of error concern the voting centers the corresponding voter's record (C.E. Form 1) and record of voting, (C.E. Form 5) of which have never been brought to Manila because they were not available. The record is not clear as to how many are these voting centers. According to petitioners they are 501, but in the Comelec resolution in question, the number mentioned is only 408, and this number is directly

challenged in the petition. Under the second assignment, it is contended that the Comelec gravely abused its discretion in including in the canvass the election returns from these voting centers and, somewhat alternatively, it is alleged as fourth assignment that petitioners' motion for the opening of the ballot boxes pertaining to said voting centers was arbitrarily denied by respondent Comelec.

The resolution under scrutiny explains the situation that confronted the Commission in regard to the 408 voting centers referred to as follows:

"The Commission had the option of excluding from the canvass the election returns under this category. By deciding to exclude, the Commission would be summarily disenfranchising the voters registered in the voting centers affected without any basis. The Commission could also order the inclusion in the canvass of these election returns under the injunction of the Supreme Court that extreme caution must be exercised in rejecting returns unless these are palpably irregular. The Commission chose to give prima facie validity to the election returns mentioned and uphold the votes cast by the voters in those areas. The Commission held the view that the failure of some election officials to comply with Commission orders (to submit the records) should not prejudice the right of suffrage of the citizens who were not parties to such official disobedience. In the case of *Lino Luna vs. Rodriguez*, 39 Phil. 208, the Supreme Court ruled that when voters have honestly cast their ballots, the same should not be nullified because the officers appointed under the law to direct the election and guard the purity of the ballot have not complied with their duty. (cited in *Laurel on Elections*, p. 24)" (Pp. 139-140, Record.)

On page 14 of the comment of the Solicitor General, however, it is stated that:

"At all events, the returns corresponding to these voting centers were examined by the Comelec and 141 of such returns were excluded, as follows:

'SUMMARY

PROVINCE

TOTAL

EXCLUDED

INCLUDED

Lanao del Norte

30

-

30

Lanao del Sur

342

137

205

Maguindanao

21

1

20

North Cotabato

7

1

6

Sultan Kudarat

12

2

10

Totals - - - - -

412

141

271"

(Page 301, Record.)

This assertion has not been denied by petitioners.

Thus, it appears that precisely because of the absence or unavailability of the CE Forms 1 and 5 corresponding to the more than 400 voting centers concerned in our present discussion, the Comelec examined the returns from said voting centers to determine their trustworthiness by scrutinizing the purported relevant data appearing on their faces, believing that such was the next best thing that could be done to avoid total disenfranchisement of the voters in all of them. On the other hand, petitioners' insist that the right thing to do was to order the opening of the ballot boxes involved.

In connection with such opposing contentions, Comelec explanation in its resolution is:

"x x x The commission had it seen fit to so order, could have directed the opening of the ballot boxes. But the Commission did not see the necessity of going to such length in a proceeding that was summary in nature and decided that there was suf-ficient bases for the resolution of the appeal. That the Commission has discretion to determine when the ballot boxes should be opened is implicit in the guidelines set by the Supreme Court which states that ' ... the ballot boxes [which] shall be opened only upon orders of either the respondent Board or respondent Commission, after the need therefor has become evident . . . ' (guideline No. 3; underscoring supplied). Furthermore, the Court on June 1, 1978, amended the guidelines by providing that the 'ballot boxes for the voting centers . . . need not be taken to Manila, EXCEPT those of the particular centers as to which the petitioners have the right to demand that the corresponding ballot boxes be opened . . . provided that the voting centers concerned shall be specified and made known by petitioners to the Regional Board of Canvassers not later than June 3, 1978 . . . ' (under-scoring supplied). The KB, candidates did not take advantage of the option granted them under these guidelines." (Pp. 106-107, Record.)

Considering that Comelec, if it had wished to do so, had the facilities to identify on its own the voting centers without CE Forms 1 and 5, thereby precluding the need for the petitioners having to specify them, and under the circumstances the need for opening the ballot boxes in question should have appeared to it to be quite apparent, it may be contended that Comelec would have done greater service to the public interest had it proceeded to order

such opening, as it had announced it had thoughts of doing in its resolution of August 30, 1978. On the other hand, We cannot really blame the Commission too much, since the exacting tenor of the guidelines issued by Us left it with very little elbow room, so to speak, to use its own discretion independently of what We had ordered. What could have saved matters altogether would have been a timely move on the part of petitioners on or before June 3, 1978, as contemplated in Our resolution. After all, come to think of it, that the possible outcome of the opening of the ballot boxes would favor the petitioners was not a certainty — the contents thereof could conceivably boomerang against them, such as, for example, if the ballots therein had been found to be regular and preponderantly for their opponents. Having in mind that significantly, petitioners filed their motion for opening only on January 9, 1979, practically on the eve of the promulgation of the resolution, We hold that by having adhered to Our guidelines of June 1, 1978, Comelec certainly cannot be held to be guilty of having gravely abused its discretion, whether in examining and passing on the returns from the voting centers referred to in the second and fourth assignments of error in the canvass or in denying petitioners' motion for the opening of the ballot boxes concerned.

The first, third and sixth assignment of errors involve related matters and may be discussed together. They all deal with the inclusion in or exclusion from the canvass of certain returns on the basis of the percentage of voting in specified voting centers and the corresponding findings of the Comelec on the extent of substitute voting therein as indicated by the result of either the technical examination by experts of the signatures and thumb-prints of the voters thereat.

To begin with, petitioners' complaint that the Comelec did not examine and study 1,694 of the records in all the 2,775 voting centers questioned by them is hardly accurate. To be more exact, the Commission excluded a total of 1,267 returns coming under four categories namely: 1,001 under the Diaz, *supra*, ruling, 79 because of 90-100% turnout of voters despite military operations, 105 palpably manufactured ones and 82 returns excluded by the board of canvassers on other grounds. Thus, 45.45% of the claims of the petitioners were sustained by the Comelec. In contrast, in the board of canvassers, only 453 returns were excluded. The board was reversed as to 6 of these, and 821 returns were excluded by Comelec over and above those excluded by the board. In other words, the Comelec almost doubled the exclusions by the board.

Petitioners would give the impression by their third assignment of error that Comelec refused to consider high percentage of voting, coupled with mass substitute voting, as proof that the pertinent returns had been manufactured. That such was not the case is already shown in the above specifications. To add more, it can be gleaned from the resolution that in respect to the 1,065 voting centers in Lanao del Sur and Marawi City where a high percentage of voting appeared, the returns from the 867 voting centers were excluded by the Comelec and only 198 were included a ratio of roughly 78% to 22%. The following tabulation drawn from the figures in the resolution shows how the Comelec went over those returns center by center and acted on them individually:

" 90% - 100% VOTING

MARAWI CITY AND LANAOS DEL SUR

NO. OF V/C THAT

V/C WITH 90% to 100% VOTING

MUNICIPALITIES

FUNCTIONED

No. of V/C Excluded Included

Marawi City

151

112

107

5

Bacolod Grande

28

28

27

1

Balabagan

53

53

49

4

Balindong

22

22

15

7

Bayang

29

20

13

7

Binidayan

37

33

29

4

Buadiposo Buntong

41

10

10

0

Bubong

24

23

21

2

Bumbaran

21 (all excluded)

Butig

35

33

32

1

Calanogas

23

21

21

0

Ditsaan-Ramain

42

39

38

1

Ganassi

39

38

23

15

Lumba Bayabao

64

63

47

16

Lumbatan

30

28

17

11

Lumbayanugue

37

33

28

5

Madalum

14

13

6

7

Madamba

20

20

5

15

Maguing

57

55

53

2

Malabang

59

47

5

42

Marantao

79

63

41

22

Marugong

37

35

32

3

Masiu

27

26

24

2

Pagayawan

15

13

9

4

Piagapo

39

39

36

3

Poona-Bayabao

44

44

42

2

Pualas

23

20

20

0

Saguiran

36

32

21

11

Sultan-Gumander

35

31

31

0

Tamparan

24

21

15

6

Taraka

31

31

31

0

Tubaran

23

19

19

0

TOTALS: Marawi &

Lanao del Sur

1,218

1,065

867

198”

We are convinced, apart from presuming regularity in the performance of its duties, that there is enough showing in the record that it did examine and study the returns and pertinent records corresponding to all the 2775 voting centers subject of petitioners' complaints below. In one part of its resolution the Comelec states:

"The Commission as earlier stated examined on its own the Books of Voters (Comelec Form No. 1) and the Voters Records Comelec Form No. 5) to determine for itself which of these election forms needed further examination by the COMELEC-NBI experts. The Commission, aware of the summary nature of this pre-proclamation controversy, believes that it can decide using common sense and perception, whether the election forms in controversy needed further examination by the expert based on the presence or absence of patent signs of irregularity." (Pp. 137-138, Record.)

In the face of this categorical assertion of fact of the Commission, the bare charge of petitioners that the records pertaining to the 1,694 voting centers assailed by them should not create any ripple of serious doubt. As We view this point under discussion, what is more factually accurate is that those records complained at were not examined with the aid of experts and that Comelec passed upon the returns concerned "using common sense and perception only." And there is nothing basically objectionable in this. The defunct Presidential, Senate and House Electoral Tribunals examined, passed upon and voided millions of votes in several national elections without the assistance of experts and "using" only "common sense and perception". No one ever raised any eyebrows about such procedure. Withal, what we discern from the resolution is that Comelec preliminarily screened the records and whatever it could not properly pass upon by "using common sense and perception" it left to the experts to work on. We might disagree with the Comelec as to which voting center should be excluded or included, were We to go over the same records Ourselves, but still a case of grave abuse of discretion would not come out, considering that Comelec cannot be said to have acted whimsically or capriciously or without any rational basis, particularly if it is considered that in many respects and from the very nature of our respective functions, becoming candor would dictate to Us to concede that the Commission is in a better position to appreciate and assess the vital circumstances closely and accurately. By and large, therefore, the first, third and sixth assignments of error of the petitioners are not well taken.

The fifth assignment of error is in Our view moot and academic. The identification of the ballot boxes in defective condition, in some instances open and allegedly empty, is at best of secondary import because, as already discussed, the records related thereto were after all examined studied and passed upon. If at all, deeper inquiry into this point would be of real value in an electoral protest.

CONCLUSION

Before closing, it may not be amiss to state here that the Court had initially agreed to dispose of the cases in a minute resolution, without prejudice to an extended or reasoned-out opinion later, so that the Court's decision may be known earlier. Considering, however, that no less than the Honorable Chief Justice has expressed misgivings as to the propriety of yielding to the conclusions of respondent Commission because in his view there are strong considerations warranting further meticulous inquiry of what he deems to be earmarks of seemingly traditional faults in the manner elections are held in the municipalities and provinces herein involved, and he is joined in this pose by two other distinguished colleagues of Ours, the majority opted to ask for more time to put down at least some of the important considerations that impelled Us to see the matters in dispute the other way, just as the minority bided for the opportunity to record their points of view. In this manner, all concerned will perhaps have ample basis to place their respective reactions in proper perspective.

In this connection, the majority feels it is but meet to advert to the following portion of the ratiocination of respondent Board of Canvassers adopted by respondent Commission with approval in its resolution under question:

"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 false and consequently should be disregarded in the canvass must be approached with extreme caution, 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 disenfranchisement of those who exercised their right of suffrage. (*Anni vs. Isquierdo et al*, L-35918, June 28, 1974; *Villalon v. Comelec*, L-32008, August 31, 1970; *Tagoranao v. Comelec*, 22 SCRA 978). In the absence of strong evidence establishing the spuriousness of the return, the basic rule of their being accorded 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 prejudice 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 factor 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 protest. (*Anni vs. Isquierdo et al*, *Supra*)." (P. 59, Record, L-49705-09.)

The writer of this opinion has taken care to personally check on the citations to be doubly sure they were not taken out of context, considering that most, if not all of them, arose from similar situations in the very venues of the factual milieu of the instant cases, and We are satisfied they do fit our chosen posture. More importantly, they actually came from the pens of different members of the Court, already retired or still with Us, distinguished by their perspicacity and their perceptive prowess. In the context of the constitutional and legislative intent expounded at the outset of this opinion and evident in the modifications of the duties and responsibilities of the Commission on Elections vis-a-vis the matters that have concerned Us herein, particularly the elevation of the

Commission as the "sole judge of pre-proclamation controversies" as well as of all electoral contests, We find the afore-quoted doctrines compelling as they reveal 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 sanctity of elections in this country.

In conclusion, the Court finds insufficient merit in the petition to warrant its being given due course. Petition dismissed, without pronouncement as to costs. Justices Fernando, Antonio and Guerrero who are presently on official missions abroad voted for such dismissal.

Castro, C.J., files a dissenting opinions.

Fernando, Antonio, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Teehankee, Aquino, and Abad Santos, JJ., did not take part.

Makasiar and Melencio-Herrera, JJ., concur in the dissenting opinion of C.J. Castro.

De Castro, J., concurs in a separate opinion.

6 pt 6 pt 0 3

DISSENTING OPINION

CASTRO, C.J.:

1

At the outset I must state that constraints of time effectively prevent me from writing an extended dissent. Hence, this abbreviated exposition of my views.

For a clear understanding of the issues, a summary of the essential events relative to these cases is necessary.

On April 7, 1978, elections of representatives to the Batasang Pambansa were held throughout the Philippines. The cases at bar concern only the results of the elections in Region XII (Central Mindanao) which comprises the provinces of Lanao del Sur, Lanao del Norte, Maguindanao, North Cotabato and Sultan Kudarat, and the cities of Marawi, Iligan and Cotabato. (The entire Region had a total of 4,107 voting centers, but only 3,984 were functional).

On June 11, 1978, the Regional Board of Canvassers issued a resolution, over the objection of the Konsensiya ng Bayan (KB) candidates, declaring all the eight Kilusan ng Bagong Lipunan (KBL) candidates elected. Appeal was taken by the KB candidates to the Comelec. On January 13, 1979, the Comelec issued its questioned resolution declaring seven KBL candidates and one KB candidate as having obtained the first eight places, and ordering the Regional Board of Canvassers to proclaim the winning candidates. The KB candidates forthwith interposed the present petition; in due time the respondents filed their comments.

Oral argument was had before the Court for two days, specifically on January 31 and February 1, 1979. Atty. Lino Patajo argued for and in behalf of the KB candidates, Assemblyman Estanislao Fernandez for the KBL and the private respondents, and Solicitor General Estelito P. Mendoza for the public respondents. The Court subjected the three counsels to intensive interrogation. The cases were then submitted for decision in the afternoon of February 1.

2

I have carefully read the entire record, more particularly the Comelec resolution of January 13, 1979, and I must confess that until now my mind cannot rest easy on a number of questions sharply in issue, some of which are

hereunder briefly discussed.

a. After the Comelec examined very closely the voting returns, books of voters and voting records from 1,116 voting centers protested by the KB candidates, to the extent of subjecting them to detailed documentary examination and fingerprint comparison by Comelec experts, and thereafter annulled 31.84% of the votes cast, why did it refuse to proceed to subject all the records of the remaining 1,659 voting centers protested by the KB candidates to the same manner of close scrutiny?

b. Why did not the Comelec examine, utilizing the same meticulous method, similar documents and records appertaining to a total of 164 voting centers in Lanao del Sur and 19 voting centers in Lanao del Norte - two provinces where concededly there had been military operations - and an additional number of voting centers in the other provinces, all of which registered a 100% turnout of voters? The peace and order conditions in the two cities of Iligan and Cotabato on the day of the elections were normal, and yet the total percentages of voting were only 73% and 52%, respectively. How then can the Comelec explain why and how in many voting centers located in areas where there had been military operations there was a voting turnout of 100%? Assuming that the KB candidates did not call the attention of the Comelec - although they actually did - to the stark improbability of 100% vote turnout in the said places, because the peace and order conditions were far from normal, it perforce devolved on the Comelec to conduct, *motu proprio*, an in-depth and full-blown inquiry into this paradox. The record shows that there was 100% voting in the whole of each of three municipalities, over 99% voting in each of thirteen other municipalities, and an average 97% turnout in five more municipalities. Of inescapable significance is the fact that most of these municipalities are located in the provinces of Lanao del Sur and Lanao del Norte, the past election history of which is replete with the perpetration of massive frauds, terrorism and scandalous substitutions of voters.

c. Why did the Comelec deny the motion of the KB candidates for the opening of ballot boxes pertaining to a total of 408 voting centers - the voting records of which were not available as they had somehow mysteriously disappeared - to determine whether or not the election in each of the said voting centers was a sham? This remedial measure was resorted to by the Comelec in 1969 when it ordered the opening of a number of ballot boxes in the pre-proclamation contest in *Lucman vs. Dimaporo* in order to see whether or not there were ballots inside them, without counting the ballots, and determine whether there had been an actual election in each of the disputed precincts. In that case the Supreme Court sustained the action of the Comelec.

d. Why did the Comelec include in the canvass the voting returns from some indicated 100 voting centers when the ballot boxes corresponding thereto were found to be completely empty? And why did the Comelec also include in the canvass the election returns corresponding to almost 200 ballot boxes found to be without padlocks?

3

Of incalculable significance is the absence of any statement in the Comelec resolution that indicates that, granting that all the questions I have above raised would be resolved in favor of the KB candidates, the election results would not be materially altered. Upon the other hand, the KB candidates state categorically, with benefit of extrapolation, that the election results would be considerably changed in their favor.

4

The majority of my brethren anchor their denial of the petition on two principal grounds, namely:

a. The issues raised by the KB candidates would be better and properly ventilated in an election protest; and

b. No grave abuse of discretion is discernible from the actuations of the Comelec.

Anent the first ground, it is a notorious fact in the history of Philippine politics that an election protest not only is usually inordinately protracted but as well entails heavy and prohibitive expenditure of time, money and effort on the part of the protestant. More than this, should the protestant in the end win, very little time or none at all is left for him to assume and discharge the duties of his office. In the meantime, the person previously proclaimed elected continues to fraudulently represent the people who had in law and in fact duly elected someone else to represent them.

Besides, taking a broad view of the fundamental issues raised by the KB candidates, I am of the opinion that resolution of these issues by the Comelec would not take more than six months of conscientious labor - and surely this period is short, very short indeed, compared to the time that will be wasted by the Comelec in deciding a formal electoral protest.

Is it not time the Supreme Court asserted its powers in order to excise completely the Old Society pernicious evil of "grab the proclamation at all costs"?

Anent the second ground, I squarely traverse the statement that no grave abuse of discretion can be imputed to the Comelec. The grave misgivings I have above articulated demonstrate what to my mind constitute the size and shape of the remissness of the Comelec. And more compelling and overriding a consideration than the overwrought technicality of "grave abuse of discretion" is the fundamental matter of the faith of the people of Region XII in the electoral process. There will always be the nagging question in the minds of the voters in that Region as to the legitimacy of those who will be proclaimed elected under the Comelec resolution should the Court refuse to direct that body to continue the meticulous search for legitimacy and truth.

5

Upon all the foregoing, it behooves the Court to remand these cases to the Comelec, with the direction that that body immediately convene and, within an unextendible period and as speedily as possible, resolve with definitiveness all the questions I have above posed, under such unequivocal guidelines as the Court may prescribe.

For my part, unless and until this is done, I shall continue to entertain grave doubt as to the correctness and validity of the results already reached by the Comelec, especially when political history, placed in perspective, pointedly reminds me of the massive frauds, terrorism and scandalous substitutions of voters that have characterized past elections in the two Lanao provinces.

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SEPARATE OPINION

DE CASTRO, J.:

The present case has afforded Us an early opportunity to examine mid define the extent of the power of judicial review as granted to the Supreme Court over any decision, order or ruling of the Commission on Elections under the new Constitution the pertinent provision of which reads:

"Section 11. Any decision, order or ruling of the Commission may be brought to the Supreme Court on

certiorari by the aggrieved party within thirty days from his receipt of a copy thereof." (Article XII, Consti-tution).

The Commission on Elections has been granted powers under the new 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 contests relating to the elections, returns, and qualifications 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 affect-ing 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). This change may properly be viewed as having the intention to relieve the Courts, particularly the Supreme Court, of those burdens placed upon them relating to the conduct of election and matters incident thereto. It could have been, likewise, intended to insulate judicial bodies from the baneful effects of partisan politics, the more deleterious ones being those that could come from the higher seats of political power, such as those in the Assembly and in provincial and city government levels.

It is, therefore, my view that what was intended by the new Constitution is to limit the intervention of the Supreme Court in the acts of the Commission as constitutional body like said Court, but with broadened powers, allocating to it a domain as exclusive as that of the legislative body (which includes the President or Prime Minister) on matters of law?making, to that of "judicial inquiry". This power is confined to justiciable questions not of political nature, and always involving alleged violation of constitutional rights or the constitution itself. For a controversy of a political character, commonly referred to as "political questions", is excluded from the scope of the Supreme Court's power of judicial inquiry.[1] The exclusive character of the power conferred upon the Commission on Elections, and considering that political rights, as distinguished from civil and personal or property rights,[2] are for the most part, if not in their totality, the subject of its authority, should counsel against an expansive intervention by the Supreme Court in the acts of the Commission on Elections. With the confernment 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.[3]

What then is the test or criterion in determining whether the Supreme Court may exercise its power under Article XII, Section 11 of the new Constitution? It is my humble sub-mission that the aforecited provision is merely as reassertion of the power of the Supreme Court, as guardian of the Consti-tution and protector of constitutional rights, of which, under no circumstance, could it be deprived, if our present constitutional system is to be maintained. For it is a power constitutionally assigned to it as the essence of the high judicial power of the Supreme Court, for the orderly and salutary apportionment of governmental powers among the different branches of the govern-ment, as well as the special constitutional bodies created to deal more effectively with specific matters requiring govern-mental action.

Examining the instant petition, nothing reveals itself as raising more than questions merely affecting the conduct of the election held on April 7, 1978, much less a truly constitutional question, aside perhaps from the allegation that the COMELEC undertook an examination of election records beyond those examined during the pendency of the controversy before the Regional Board of Canvassers, allegedly without notice to the petitioners, thus

intimating a violation of due process. This particular matter, however, can easily be disposed of by citing the provision of Section 175 of the Electoral Code of 1978 which reads:

“xx xx xx. 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.”

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. Notice is required by the legal provision cited, but this must be notice to the party adversely affected, is the candidate-elect whose proclamation is suspended. The action taken by the COMELEC in examining additional election documents to those examined by the KB experts during the pendency of the controversy with the Regional Board of Canvassers was, therefore, one of which petitioners cannot be heard, nor have any reason, to complain, for it even resulted in one KB candidate getting into the winners' column. If the COMELEC stopped at a certain point in its examination, instead of going through all those questioned by the petitioners, evidently due to time constraint as fixed in the guidelines, set by this Court, and the summary character of pre-proclamation proceedings, it cannot be charged with abuse of discretion, much less a grave one. It did not have to conduct the additional examination, in the first place. The controversy which was heard and decided, in the first instance, by the Regional Board of Canvassers, with guidelines set by this Court, was appealed to the COMELEC. The latter's appellate authority was thus limited to a review of the decision of the Board rendered on the basis of the evidence presented before it, rendering its own decision on the basis of the same evidence, and no more. It incorporated the result of its own examination of additional election returns, and found one KB as one of the winning candidate, a fact clearly showing that COMELEC did examine the said documents, otherwise, the result as previously declared by the Board of Canvassers with a clean sweep of the KBL candidate would have remained unaltered.

Expounding more on the one circumstance inclining me to the theory that with the enlarged power and broadened authority of the COMELEC which extends to and cover virtually the entire electoral process, as exclusively as the power of legislation is constitutionally lodged in the law-making body, what is given to the Supreme Court as its reviewing authority over acts of the COMELEC is no more than what it could exercise under its power of judicial inquiry with respect to acts of the legislative body, which is the transfer to the COMELEC of the powers pertaining to the Electoral Tribunals and the courts under the old Constitution over election contests, it must not be hard to concede that with the composition of the electoral tribunals in which six of the justices of the Supreme Court sit in said bodies, the Supreme Court could not longer exercise any reviewing authority over the acts of the said electoral tribunals except possibly when violation of the Constitution or constitutional rights are involved. With this limited concept of this Court's authority over the defunct electoral tribunals now applied to an equally constitutional body that the COMELEC is that took over the function of the Electoral Tribunals, I would hesitate to hold that the Supreme Court may grant the relief as is prayed for in the present petition.

If this is so under the law and the Constitution, it should also be upon consideration of public policy. The last elections were called by the President as a test or experiment as to how the vital reforms and changes of political and social discipline and moral values he has instituted to evolve a new order have affected the thinking and the attitudes of our people. There should be extreme caution, if not restraint, in any act on our part that might reflect on the success or failure of that experiment intended, at the same time as a big stride in the way back to normalization. This is specially true in the field of politics where the ills of the Old Society has been most grave, because our elections then as a democratic process, have tarnished the image of our country as a representative democracy. Except on very compelling reasons then, which I believe do not exist in the case before Us, should we

make any pronouncement that would detract on how successful the last political exercise had been, as the first election held under the new Constitution. We must refrain from imputing to the COMELEC which has been enlarged with fresh mandate and a bigger trust by the Constitution failure in the performance of its functions either by willful neglect, official incompetence, much less by deliberate partiality, in the first real test of its capability.

In the light of the foregoing, I vote, in concurrence with the majority, to dismiss the petition, first, as to the matter allegedly involving a violation of the petitioners' right of due process on the ground that there was no denial thereof, and second, as to the other matters involving no violation of constitutional rights, on the ground they are purely political questions, and that in any case, no grave abuse of discretion has been committed by, much less is there lack or excess of jurisdiction on the part of, the Commission on Elections.

[1] Mabanag vs. Lopez Vito, 78 Phil. 1; Tañada & Macapagal vs. Cuenco, L-10520, February 28, 1957; Gonzales vs. Comelec, L-28196 and L-28224, November 9, 1967; The Plebiscite Cases, 50 SCRA 30 (1973); Peralta vs. Commission on Elections, et al., L-4771, March 11, 1978; Juan T. David vs. Commission on Elections, et al., L-47803, March 11, 1978; Youth Democratic Movement, et al. vs. Commission on Elections, L-47816, March 11, 1978; Sanidad vs. Commission on Elections, 73 SCRA 333.

[2] Political right consists in the power to participate directly or indirectly in the establishment of the government. (Avelino vs. Cuenco, 77 Phil., 192).

[3] A political question relates to "those question which under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or the executive branch of the government. (Tañada vs. Macapagal, G.R. No. L-10520, February 28, 1957).

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