

**ALVARO FILART, PETITIONER, VS. COMMISSION ON ELECTIONS,
MUNICIPAL BOARD OF CANVASSERS OF SAN GUILLERMO, ISABELA,
AND ARMANDO H. GALICIA, RESPONDENTS.***G.R. No. L-35154. October 26, 1973*

Ponente: ANTONIO, J.

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In this petition for certiorari and prohibition with preliminary injunction, Alvaro Filart seeks to annul the Resolution RR-1174, dated May 24, 1972, of the Commission on Elections (Comelec for short) in Case No. C-291,[1] which (1) set aside the proclamation of Alvaro Filart as mayor of the municipality of San Guillermo, Isabela; (2) declared the election returns from Precincts Nos. 13, 13-A and 13-B as spurious or manufactured; (3) refused to make a finding whether or not the returns from Precincts Nos. 10 and 10-A are spurious or prepared at gunpoint as they will not affect the results; and (4) directed the Municipal Board of Canvassers of San Guillermo, Isabela, to reconvene for the purpose of making a new canvass, excluding from such new canvass, the returns from Precincts Nos. 13, 13-A and 13-B, and proclaim the winning mayoralty candidate on the basis of the tabulation of the votes received in all the other precincts, with the proviso that Alvaro Filart appeal to this Court on or before June 9, 1972, otherwise the winning candidate for mayor would be proclaimed.[2]

Notice of this Resolution RR-1174 was sent by Comelec through telegram[3] to the petitioner on May 31, 1972, but it was only on June 2, 1972 when petitioner was able to obtain a true copy thereof from the Comelec, whereupon he filed on June 5, 1972 his notice of appeal.[4] Upon the filing on June 6, 1972 of the instant petition, We required, by resolution of June 7, 1972,[5] the respondents Comelec, Municipal Board of Canvassers and Armando H. Galicia, to file an answer to the petition, and issued an order restraining said respondents from executing and implementing the aforesaid resolution, until further orders from this Court.[6] In the same resolution of June 7, 1972, the motion dated June 6, 1972 of respondent Armando H. Galicia to dismiss Filart's petition was also denied.[7] Subsequently, respondent Comelec filed its answer on June 19, 1972,[8] while that of respondent Armando H. Galicia on June 26, 1972,[9] and with the submission of the memoranda of the parties,[10] the case was deemed submitted for decision. No answer was filed for respondent Municipal Board of Canvassers of San Guillermo, Isabela (Board for short).

In the elections held on November 8, 1971, petitioner Alvaro Filart, the incumbent mayor of San Guillermo, Isabela, was the official candidate of the Nacionalista Party for the office of mayor of said municipality, while respondent Armando H. Galicia was the official candidate of the Liberal Party, and Ireneo Narne and Ildefonso Cariaga were the other candidates for the same office. After the elections, or on November 10, 1971, the Board of Canvassers, on the basis of the results of its canvass, proclaimed Alvaro Filart as mayor-elect of said municipality. At the canvass, no objection was raised by those concerned on the authenticity or legality of any of the returns.

The Proceedings:

In Court of First Instance of Isabela -

On November 20, 1971, respondent Armando H. Galicia, who obtained the second highest number of votes for the office in dispute, filed with the Court of First Instance of Isabela a regular election protest, dated November 19, 1971, against petitioner Alvaro Filart, as protestee in Election Case No. II-4 of said Court,[11] alleging substantially that as per certificate of canvass of the Board, the total votes cast for the office of mayor were 1,577, from which Alvaro Filart received 721 votes; Armando H. Galicia, 526 votes; Ireneo Narne, 217 votes; and Ildefonso Cariaga, 113 votes; that during the elections, votes were illegally cast and counted in favor of protestee Filart, in five (5) precincts, viz., Precincts Nos. 10 and 10-A, situated in Barrio Guam and Precincts Nos. 13, 13-A and 13-B, situated in Barrio Dingading, all of San Guillermo, Isabela; that the true and legal results of the elections in said precincts had been rendered uncertain because of: (a) terrorism, intimidation, undue influence, threats and coercion upon the registered voters of said precincts, by heavily armed goons of not less than 15 persons, under the employ of the protestee, resulting in the failure of said voters to cast their votes in their respective precincts; (b) the employment of similar forms of coercion by protestee's goons upon members of the Board of Election Inspectors of said precincts resulting in their surrender to said goons of the ballots, which the latter then filled up, by writing thereon the names of the protestee and those of his official ticket and thereafter depositing the said ballots inside the ballot boxes; (c) or by compelling thru threats or coercion the election inspectors to open the ballot boxes, enabling said goons to retrieve the ballots already cast, which they then erased and altered to make it appear that they were votes cast in favor of the protestee and the candidates of his party; (d) in the same unlawful manner, the voters in the said precincts were prevented from entering the same and the public precluded from observing the proceedings taken therein, as the heavily armed goons held everyone at bay until the counting was finished and the members of the Board of Election Inspectors intimidated into making false entries in the election forms; that the irregularities narrated above resulted in the illegal casting and counting of votes in favor of the protestee in the aforementioned precincts totalling 487 votes, which, if deducted from the votes of the protestee, would thus reduce the number of his votes, and give to protestant Galicia the plurality of the votes cast in that election.

Protestant Galicia therefore prayed, among others, that an order be issued requiring the municipal treasurer of San Guillermo, Isabela, or any other government official who may have custody of the ballot boxes, copies of the registry lists, the election statements, the voters' affidavits and other documents used in the elections in said Precincts Nos. 10, 10-A, 13, 13-A and 13-B in San Guillermo, Isabela, to immediately deposit with the Court of First Instance of Isabela the said election paraphernalia in order that it may re-examine the same and nullify the elections held in said precincts; that after due proceedings, the proclamation of the protestee Alvaro Filart as mayor-elect of San Guillermo be set aside and the protestant Armando H. Galicia declared the one duly elected to said office; and that the protestee be ordered to pay to the protestant the sum of P20,000.00 for moral and exemplary damages, as well as the expenses and costs incurred in the proceedings.

On November 23, 1971, the Court of First Instance of Isabela issued an order[12] requiring the protestee (herein petitioner) to answer the petition and for the parties to appear on December 2, 1971 at 8:30 a.m., so that their respective representatives may accompany the transfer of the ballot boxes from San Guillermo, Isabela, to said court.

On November 27, 1971, protestee Alvaro Filart filed his answer with counterprotest,[13] which was later amended on December 7, 1971,[14] and the same was duly admitted by the lower court on the same date.[15] In his amended answer with counterprotest, protestee Filart admitted some and denied the other allegations contained in Galicia's petition and asserted, among others, that the certificate of canvass of the votes cast and the proclamation of the winning candidate for the office of municipal mayor by the Municipal Board of Canvassers showed that protestee Filart received 708 votes for the office of mayor of San Guillermo, while protestant Galicia garnered only 521 votes, Ireneo Narne, 220 votes, and Ildefonso Cariaga, 102 votes; that the conduct of elections

in the five (5) precincts in question was legal, orderly, peaceful, free, honest and clean, and the results reflected in the election returns from said precincts are the lawful, true and correct figures or number of votes received by each candidate including those of the protestant and protestee, which votes are the result of the honest, voluntary and free will of the duly registered voters of said precincts; and that the Boards of Election Inspectors of the said precincts had exercised their duties in accordance with law and the instructions of the Comelec, free from any undue influence, threat, violence or any form of unlawful intervention whatsoever.

In his counterprotest, Alvaro Filart impugns and contests the results of the elections held on November 8, 1971, in Precincts Nos. 1-A, 2, 2-A, 3, 6, 7, 8, 9 and 12, of San Guillermo, Isabela, on the ground that the same are vitiated by fraud, terrorism and other irregularities perpetrated by protestant Armando H. Galicia and his armed goons, as follows: (a) that several days prior to and during election day, armed men of the New People's Army (NPA) supporting the candidacy of the protestant, entered the polling places, especially the precincts mentioned in the counterprotest, terrorizing and intimidating the voters therein into voting for the protestant, threatening them that should the protestant fail to win overwhelmingly in those precincts, the voters therein will be liquidated and killed; (b) that on election day, as a result of the threats and intimidation perpetrated by protestant and his goons, the electors or voters of said precincts, specifically the political followers and sympathizers of the protestee, were either prevented from casting their votes in favor of the protestee, or forced to vote for the protestant, as the voters were compelled to exhibit their ballots to said armed men before they were dropped into the ballot boxes; (c) that as a result of the fear thus engendered by the armed goons of the protestant, several ballots cast for the protestee were not read or credited to protestee during the canvass but, instead, were read and credited in favor of protestant, resulting in more votes credited to said party than what he would actually obtain in an honest canvass; that in almost all of the precincts subject of the counterprotest, the ballots were prepared and filled not by the registered voters, but by the armed men of the protestant and thereafter were illegally counted in protestant's favor by the Board of Election Inspectors acting under threats from the said armed goons; (d) that in all of the counterprotested precincts, several marked ballots cast for the protestant, as a result of his massive vote-buying, were counted as valid votes for the protestant by the Board of Election Inspectors in flagrant violation of the Election Law; and (e) that some Election Inspectors of the Nacionalista Party were prevented by armed men of the New People's Army acting in connivance with protestant, from entering their respective polling places and from performing their duties therein; and that were it not for the above-described acts of terrorism, intimidation and wholesale fraud perpetrated in the aforesaid precincts, protestee would have obtained a much bigger plurality of votes over the protestant than that appearing in the certificate of canvass.

Protestee Alvaro Filart, as counter-protestant, therefore, prayed that, after due hearing, judgment be rendered dismissing the protest; that an order be issued (a) directing the proper officials, particularly the municipal treasurer of San Guillermo, Isabela, to deliver to said court all ballot boxes corresponding to the precincts mentioned in paragraph I of the counterprotest, including the keys, and registry list of voters; (b) that the ballots in the precincts counterprotested be examined and the votes recounted, the invalid votes of the protestant including those prepared and cast by persons other than the registered voters be declared null and void and deducted from protestant's total number of votes, while the valid votes of the protestee and counterprotestant which were not previously credited to him be considered and added to his total number of votes; and that protestant be sentenced to pay the protestee-counterprotestant the amounts of P20,000.00 as moral, P10,000.00 as compensatory, and P10,000.00 as exemplary damages, respectively.

In connection with the election protest before the Court of First Instance of Isabela, Branch II, the ballot boxes in Precincts Nos. 10-A, 13, 13-A and 13-B, subject of the protest, were opened, the ballots therein examined in the presence of the Commissioners designated by the protestant and the protestee, the non-contested ballots were segregated and counted, while the ballots contested by protestant were marked as exhibits, and the objections of

said party to their validity duly recorded during the hearings of April 24, 1972 (Exhibit D, page 508, Records), April 25 and 26, 1972 (Annex K, page 103, Records), April 27 and 28, 1972 (Annex L, page 108, Records) and May 2, 1972 (Annex M, page 125, Records).

In the Comelec

Meanwhile, or on November 24, 1971, i.e., four (4) days after the filing on November 20, 1971 of his aforesaid electoral protest with the Court of First Instance of Isabela, Second Branch-Cauayan, Armando H. Galicia filed with the Comelec a verified petition in Comelec Case No. C-291,[16] impugning the election results in the same precincts covered by his election protest pending before the Isabela Court, namely, Precincts Nos. 10 and 10-A of Barrio Guam and Precincts Nos. 13, 13-A and 13-B of Barrio Dingading of San Guillermo on the basis of the same grounds contained in his electoral protest, viz.: that not less than fifteen (15) goons heavily armed with armalite M-16s, Carbine M-2 Cal. 30s, Thompson Submachine guns and other high powered firearms, under the employ and acting upon instructions of Alvaro Filart swooped down upon the said polling places, interfered with the conduct of elections thereat, and by the employment of terrorism, intimidation, force, threats and violence, (1) cordoned the aforesaid precincts and prevented the registered voters therein from entering the polling places; (2) forced the boards of election inspectors of the precincts, except Precincts Nos. 10 and 10-A, to open the ballot boxes to enable the goons to retrieve the ballots already cast, which were then altered by erasing or crossing out the names of Armando Galicia and the other candidates of his party and placing thereon the names of Alvaro Filart and the other NP candidates; (3) demanded and obtained from the Boards of Inspectors the unused ballots which were then filled up by placing thereon the names of Alvaro Filart and the other NP candidates and thereafter cast inside the ballot boxes; (4) forced the Boards of Election Inspectors to prepare and sign falsified and spurious entries in the tally sheets, in the election returns and other election forms, which documents the goons then handcarried and delivered to the respondent Board of Canvassers. Attached to said petition were the "Minutes of Voting and Counting of Votes", prepared and signed by the chairman of said Board,[17] and the affidavits of the chairmen and members of the respective boards of election inspectors, as well as some of the registered voters thereat[18] attesting to the aforesaid acts of terrorism. Armando Galicia further alleged in the said petition that on the basis of the aforesaid spurious and falsified returns the Board of Canvassers made an illegal canvass and thereafter unlawfully proclaimed respondent Filart as duly elected Mayor with 708 votes as against petitioner Galicia's 520 votes, his closest rival; that if the election returns in the aforementioned five (5) precincts are nullified and set aside, Galicia would emerge as the winner by not less than 226 votes and the results in the positions of Vice-Mayor and Councilors would be similarly affected; that during all the said time when the foregoing anomalies were perpetrated and up to the date of the filing of the petition petitioner Galicia was in hiding as he was able to escape from an ambush set for him by Alvaro Filart's armed goons during election day and, consequently, he was unable to interpose his objections to the canvassing and proclamation of respondent Filart; that all the election returns from the five (5) precincts in question were, as shown above, manufactured, spurious and prepared at gunpoint and, hence, were no returns at all;[19] and, therefore, the proclamation of Alvaro Filart, based on such fraudulent election returns, is null and void.

Armando H. Galicia then prayed that: (1) the questioned canvass made by respondent Municipal Board of Canvassers be set aside; (2) the election returns of Precincts Nos. 10, 10-A, 13, 13-A and 13-B of San Guillermo, Isabela, be declared null and void; (3) pending the final determination of this case, an ex-parte order be immediately issued suspending the effects of the canvass made and the proclamation of Alvaro Filart; (4) after hearing, the respondent Board be ordered to make another canvass at such safe place as may be designated by the Comelec on the basis of the lawful election returns from Precincts Nos. 1, 1-A, 2, 2-A, 3, 4, 5, 6, 7, 8, 9, 11 and 12 of San Guillermo, Isabela, and, thereafter, proclaim the candidate who may emerge the winner therein.

On November 25, 1971, the Comelec, in a minute resolution, set Galicia's petition for preliminary hearing on December 7, 1971 and required Armando H. Galicia to furnish the respondent Board and the other candidates for mayor copies of his petition.

On November 29, 1971, Galicia filed with the Comelec a manifestation, dated November 25, 1971,[20] that he had caused to be filed with the Court of First Instance of Isabela, ex abundanti cautela the aforesaid election protest, Election Case No. II-4, pursuant to the doctrine enunciated in *Pacis vs. Commission on Elections*,[21] and *Antonio, Jr. vs. Commission on Elections*. [22] It was only during the month of December, 1971 however that Galicia filed with the Court of First Instance of Isabela a manifestation, dated December 3, 1971,[23] that he had filed therein the said election protest ex abundanti cautela.

On December 6, 1971, Galicia filed with the Comelec a motion to suspend effects of illegal canvass and proclamation made by respondent Board of Alvaro Filart as duly reelected mayor of San Guillermo,[24] pending the final determination of the case, citing *Chiongbian vs. Commission on Elections*,[25] *Cauton v. Commission on Elections*,[26] *Antonio, Jr. vs. Commission on Elections*, supra.

The Comelec on December 7, 1971, conducted a hearing ex parte without the presence of Filart, and on the basis of the sworn statements of the teacher-inspectors[27] of Precincts Nos. 10, 10-A, 13, 13-A and 13-B, attached to Galicia's petition,[28] declared that there was prima facie showing that the election returns from said precincts were prepared under duress and (a) set the case for hearing on the merits on December 17, 1971 and (b) granted the motion of Galicia to suspend the effects of the proclamation of Alvaro Filart as the winning candidate for mayor of San Guillermo, Isabela.[29] Filart, in his verified "Manifestation and Reply" of July 8, 1972,[30] claimed that he was neither required by Comelec to answer the petition nor served a copy of the Comelec's resolution of December 7, 1971.

During the hearing on December 17, 1971, Atty. Antonio M. Albano, counsel for Alvaro Filart, who came to know of this proceeding on December 16, 1971, appeared before the Comelec and moved for the dismissal of Galicia's petition on the ground that an election protest was earlier filed by Galicia against Filart on November 20, 1971 in the Court of First Instance of Isabela, which protest was not filed ex abundanti cautela and, as such, respondent Comelec had no jurisdiction on the matter. The comelec failed to resolve this motion and instead proceeded to receive the testimonial evidence of the witnesses, who were members of the boards of inspectors of the five (5) questioned precincts,[31] as well as the report of the NBI handwriting experts and the Fingerprint Identification Division of the Comelec.

The Comelec also ordered the examination of the Precinct Books and CE Form 11-A of the five (5) precincts aforementioned,[32] in order to ascertain whether or not most of the votes cast in those precincts were done by persons other than the registered voters.

Based on its findings the respondent Comelec rendered on May 24, 1972 its aforementioned Resolution RR-1174 in Case No. C-291 on the basis of its findings:

" * * * that the returns from Precincts 13, 13-A and 13-B are spurious or manufactured and should be excluded from the canvass, there is no need to proceed to determine whether or not the returns from Precincts 10 and 10-A were similarly tainted. In Precincts 13, 13-A and 13-B, FILART was credited with a total of 363 votes while GALICIA with only 4 votes. With the exclusion of these three returns from the canvass, FILART will lose 363 votes and GALICIA only 4 votes. FILART's final votes would be only 343 votes while GALICIA's will be 517 votes."

It is, therefore, for the purpose of annulling and setting aside the resolution of the Comelec that the present petition for certiorari and prohibition was instituted.

The principal issue posed by the parties is whether or not the Commission on Elections had jurisdiction to entertain Galicia's petition to annul Filart's proclamation, considering that when it was filed, an election protest lodged by Galicia against Filart involving substantially the same grounds was already pending in the Court of First Instance of Isabela, and the said court, not only without objection on the part of protestant but with his active participation, conducted a revision and examination of all the ballots in the precincts contested in the election protest.

After a careful review of the facts on the records, We find the instant petition meritorious.

- It is well-settled that the question, whether or not certain electoral returns are falsified or tampered with, and should not be included in the canvass, must first be raised before the Board of Canvassers, subject to appeal from its decision to the Commission on Elections,[33] and that if such question is not raised before the Board, the same can not be raised for the first time before the Commission on Elections in the latter's exercise of its appellate jurisdiction.[34] Where the petitioner does not do so and instead takes it up directly with the COMELEC, such failure will cause the dismissal of the petition.[35] Recently We reiterated the rule in *Anni v. Rasul*[36] and explained its rationale, thus:

"The rule has been time-tested. To allow a respondent in the Comelec to raise belated questions concerning returns at any time during the pendency of the case on review before the Comelec notwithstanding that he has not originally raised such questions before the canvassing board and only when he finds his position endangered would mean undue and endless delays in pre-proclamation proceedings before the Comelec, contrary to the settled doctrine that 'pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.'"

Non-compliance with such requirement can not be justified by Galicia's averment that "during all the said time when the foregoing anomalies were perpetrated and up to the present" said respondent was "in hiding as it was only through a timely warning that he escaped an ambush set for him by * * * Filart's armed goons during election day" and, consequently, he "was unable to interpose his objections to the canvassing and proclamation of * * * Filart." [37] To begin with, Galicia has not substantiated with competent proof such averment. Upon the other hand, the same is disputed by petitioner who insists, in his verified "Manifestation and Reply," dated July 3, 1972, that respondent Galicia "was duly represented during the canvassing and proceedings in the board of canvassers;" and that "respondent Galicia voted on election day and was campaigning and bringing voters to the polling places on election day and was freely going around the municipality days before election day. In fact, the canvassing and preparation of the election returns for certain precincts, like precincts Nos. 10 and 10-A, were conducted in the poblacion. * * * As regards the alleged 'ambush' story of respondent Galicia, petitioner Filart states that the only real ambush that took place in San Guillermo was that perpetrated by armed men on petitioner's official jeep which resulted in the death of 6 men, mostly policemen of the town – and one of the suspects in that ambush is the herein respondent Galicia, who is a former Chief of Police of San Guillermo." [38]

- The claim of respondent Galicia that he filed his electoral protest with the Court of First Instance of Isabela (Case No. II-4) on November 20, 1971, *ex abundanti cautela*, is not borne out by the facts. An examination of said electoral protest reveals that nowhere in the allegations contained therein, is it asserted, much less intimated, that the aforesaid petition was being filed *ex abundanti cautela*. As a matter of fact, in his election protest, Galicia prayed that "(a) upon service of summons in accordance with law, a date be immediately set for the hearing of this protest" and (b) that "an order be issued to the Municipal Treasurer of San Guillermo, Isabela, or any other government official who may have custody of the ballot boxes, copies of the registry lists, the election statements, the voters' affidavits, and other documents used in the elections in the said precincts Nos. 10, 10-A, 13, 13-A, and 13-B in San Guillermo, Isabela, ordering said municipal treasurer or official to immediately deposit with this Honorable Court the aforementioned documents in order that this Court may re-examine the same and declare the elections in the said precincts set aside, annulled and without effect."

Consequently, in accordance with Galicia's prayer, the Court of First Instance of Isabela issued its order of November 23, 1971 requiring that summons be served upon petitioner Filart and likewise directed the production and delivery to said court, the ballot boxes and other election paraphernalia involved in said protest. As aforesaid, upon service on him of the summons, petitioner Filart filed his answer with the counter-protest on November 27, 1971, which was later amended December 7, 1971. It is true that respondent Galicia subsequently filed a manifestation dated December 3, 1971 with the Isabela court wherein he stated for the first time that the electoral protest he filed on November 20, 1971 was made *ex abundanti cautela*, but, aside from the fact that it was rather belated, the same appears to be inconsistent with respondent Galicia's subsequent conduct. Thus it appears from the record of the Isabela case that respondent Galicia participated, through his counsel, in the examination and revision of the ballots in the contested precincts during the hearings before the Court of First Instance of Isabela on April 24, 25, 26, 27, 28, 1972, and in those of May 4, 5, 8, 9, 10, 11, 12, 13, 16, 18 and 19, 1972. Contrary to the claim of respondent Galicia, the Isabela Court of First Instance never considered the electoral case as one filed *ex abundanti cautela*. This is amply shown by the fact that, notwithstanding the aforementioned manifestation of respondent, the said Court proceeded with the revision of the ballots in the contested precincts. Thus in its order of April 17, 1972 denying the motion of respondent Galicia for postponement of the hearing of the electoral protest, the trial court stated: "The Court recalls that the hearing of this case has been postponed several times at the instance of the protestant, based on the same ground, which the Court, in the spirit of liberality, granted, anticipating that if ever the said protestant wins in his petition in the Comelec, this case now under consideration would become moot and academic. Considering the limited time allotted to this Court by law within which to dispose this election case, the Court cannot now grant the prayer of the protestant for another continuance. The revision of the ballots shall commence on April 21, 1972 to be undertaken by the commissioners and substitutes, as follows: For the Court: two (2) commissioners, the Clerk of Court, as Chairman-Commissioner and the Deputy Clerk of Court, as substitute; for the protestant: Atty. Elizardo Delmendo and Atty. Elisa Lelina, Jr., as substitute, with the privilege of substituting said commissioner by the protestant if he so desires; for the protestee: Atty. Lope Cabasal and Atty. Comunidad Lamorena, as substitute." In the same order, the Isabela Court directed the Provincial Commander of Ilagan, Isabela, where the ballot boxes of the questioned precincts were deposited, to deliver the same to said Court in the presence of the representatives of both parties on April 20, 1972. Instead of seeking a reconsideration of that order, respondent Galicia, as aforesaid, participated, thru his counsel, and commissioners, in the examination and revision of the ballots in the contested precincts during the period from April 24, 1972 up to and including May 19, 1972 when the revision of the ballots of all the contested precincts was terminated.

In the circumstances of the case, We find no cogent reason to depart from the well-settled rule that once a court of first instance has acquired jurisdiction by virtue of the filing of an election protest, all questions relative thereto will be decided in the case itself and not in another proceeding before a different forum. The rationale of the rule has been ably explained by Justice Fernando thus: "There can be no more appropriate disposition of a dispute of this character than a recognition of the prior competence of a court of justice whenever an election protest has been filed to determine who of the parties is entitled to the position in controversy. It would be conducive to confusion and conflict in authority if under the circumstances, as above disclosed, the Commission on Elections would still be considered as having the residual power to interfere with a pending election protest. Such an undesirable result should be avoided, and the *Acain* holding if referred to, as respondent Commission on Elections did, would serve such purpose."^[39]

It is insisted, however, by private respondent that there are peculiar circumstances of the case which should bring it within the ambit of *Tuburan v. Ballener*^[40] to warrant a departure from the aforesaid rule.

To begin with, in the *Tuburan* case, when the provincial board, sitting as a municipal board of canvassers, proclaimed Frank Ballener as the duly elected mayor on the basis of the questioned returns, petitioner *Tuburan* immediately interposed with said Board his objection to the proclamation and asked that it be suspended on the

ground that the election return from Precinct 18, which was used in the canvass and which involved a sufficient number of votes to affect the results, was, on its face, tampered and falsified. In the case at bar, not only did Galicia fail to appear before the board of canvassers but also failed to raise any objection before said Board, in the use of the returns from the questioned precincts. It was evident in the aforesaid Tuburan case that Jose Tuburan went to the Court of First Instance on December 26, 1967 merely "as a precautionary measure for the protection of his rights, because the period for filing a protest was due to expire the next day, December 27, and he had yet no knowledge or information as to whether or not the petition he had sent by personal courier to the Commission had actually been filed." Such justifying circumstances do not, however, obtain in the case at bar, as after the proclamation of Filart on November 10, 1971, Galicia immediately filed his election protest with the Isabela Court of First Instance, and it was only on November 24, 1971, when he filed his petition with the Comelec. Finally, in Tuburan, We said that "the evidence of falsification" of the questioned returns "is strong and convincing and there is no attempt to dispute its veracity nor any reference to contrary evidence, which if presented" would tend to overthrow the resolution of the Commission on Elections annulling Ballener's proclamation. We cannot reach the same conclusion in the case at bar, since the findings of the Comelec on the number of registered voters, who voted in Precincts Nos. 13, 13-A and 13-B, using as basis the findings of the NBI on the examination of the fingerprints and signatures of the registered voters in said questioned precincts, appear to be at variance with the result of the revision of the ballots conducted by the Isabela Court of First Instance.

WHEREFORE, the writ of certiorari prayed for is hereby granted annulling Resolution RR-1174, dated May 24, 1972, of respondent Commission on Elections in Case No. C-291, for want of jurisdiction to issue the same, and the writ of prohibition also prayed for is granted. Accordingly, the reconvening of respondent Municipal Board of Canvassers of San Guillermo, Isabela, for the purpose of making a new canvass and proclaiming the winning candidate for Mayor, as decreed in the aforesaid resolution, is enjoined. The temporary restraining order issued on June 7, 1972 is hereby made permanent. Costs against respondent Armando H. Galicia.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, and Esguerra, JJ., concur.
Barredo, J., concurs in a separate opinion.

[1] Entitled "Armando H. Galicia, Petitioner, versus Alvaro Filart and the Municipal Board of Canvassers of San Guillermo, Isabela, Respondents," Annex "A", Filart's Petition, Record, pp.19-33.

[2] Annex "A", Filart's Petition, Resolution RR-1174 of Comelec, Record, pp. 19-33.

[3] Annex "B", Filart's Petition, Record, p. 34.

[4] Annex "C", Filart's Petition, Record, p. 35.

[5] Record, pp. 138, 139.

[6] See also Summons, dated June 7, 1972, Record, p. 139, and Temporary Restraining Order, dated June 7, 1972, Record, pp. 140-141.

[7] Resolution, dated June 7, 1972, Record, p. 138.

[8] Comelec's Answer, dated and filed June 19, 1972, Record, pp. 445-455.

[9] Galicia's Answer, dated June 23, 1972, Record, pp. 325-376, with Annexes "1" to "10", inclusive, Record, pp. 377-406.

[10] Filart's Memo, dated July 29, 1972 and filed August 1, 1972, Record, pp. 461-483; Comelec's Memo, dated and filed Aug. 9, 1972, Record, pp. 587-599; and Galicia's Memo, dated August 9 and filed Aug. 10, 1972, Record, pp. 602-667.

[11] Annex D, Filart's Petition, Record, pp. 36-39.

[12] Annex "E", Filart's Petition, Record, pp. 40 & 41.

[13] Annex "F", Id., Record, pp. 42-50.

[14] Annex "G", Id., Record, pp. 51-60 & 61-69.

[15] Annex "H", Id., Record, p. 70.

[16] Annex "I", Filart's Petition, Record, pp. 71-82, wit Annexes "A" to "K", inclusive, Record, pp. 83-100.

[17] Annex "A", Galicia's Petition with Comelec, Record, pp. 83-84, 85-86.

[18] Appended to Galicia's Petition are the affidavits of: Jose Francisco, chairman of Precinct No. 10, undated, Annex "B", Record, p. 87; Rodrigo C. Reyes and Juan M. Bernardino, chairman and poll clerk, respectively, of Precinct No. 13-B, dated Nov. 12, 1971, Annex "C", Record, pp. 89-90; Carlito B. Garcia and Domingo L. Marfil, teacher-member and poll clerk of Precincts Nos. 10 and 10-A, respectively, dated Nov. 12, 1971, Annex "D", Record, p. 91; Andres R. Albano and Benjamin P. Melchor, chairman and teacher-member, respectively, of Precinct No. 13-A, dated Nov. 11, 1971, Annex "E", Record, pp. 92-93; Francisco Aliman and Conrado Sagun, both registered voters of Precinct No. 10, dated Nov. 11, 1971, Annex "F", Record, p. 94; Carlito Ubarra, appointed watcher of Armando Galicia at Precinct No. 10, dated Nov. 11, 1971, Annex "G", Record, p. 95; Sergio Batang and Felicio Embang, inspector and substitute inspector, respectively, of the LP at Precinct No. 10, dated Nov. 11, 1971, Annex "H", Record, p. 96; Rufino Aquinde, Quirino Alonzo, Loreto Olivares, Doro Diclas and Remigio Garcia, all registered voters at Precinct No. 10-A, dated Nov. 11, 1971, Annex "I", Record, pp. 97-98; Ernesto Naniong, registered voter at Precinct No. 10-A, dated Nov. 11, 1971, Annex "J", Record, p. 99; and a certification, dated Nov. 9, 1971, of Elpidio Salvador and Eugenio Nolasco to the effect that at 6:00 p.m., Nov. 7, 1971, they confiscated from the goons and the chief of police Rodolfo Martinez, seven (7) firearms at Barrio Palawan, San Mariano Sur, and Guam, Annex "K", Record, p. 100.

[19] Citing the cases of *Pacis v. Comelec*, 32 SCRA 319; *Aguan v. Comelec*, 23 SCRA 883; and *Purisima v. Salanga*, 15 SCRA 705.

[20] Annex "1", Galicia's Motion to Dismiss, Record, p. 198.

[21] L-29026, Sept. 28, 1968, 25 SCRA 377.

[22] L-31604, April 17, 1970, 32 SCRA 319.

[23] Annex "1-A", Galicia's Motion to Dismiss, Record, p. 199.

[24] Annex "2", Id., Record, pp. 200-201.

[25] L-19292, December 11, 1961.

[26] L-25467, April 27, 1969, 19 SCRA 911.

[27] See footnote 17.

[28] Annex "2", Galicia's Motion to Dismiss, Record, pp. 200-201.

[29] Annex "J", Filart's Petition, Record, pp. 101-102.

[30] Record, pp. 420-441.

[31] The witnesses who testified were: Rodrigo Kabigting Reyes, chairman of Precinct 13-B; Andres Albano, chairman of Pct. 13-A; Tomas Agustin, chairman of Pct. 13; Jose Francisco, chairman of Pct. 10-A and Carlito Garcia, teacher-member inspector of Pct. 10. See Comelec's minutes of Dec. 17, 1971, Annex "4" of Galicia's Motion to Dismiss, Record, pp. 204-205.

[32] Comelec's minutes, December 17, 1971, Annex "4" of Galicia's Motion to Dismiss, Record, pp. 204-205.

[33] Ong vs. Commission on Elections, et al., L-28415, Jan. 29, 1968, 22 SCRA 241; Tagaranao vs. Commission on Elections, et al., L-28598, March 12, 1968, 22 SCRA 978; Abrigo vs. Commission on Elections, et al., L-31374, Jan. 21, 1970, 31 SCRA 26; Anni, et al., vs. Rasul, et al., L-34904, Aug. 30, 1972, 46 SCRA 758.

[34] Lucman vs. Dimaporo, et al., L-31558, May 29, 1970, 33 SCRA 387; Anni, et al., vs. Rasul, et al., Ibid.

[35] Moore vs. Commission on Elections, et al., L-31394, Jan. 23, 1970, 31 SCRA 60.

[36] Anni, et al., vs. Rasul, et al., Ibid.

[37] Par. 10, Galicia's Petition in Comelec Case No. C-291, Record, p. 80.

[38] Record, p. 432.

[39] Reyes vs. Reyes, L-28476, January 31, 1968, 22 SCRA 485.

[40] L-28751, August 30, 1968, 24 SCRA 945-946.

CONCURRING

BARREDO, J.:

I concur in the main opinion, but I would like to reserve my view as to whether or not the participation of the respondent Galicia in the proceedings in the election protest after he filed his manifestation that he filed the same *ex abundante cautela* constitutes a waiver or in legal effect negates such manifestation. I agree, of course, in the holding that said manifestation was filed late and could not have produced the legal effect intended. I believe that such a manifestation should be made in the motion of protest or filed simultaneously therewith.

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