

**SULTAN RASUMAN DIPATUAN AND HADJI ALL MAMADRA ALAWI,
PETITIONERS, VS. THE COMMISSION ON ELECTIONS, MUNICIPAL
BOARD OF CANVASSERS OF BACOLOD GRANDE, MACABOROD
BALINDONG AND HADJI...***G.R. No. L-34880. October 27, 1972*

Ponente: FERNANDO, J.

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What petitioners Sultan Rasuman Dipatuan and Hadji Ali Mamadra Alawi, in this certiorari and prohibition proceeding, would have us do is to set aside a resolution of respondent Commission on Elections, dated March 10, 1972, as in their view it did manifest on its face a grave abuse of discretion, there being a marked deviation from the plain and explicit command of well-settled doctrines of this Court. More specifically, notwithstanding the failure of respondent Macaborod Balindong and Hadji Hasan Ali Dino Api[1] to raise an objection before the Municipal Board of Canvassers of Bacolod Grande, Lanao del Sur, as to the inclusion of returns in certain precincts, the dispute in this case dealing with the mayoralty and vice-mayoralty positions, respondent Commission entertained their petition for excluding such returns from certain precincts and sustained their stand. What is worse, so petitioners alleged, the previous proclamation as to their having been elected was nullified and respondent Municipal Board of Canvassers reconvened to make a new one. Petitioners would thus be gravely prejudiced; the result would be a foregone conclusion for the victory of respondents Balindong and Dino Api would be assured with such disputed returns not counted. Neither in the comment of respondent Commission of April 13, 1972 nor in the answer filed by it on June 23, 1972 was there a denial that the Board of Canvassers was not at all given the opportunity of passing upon the question of whether the returns in the disputed precincts should be accepted or not. Under the circumstances and considering the consistency with which this Court has invariably ruled that such an issue should be raised before a municipal board of canvassers, the merit of the petition may be discerned. Nor is this non-observance of the authoritative precedents by respondent Commission to be cured by the claim of what appears to be a latitudinarian construction of its powers under the Constitution. Again the uninterrupted holding of this Court is to the effect that its competence is limited solely to the enforcement and administration of all laws relative to the conduct of elections.[2] Petitioners are thus entitled to the writs prayed for.

The facts of significance are on the whole not open to dispute, some inaccuracies in the petition being clarified in the answer of respondent Commission. There is no question as to the election for municipal officials having taken place on November 8, 1971 with petitioners Sultan Rasuman Dipatuan and Hadji Ali Mamadra Alawi being duly registered and qualified candidates for the office of Mayor and Vice-Mayor of the municipality of Bacolod Grande, Lanao del Sur.[3] Such facts were expressly admitted in the answer of respondent Commission on Elections filed on June 23, 1972.[4] As to the asserted disqualification of respondent Macaborod Balindong for having been previously convicted of multiple murder,[5] respondent Commission admitted that the matter was brought to its attention, but added that in its resolution of October 22, 1971, it disallowed the same.[6] The

petition next took up the alleged disturbance created inside the polling places of Precincts 7, 7-a, 8, 9 and 10 by respondent Balindong as well as the other private respondent, Dino Api, who was a candidate for Vice-Mayor.[7] Respondent Commission did admit that the voting had to be stopped because of a shooting incident, but it denied the allegation as to who the perpetrators were for lack of knowledge as well as the claim that voting was resumed thereafter at 1:00 o'clock in the afternoon, the version of the Commission being that it was not so.[8] The allegation that respondents Balindong and Api and their armed partisan followers utilizing force and violence terrorized the Board of Inspectors and the voters in Precincts 1, 1-A, 2, 2-A, 3, 4, 5 and 6 of Bacolod Grande[9] was denied by respondent Commission.[10] It did admit, however, that the election returns were prepared at the Headquarters of the Philippine Constabulary in Camp Amai Pakpak, Marawi City, at the office of the Provincial Commander of Lanao del Sur.[11] There was likewise a denial of the grievance alleged in the petition that only the supposed witnesses of respondents Balindong and Dino Api were given the chance to be heard while those of petitioners were ignored.[12] Lastly, there was a denial of the allegation in the petition as to the valid proclamation of petitioners Dipatuan and Alawi as the duly elected Mayor and Vice-Mayor of Bacolod Grande, respondent Commission stressing that the effect of such proclamation was duly suspended by it on December 2, 1971.[13]

It does appear, and this is by way of repetition, that at no time did private respondents object to the inclusion of the returns of Precincts 7, 7-A, 8, 9 and 10 at the canvassing stage. Respondent Commission did not even bother to take issue on the following paragraphs of petition: "That after the results of the elections were already publicly made known and having already realized their defeat in the elections, respondents Balindong and Dino Api on November 15, 1971, filed a hurried petition to respondent Comelec, alleging, among others, in that petition, the alleged gun-point returns for Precinct No. 10 while remaining silent on the results of the election in Precincts 1, 1-A, 2, 2-A, 3, 4, 5 and 6. * * *; Aforesaid respondents subsequently filed a belated amended petition on December 13, 1971. * * *; On December 2, 1971, Petitioners herein, thru counsel, filed their answer to the original petition and subsequently, on December 22, 1971, their (Petitioners') amended answer to the Amended petition aforesaid." [14]

In the order of respondent Commission of March 10, 1972,[15] which is sought to be nullified, it declared "the returns from Precincts 7, 7-A, 8, 9 and 10 as spurious or manufactured returns which should be excluded from the canvass," set aside "the proclamation of [Sultan Rasuman Dipatuan] and [Hadji Ali Mamadra Alawi] made by the Municipal Board of Canvassers on November 9, 1971" and directed "the Municipal Board of Canvassers to reconvene for the purpose of terminating the canvass on the basis of all the returns except the returns from Precincts 7, 7-A, 8, 9 and 10 which should be excluded from the canvass, and thereafter to proclaim the winning candidates for Mayor and Vice-Mayor of Bacolod Grande." [16] Petitioners, as losing candidates, were given up to March 20, 1972 to obtain a restraining order from this Court, a period extended to March 25; otherwise, the winning candidates for mayor and vice-mayor of Bacolod Grande would be proclaimed. The petition was filed with this Court on March 23, 1972. The next day a resolution of this tenor was issued by us: "Acting upon the petition for certiorari, prohibition, mandamus with preliminary injunction, [the Court resolved] to require the respondents to comment thereon within ten (10) days from notice hereof and not to move to dismiss the petition. Effective immediately and until further orders from this Court, let temporary restraining order issue." [17] The comments were subsequently filed and on June 1, 1972, the respondents were required to answer. That they did, the answer for respondents Balindong and Dino Api being filed on June 23, 1972, that for the Commission on Elections being filed on the same day, and that from the Municipal Board of Canvassers on July 15, 1972. With the submission of the memoranda for the parties, the case was deemed submitted for decision on October 1, 1972.

From the above recital, it is easily understandable why the petition is impressed with merit. The writs for certiorari and prohibition prayed for should be granted.

1. The statutory scheme as to the canvassing of votes is set forth explicitly in the Election Code of 1971.[18] The public interest in procedural regularity would best be served if the terms of the statute are complied with strictly. Moreover, it would be to tax to the limit of the capability of respondent Commission on Elections if notwithstanding such failure to abide by what is ordained by law, the matter could in the first instance be inquired into by it. The mere thought of the number of municipalities where objection to the inclusion of certain returns could be raised is enough to stagger the imagination. Wisely then has this Court ruled as a necessary corollary that such an issue should first be brought up before the appropriate board of canvassers. In the recent decision of *Lucman vs. Dimaporo*,[19] this Court, speaking through the Chief Justice, made clear that petitioner there "could not legally raise before the Commission, in the exercise of its appellate jurisdiction, any question not originally set up before said Board." [20] That is to reiterate a principle which five months earlier this Court had explicitly set forth in *Moore vs. Commission on Elections*. [21] In the latest case in point, *Anni vs. Rasul*, [22] decided barely two months ago, the rationale for such a doctrine has been expressed in the following language of Justice Teehankee: "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.'" [23] It might be argued that in *Antonio vs. Commission on Elections*, [24] this Court did not consider as an insuperable objection a party's failure to follow such procedure. It could be said that the case was rather unique, there being evident a total failure of the election which in the opinion of the Court did call for entire and total disapproval of what was done by the Provincial Board of Canvassers. Moreover, as noted in the opinion of Justice J.B.L. Reyes, it could not have held a valid session. Thus: "A reading of the minutes of the canvass proceedings leaves no doubt that the short notices (barely an hour) given to Vice-Governor Gato and two members of the Provincial Board were expressly designed to prevent their attendance, and this maneuver would suffice to annul the canvass * * *." [25] There is no warrant for construing the *Antonio* decision then as a justification for a party relying on respondent Commission to pass upon an issue that has to be threshed out with the board of canvassers. This petition therefore is on solid ground. Deference to the pronouncements cited entitles it to a favorable response, under the facts disclosed. Respondent Commission lacked legal competence to issue the challenged order.

2. There is just more than an intimation, both in the answer and in the memorandum of respondent Commission, that this Court should look with favor on the exercise of its authority to the end that the constitutional objective of insuring free, orderly and honest elections be attained. That plea, of course, is entitled to the utmost sympathy. Nonetheless, this Court has made clear, not once, but repeatedly, that the power of the Commission in the language of the Constitution is to "have exclusive charge of [the] enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law." [26] It is thus manifest that it has no competence to act outside the statutes and administrative orders in pursuance thereof. Its scope of activity is circumscribed by the Election Code. Subsequent enactments may of course broaden its field of action, but they must so provide, whether in express terms or by clear implication. It is not vested with direct constitutional authority unlike the executive, legislative and judicial departments. [27] There are set boundaries to its power, limits beyond which it cannot go. Outside lies a terrain where its writ will not run. It is not vested with a roving commission to inquire into all electoral evils and correct them. It is thus cabined and combined. An observation of Justice Miller should ever be kept by it in mind. Any one discharging a public function is all the more strongly bound to observe the limitations that the law imposes on the authority which it gives. [28] There was, therefore, an imperative need for respondent Commission to justify what was done by it in this case. As it failed to do so, then the challenge against the validity of the action taken by it must succeed. So we

have held in an unbroken line of cases impressive for their number and unanimity.[29]

A few excerpts from relevant decisions would not be amiss. Thus according to Chief Justice Moran in *Cortez vs. Commission on Elections*:^[30] "The power given to the Commission by section 2, Article X of the Constitution, 'to decide' all administrative questions concerning location of polling places, is a power that should be exercised when a question is brought before the Commission, and its decision should be rendered in accordance with law and not in contravention of law. The functions and powers of the Commission on Elections are limited by law. It has no legislative power to change or modify the law, nor may such power be delegated to the Commission. In the instant case, the action taken by the Commission on Elections finds no support in law."^[31] From the then Justice, now Chief Justice, Concepcion, in *Abcede vs. Imperial*:^[32] "Lastly, as the branch of the executive department — although independent of the President — to which the Constitution has given the 'exclusive charge' of the 'enforcement and administration of all laws relative to the conduct of elections,' the power of decision of the Commission is limited to purely 'administrative questions.' * * * The question whether in order to enjoy those benefits — a candidate must be capable of 'understanding the full meaning of his acts and the true significance of election,' and must have — over a month prior to the elections (when the resolution complained of was issued) 'the tiniest chance to obtain the favorable indorsement of a substantial portion of the electorate' is a matter of policy, not of administration and enforcement of the law, which policy must be determined by Congress in the exercise of its legislative functions. Apart from the absence of specific statutory grant of such general, broad power as the Commission claims to have, it is dubious whether, if so granted -- in the vague, abstract, indeterminate and undefined manner necessary in order that it could pass upon the factors relied upon in said resolution (and such grant must not be deemed made, in the absence of clear and positive provision to such effect, which is absent in the case at bar) -- the legislative enactment would not amount to undue delegation of legislative power. * * *"^[33] This is what Justice J.B.L. Reyes said in *Lawsin vs. Escalona*:^[34] "The additional precautions prescribed by the Commission on Elections, pursuant to its regulatory power, could not warrant the conclusion that the tally sheet is one of the authentic copies referred to in section 163, since the Commission on Elections may not increase its scope, nor alter or amend the Election Code enacted by the Legislature. If sections 163 and 168 did not originally include the tally sheet (or board), the Commission is powerless to subsequently insert it therein."^[35] Even in *Cauton vs. Commission on Elections*,^[36] often relied upon, and correctly so, as indicative of the broad discretion enjoyed by respondent Commission, Justice Zaldivar, who spoke for the Court, was careful to point out that it should not exceed statutory authority. Thus: "The opening of the ballot boxes may, therefore, be prayed for by a candidate who is prejudiced by the apparent falsification of the election returns outside the ballot boxes, and in ordering the opening of the ballot boxes the purpose of the Commission is not to help a particular candidate win an election but to properly administer and enforce the laws relative to the conduct of election."^[37]

WHEREFORE, the writ of certiorari is granted annulling the resolution of respondent Commission on Elections of March 10, 1972. The writ of prohibition is likewise granted restraining the enforcement of such resolution. The convening, as therein decreed, of respondent Municipal Board of Canvassers of Bacolod Grande, Lanao del Sur for the purpose of giving effect to such resolution is likewise prohibited. Without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro, J., concurs in the result.

Makalintal, J., on official leave.

[1] Another respondent named is the Municipal Board of Canvassers of Bacolod Grande.

[2] Article X, Section 2 of the Constitution provides: "The Commission on Elections shall have exclusive charge

of its enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court. No pardon, parole, or suspension of sentence for the violation of any election law may be granted without the favorable recommendation of the Commission."

[3] Petition V, pars. 1 and 2.

[4] Answer of Respondent Commission on Elections, par. 1.

[5] Petition V, pars. 3, 5 and 6.

[6] Answer of Respondent Commission, par. 2.

[7] Petition V, par. 7. See also par. 8.

[8] Answer of Respondent Commission, par. 3.

[9] Petition V, par. 9.

[10] Answer of Respondent Commission, par. 4.

[11] Petition V, par. 10 and Answer of Respondent Commission, par. 5.

[12] Petition V, par. 14 and Answer of Respondent Commission, par. 6.

[13] Petition V, par. 15 and Answer of Respondent Commission, par. 7.

[14] Petition V, pars. 11, and 12 and 13.

[15] Annex V of the Petition.

[16] Order of Respondent Commission dated March 10, 1972.

[17] Resolution dated March 24, 1972.

[18] According to Section 216 of the Revised Election Code of 1971: "The municipal or municipal district board of canvassers shall meet not later than six o'clock in the evening on election day for the purpose of canvassing the votes cast in the municipality for candidates for municipal or municipal district offices, as the case may be. The municipal or municipal district treasurer shall produce before it the election returns from the different election precincts already received by him. The board shall canvass continuously until the last statement of election has been read, but may suspend the canvassing only for the purpose of waiting the other election returns, and shall immediately resume canvassing upon receipt of said election returns. Each time the board suspends its canvassing, it shall prepare the total of votes cast for each candidate for national, provincial, city, municipal or municipal district offices and send copies thereof by the fastest means of communication to the Commission on Elections in Manila and to the provincial treasurer, making available the data contained therein to mass media and other interested parties. After counting all the votes cast for candidates for municipal or municipal district offices, as the case may be, the board shall proclaim as elected for said offices those who have polled the largest number of votes for the different offices, in the same manner as hereinabove provided for the provincial board."

[19] L-31558, May 29, 1970, 33 SCRA 387.

[20] Ibid., 407.

[21] L-31394, January 23, 1970, 31 SCRA 60. Moore cited the following cases: Ong vs. Commission on Elections, L-28415, January 29, 1968, 22 SCRA 241; Tagoranao vs. Commission on Elections, L-28598, March 12, 1968, 22 SCRA 978 and Abrigo vs. Commission on Elections, L-31374, January 21, 1970, 31 SCRA 26.

[22] L-34904, August 30, 1972.

[23] Ibid.

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

[25] Ibid., 331.

[26] Article X, Sec. 2 of the Constitution.

[27] According to Article VI, Sec. 1: "The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives." This is what Article VII, Sec. 1, provides: "The Executive power shall be vested in a President of the Philippines." On the judiciary, this is what is contained in Article VIII, Sec. 1: "The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law."

[28] Cf. United States vs. Lee, 106 US 196 (1882).

[29] Cortez vs. Commission on Elections, 79 Phil. 352 (1947); Nacionalista Party vs. Commission on Elections, 85 Phil. 149 (1949); Abundante vs. Relato, 94 Phil. 8 (1953); Abcede vs. Imperial, 103 Phil. 136 (1958); Reyes vs. Commission on Elections, 103 Phil. 940 (1958); Guevara vs. Commission on Elections, 104 Phil. 268 (1958); Salcedo vs. Commission on Elections, 108 Phil. 1164 (1960); Sanchez vs. Del Rosario, L-16878, April 26, 1961, 1 SCRA 1102; Albano vs. Arranz, L-19260, January 31, 1962, 4 SCRA 386; Masangcay vs. Commission on Elections, L-13827, Sept. 28, 1962, 6 SCRA 27; Lawsin vs. Escalona, L-22540, July 31, 1964, 11 SCRA 643; Ututalum vs. Commission on Elections, L-25439, Dec. 3, 1965, 15 SCRA 465; Acuña vs. Golez, L-25399, Jan. 27, 1966, 16 SCRA 32; Cauton vs. Commission on Elections, L-25467, April 27, 1967, 19 SCRA 911; Janairo vs. Commission on Elections, L-28315, Dec. 8, 1967, 21 SCRA 1173; Abes vs. Commission on Elections, L-28348, Dec. 15, 1967, 21 SCRA 1252; Ibuna vs. Commission on Elections, L-28328, Dec. 29, 1967, 21 SCRA 1457; Reyes vs. Reyes, L-28476, Jan. 31, 1968, 22 SCRA 485; Alonto vs. Commission on Elections, L-2849, Feb. 28, 1968, 22 SCRA 878; Kibad vs. Commission on Elections, L-28469, May 7, 1968, 23 SCRA 588; Balindong vs. Commission on Elections, L-29610, March 28, 1969, 27 SCRA 567; Binging Ho vs. Municipal Board of Canvassers, L-29051, July 28, 1969, 28 SCRA 829; Antonio, Jr. vs. Commission on Elections, L-31604, April 17, 1970, 32 SCRA 319; Lucman vs. Dimaporo, L-31558, May 29, 1970, 33 SCRA 387; Usman vs. Commission on Elections, L-33325, Dec. 29, 1971, 42 SCRA 667; Puñgutan vs. Abubakar, L-33541, Jan. 20, 1972, 43 SCRA 1 and Tiglao vs. Commission on Elections, L-31566, Feb. 29, 1972, 43 SCRA 535.

[30] 79 Phil. 352 (1947).

[31] Ibid., 355-356.

[32] 103 Phil. 136 (1958).

[33] Ibid., 141-142.

[34] L-22540, July 31, 1964, 11 SCRA 643.

[35] Ibid., 647-648,

[36] L-25467, April 27, 1967, 19 SCRA 911.

[37] Ibid., 923.

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