

ROGELIO O. TIGLAO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, CORNELIO SANGA AND THE BOARD OF CANVASSERS OF PAMPANGA, RESPONDENTS.

G.R. Nos. L-31566 & L-31847. August 31, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The present proceedings are the sequel of our judgment of February 18, 1970 in Case L-31566 wherein inter alia we set aside the resolution of January 26, 1970 of respondent Comelec and directed that the proclamation of the winning candidate for the position of Congressman for the second district of Pampanga be held in abeyance until after the questions affecting the same, as discussed in the decision, pending in the Pampanga court of first instance, are determined with finality.

Foremost among these incidents pending in the Pampanga court, as recounted in our decision of February 18, 1970, were seven ex-parte petitions for judicial correction of election returns under section 154 of the Revised Election Code filed on January 27, 1970 by the corresponding boards of election inspectors.[1] In its "decision" of February 7, 1970, the Pampanga court had therein authorized the correction of the election returns from six precincts of San Luis, Pampanga,[2] crediting petitioner Tiglao with 292 additional votes therein that would overcome respondent Sanga's over-all margin of 247 votes. After our decision of February 18, 1970, the Pampanga court eventually maintained its said "decision" of February 7, 1970, per its resolution of March 10, 1970, denying therein intervenor Sanga's motion for reconsideration of February 25, 1970 and its resolution of March 25, 1970 denying therein intervenor Sanga's motion of March 13, 1970 for retrial and recall of petitioners-inspectors and witnesses for cross-examination.

In this Court, after several incidents resolved in our resolutions of March 19, March 20, March 23, March 25, and March 30, 1970, we directed respondent Comelec, through the last resolution of March 30, 1970 "to immediately convene the board of canvassers with instructions to conclude its canvass and to proclaim forthwith the winning candidate for the second congressional district of Pampanga. "

The corresponding members of the boards of inspectors of the six San Luis precincts concerned thereafter convened at the session hall of the Comelec before the three-man supervisory committee appointed by Comelec at proceedings attended by the counsels of the contending parties and the provincial board of canvassers of Pampanga and made the authorized corrections, duly initialed by them, on the corresponding returns, crediting petitioner Tiglao with 292 additional votes therein in the following manner:

“Election

Precinct

As Per Uncor-

Correction

Additional

Case No.

No.

rected Return

Authorized

Votes

3653

9

7

60

53

3654

21

5

50

45

3655

20

9

49

40

3656

19

0

100

100

3657

16

0

25

25

3659

15

0

29

29

Total -

292 votes"

Upon termination of the act of correction, respondent Sanga's counsel objected to the correctness of the corrections made in four precincts,[3] principally on questions of identity, raised as to whether the persons, who appeared and were questioned by the committee and by counsels for both parties and made the corrections on the corresponding returns, were the same persons who accomplished the said returns in the elections. The committee so found affirmatively in its report of April 3, 1970 to respondent Comelec, which, in its resolution of the same date, approved the report of the committee, overruled respondent Sanga's objections and "consider(ed) said corrections to have been regularly made."

Upon the provincial canvassing board reconvening on April 6, 1970 to discharge its function, respondent Sanga's counsel verbally moved that the six corrected returns "be disregarded on the ground that said returns on their face are mathematically improbable and were obviously manufactured as it clearly appears that the votes cast for the congressional candidate(s) are very much in excess of the registered voters in the respective precincts. " The board thereupon, by unanimous vote, resolved to refer the issue to the Comelec for resolution.

Respondent Comelec, after hearing the parties, promulgated its split 2 to 1 resolution of April 7, 1970, wherein, resolving the referral, it ordered the board "not to include in the canvass the election returns for Precincts Nos. 9, 15, 16, 19, 20 and 21 of San Luis, Pampanga, for being mathematically improbable as shown by the great excess of votes appearing thereon for congressional candidates" and to thus complete the canvass and make the corresponding proclamation of the winner on April 13, 1970 at 5:00 p.m., unless restrained by this Court.

Upon petitioner Tiglao filing on April 9, 1970 of his "Motion to Enforce Judgment (alternatively) Petition for Certiorari", challenging this last resolution of respondent Comelec on the ground that Comelec had no authority to review and vacate the Pampanga court's correction "decision" the Court issued a restraining order as prayed for and required respondents to file their answer thereto. Respondents, in their answers, joined issue, asserting that the Pampanga court's ruling in the judicial correction proceedings is not res judicata and binding on Comelec insofar as the genuineness of the corrected returns is concerned if in Comelec's judgment the use thereof would tend to foist a fraud on the electorate. Respondent Sanga further contended that petitioner Tiglao had instigated the boards of inspectors of the precincts concerned to petition for judicial correction of the returns to offset the former's (Sanga's) majority as shown in Comelec's first resolution of January 26, 1970 (set aside in our judgment of February 18, 1970), against said board's previous representations to Comelec that they had been forced to prepare said returns at gunpoint.

The Court heard the parties in oral argument on April 23, 1970 and held a re-hearing on July 16, 1970, wherein,

pursuant to its resolution of June 29, 1970, it heard Hon. Honorio Romero, presiding judge of Branch III of the Pampanga court who heard and decided the correction proceedings and received from his clerk of court the records, exhibits and transcripts of the proceedings.

The questioned Comelec majority resolution itemized the following excess votes found upon examination of the corrected returns:

“Prec.

No. of

No. of

Total

Excess Votes

No.

Reg.

Voters

No. of

For

Voters

who ac-

Votes

Reg. : Votes

tually

cast for

Voters : cast

voted

Congress

-man

9

158

158

211

53

53

15

102

82

111

9

29

16

107

86

111

4

25

19

216

138

238

22

100

20

120

80

107

—[4]

27

21

115

80

119

4

39

TOTAL

818

624

897

794

273”

The Comelec majority, holding that "where, as in this case, the excess votes were the result of judicial correction made one day after the Commission has promulgated its decision (Case No. RR-695), and the winner already known, based solely on sworn petitions of the corresponding boards of inspectors, and the returns as corrected contained excess votes materially affecting the result of the election, then the only explanation that could be derived therefrom is that said boards had submitted false or inaccurate data to the Court," that it "cannot countenance the use of election returns that are 'obviously' invalid" and that "the court merely sustained the sworn petitions of said boards without considering other factors on the probable consequences thereof", ordered the exclusion for being "mathematically impro-bable" of the six corrected returns from the canvassing, "adhering to the sound policy that abhors 'mere pyrrhic victory of candidates and that the holding of elections must, at all times and at any cost, be free, orderly and honest."

The parties assail each other for their respective incongruous postures: respondents' upholding for the Comelec's ruling sustaining Sanga's contention that the returns which were concededly genuine and au-thentic are now to be excluded as "obviously manufactured" and invalid after and because of the corrections thereon judicially authorized by the Pampanga court, which very corrections Corn-elec had itself ruled to have been "regularly made;" and petitioner's, for maintaining that the six returns were properly corrected only to reflect the true and correct total votes of Tiglao (313, increased by 292 from 21), ignoring the 273 excess votes appearing on the very face of the returns as a result of the corrections made, as against the lesser "number of voters who actually voted" with the corresponding "ballots found in the compartment for valid ballots recorded thereon (897 votes cast as corrected vs. 624 voters, who actually voted = excess of 273 votes)[5] and for seeking to explain them away now by affidavits of the inspectors submitted at the first hearing held on April 23, 1970 to the effect that the votes credited now to Tiglao per the correction were wrongly cre-dited originally to another candidate, Federico Taruc, and should therefore be deducted from the votes credited to Taruc in the re-turns, when they had testified at the correction proceedings that aside from their mistake in the number of votes credited to peti-tioner Tiglao, no other mistake had been committed by them in the preparation of the returns.[6]

1. It is evident that no matter how worthy the respondent Comelec's motives may be, the Comelec lacks jurisdiction and authority to review the judicial correction ordered by the Pampanga court as the court of competent jurisdiction under section 154 of the Revised Election Code.[7] Much less may Comelec set aside the judicially corrected returns, which is a foreclosed question as it itself admits. Assuming in gratia argumenti that the Pampanga court grossly erred in ordering the corrections on the basis of patently false testimony of the inspectors resulting in the excess votes now shown on the corrected returns, Comelec may not collaterally attack and discard the Pampanga court's ruling as correctly stated in Commissioner Patajo's dissenting opinion. The judicial resolution of the inspectors' petition for correction of returns is final and executory for the purpose of the canvass solely, and with the court's order of approval or denial, as the case may be, in the exercise of its sound discretion, the proceeding comes to an end, giving way to the proclamation and the proper electoral protest.[8] No appeal lies from the court's order; "(I)f at all, only questions of jurisdiction and of law may be brought to the Supreme Court in appropriate instances by certiorari, prohibition or mandamus with a request for the issuance of the corresponding writ of preliminary injunction, if necessary." [9]

2. The Court has noted, however, that the vexing question at bar of excess votes emerging despite, and in fact as a result of, the judicial correction proceedings would not have arisen, had due notice of the petition for correction been properly given to the affected candidates, with the questioned returns sought to be corrected duly submitted to the lower court, and hence, the testimony of the inspectors in support of their petition would not have been heard ex-parte by the court without benefit of cross-examination, as in the case at bar.

The Court, on the strength of prevailing jurisprudence cited in the preceding paragraph No. 1, had issued in Case L-31566 its resolution of March 23, 1970, denying respondent Sanga's urgent motion of March 19, 1970 for reconsideration of the Court's resolution of the same date declaring its decision of February 18, 1970 to be executory and authorizing the canvassing board to reconvene and complete its canvass. The Court, thereafter, acting upon respondent Sanga's urgent motion for reconsideration of March 24, 1970 (wherein Sanga for the first time adverted to the excess votes that would result from the judicial correction), issued its resolution of March 30, 1970 denying Sanga's motion and declaring that "the electoral administrative processes which are mandated by law to be summary in nature in order to determine expeditiously the outcome of the elections ... must come to an end" and that "no further motion to hold in abeyance the effectivity of the Court's resolutions of March 19 and 23 (for the canvass to proceed) will be entertained. "

In our decision of February 18, 1970, we had directed that the proclamation of the winning candidate between the contending rivals be held in abeyance until after the questions affecting the same, pending in the Pampanga court, are determined with finality. The challenged COMELEC resolution now before us has per-force laid open the question of finality of the Pampanga court's correction ruling - not because of Comelec's resolution beyond its jurisdiction to exclude the corrected returns and thus review and set aside the Pampanga court's ruling - but because of the grave question of due process by virtue of lack of notice of the proceedings on the parties affected, as motu proprio noted by the Court, and which bears heavily on the validity or nullity of the correction proceedings, as hereinafter discussed. Besides, prescinding from the fact that the Pampanga court's ruling was not directly elevated to the Court, it is a settled principle in the administration of justice that "it is always in the power of the Court to suspend its own rules or to except a particular case from its operation whenever the purposes of justice require it." [10]

Since the Court's pronouncement in *Gumpal vs. Court of First Instance of Isabela*^{10-a} that section 154 of the Revised Election Code does not require notice of the judicial correction proceedings upon the candidates affected, in contrast with section 163 thereof which specifically directs that notice of the judicial recount proceedings be "given to all candidates affected", the Court has had occasion to amplify on its ruling and the rationale therefor.

As restated in *Estrada vs. Navarro*,¹¹ the Court has invariably required unanimity of the inspectors in petitioning for correction for the reason "that the proceeding for correction is a summary one, is not supposed to raise controversial issues, and does not call for a recount or revision of the ballots themselves, either of which contemplates a different remedy."

Experience has shown us the contrary, however. Invariably, the correction petition itself, although by unanimous consent of the inspectors, has ipso facto given rise to grave controversial issues and doubts since the correction sought to be made would materially affect the result of the election. Witness *Dizon*,¹² where by judicial correction of the election return of one precinct in Biñan, Laguna, reducing candidate Benitez' votes therein from 148 to 129, Benitez lost out to his opponent Dizon in the gubernatorial race in the 1928 elections by 10 votes, when without the correction, he would have won by 9 votes; *Gumpal*, supra, where by judicial correction of the returns from two precincts in Santiago, Isabela, Leocadio Ignacio, Gumpal's opponent for the position of provincial board member in the 1959 elections was credited in one precinct with 174 votes "not included in (the) election return due to inadvertence" and 140 instead of 114 votes in the other precinct, or a total of 200 additional votes, sufficient for Ignacio to nose out Gumpal by 10 votes; and the latest case of *Cuenco vs. Laya*,¹³ where by judicial correction of the return from one precinct in Carcar, Cebu, upheld by the Court by a six-to-three vote, Eduardo Gullas was credited with 67 votes to supply the complete omission from the return of his name and votes received, which votes were decisive in his being proclaimed winner over Antonio V. Cuenco by 16 votes in the last elections for the third congressional district of Cebu. And controversies have also arisen even as to unanimity of the petition itself, e.g. as to whether the adverse party's inspector understood the petition or was the person actually appointed as such or was compelled to sign the petition under duress, or whether the unanimous petition may still be acted upon by the court or be properly considered when the adverse party's inspector recants or disowns the petition or whether such unanimity need only exist upon the filing of the petition or before the court issues the order of correction.

In the above-cited cases, the Court, reflecting on the desirability of requiring that due notice of the correction proceedings be given to all candidates affected, did concede in *Gumpal* that "it would be a good practice to require such notice in appropriate cases, particularly when there is sufficient time therefor and there are circumstances indicating that the allegations of the petition for correction may not be entirely truthful," and in *Cuenco*, that "due process, the community's sense of fairness, would seem to indicate the need of hearing the petitioner Cuenco, consistently with the summary character of the proceedings. In-deed the respondent judge might have accommodated the petitioner's request, considering that the latter's residence is only a stone's throw from the courthouse." But the Court therein, after satisfying itself that all indications pointed to the veracity of the petitions unanimously filed by the inspectors, upheld the judicial corrections thus authorized, despite the lack of notice to the affected parties, on broad perspectives of public policy in the light of the law's mandate requiring the prompt ascertainment in summary proceedings of the winning candidate entitled to proclamation.

Considering that the difference in votes between the rival candidates in the cited cases, as in the case at bar, is marginal, such that the judicial correction by unanimous petition of the inspectors of one or a few precincts would materially affect the results of the election and spell victory or defeat, the Court has felt constrained to re-examine thoroughly the question and after due deliberation has arrived at the conclusion that due process, as guaranteed by the Constitution, requires in order that jurisdiction may be properly acquired over the parties affected and exercised by courts of first instance in correction proceedings under section 154 of the Revised Election Code that (1) notice of the correction proceedings be given to all candidates affected just as it is required under section 163 thereof governing recount proceedings and (2) copy of the return sought to be corrected must be ordered by the court to be duly submitted to it by the provincial or municipal treasurer, as the case may be, or by the chairman of the board of canvassers concerned who had received the same for the canvassing, without

prejudice to availing of other official copies of the return such as the Comelec's copy and that deposit-ed in the ballot box.

The demands of procedural due process that a party affect-ed must be given notice and an opportunity to be heard must be fulfilled together with the law's policy for the prompt proclama-tion of the true winner in the elections. The summary character of the proceedings, if implemented with a firm hand so as to rule out impertinent and irrelevant questions and dilatory tac-tics, would normally not cause any undue delay in the ensuing proclamation. And if some measure of delay were entailed, nevertheless the due process requirement may not be dispensed with.¹⁴ Lack of notice to a party adversely affected has invariably been held to mean the nullity of the decisions rendered in ordinary civil cases, since they "suffer from a fatal infirmity for want of due process."¹⁵ As stated by the now Chief Jus-tice in Cuaycong vs. Sengbengco,¹⁶ 'Acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding. "

This doctrine of due process should equally be applied to correction proceedings under section 154 of the Revised Elec-tion Code, for they are in law and in fact judicial proceedings. As pointed out by Mr. Justice J. B. L. Reyes speaking for the Court in Binging Ho vs. Municipal Board of Canvassers,¹⁷ wherein we upheld the constitutionality of the legislative grant of authority on courts of first instance to recount the ballots in case of conflicting election returns,¹⁸ "(T)he ascertaining that such basic facts do exist according to the evidence submitted by the parties is essentially a judicial function, and it is only after the court decides that the recount is legally justified that the actual recount takes place." Correction proceedings constitute the only other instance of such legislative grant of authority on the courts to intervene in the pre-proclamation electoral process, and the Court's ruling in Binging Ho is equally applicable. In paraphrase thereof, the pre-requisite finding or determination by the courts as to the veracity or non-veracity of the inspectors' petition and of the error alleged, to warrant the granting or denial of judicial authority to make the correction, an exercise of the judicial power to ascertain the facts, pass upon their sufficiency, and apply the law to the controversy."

With due notice of the proceeding, the fate of a candidate adversely affected would not be adjudged ex-parte and without due process, and he would have the opportunity of confronting the inspectors seeking the correction and cross-examining them to assist the court in appraising the veracity of the petition, and the paramount public interest which calls for the proclama-tion of the actual winner in the election would be subserved. The spectacle of excess votes resulting from the correction authorized by the court would not arise, since the same would be readily perceived by the court and the parties affected from the face of the return, which states the number of registered voters in the precinct, the number who actually voted, with the corresponding number of valid and spoiled ballots.

There really exists no valid reason compatible with due process why such notice of the proceedings and submittal of the return should be required only in recount proceedings and not in correction, proceedings.

For the foregoing reasons, the Court accordingly expressly overrules the previous doctrine enunciated by it in the cited cases of Gumpal vs. Court of First Instance of Isabela and Cuenco vs. Laya, supra, and all other cases inconsistent with the doctrine now enunciated that notice of the correction proceedings must be given to all candidates affected and that copy of the election return sought to be corrected should be ordered by the court to be duly submitted to it by the custodian thereof. The Court therefore declares the correction proceedings in the Pampanga court null and void.

3. With the Court's declaration of nullity of the Pampanga court's decision in the correction proceedings for lack of notice to the candidates affected, specifically petitioner Tiglao, respondent Sanga and candidate Federico Taruc

(to whom the additional 292 votes now sought to be credited to Tiglao per the correction were erroneously credited, according to the April, 1970 affidavits of the inspectors, *supra*), said court will have to hear anew the inspectors' petitions for correction, with due notice to the candidates affected, and render anew its resolution on the basis of the evidence that may be submitted to it.

The Court herein expressly discards the previous doctrine of *Benitez vs. Paredes*¹⁹ and *Dizon vs. Provincial Board of Canvassers*²⁰ and all subsequent cases uniformly ruling that in correction proceedings, where the court after hearing the inspectors is satisfied as to the veracity of their petition or affidavits and of the error alleged to have been committed, it shall, without any need of opening the ballot boxes, order the corresponding correction of such error in the election return. In lieu thereof, the Court now sets the procedure that in all such correction proceedings, the court of first instance upon being satisfied at the hearing that a *prima facie* case has been made out, must furthermore, -- unless the correction sought is indubitable or unopposed and may therefore be summarily ordered -- in all cases where it finds that the integrity of the ballot box and its contents has been duly preserved, go to the real evidence, open the ballot box and conduct a summary recount of the ballots themselves as in judicial recount proceedings under section 163 of the code.

In resolving now to establish the procedure for a summary recount of the ballots in disputed correction proceedings where the ballot box and its contents have not been tampered with, the Court is impelled by its constitutional prerogative and duty to lay down the guidelines and fix uniform procedures for the observance of trial courts and the parties affected.

Under its constitutional rule-making power "to promulgate rules concerning pleading, practice and procedure in all courts,"²¹ it is conceded that 'procedure' is "generally accepted as embracing both 'pleading' and 'practice' and it also includes 'evidence.' What evidence should be admitted and what rejected in each case, and how to weigh it under particular circumstances is fundamentally a judicial function and essentially a procedural matter."²² Related thereto is the injunction in Rule 135, section 6 of the Rules of Court that:

"Sec. 6. Means to carry jurisdiction into effect. - When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules." (emphasis furnished)

This rule was incorporated in the pre-war Rules of Court on the basis of the Court's assertion, in connection with its rule-making power in the early case of *Shioji vs. Harvey*,²³ that "(I)ndependent of any statutory provision . . . every court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction. " In *Villalon vs. Arrieta*, *supra*, passing on the more specific provisions of section 163 on recount proceedings (as compared to the broad and general provisions of section 154 on correction proceedings), the Court observed that "the law evidently leaves it to the court to devise the means for the exercise of its powers and the performance of its assigned role in the manner which may appear to it to be most consistent with the fundamental purpose of the proceeding."

The Court, therefore, declares that the suitable process or mode of proceeding in disputed correction proceedings that would enable trial courts to effectively exercise their fundamentally judicial function of receiving and weighing the evidence is to avail of the real evidence²⁴ of the ballot box and of its contents and to conduct an arithmetical count of the ballots themselves, as in recount proceedings under section 163 of the code. Neither appreciation of the ballots nor determination of their validity is called for, since the only purpose of the recount, as is well settled by jurisprudence,²⁵ is merely to count the number of votes received by each candidate as they appear on the face of the valid ballots previously counted by the board of inspectors. The recount conducted as

part of the correction proceedings would serve best the overriding spirit of the election code - in entrusting to courts of first instance exclusive jurisdiction over summary recount proceedings under sections 163 and 168 and correction proceedings under section 154 - of restoring public tranquility by dispelling all doubts as to the true number of votes cast for the rival candidates in a given pre-cinct.²⁶

The Court is further sustained in its conclusion by the following compelling reasons and considerations:

(a) Far from being non-contentious in character, the margin of votes involved in correction proceedings has invariably proven to be not only controversial but decisive of the results of the election, as discussed above;²⁷

(b) There really is no substantial difference between correction proceedings and recount proceedings in the one and principal objective thereof of expeditiously determining before proclamation the actual votes to be summarily credited to a particular candidate or candidates in a given precinct where the inspectors claim to have committed an honest error or there are discrepant returns, and thus offering prompt relief in a simple but decisive controversy;

(c) The rationale behind the grant of authority to courts of first instance to authorize correction of election returns, as well as to recount the ballots in case of discrepancy between authentic copies of the same returns, is that "mistakes of all sorts are too common in human experience to justify anyone in denying the possibility of honest error ... (generally such errors or omissions to the prejudice of one candidate are attributed to honest mistake, oversight, inadvertence or confusion due to fatigue and lack of sleep or terrorism as in the case at bar) .. and it was in contemplation of the possibility of such errors that the law-makers provided for their correction with judicial approval."²⁸ The only difference as far as the commission of the error by the inspectors is concerned is that in recount proceedings, the errors appear on the face of the discrepant copies of the return, while in correction proceedings, the error is not readily seen on the face of the return (except where the name and votes of a particular candidate is totally omitted, as in Cuenco) but has to be manifested by sworn statement or petition of the inspectors alleging that they gave a certain candidate(s) more votes or less votes than were actually counted for him. Just as there is need to recount the ballots in case of discrepant returns in order to determine the true result of the count of votes cast for the contending candidates, there exists the same, if not greater need, to also recount the ballots for the same purpose, in case the inspectors claim they committed some honest error and seek judicial authorization to alter or amend the return originally prepared and announced by them. The procedural and evidentiary rule of opening the ballot box and summarily recounting the votes would readily bear out the fact of such honest error and no prejudice will have been caused; in the contrary case, however, the falsity of the alleged honest error would just as readily be exposed and irreparable prejudice to the intended victim will have been avoided;

(d) Nothing in the provision of section 154 of the Revised Election Code on correction proceedings bars a recount of the votes. The cited codal provision merely directs that "the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court." The petition for correction is addressed to the sound judicial discretion of the court, and there is nothing in the law to indicate that the judge of first instance must of necessity order the correction²⁹ and accept unqualifiedly the inspectors' version of what was the true result of their count of the votes. For there is nothing either in the law that would bar the judge from following the realistic procedure provided in section 163 of the Code for a summary recount of the votes,³⁰ and thus cut the Gordian Knot and thereby satisfy himself as well as all the parties - more than a hundred affidavits of the inspectors - of the true and actual result of the count of the votes cast in the precinct concerned;

(e) The past precedents against opening the ballot box and recounting the votes were based on the Court's giving paramount consideration to the imperative perspectives of public policy imposing upon courts the preemptory duty

of ascertaining the candidate entitled to proclamation as the winner. But side by side therewith, the Court has time and again stressed the overriding necessity of thwarting the unrelenting efforts of the unscrupulous (who continually tailor their evil schemes to fit within the ambit of the Court's latest pronouncements) to frustrate the popular choice of the electorate and leave the aggrieved party the "mere pyrrhic victory" of a long tedious election protest, and of exerting every effort to ascertain the true returns, mindful that outright exclusion from canvass of returns decisive of an election is an act which lends itself to misuse by the canvassing board. These imperatives likewise based on the clear mandates of public policy ordain as indicated above, that the true actual results of the balloting be determined by opening the ballot box and recounting the votes cast, even though the expeditious proclamation of the winning candidate be delayed in some measure. In practice, however, this should prove as expeditious as the summary recount in recount proceedings under section 163 of the Code, for as soon as the trial court is satisfied as to the existence of a prima facie case of correction, he may conduct forthwith the recount and thereby determine the true result of the balloting, cutting short all further conjecture and discussion as to the fidelity of the inspectors' recollection of the votes cast and of the errors allegedly committed by them in recording the in the election return;

(f) The broad legislative grant of authority to the courts of first instance to authorize the amendment or alteration of the return necessarily carries the grant of whatever is reasonably necessary for the proper and effective exercise of the court's judicial task, since the procedure is not specified by the code and the court is enjoined under Rule 135, section 6 to adopt a suitable process conformalby to the spirit of the law, viz, to demand the submittal of the real and best evidence of the ballots as deposited in the ballot box and conduct a summary recount to determine the true and actual result of the balloting, which the courts may then judiciously and within the limits of human certainty authorize to be incorporated in the return submitted for correction;

(g) The question of the contending candidates' consent to the trial court's opening the ballot box and recounting the ballots - which formula was proposed in the past without success, as one or all candidates invariably would manifest their non-conformity on some vague or speculative grounds - thus becomes irrelevant in the light of our pronouncement now establishing the conduct of such summary recount as the suitable procedure in correction proceedings under section 154 of the code;

(h) Our pronouncement now is but a logical development and consequence of our decisions in *Pacis vs. Comelec*,³¹ upholding Comelec's order therein to open the ballot boxes in four precincts to secure serviceable copies of the election returns; in *Mutuc vs. Comelec*,³² authorizing the reopening by the inspectors of the ballot box to retrieve an accomplished copy of the return, failing which the inspectors were directed to count the ballots and accomplish a new return based thereon: as well as our decision of February 18, 1970 in the case at bar, where we overruled respondent Comelec's ruling that the remedy of judicial correction of the returns for Precincts 35-A and 36, Apalit, where the name of petitioner Tiglao was completely omitted, could not longer be availed of because the inspectors, according to Comelec, "could not remember whether petitioner received any votes" therein, and instead ordered the inspectors to open, in the presence of all parties concerned, the ballot boxes for said precincts, count the votes for petitioner Tiglao, if any, and make new returns accordingly; and

(i) The condition herein required that the trial court make a preliminary finding that the integrity of the ballot box and its contents has been duly preserved is, of course, a necessary one, since a new count of the ballots found in a ballot box that has been tampered with would serve no legitimate purpose and would defeat the very objective of the recount to determine from the real evidence of the ballots the true results thereof.³³ In such a case, the trial court must content itself with all other secondary evidence available to satisfy itself of the merit of the petition, such as the inspectors' testimonies, the tally board and tally sheet, minutes of voting, etc., without regard to the contents of the tampered ballot box.

ACCORDINGLY, the Court has resolved: (a) to annul and set aside respondent Comelec's resolution of April 7, 1970, and (b) to likewise annul and set aside all proceedings, as well as the "decision" of the Court of First Instance of Pampanga dated February 7, 1970 and its resolutions of February 25, 1970 and March 25, 1970 affirming its said "decision", in the correction proceedings, Election Cases Nos. 3653, 3654, 3655, 3656, 3657 and 3659 thereof, with instructions as discussed above, particularly in paragraphs 2 and 3 hereof, to hear the same anew with due notice to the candidates affected; to have before it the copies of the election returns sought to be corrected; upon being satisfied prima facie of the errors alleged to have been committed by the boards of inspectors concerned and upon its preliminary finding that the identity and integrity of the ballot boxes have been duly preserved, order the opening thereof and after likewise satisfying itself that the integrity of the ballots therein has been also duly preserved, conduct a summary and arithmetical recount of the ballots themselves; and thereafter to render anew the appropriate resolution on the basis of the evidence before it.

Let a copy hereof be served upon the Court of First Instance of Pampanga, Branch III, presided by Judge Honorio Romero, for its compliance herewith.

Concepcion, C.J., Reyes, J.B.L., Castro, Villamor, and Makasiar, JJ., concur.

Dizon and Zaldivar, JJ., concur and dissent in a separate opinions.

Makalintal, J., concurs in the concurring and dissenting opinion of Mr. Justice Dizon.

Fernando and Barredo, JJ., concur in a separate opinions.

[1] Election Cases Nos. 3653 to 3659 of the Court of First Instance of Pampanga.

[2] Precincts 9, 21, 20, 19, 16 and 15, and disauthorizing that of Precinct 18 covered by Election Case No. 3658.

[3] Precincts 9, 15, 16 and 20.

[4] The total under this column should be 92, but in precinct 20, no excess vote vis a' vis registered voters results and the total no. of votes cast of 107 (with the correction) is 13 short of the no. of 120 registered voters. Hence, 13 is deducted from 92, leaving a total excess votes in the 6 precincts of 79, as compared to the total number of registered voters. (897 votes cast less 818 registered voters shows a total of 79 by way of excess votes cast in the 6 precincts).

[5] 897 votes cast as corrected vs. 818 registered voters per data on returns gives a total excess votes in the six precincts of 79; supra fn. 4.

[6] Except in 2 out of the 7 precincts. Re precinct 16, chairman Carlos Sampang testified that "due to our confusion, sir, the votes of Taruc and Tiglao were interchanged" and Taruc should be given zero votes and Tiglao 28, not 25, votes as originally prayed in the petition for correction. (t.s.n. Jan. 27, 1970, pp. 13-14). The Pampanga court however ordered the correction by crediting Tiglao with 25 votes instead of zero and ordered no correction in Taruc's votes. Re Precinct 18, LP inspector Francisco Labao testified that "we committed an error, the (80) votes intended for Tiglao were registered for Taruc." (Idem, p. 16). The Pampanga court ordered the correction to credit Tiglao with 80 votes instead of zero and likewise ordered no correction in Taruc's votes. This precinct is not involved in the case at bar, since the said court, in its second order of Jan. 29, 1970 set aside its first correction order of Jan. 28, 1970 for this precinct, due to its having been already passed upon by Comelec which had ordered Tiglao credited therein with 36 votes instead of zero.

[7] "SECTION 154. Alterations in the statement. -- After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

[8] *Dizon vs. Prov. Board of Canvassers*, 52 Phil. 47 (1928); *Aguilar vs. Navarro*, 55 Phil. 898 (1931); *Clarin vs. Alo*, 94 Phil. 432 (1954); *Astilla vs. Asuncion*, L-22246, Feb. 19, 1964, 10 SCRA 456.

[9] *Villaon vs. Arrieta*, L-29177, Sept. 30, 1969, 29 SCRA 671.

[10] *Ordoveza vs. Raymundo*, 63 Phil. 275 (1936); see also *Ocampo vs. Sanchez*, 97 Phil. 472 (1955); *Ronquillo vs. Marasigan*, 5 SCRA 304 (May 31, 1962); Justice Barredo's concurring opinion in *Estrada vs. Sto. Domingo*, 28 SCRA, 890, 933 (July 29, 1969).

10-a L-16409, Nov. 29, 1960.

11 L-28374, Dec. 29, 1967; 21 SCRA 1514.

12 *Supra*, fn. 8; see *Benitez vs. Paredes and Dizon*, 52 Phil. 1 (1928).

13 L-31252, Dec. 22, 1969; 30 SCRA 754.

14 *Luzon Surety Co., Inc. vs. Beson*, L-26865-66, Jan. 30, 1970, 31 SCRA 313 and cases cited.

15 See *Macabingkil vs. Yatco*, L-23174, Sept. 18, 1967, 21 SCRA 150 and cases cited.

16 L-11837, November 29, 1960, 60 O.G., p. 6387.

17 L-19051, July 28, 1969; 28 SCRA 829.

18 Under sections 163 and 168 of the Revised Election Code.

19 52 Phil. 1 (1928).

20 52 Phil. 47 (1928); see fn. 8; *Rabe vs. Comelec*, 108 Phil. 260 (May 25, 1960).

21 Article VIII, section 13 of the Constitution.

22 1 *Moran's Rules of Court*, 1970 Ed., p. 100, cit. *Bustos vs. Lucero*, 81 Phil. 640; emphasis furnished.

23 43 Phil. 333 (1922).

24 As distinguished from testimonial and circumstantial evidence. Wigmore, on Evidence, 3rd. Ed., sec. 1150, prefers the term "autoptic proference", indicating the inspection by the tribunal of the thing itself and its condition, (in this case, the ballots themselves and what appears thereon), since the term "real evidence" has previously been used by other writers to refer to "any fact about a material or corporate object, e. g. a book or a human foot, whether produced in court or not."

25 *Cawa vs. del Rosario*, 108 Phil. 520 (May 30, 1960).

26 See *Board of Inspectors vs. Piccio*, 81 Phil. 577 (1948); *Albano vs. Prov. Bd. of Canvassers*, 5 SCRA 13 (May 10, 1962).

27 *Supra*, paragraph 2.

28 *Solidum vs. Macalalag*, L-28666, May 20, 1969, 28 SCRA 200, citing *Dizon*, *supra*, fn. 20; notes in parentheses ours.

29 *Board of Election Inspectors of Bongabon vs. Sison*, 55 Phil. 914 (1931).

30 "Sec. 163. When statements of a precinct are contradictory. In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the

board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected."

31 L-28455, Feb. 10, 1968; 22 SCRA 539.

32 L-28517, Feb. 21, 1968; 22 SCRA 662.

33 Resolution of Feb. 20, 1962, Chiongbian vs. Comelec, L-19202; Pacis vs. Comelec, L-29026, September 28, 1968; 25 SCRA 377.

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CONCURRING AND DISSENTING OPINION

DIZON, J.:

The majority opinion penned by Mr. Justice Claudio Teehankee in effect overhauls - in part - what heretofore has been the procedure followed in proceedings for the correction of election returns in accordance with the provisions of the Revised Election Code. While I concur in the result arrived at, I find myself unable to accept some statements and conclusions set forth therein. I, therefore, submit this separate opinion stating the reasons for my concurrence and dissent.

(1) It is well settled that, under Section 154 of the Revised Election Code, a competent court may authorize the correction of an election return upon una-nimous petition of the members of the Board of Inspectors of the precinct concerned (*Benitez vs. Barredo et al.*, 52 Phil. p. 1; *Board of Inspectors etc. vs. Sison*, 55 Phil. 914). In justification of this We said in *Benitez--Barredo* that "Mistakes of all sorts are too common in human experience to justify anyone in denying the possibility of honest error in a case like the one under consideration; and it was in contemplation of the possibility of such error that the lawmakers provided for their correction with judicial approval" (52 Phil. 47-54). The requirement of unanimity on the part of the election inspectors was, of course, intended to prevent the misuse of the legal provision, the prevailing opinion on the matter being that, from the moment there is lack of unanimity amongst them the case becomes contentious and makes the correction improper.

For reasons of expediency - to avoid undue delay in the proclamation of the winning candidate - the proceeding for correction was deemed to be summary, so summary that it has been held that a petition for the purpose may be heard and resolved without notice to the other affected candidates (*Gumpal vs. Court of First Instance et al.*, G. R. Nose L-16409 and L-16416, November 29, 1960). While the purpose of the law, as construed by the courts, was undoubtedly laudable, experience has shown that a determined losing candidate, with the aid of unscrupulous election inspectors or of election inspectors acting under threats, could resort to this proceeding for correction of election returns to enable the former to "grab the proclamation" leaving to his opponent no other recourse but to avail himself of the tedious and expensive remedy of an election contest to protect his rights.

Because of the summary character of the correction proceeding, it was thought not proper, generally, for the Court

to inquire extensively into the circumstances, under which the election inspectors committed the alleged mistake, nor to order the opening of the ballot box as an effective means of verifying the truth of the allegations regarding the alleged commission of a mistake the election inspectors. Thus, to prevent undue delay in the proclamation of the winner, judicial practice had in truth created the possibility of an injustice being committed against other candidates who would be affected adversely by the correction. For these reasons, I agree with the majority that the procedure followed heretofore in correction proceedings should be so changed as to give the parties who might be adversely affected by the proposed correction, an opportunity to be heard, and enable the Court, in doubtful cases, to verify the trust of the allegations made in the petition for correction not only by receiving pertinent oral evidence but also by ordering the opening of the ballot box for the purpose of making physical count of the ballots contained therein and the number of votes cast in favor of each of the candidates for the contested position. It is to be understood however that this is no authority for said Court to go into the matter of appreciation of ballots and the resolution of particular objections against anyone of them

(2) The Revised Election Code (section 144) provides that after the counting of the votes, the Board Inspectors shall make a written statement of the result, this statement being what is generally known as an election return. These election returns are then submitted in accordance with law to the provincial or Municipal Board of Canvassers who are to make the canvass of the result and the proclamation of the winning candidates in accordance with the provisions of Section 158 to 170 of the same Code.

Now, what really are the powers of these Boards of Canvassers? While it has been generally stated that their duty in the premises is ministerial, the truth is that, under the law, as construed by *Us Lagumbay* and other cases, these Boards of Canvassers are not supposed to be mere adding machines but may exercise a certain amount of discretion - however limited - to determine whether or not any given election return is genuine, or is an obviously manufactured return, for the purpose of determining whether or not the same should be used in canvassing the result of the election. From their resolution, of course, any aggrieved party may seek relief either by invoking the supervisory jurisdiction of the Commission on Elections or the power of review of this Court. I deem it to be the settled rule, however, that the Boards of Canvassers, pursuant to the provisions of the Revised Election Code, have not only the right but the duty to determine, in the first instance, whether any given election return before them is genuine or is Obviously manufactured. In the present case, the Provincial Board of Canvassers appears to have failed to comply with its duty in the premises because when the election returns for the contested precincts came up for consideration and questions were raised against their use for the canvassing of the results, said Board referred the whole matter to the Commission on elections who, after hearing the parties, rendered the resolution assailed in these proceedings. My view on the matter is that said resolution was irregularly rendered, the Comelec not having authority to decide, in the first instance, the matter thus submitted to it. In the exercise of its supervisory powers over the Board of Canvassers, it should have required the latter to decide the matter first, and thereafter any party aggrieved thereby could take up the matter with the Comelec or with this Court, For this reason I agree with the majority that the resolution aforesaid of the Comelec should be set aside.

(3) The majority opinion holds that after the Court of First Instance of Pampanga had authorized the correction of the election returns under consideration and after the same had been corrected in accordance with the petition of the members of the Boards of Inspectors, the Provincial Board of Canvassers of Pampanga had only one duty in the premises: to accept and use the corrected returns in the canvassing of the votes and the proclamation of the winner in the elections for the position of one of the Representative districts of Pampanga, and that neither the Comelec nor the Provincial Board of Canvassers had authority to review the aforesaid decision of the Court of First Instance of said province. While the Undersigned agrees with the legal proposition that neither the Comelec nor any Provincial or Municipal Board of Canvassers has jurisdiction to review and, as a result thereof, to modify or reverse the decision rendered by a Court of First Instance in a proceeding for correction of an election

return, I do not admit that the Provincial Board of Canvassers of Pampanga can not refuse to use the corrected election returns in question for the purpose of the canvass it has to make, if in its opinion they do not speak the truth or are obviously manufactured because, as corrected, they give rise to a manifest and unexplained considerable excess of the votes cast over the number not only of the registered voters in each precinct but also over the number of registered voters who actually cast their votes. If in the exercise of their discretion on the matter they would refuse to the corrected returns, I submit that such action does not amount to reversing or modifying the decision of the Court of First Instance, of Pampanga. It should be remembered in this connection that said Court simply authorized the Board of Inspectors, on the strength of the evidence presented, to correct the election returns the manner prayed for in their unanimous petition. Upon the other hand, it seems clear to the undersigned the possible negative action of the Provincial Board of Canvassers referred to above would not amount to saying that the Court of First instance erred in authorizing correction because the evidence presented before it was not sufficient. This is what would amount to a review of the decision of said Court.

(4) Finally, my understanding of the majority opinion is that it annuls all the proceedings had to fore it the Court of First Instance of Pampanga relative to the petition for correction of the election returns in question and directs said Court and the parties concerned to start all over again, with the court's powers on the matter either amplified or merely clarified. I agreed with this ultimate result because of the peculiar circumstances of the case - which could easily be repeated in future similar cases. To be remembered is the fact that it was first attempted to have the election returns in question declared void because they were "gun point returns"; that after the failure of this attempt, a tentative canvass made showed a favorable result for Sanga; that it was then that the Boards of Inspectors of the affected precincts - who at the beginning were or might have been ready to sustain the "gun point returns" theory - came out with the petition for correction mentioned heretofore; that, according to the evidence presented before the Court of First Instance of Pampanga, these Boards of Inspectors, while holding session in separate premises, happened - by accident perhaps - to commit the same mistake in registering the number of votes received by the same candidate - Tiglao - because of shots fired outside the election precinct premises; that the presiding judge authorized the correction of the questioned election returns without even having them before him and without having any notice served on the other candidates for the same position for which Tiglao ran, who would inevitably be adversely affected by the correction sought. These circumstances more than justify, in my opinion, the resolution to annul the afore-mentioned proceedings.

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CONCURRING OPINION

FERNANDO, J.:

I concur in the result but reach it by an approach in sympathy with, but not unqualifiedly subscribing to, the premises the majority find compelling. This is not to deny the merit inherent in the opinion of Justice Teehankee characterized by vigor and forthrightness and powerful in its logic. Precisely though, its high persuasive quality may obscure what for me would appear to be certain implications and nuances that for the present at least I cannot fully accept. Hence this concurring opinion. There is, it would seem, some justification for a separate statement of one's views considering the marked departure from previous rulings, overruling past decisions and locating the

existence of a power hitherto not discerned.

1. It is expressly declared in the dispositive portion of our decision that the Court of First Instance of Pampanga is directed in the correction proceedings, in the election cases therein named,[1] "to hear the same anew with due notice to the candidates affected; to have before it the copies of the election returns sought to be corrected; upon being satisfied prima facie of the errors alleged to have been committed by the boards of inspectors concerned and upon its preliminary finding that the identity and integrity of the ballot boxes have been duly preserved, order the opening thereof and after like-wise satisfying itself that the integrity of the ballots therein has been also duly preserved, conduct a summary and arithmetical recount of the ballots themselves; and thereafter to render anew the appropriate resolution on the basis of the evidence before it." The result thus reached would impart to Section 154 of the Revised Election Code the interpretation that the candidates affected be notified of the hearing thereon in accordance with the cardinal requirement of due process and that if it be ascertained that the integrity of the ballot boxes and their contents has been duly preserved, to open the same for the purpose of determining the votes actually received by such candidates as the basis of whatever appropriate resolutions could thereafter be handed down. As noted at the outset, I am in full agreement.

There can be no exception to the correctness of this categorical pronouncement in the opinion of Justice Teehankee: "The demands of procedural due process that a party affected must be given notice and an opportunity to be heard must be fulfilled together with the law's policy for the prompt proclamation of the true winner in the elections." It may not be amiss to refer to what was clearly set forth in a dissent by Justice Dizon in *Cuenco v. Laya*. [2] It was his view that respondent Judge "committed a grave abuse of discretion in considering [the urgent petition] ex parte and in issuing the order complained of." [3] As he pointed out: "[I] agree with the majority opinion that 'broad perspectives of public policy impose upon courts the imperative duty to ascertain who is the real candidate elected, in as expeditious a manner as possible, without being fettered by technicalities and procedural barriers', but I also submit that equally broad and imperative perspectives of public policy demand that the courts should do so with fairness and understanding, and without taking any precipitous action – violative of due process – that might give rise to suspicions of bias." [4] The construction that is now fastened on this section of the Election Code has decidedly in its favor its conformity with a constitutional mandate. That is as it ought to be. Hereafter, no doubt should remain as to the necessity of giving the candidates affected an opportunity to be heard in every proceeding for correction.

2. Equally so, the disposition of this litigation, considering the facts brought to our attention, would not be in accordance with justice according to law unless a recount is had, assuming, of course, the integrity of the ballot boxes and their contents has been preserved. Here, again, the writer of this opinion joins the rest of his colleagues. He is not fully persuaded, however, that there is a need to provide that hereafter "in all such correction proceedings, the court of first instance upon being satisfied at the hearing that a prima facie case has been made out, must further-more, – unless the correction sought is indubitable or unopposed and may therefore be summarily ordered – in all cases where it finds that the integrity of the ballot box and its contents has been duly preserved, go to the real evidence, open the ballot box and conduct a summary recount of the ballots themselves as in judicial recount proceedings under section 163 of the code." While, for me, the necessity for such a procedure is apparent in this case, I am not prepared as yet to go along with the view that such a rigid formulation should be invariably adhered to in every such litigation of this character. I would leave the matter open to the discretion of the lower court. With this view I take of the case, there would seem to be no need as yet for the appropriate invocation of the exercise of our rule-making power. It is in that sense that my acceptance of the opinion of Justice Teehankee is less than complete.

3. The opinion of Justice Teehankee sets forth in the most emphatic language what is referred to as "compelling

reasons and considerations" for the conclusion reached in this case. The way they are marshalled and assembled would appear to render immune from any objection our decision in this case. If I find myself unable to give my unconditional assent, it is partly due to what I feel to be the assumption that both the correction and recount proceedings need not be distinguished. As set forth, the opinion states that there "really is no substantial difference" between them. Insofar as the objective be to determine the votes actually received, then there is no basis for disagreement. To the extent, however, that the differing theories constituting the justification for the various steps set forth in detail in the Election Code are inadvertently overlooked in the stress laid on the ultimate purpose of a recount, namely, to ascertain the true will of the voters, then it would appear to me that less than sweeping language is called for.

It may be likewise that I read into Justice Teehankee's opinion implications that it does not really contain, but in the weighing of the two objectives of public interest, insufficient weight, it seems to me, is placed on the need for prompt expedition of the proceedings prior to proclamation. This is not to say that "the thwarting of the unrelenting efforts of the scrupulous to frustrate the popular choice of the electorate" is not a basic objective. That affords warrant for the opening of the ballot boxes in proceedings of this character to determine what the true results are. That is to pay tribute anew to the constitutional objective of insuring free, orderly, and honest elections.[5]

What makes me hesitant, however, to go along with the sweeping scope of the opinion is that while I am persuaded that this particular case calls for a decision as rendered by us, I am far from convinced that thereafter the procedure indicated by us in this decision is to be inflexibly followed. The situations that may arise in the future are many and varied. A principle valid for today may not always retain that attribute. Moreover, for me at least, there is merit in the view, especially in election law cases, that no overriding doctrine impressed with an inflexible character is to be categorically announced, the process of inclusion or exclusion being the more appropriate considering the multifarious and diverse instances of abuses in the electoral process that may subsequently present themselves. I am not prepared to state then, except where, as in the case of the notice, the constitutional command of due process is paid deference, that the action to be taken by the lower court in the exercise of its power under Section 154 is to be predetermined in advance to cover each and every instance where such power is invoked.

4. Nor would there be in any opinion any valid objection that could be raised if our decision, considering the literal language of Section 154 of the Election Code, tends to be rather expansive in character. That is implicit in the process of construction. To paraphrase those noted jurists, Holmes and Cardozo, judge-made law is one of the existing realities of life. A court though is not free to roam at will. The limits of its competence are narrower. It may legislate only between gaps. It fills the open spaces of the law. But courts must and do legislate, only they do so interstitially; they are confined from molar to molecular motions. Nonetheless within such limits and within the confines of these open spaces, choice moves with a freedom that stamps its action as creative. The law which is the resulting product is not found but made. Clear is it thus that the power to declare the law carries with it the authority, and within limits the duty, to make law where none exists.[6]

[1] Election Cases Nos. 3653, 3654, 3655, 3656, 3657 and 3659.

[2] L-31152, December 22, 1969, 30 SCRA 754.

[3] Ibid, p. 776.

[4] Ibid, p. 777. Justice Zaldivar, who likewise dissented, and the writer of this opinion concurred in the above observation on the due process aspect of the question.

[5] Cf. L-25467, April 27, 1967, 19 SCRA 911. The other cases are *Espino v. Zaldivar*, L-22325, December 11, 1967, 21 SCRA 1204; *Ong v. Commission on Elections*, L-28415, Jan. 29, 1968, 22 SCRA 241; *Mutuc v. Commission on Elections*, L-28517, Feb. 21, 1968, 22 SCRA 662; *Pedido v. Commission on Elections*, L-28539, March 30, 1968, 22 SCRA 1403; *Aguam v. Commission on Elections*, L-28955, May 28, 1968, 23 SCRA 883; *Pelayo, Jr. v. Commission on Elections*, L-28869, June 29, 1968, 23 SCRA 1374; *Pacis v. Commission on Elections*, L-29026, Sept. 28, 1968, 25 SCRA 377; *Ligot v. Commission on Elections*, L-31380, Jan. 21, 1970, 31 SCRA 45; *Abrigo v. Commission on Elections*, L-31374, Jan. 21, 1970, 31 SCRA 26; *Moore v. Commission on Elections*, L-31394, Jan. 23, 1970, 31 SCRA 60; *Ilarde v. Commission on Elections*, L-31446, Jan. 23, 1970, 31 SCRA 72.

[6] Cf. *Holmes, Southern Pacific Co. v. Jensen*, 244 US 205, 221 (1917); *Cardozo, The Nature of judicial Process*, 10, 113, 115, 124 (1921).

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