

**TUPAY T. LOONG, PETITIONER, VS. COMMISSION ON ELECTIONS
AND ABDUSAKUR TAN, RESPONDENTS, YUSOP JIKIRI, INTERVENOR.***G.R. No. 133676. April 14, 1999*

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133676/>**PUNO, J.:**

In a bid to improve our elections, Congress enacted R.A. No. 8436 on December 22, 1997 prescribing the adoption of an automated election system. The new system was used in the May 11, 1998 regular elections held in the Autonomous Region in Muslim Mindanao (ARMM) which includes the Province of Sulu. Atty. Jose Tolentino, Jr. headed the COMELEC Task Force to have administrative oversight of the elections in Sulu.

The voting in Sulu was relatively peaceful and orderly.[1] The problem started during the automated counting of votes for the local officials of Sulu at the Sulu State College. At about 6 a.m. of May 12, 1998, some election inspectors and watchers informed Atty. Tolentino, Jr. of discrepancies between the election returns and the votes cast for the mayoralty candidates in the municipality of Pata. Some ballots picked at random by Atty. Tolentino, Jr. confirmed that votes in favor of a mayoralty candidate were not reflected in the printed election returns. He suspended the automated counting of ballots in Pata and immediately communicated the problem to the technical experts of COMELEC and the suppliers of the automated machine. After consultations, the experts told him that the problem was caused by the misalignment of the ovals opposite the names of candidates in the local ballots. They found nothing wrong with the automated machines. The error was in the printing of the local ballots, as a consequence of which, the automated machines failed to read them correctly.[2]

At 12:30 p.m. of the same day, Atty. Tolentino, Jr. called for an emergency meeting of the local candidates and the military-police officials overseeing the Sulu elections. Those who attended were the various candidates for governor, namely, petitioner Tupay Loong, private respondent Abdusakur Tan, intervenor Yusop Jikiri and Kimar Tulawie. Also in attendance were Brig. Gen. Edgardo Espinosa, AFP, Marine forces, Southern Philippines, Brig. Gen. Percival Subala, AFP, 3rd Marine Brigade, Supt. Charlemagne Alejandrino, Provincial Director, Sulu, PNP Command and congressional candidate Bensandi Tulawie.[3]

The meeting discussed how the ballots in Pata should be counted in light of the misaligned ovals. There was lack of agreement. Those who recommended a shift to manual count were Brig. Generals Espinosa and Subala, PNP Director Alejandrino, gubernatorial candidates Tan and Tulawie and congressional candidate Bensandi Tulawie. Those who insisted on an automated count were gubernatorial candidates Loong and Jikiri. In view of their differences in opinion, Atty. Tolentino, Jr. requested the parties to submit their written position papers.[4]

Reports that the automated counting of ballots in other municipalities in Sulu was not working well were received by the COMELEC Task Force. Local ballots in five (5) municipalities were rejected by the automated machines. These municipalities were Talipao, Siasi, Tudanan, Tapul and Jolo. The ballots were rejected because they had the wrong sequence code.[5]

Private respondent Tan and Atty. Tolentino, Jr. sent separate communications to the COMELEC en banc in

Manila. Still, on May 12, 1998, Tan requested for the suspension of the automated counting of ballots throughout the Sulu province.[6] On the same day, COMELEC issued Minute Resolution No. 98-1747 ordering a manual count but only in the municipality of Pata. The resolution reads:[7]

"x x x x x x x x

"In the matter of the Petition dated May 12, 1998 of Abdusakur Tan, Governor, Sulu, to suspend or stop counting of ballots through automation (sic) machines for the following grounds, quoted to wit

'1.. The Election Returns for the Municipality of Pata, Province of Sulu-District II do not reflect or reveal the mandate of the voters:

'DISCUSSIONS

'That the watchers called the attention of our political leaders and candidates regarding their discovery that the election returns generated after the last ballots for a precinct is scanned revealed that some candidates obtained zero votes, among others the Provincial Board Members, Mayor, Vice-Mayor, and the councilors for the LAKAS-NUCD-UMDP;

'That the top ballot, however, reveals that the ballots contained votes for Anton Burahan, candidate for Municipal Mayor while the Election Return shows zero vote;

'That further review of the Election Return reveals that John Masillam, candidate for Mayor under the LAKAS-NUCD-UMDP-MNLF obtains (sic) 100% votes of the total number of voters who actually voted;

'The foregoing discrepancies were likewise noted and confirmed by the chairmen, poll clerks and members of the Board of Election Inspectors (BEI) such as Rena Jawan, Matanka Hajirul, Dulba Kadil, Teddy Mirajuli, Rainer Talcon, Mike Jupakal, Armina Akmad, Romulo Roldan and Lerma Marawali to mention some;

'The Pata incident can be confirmed by no less than Atty. Jose Tolentino, Head, Task Force Sulu, whose attention was called regarding the discrepancies;

'The foregoing is a clear evidence that the automated machine (scanner) cannot be relied upon as to truly reflect the contents of the ballots. If such happened in the Municipality of Pata, it is very possible that the same is happening in the counting of votes in the other municipalities of this province. If this will not be suspended or stopped, the use of automated machines will serve as a vehicle to frustrate the will of the sovereign people of Sulu;

'Wherefore, the foregoing premises considered and in the interest of an honest and orderly election, it is respectfully prayed of this Honorable Commission that an Order be issued immediately suspending or stopping the use of the automated machine (scanner) in the counting of votes for all the eighteen (18) municipalities in the Province of Sulu and in lieu thereof, to avoid delay, counting be done through the usual way known and tested by us.'

"While the commission does not agree with the conclusions stated in the petition, and the failure of the machine to read the votes may have been occasioned by other factors, a matter that requires immediate investigation, but in the public interest, the Commission,

'RESOLVED to grant the Petition dated May 12, 1998 and to Order that the counting of votes shall be done manually in the Municipality of PATA, the only place in Sulu where the automated machine failed to read the ballots, subject to notice to all parties concerned.'"

Before midnight of May 12, 1998, Atty. Tolentino, Jr. was able to send to the COMELEC en banc his report and recommendation, urging the use of the manual count in the entire Province of Sulu, viz:[8]

"The undersigned stopped the counting in the municipality of Pata since he discovered that votes for a

candidate for mayor was credited in favor of the other candidate. Verification with the Sulu Technical Staff, including Pat Squires of ES & S, reveals that the cause of the error is the way the ballot was printed. Aside from misalignment of the ovals and use of codes assigned to another municipality (which caused the rejection of all local ballots in one precinct in Talipao), error messages appeared on the screen although the actual condition of the ballots would have shown a different message. Because of these, the undersigned directed that counting for all ballots in Sulu be stopped to enable the Commission to determine the problem and rectify the same. It is submitted that stopping the counting is more in consonance with the Commission's mandate than proceeding with an automated but inaccurate count.

"In view of the error discovered in Pata and the undersigned's order to suspend the counting, the following documents were submitted to him.

"1. Unsigned letter dated May 12, 1998 submitted by Congressman Tulawie for manual counting and canvassing;

"2. Petition of Governor Sakur Tan for manual counting;

"3. Position paper of Tupay Loong, Benjamin Loong and Asani Tamang for automated count;

"4. MNLF Position for automated count; and

"5. Recommendation of General E.V. Espinosa, General PM Subala, and PD CS Alejandrino for manual count;

"Additional marines have been deployed at the SSC. The undersigned is not sure if it is merely intended to tame a disorderly crowd, inside and outside SSC, or a show of force.

"It is submitted that since an error was discovered in a machine which is supposed to have an error rate of 1: 1,000,000, not a few people would believe that this error in Pata would extend to the other municipalities. Whether or not this is true, it would be more prudent to stay away from a lifeless thing that has sown tension and anxiety among and between the voters of Sulu.

Respectfully submitted:

12 May 1998

(Sgd.) JOSE M. TOLENTINO, JR."

The next day, May 13, 1998, COMELEC issued Resolution No. 98-1750 approving Atty. Tolentino, Jr.'s recommendation and the manner of its implementation as suggested by Executive Director Resurreccion Z. Borra. The Resolution reads:[9]

"In the matter of the Memorandum dated 13 May 1998 of Executive Director Resurreccion Z. Borra, pertinent portion of which is quoted as follows:

"In connection with Min. Res. No. 98-1747 promulgated May 12, 1998 which resolved to order that the counting of votes shall be done manually in the municipality of Pata, the only place in Sulu where the automated counting machine failed to read the ballots, subject to notice to all parties concerned, please find the following:

"1. Handwritten Memo of Director Jose M. Tolentino, Jr., Task Force Head, Sulu, addressed to the Executive Director on the subject counting and canvassing in the municipality of Pata due to the errors of the counting of votes by the machine brought about by the error in the printing of the ballot, causing misalignment of ovals and use of codes assigned to another municipality.

He recommended to revert to the manual counting of votes in the whole of Sulu. He attached the stand of Congressman Tulawie, Governor Sakur Tan and recommendation of Brigadier General Edgardo Espinosa, General Percival Subla, P/Supt. Charlemagne Alejandrino for manual counting. The position paper of former

Governor Tupay Loong, Mr. Benjamin Loong and Mr. Asani S. Tammang, who are candidates for Governor and Congressman of 1st and 2nd Districts respectively, who wanted the continuation of the automated counting.

"While the forces of AFP are ready to provide arm (sic) security to our Comelec officials, BEIs and other deputies, the political tensions and imminent violence and bloodshed may not be prevented, as per report received, the MNLF forces are readying their forces to surround the venue for automated counting and canvassing in Sulu in order that the automation process will continue.

"Director Borra recommends, that while he supports Minute Resolution No. 98-1747, implementation thereof shall be done as follows:

"1. That all the counting machines from Jolo, Sulu be transported back by C130 to Manila and be located at the available space at PICC for purposes of both automated and manual operations. This approach will keep the COMELEC officials away from violence and bloodshed between the two camps who are determined to slug each other as above mentioned in Jolo, Sulu. Only authorized political party and candidate watchers will be allowed in PICC with proper security, both inside and outside the perimeters of the venue at PICC.

"2. With this process, there will be an objective analysis and supervision of the automated and manual operations by both the MIS and Technical Expert of the ES & S away from the thundering mortars and the sounds of sophisticated heavy weapons from both sides of the warring factions.

"3. Lastly, it will be directly under the close supervision and control of Commission on Elections En Banc.

"RESOLVED:

"1. To transport all counting machines from Jolo, Sulu by C130 to Manila for purposes of both automated and manual operations, with notice to all parties concerned;

"2. To authorize the official travel of the board of canvassers concerned for the conduct of the automated and manual operations of the counting of votes at PICC under the close supervision and control of the Commission En Banc. For this purpose, to make available a designated space at the PICC;

"3. To authorize the presence of only the duly authorized representative of the political parties concerned and the candidates watchers both outside and inside the perimeters of the venue at PICC."

Atty. Tolentino, Jr. furnished the parties with copies of Minute Resolution No. 98-1750 and called for another meeting the next day, May 14, 1998, to discuss the implementation of the resolution.[10] The meeting was attended by the parties, by Lt. Gen. Joselin Nazareno, then the Chief of the AFP Southern Command, the NAMFREL, media, and the public. Especially discussed was the manner of transporting the ballots and the counting machines to the PICC in Manila. They agreed to allow each political party to have at least one (1) escort/watcher for every municipality to accompany the flight. Two C130s were used for the purpose.[11]

On May 15, 1998, the COMELEC en banc issued Minute Resolution No. 98-1796 laying down the rules for the manual count, viz:[12]

"In the matter of the Memorandum dated 15 May 1998 of Executive Director Resurreccion Z. Borra, quoted to wit:

"In the implementation of COMELEC Min. Resolution No. 98-1750 promulgated 13 May 1998 in the manual counting of votes of Pata, Sulu, and in view of the arrival of the counting machines, ballot boxes, documents and other election paraphernalia for the whole province of Sulu now stored in PICC, as well as the arrival of the Municipal Board of Canvassers of said Municipality in Sulu, and after conference with some members of the Senior Staff and Technical Committee of this Commission, the following are hereby respectfully

recommended:

'1. Manual counting of the local ballots of the automated election system in Pata, Sulu;

'2. Automated counting of the national ballots considering that there are no questions raised on the National Elective Officials as pre-printed in the mark-sensed ballots;

'3. The creation of the following Special Boards of Inspectors under the supervision of Atty. Jose M. Tolentino, Jr., Task Force Head, Sulu, namely:

a) Atty. Mamasapunod M. Aguam

Ms. Gloria Fernandez

Ms. Esperanza Nicolas

b) Director Ester L. Villaflor-Roxas

Ms. Celia Romero

Ms. Rebecca Macaraya

c) Atty. Zenaida S. Soriano

Ms. Jocelyn Guiang

Ma. Jacelyn Tan

d) Atty. Erlinda C. Echavia

Ms. Theresa A. Torralba

Ms. Ma. Carmen Llamas

e) Director Estrella P. de Mesa

Ms. Teresita Velasco

Ms. Nelly Jaena

'4. Additional Special Board of Inspectors may be created when necessary.

'5. The Provincial Board of Canvassers which by standing Resolution is headed by the Task Force Sulu Head shall consolidate the manual and automated results as submitted by the Municipal Boards of Canvassers of the whole province with two members composed of Directors Estrella P. de Mesa and Ester L. Villaflor-Roxas;

'6. The political parties and the candidates in Sulu as well as the Party-List Candidates are authorized to appoint their own watchers upon approval of the Commission',

'RESOLVED to approve the foregoing recommendations in the implementation of Min. Resolution No. 98-1750 promulgated on 13 May 1998 providing for the manual counting of votes in the municipality of Pata, Sulu.

'RESOLVED, moreover, considering the recommendation of Comm. Manolo B. Gorospe, Commissioner-In-Charge, ARMM, to conduct a parallel manual counting on all 18 municipalities of Sulu as a final guidance of the reliability of the counting machine which will serve as basis for the proclamation of the winning candidates and for future reference on the use of the automated counting machine.'"

On May 18, 1998, petitioner filed his objection to Minute Resolution No. 98-1796, viz:[13]

"1. The minute resolution under agenda No. 98-1796 violates the provisions of Republic Act No. 8436 providing for an automated counting of the ballots in the Autonomous Region in Muslim Mindanao. The automated counting is mandatory and could not be substituted by a manual counting. Where the machines are allegedly defective, the only remedy provided for by law is to replace the machine. Manual counting is prohibited by law;

"2. There are strong indications that in the municipality of Pata the ballots of the said municipality were rejected by the counting machine because the ballots were tampered and/or the texture of the ballots fed to the counting machine are not the official ballots of the Comelec;

"3. The automated counting machines of the Comelec have been designed in such a way that only genuine official ballots could be read and counted by the machine;

"4. The counting machines in the other municipalities are in order. In fact, the automated counting has already started. The automated counting in the municipalities of Lugus and Panglima Tahil has been completed. There is no legal basis for the 'parallel manual counting' ordained in the disputed minute resolution."

Nonetheless, COMELEC started the manual count on the same date, May 18, 1998.

On May 25, 1998, petitioner filed with this Court a petition for certiorari and prohibition under Rule 65 of the Rules of Court. He contended that: (a) COMELEC issued Minute Resolution Nos. 98-1747, 98-1750, and 98-1798 without prior notice and hearing to him; (b) the order for manual counting violated R.A. No. 8436; (c) manual counting gave "opportunity to the following election cheatings," namely:

"(a) The counting by human hands of the tampered, fake and counterfeit ballots which the counting machines have been programmed to reject (Section 7, 8 & 9 of Rep. Act 8436).

"(b) The opportunity to substitute the ballots all stored at the PICC. In fact, no less than the head of the COMELEC Task Force of Sulu, Atty. Jose M. Tolentino, Jr. who recommended to the COMELEC the anomalous manual counting, had approached the watchers of petitioners to allow the retrieval of the ballots, saying "tayo, tayo lang mga watchers, pag-usapan natin," dearly indicating overtures of possible bribery of the watchers of petitioner (ANNEX E).

"(c) With the creation by the COMELEC of only 22 Boards of Election Inspectors to manually count the 1,194 precincts, the manipulators are given sufficient time to change and tamper the ballots to be manually counted.

"(d) There is the opportunity of delaying the proclamation of the winning candidates through the usually dilatory moves in a pre-proclamation controversy because the returns and certificates of canvass are already human (sic) made. In the automated counting there is no room for any dilatory pre-proclamation controversy because the returns and the MBC and PBC certificates of canvass are machine made and immediate proclamation is ordained thereafter."

Petitioner then prayed:

"WHEREFORE, it is most especially prayed of the Honorable Court that:

"1. upon filing of this petition, a temporary restraining order be issued enjoining the COMELEC from conducting a manual counting of the ballots of the 1,194 precincts of the 18 municipalities of the Province of Sulu but instead proceed with the automated counting of the ballots, preparation of the election returns and MBC, PBC certificates of canvass and proclaim the winning candidates on the basis of the automated counting and consolidation of results;

"2. this petition be given due course and the respondents be required to answer;

"3. after due hearing, the questioned COMELEC En Banc Minute Resolutions of May 12, 13, 15, and 17, 1998

be all declared null and void ab initio for having been issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction and for being in violation of due process of law;

" 4. the winning candidates of the Province of Sulu be proclaimed on the basis of the results of the automated counting, automated election returns, automated MBC and PBC certificates of canvass;

"x x x."

On June 8, 1998, private respondent Tan was proclaimed governor- elect of Sulu on the basis of the manual count.[14] Private respondent garnered 43,573 votes. Petitioner was third with 35,452 votes or a difference of 8,121 votes.

On June 23, 1998, this Court required the respondents to file their Comment to the petition and directed the parties "to maintain the status quo prevailing at the time of the filing of the petition." [15] The vice-governor elect was allowed to temporarily discharge the powers and functions of governor.

On August 20, 1998, Yusop Jikiri, the LAKAS-NUCD-UMDP-MNLF candidate for governor filed a motion for intervention and a Memorandum in Intervention.[16] The result of the manual count showed he received 38,993 votes and placed second. Similarly, he alleged denial of due process, lack of factual basis of the COMELEC resolutions and illegality of manual count in light of R.A. No. 8436. The Court noted his intervention.[17] As similar petition for intervention filed by Abdulwahid Sahidulla, a candidate for vice-governor, on October 7, 1998 was denied as it was filed too late.

In due time, the parties filed their respective Comments. On September 25, 1998, the Court heard the parties in oral arguments[18] which was followed by the submission of their written memoranda.

The issues for resolution are the following:

1. Whether or not a petition for certiorari and prohibition under Rule 65 of the Rules of Court is the appropriate remedy to invalidate the disputed COMELEC resolutions.

2. Assuming the appropriateness of the remedy, whether or not COMELEC committed grave abuse of discretion amounting to lack of jurisdiction in ordering a manual count.

2.a. Is there a legal basis for the manual count?

2-b. Are its factual bases reasonable?

2.c. Were the petitioner and the intervenor denied due process by the COMELEC when it ordered a manual count?

3. Assuming the manual count is illegal and that its result is unreliable, whether or not it is proper to call for a special election for the position of governor of Sulu.

We shall resolve the issues in seriatim.

First. We hold that certiorari is the proper remedy of the petitioner. Section 7, Article IX(A) of the 1987 Constitution states that if "unless provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof." We have interpreted this provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers.[19] Contrariwise, administrative orders of the COMELEC are not, as a general rule, fit subjects of a petition for certiorari. The main issue in the case at bar is whether the COMELEC gravely abused its discretion when it ordered a manual count of the 1998 Sulu local elections. A resolution of the issue will involve an interpretation of R.A. No. 8436 on automated

election in relation to the broad power of the COMELEC under Section 2(1), Article IX(C) of the Constitution "to enforce and administer all laws and regulations relative to the conduct of an election x x x." The issue is not only legal but one of first impression and undoubtedly suffused with significance to the entire nation. It is adjudicatory of the right of the petitioner, the private respondent and the intervenor to the position of governor of Sulu. These are enough considerations to call for an exercise of the certiorari jurisdiction of this Court.

Second. The big issue, one of first impression, is whether the COMELEC committed grave abuse of discretion amounting to lack of jurisdiction when it ordered a manual count in light of R.A. No. 8436. The post election realities on ground will show that the order for a manual count cannot be characterized as arbitrary, capricious or whimsical.

- It is well established that the automated machines failed to read correctly the ballots in the municipality of Pata. A mayoralty candidate, Mr. Anton Burahan, obtained zero votes despite the representations of the Chairman of the Board of Election Inspectors and others that they voted for him. Another candidate garnered 100% of the votes.
- It is likewise conceded that the automated machines rejected and would not count the local ballots in the municipalities of Talipao, Siasi, Indanan, Tapal and Jolo.
- These flaws in the automated counting of local ballots in the municipalities of Pata, Talipao, Siasi, Indanan, Tapal and Jolo were carefully analyzed by the technical experts of COMELEC and the supplier of the automated machines. All of them found nothing wrong with the automated machines. They traced the problem to the printing of local ballots by the National Printing Office. In the case of the municipality of Pata, it was discovered that the ovals of the local ballots were misaligned and could not be read correctly by the automated machines. In the case of the municipalities of Talipao, Siasi, Indanan, Tapal and Jolo, it turned out that the local ballots contained the wrong sequence code. Each municipality was assigned a sequence code as a security measure. Ballots with the wrong sequence code were programmed to be rejected by the automated machines.

It is plain that to continue with the automated count in these five (5) municipalities would result in a grossly erroneous count. It cannot also be gainsaid that the count in these five (5) municipalities will affect the local elections in Sulu. There was no need for more sampling of local ballots in these municipalities as they suffered from the same defects. All local ballots in Pata with misaligned ovals will be erroneously read by the automated machines. Similarly, all local ballots in Talipao, Siasi, Indanan, Tapal and Jolo with wrong sequence codes are certain to be rejected by the automated machines. There is no showing in the records that the local ballots in these five (5) municipalities are dissimilar which could justify the call for their greater sampling.

Third. These failures of automated counting created post election tension in Sulu, a province with a history of violent elections. COMELEC had to act decisively in view of the fast deteriorating peace and order situation caused by the delay in the counting of votes. The evidence of this fragile peace and order cannot be downgraded. In his handwritten report to the COMELEC dated May 12, 1998, Atty. Tolentino, Jr. stated:

"x x x

"Additional marines have been deployed at the SSC. The undersigned is not sure if it is merely intended to tame a disorderly crowd inside and outside SSC, or a show of force.

"It is submitted that since an error was discovered in a machine which is supposed to have an error rate of 1:1,000,000, not a few people would believe that this error in Pata would extend to the other municipalities. Whether or not this is true, it would be more prudent to stay away from a lifeless thing that has sown tension and anxiety among and between the voters of Sulu."

Executive Director Resurreccion Z. Borra, Task Force Head, ARMM in his May 13, 1998 Memorandum to the

COMELEC likewise stated:

"x x x

"While the forces of AFP are ready to provide arm (sic) security to our COMELEC officials, BEI's and other deputies, the political tensions and imminent violence and bloodshed may not be prevented, as per report received, the MNLF forces are readying their forces to surround the venue for automated counting and canvassing in Sulu in order that automation process will continue."

Last but not the least, the military and the police authorities unanimously recommended manual counting to preserve peace and order. Brig. Gen. Edgardo V. Espinosa, Commanding General, Marine Forces Southern Philippines, Brig. Gen. Percival M. Subala, Commanding General, 3rd Marine Brigade, and Supt. Charlemagne S. Alejandrino, Provincial Director, Sulu PNP Command explained that it "x x x will not only serve the interest of majority of the political parties involved in the electoral process but also serve the interest of the military and police forces in maintaining peace and order throughout the province of Sulu."

An automated count of the local votes in Sulu would have resulted in a wrong count, a travesty of the sovereignty of the electorate. Its aftermath could have been a bloodbath. COMELEC avoided this imminent probability by ordering a manual count of the votes. It would be the height of irony if the Court condemns COMELEC for aborting violence in the Sulu elections.

Fourth. We also find that petitioner Loong and intervenor Jikiri were not denied due process. The Tolentino memorandum clearly shows that they were given every opportunity to oppose the manual count of the local ballots in Sulu. They were orally heard. They later submitted written position papers. Their representatives escorted the transfer of the ballots and the automated machines from Sulu to Manila. Their watchers observed the manual count from beginning to end. We quote the Tolentino memorandum, viz:

"x x x

"On or about 6:00 a.m. of May 12, 1998, while automated counting of all the ballots for the province of Sulu was being conducted at the counting center located at the Sulu State College, the COMELEC Sulu Task Force Head (TF Head) proceeded to the room where the counting machine assigned to the municipality of Pata was installed to verify the cause of the commotion therein.

"During the interview conducted by the TF Head, the members of the Board of Election Inspectors (BEI) and watchers present in said room stated that the counting machine assigned to the municipality of Pata did not reflect the true results of the voting thereat. The members of the BEI complained that their votes were not reflected in the printout of the election returns since per election returns of their precincts, the candidate they voted for obtained "zero". After verifying the printout of some election returns as against the official ballots, the TF Head discovered that votes cast in favor of a mayoralty candidate were credited in favor of his opponents.

"In his attempt to remedy the situation, the TF Head suspended the counting of all ballots for said municipality to enable COMELEC field technicians to determine the cause of the technical error, rectify the same, and thereafter proceed with automated counting. In the meantime, the counting of the ballots for the other municipalities proceeded under the automated system.

"Technical experts of the supplier based in Manila were informed of the problem and after numerous consultations through long distance calls, the technical experts concluded that the cause of the error was in the manner the ballots for local positions were printed by the National Printing Office (NPO), namely, that the ovals opposite the names of the candidates were not properly aligned. As regards the ballots for national positions, no error was found.

"Since the problem was not machine-related, it was obvious that the use of counting machines from other municipalities to count the ballots of the municipality of Pata would still result in the same erroneous count. Thus, it was found necessary to determine the extent of the error in the ballot printing process before proceeding with the automated counting.

"To avoid a situation where proceeding with automation will result in an erroneous count, the TF Head, on or about 11:45 a.m. ordered the suspension of the counting of all ballots in the province to enable him to call a meeting with the heads of the political parties which fielded candidates in the province, inform them of the technical error, and find solutions to the problem.

"On or about 12:30 p.m., the TF Head presided over a conference at Camp General Bautista (3rd Marine Brigade) to discuss the process by which the will of the electorate could be determined. Present during the meeting were:

- Brig. Gen. Edgardo Espinoza
Marine Forces, Southern Philippines
- Brig. Gen. Percival Subala
3rd Marine Brigade
- Provincial Dir. Charlemagne Alejandrino
Sulu PNP Command
- Gubernatorial Candidate Tupay Loong
LAKAS-NUCD Loong Wing
- Gubernatorial Candidate Abdusakur Tan
LAKAS-NUCD Tan Wing
- Gubernatorial Candidate Yusop Jikiri
LAKAS-NUCD-MNLF Wing
- Gubernatorial Candidate Kimar Tulawie
LAMMP
- Congressional Candidate Bensaudi Tulawie
LAMMP

"During said meeting, all of the above parties verbally advanced their respective positions. Those in favor of a manual count were:

- Brig. Gen. Edgardo Espinoza
- Brig. Gen. Percival Subala
- Provincial Dir. Charlemagne Alenjandrino
- Gubernatorial Candidate Abdusakur Tan
- Gubernatorial Candidate Kimar Tulawie
- Congressional Candidate Bensaudi Tulawie and those in favor of an automated count were:

1. Gubernatorial Candidate Tupay Loong
2. Gubernatorial Candidate Yusop Jikiri

"Said parties were then requested by the TF Head to submit their respective position papers so that the same

may be forwarded to the Commission en banc, together with the recommendations of the TF Head.

"The TF Head returned to the counting center at the Sulu State College and called his technical staff to determine the extent of the technical error and to enable him to submit the appropriate recommendation to the Commission en banc.

"Upon consultation with the technical staff, it was discovered that in the Municipality of Talipao, some of the local ballots were rejected by the machine. Verification showed that while the ballots were genuine, ballot paper bearing a wrong "sequence code" was used by the NPO during the printing process.

"Briefly, the following is the manner by which a sequence code" determined genuineness of a ballot. A municipality is assigned a specific machine (except for Jolo, which was assigned two (2) machines, and sharing of one (1) machine by two (2) municipalities, namely, H.P. Tabil and Maimbung, Pandami and K. Caluang, Pata and Tongkil and Panamao and Lugus). A machine is then assigned a specific "sequence code" as one of the security features to detect whether the ballots passing through it are genuine. Since a counting machine is programmed to read the specific "sequence code" assigned to it, ballots which bear a "sequence code" assigned to another machine/municipality, even if said ballots were genuine, will be rejected by the machine.

"Other municipalities, such as Siasi, Indanan, Tapul and Jolo also had the same problem of rejected ballots. However, since the machine operators were not aware that one of the reasons for rejection of ballots is the use of wrong "sequence code", they failed to determine whether the cause for rejection of ballots for said municipalities was the same as that for the municipality of Talipao.

"In the case of 'misaligned ovals', the counting machine will not reject the ballot because all the security features, such as "sequence code", are present in the ballot, however, since the oval is misaligned or not placed in its proper position, the machine will credit the shaded oval for the position where the machine is programmed to "read" the oval. Thus, instead of rejecting the ballot, the machine will credit the votes of a candidate in favor of his opponent, or in the adjacent space where the oval should be properly placed.

"It could not be determined if the other municipalities also had the same technical error in their official ballots since the "misaligned ovals" were discovered only after members of the Board of Election Inspectors of the Municipality of Pata complained that their votes were not reflected in the printout of the election returns.

"As the extent or coverage of the technical errors could not be determined, the TF Head, upon consultation with his technical staff, was of the belief that it would be more prudent to count the ballots manually than to proceed with an automated system which will result in an erroneous count.

"The TF Head thus ordered the indefinite suspension of counting of ballots until such time as the Commission shall have resolved the petition/position papers to be submitted by the parties. The TF Head and his staff returned to Camp General Bautista to await the submission of the position papers of the parties concerned.

"Upon receipt of the position papers of the parties, the TF Head faxed the same in the evening of May 12, 1998, together with his handwritten recommendation to proceed with a manual count." Attached are copies of the recommendations of the TF Head (Annex "1"), and the position papers of the Philippine Marines and Philippine National Police (Annex "2"), LAKAS-NUCD Tan Wing Annex (Annex "3"), Lakas-NUCD Loong Wing (Annex "4"), LAKAS-NUCD-MNLF Wing (Annex "5") and LAMMP (Annex "6"). Said recommendations and position papers were the bases for the promulgation of COMELEC Minute Resolution No. 98-1750 dated May 13, 1998 (Annex "7"), directing among other things, that the ballots and counting machines be transported by C130 to Manila for both automated and manual operations.

"Minute Resolution No. 98-1750 was received by the TF Head through fax on or about 5:30 in the evening of May 13, 1998. Copies were then served through personal delivery to the heads of the political parties, with notice to them that another conference will be conducted at the 3rd Marine Brigade on May 14, 1998 at 9:00

o'clock in the morning, this time, with Lt. General Joselin Nazareno, then AFP Commander, Southern Command. Attached is a copy of said notice (Annex "8") bearing the signatures of candidates Tan (Annex "8-A") and Loong (Annex "8-B"), and the representatives of candidates Tulawie (Annex "8-C") and Jikiri (Annex "8-D").

"On May 14, 1998, the TF Head presided over said conference in the presence of the heads of the political parties of Sulu, together with their counsel, including Lt. Gen. Nazareno, Brig. Gen. Subala, representatives of the NAMFREL, media and the public.

"After hearing the sides of all parties concerned, including that of NAMFREL, the procedure by which the ballots and counting machines were to be transported to Manila was finalized, with each political party authorized to send at least one (1) escort/watcher for every municipality to accompany the ballot boxes and counting machines from the counting center at the Sulu State College to the Sulu Airport up to the PICC, where the COMELEC was then conducting its Senatorial Canvass. There being four parties, a total of seventy-two (72) escorts/watchers accompanied the ballots and counting machines.

"Two C130s left Sulu on May 15, 1998 to transport all the ballot boxes and counting machines, accompanied by all the authorized escorts. Said ballots boxes reached the PICC on the same day, with all the escorts/watchers allowed to station themselves at the ballot box storage area. On May 17, 1998, another C130 left Sulu to ferry the members of the board of canvassers."

Fifth. The evidence is clear that the integrity of the local ballots was safeguarded when they were transferred from Sulu to Manila and when they were manually counted.

As shown by the Tolentino memorandum, representatives of the political parties escorted the transfer of ballots from Sulu to PICC. Indeed, in his May 14, 1992 letter to Atty. Tolentino, Jr., petitioner Tupay Loong himself submitted the names of his representatives who would accompany the ballot boxes and other election paraphernalia, viz:[20]

"Dear Atty. Tolentino:

"Submitted herewith are the names of escort(s) to accompany the ballot boxes and other election paraphernalia to be transported to COMELEC, Manila, to wit:

1. Jolo - Joseph Lu
2. Patikul - Fathie B. Loong
3. Indanan - Dixon Jadi
4. Siasi - Jamal Ismael
5. K. Kaluang - Enjimar Abam
6.
Pata
- Marvin Hassan
7. Parang - Siyang Loong
8.
Pangutaran
- Hji. Nasser Loong

9. Marunggas - Taib Mangkabong
10. Luuk - Jun Arbison
11. Pandami - Orkan Osman
12. Tongkil - Usman Sahidulla
13. Tapul - Alphawanis Tupay
14. Lugus - Patta Alih
15. Maimbong - Mike Bangahan
16. P. Estino - Yasir Ibba
17. Panamao - Hamba Loong
18. Talipao - Ismael Sali

"Hoping for your kind and (sic) consideration for approval on this matter.

"Thank you.

Very truly yours,

(Sgd.) Tupay T. Loong

(Sgd.) Asani S. Tammang"

The ballot boxes were consistently under the watchful eyes of the parties' representatives. They were placed in an open space at the PICC. The watchers stationed themselves some five (5) meters away from the ballot boxes. They watched 24 hours a day and slept at the PICC.[21]

The parties' watchers again accompanied the transfer of the ballot boxes from PICC to the public schools of Pasay City where the ballots were counted. After the counting they once more escorted the return of the ballot boxes to PICC.[22]

In fine, petitioner's charge that the ballots could have been tampered with before the manual counting is totally unfounded.

Sixth. The evidence also reveals that the result of the manual count is reliable.

It bears stressing that the ballots used in the case at bar were specially made to suit an automated election. The ballots were uncomplicated. They had fairly large ovals opposite the names of candidates. A voter needed only to check the oval opposite the name of his candidate. When the COMELEC ordered a manual count of the votes, it issued special rules as the counting involved a different kind of ballot, albeit, more simple ballots. The Omnibus Election Code rules on appreciation of ballots cannot apply for they only apply to elections where the names of candidates are handwritten in the ballots. The rules were spelled out in Minute Resolution 98-1798, viz:[23]

"In the matter of the Memorandum dated 17 May 1998 of Executive Director Resurreccion Z. Borra, re procedure of the counting of votes for Sulu for the convening of the Board of Election Inspectors, the Municipal Board of Canvassers and the Provincial Board of Canvassers on May 18, 1998 at 9:00 a.m. at the Philippine International Convention Center (PICC),

'RESOLVED to approve the following procedure for the counting of votes for Sulu at the PICC:

'I. Common Provisions:

'1. Open the ballot box, retrieve the Minutes of Voting and the uncounted ballots or the envelope containing the counted ballots as the case may be;

'2. Segregate the national ballots from the local ballots;

'3. Count the number of pieces of both the national and local ballots and compare the same with the number of votes who actually voted as stated in the Minutes of Voting;

- If there is no Minutes of Voting, refer to the Voting Records at the back of the VRRs to determine the number of voters who actually voted.

- If there are more ballots than the number of voters who actually voted, the poll clerk shall draw out as many local and national ballots as may be equal to the excess and place them in the envelope for excess ballots.

'II Counting of Votes

'A. National Ballots:

'1. If the national ballots have already been counted, return the same inside the envelope for counted ballots, reseal and place the envelope inside the ballot box;

'2. If the national ballots have not yet been counted, place them inside an envelope and give the envelope through a liaison officer to the machine operator concerned for counting and printing of the election returns;

'3. The machine operator shall affix his signature and thumbmark thereon, and return the same to the members of the BEI concerned for their signatures and thumbmarks;

'4. The said returns shall then be placed in corresponding envelopes for distribution;

'B. Local Ballots:

'1. Group the local ballots in piles of fifty (50);

'2. The Chairman shall read the votes while the poll clerk and the third member shall simultaneously accomplish the election returns and the tally board respectively.

'If the voters shaded more ovals than the number of positions to be voted for, no vote shall be counted in favor of any candidate.

'3. After all the local ballots shall have been manually counted, the same shall be given to the machine operator concerned for counting by the scanning machine. The machine operator shall then save the results in a diskette and print out the election returns for COMELEC reference.

'4. The BEI shall accomplish the certification portion of the election returns and announce the results;

'5. Place the election returns in their respective envelopes and distribute them accordingly;

'6. Return all pertinent election documents and paraphernalia inside the ballot box.

'III. Consolidation of Results

'A. National Ballots

'1. The results of the counting for the national ballots for each municipality shall be consolidated by using the ERs of the automated election system;

'2. After the consolidation, the Machine Operator shall print the certificate of canvass by municipality and

statement of votes by precinct;

'3. To consolidate the provincial results, the MO shall load all the diskettes used in the scanner to the ERs;

'4. The MO shall print the provincial certificate of canvass and the SOV by municipality;

'5. In case there is system failure in the counting and/or consolidation of the results, the POBC/MOBC shall revert to manual consolidation.

'B. Local Ballots

'1. - The consolidation of votes shall be done manually by the Provincial/Municipal Board of Canvassers;

'2. The proclamation of winning candidates shall be based on the manual consolidation.

'RESOLVED, moreover, that the pertinent provisions of COMELEC Resolution Nos. 2971 and 3030 shall apply.

'Let the Executive Director implement this resolution.'"

As aforesated, five (5) Special Boards were initially created under Atty. Tolentino, Jr. to undertake the manual counting,[24] viz:

"a) Atty. Mamasapunod M. Aguam

Ms. Gloria Fernandez

Ms. Esperanza Nicolas

b) Director Ester L. Villaflor-Roxas

Ms. Celia Romero

Ms. Rebecca Macaraya

c) Atty. Zenaida S. Soriano

Ms. Jocelyn Guiang

Ma. Jocelyn Tan

d) Atty. Erlinda C. Echavia

Ms. Teresa A. Torralba

Ms. Ma. Carmen Llamas

e) Director Estrella P. de Mesa

Ms. Teresita Velasco

Ms. Nelly Jaena"

Later, the COMELEC utilized the services of 600 public school teachers from Pasay City to do the manual counting. Five (5) elementary schools served as the venues of the counting, viz:[25]

"1. Gotamco Elementary School, Gotamco Street, Pasay City - for the municipalities of Indanan, Pangutaran, Panglima Tahil, Maimbung;

"2. Zamora Elementary School, Zamora Street, Pasay City - for the municipalities of Jolo, Talipao, Panglima

Estino, and Tapul;

"3. Epifanio Elementary School, Tramo Street, Pasay City - for the municipalities of Parang, Lugus, Panamao;

"4. Burgos Elementary School, Burgos Street, Pasay City - for the municipalities of Luuk and Tongkil;

5. Palma Elementary School - for the municipalities of Siasi and Kalingalang Caluang."

From beginning to end, the manual counting was done with the watchers of the parties concerned in attendance. Thereafter, the certificates of canvass were prepared and signed by the City/Municipal Board of Canvassers composed of the Chairman, Vice-Chairman, and Secretary. They were also signed by the parties' watchers.[26]

The correctness of the manual count cannot therefore be doubted. There was no need for an expert to count the votes. The naked eye could see the checkmarks opposite the big ovals. Indeed, nobody complained that the votes could not be read and counted. The COMELEC representatives had no difficulty counting the votes. The 600 public school teachers of Pasay City had no difficulty. The watchers of the parties had no difficulty. Petitioner did not object to the rules on manual count on the ground that the ballots cannot be manually counted. Indeed, in his original Petition, petitioner did not complain that the local ballots could not be counted by a layman. Neither did the intervenor complain in his petition for intervention. The allegation that it will take a trained eye to read the ballots is more imagined than real.

This is not all. As private respondent Tan alleged, the manual count could not have been manipulated in his favor because the results show that most of his political opponents won. Thus, "the official results show that the two congressional seats in Sulu were won by Congressman Hussin Amin of the LAKAS-MNLF Wing for the 1st District and Congressman Asani Tammang of the LAKAS-Loong Wing for the 2nd District. In the provincial level, of the eight (8) seats for the Sangguniang Panlalawigan, two (2) were won by the camp of respondent Tan; three (3) by the camp of petitioner Loong; two (2) by the MNLF; and one (1) by LAMMP. In the mayoral race, seven (7) out of eighteen (18) victorious municipal mayors were identified with respondent Tan; four (4) with petitioner Loong; three (3) with the MNLF; two (2) with LAMMP and one (1) with REPORMA." [27] There is logic to private respondent Tan's contention that if the manual count was tampered, his candidates would not have miserably lost.

Seventh. We further hold that petitioner cannot insist on automated counting under R.A. No. 8436 after the machines misread or rejected the local ballots in five (5) municipalities in Sulu. Section 9 of R.A. No. 8436 provides:

"SEC. 9. Systems Breakdown in the Counting Center. In the event of a systems breakdown of all assigned machines in the counting center, the Commission shall use any available machine or any component thereof from another city/municipality upon approval of the Commission En Banc or any of its divisions.

The transfer of such machines or any component thereof shall be undertaken in the presence of representatives of political parties and citizens' arm of the Commission who shall be notified by the election officer of such transfer.

There is a systems breakdown in the counting center when the machine fails to read the ballots or fails to store/save results or fails to print the results after it has read the ballots; or when the computer fails to consolidate election results/reports or fails to print election results/reports after consolidation."

As the facts show, it was inutile for the COMELEC to use other machines to count the local votes in Sulu. The errors in counting were due to the misprinting of ovals and the use of wrong sequence codes in the local ballots. The errors were not machine-related. Needless to state, to grant petitioner's prayer to continue the machine count of the local ballots will certainly result in an erroneous count and subvert the will of the electorate.

Eighth. In enacting R.A. No. 8436, Congress obviously failed to provide a remedy where the error in counting is not machine-related for human foresight is not all-seeing. We hold, however, that the vacuum in the law cannot prevent the COMELEC from levitating above the problem. Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this provision is to have COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections. Thus, we held in *Sumulong v. COMELEC*:^[28]

"Politics is a practical matter, and political questions must be dealt with realistically - not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions x x x. There are no ready made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of laws relative to the conduct of election, x x x we must not by any excessive zeal take away from the Commission on Elections the initiative which by constitutional and legal mandates properly belongs to it."

In the case at bar, the COMELEC order for a manual count was not only reasonable. It was the only way to count the decisive local votes in the six (6) municipalities of Pata, Talipao, Siasi, Tudanan, Tapul and Jolo. The bottom line is that by means of the manual count, the will of the voters of Sulu was honestly determined. We cannot kick away the will of the people by giving a literal interpretation to R.A. 8436. R.A. 8436 did not prohibit manual counting when machine count does not work. Counting is part and parcel of the conduct of an election which is under the control and supervision of the COMELEC. It ought to be self-evident that the Constitution did not envision a COMELEC that cannot count the result of an election.

Ninth. Our elections are not conducted under laboratory conditions. In running for public offices, candidates do not follow the rules of Emily Post. Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. We cannot, however, engage in a swivel chair criticism of these actions often taken under very difficult circumstances. Even more, we cannot order a special election unless demanded by exceptional circumstances. Thus, the plea for this Court to call a special election for the governorship of Sulu is completely off-line. The plea can only be grounded on failure of election. Section 6 of the Omnibus Election Code tells us when there is a failure of election, viz:

"Sec. 6. Failure of election. - If on account of force majeure, terrorism, fraud, or other analogous causes, the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election, not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect."

To begin with, the plea for a special election must be addressed to the COMELEC and not to this Court. Section 6 of the Omnibus Election Code should be read in relation to Section 4 of R.A. No. 7166 which provides:

"Sec. 4. Postponement, Failure of Election and Special Elections. - The postponement, declaration of failure of elections and the calling of special elections as provided in Sections 5, 6, and 7 of the Omnibus Election Code

shall be decided by the Commission en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after casting of votes or on the day of the election."

The grounds for failure of election - force majeure, terrorism, fraud or other analogous causes - clearly involve questions of fact. It is for this reason that they can only be determined by the COMELEC en banc after due notice and hearing to the parties. In the case at bar, petitioner never asked the COMILEC en banc to call for a special election in Sulu. Even in his original petition with this Court, petitioner did not pray for a special election. His plea for a special election is a mere afterthought. Too late in the day and too unprocedural. Worse, the grounds for failure of election are inexistent. The records show that the voters of Sulu were able to cast their votes freely and fairly. Their votes were counted correctly, albeit manually. The people have spoken. Their sovereign will has to be obeyed.

There is another reason why a special election cannot be ordered by this Court. To hold a special election only for the position of Governor will be discriminatory and will violate the right of private respondent to equal protection of the law. The records show that all elected officials in Sulu have been proclaimed and are now discharging their powers and duties. Thus, two (2) congressmen, a vice-governor, eight (8) members of the Sangguniang Panlalawigan and eighteen (18) mayors, numerous vice-mayors and municipal councilors are now serving in their official capacities. These officials were proclaimed on the basis of the same manually counted votes of Sulu. If manual counting is illegal, their assumption of office cannot also be countenanced. Private respondent's election cannot be singled out as invalid for alikes cannot be treated unalikes.

A final word. Our decision merely reinforces our collective efforts to endow COMELEC with enough power to hold free, honest, orderly and credible elections. A quick flashback of its history is necessary lest our efforts be lost in the labyrinth of time.

The COMELEC was organized under Commonwealth Act No. 607 enacted on August 22, 1940. The power to enforce our election laws was originally vested in the President and exercised through the Department of Interior. According to Dean Sinco,[29] the view ultimately emerged that an independent body could better protect the right of suffrage of our people. Hence, the enforcement of our election laws, while an executive power, was transferred to the COMELEC.

From a statutory creation, the COMELEC was transformed to a constitutional body by virtue of the 1940 amendments to the 1935 Constitution which took effect on December 2, 1940. COMELEC was generously granted the power to "have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections x x x." [30]

Then came the 1973 Constitution. It further broadened the powers of COMELEC by making it the sole Judge of all election contests relating to the election, returns and qualifications of members of the national legislature and elective provincial and city officials.[31] In fine, the COMELEC was given judicial power aside from its traditional administrative and executive functions.

The 1987 Constitution quickened this trend of strengthening the COMELEC. Today, COMLEC enforces and administers all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda and recalls. Election contests involving regional, provincial and city elective officials are under its exclusive original jurisdiction. All contests involving elective municipal and barangay officials are under its appellate jurisdiction.[32]

Our decisions have been in cadence with the movement towards empowering the COMELEC in order that it can more effectively perform its duty of safeguarding the sanctity of our elections. In *Cauton vs. COMELEC*, [33] we laid down this liberal approach, viz:

x x x

"The purpose of the Revised Election Code is to protect the integrity of elections and to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created -- to promote free, orderly, and honest elections. The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with."

In *Pacis vs. COMELEC*,^[34] we reiterated the guiding principle that "clean elections control the appropriateness of the remedy." The dissent, for all its depth, is out of step with this movement. It condemns the COMELEC for exercising its discretion to resort to manual count when this was its only viable alternative. It would set aside the results of the manual count even when the results are free from fraud and irregularity. Worse, it would set aside the judgment of the people electing the private respondent as Governor. Upholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all. Well done is always better than well said.

IN VIEW WHEREOF, the petition of Tupay Loong and the petition in intervention of Yusop Jikiri are dismissed, there being no showing that public respondent gravely abused its discretion in issuing Minute Resolution Nos. 98-1748, 98-1750, 98-1796 and 98-1798. Our status quo order of June 23, 1998 is lifted. No costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Buena, and Gonzaga-Reyes, JJ., concur.

Pardo, J., No part.

Panganiban, J., see dissenting opinion.

Ynares Santiago, J., no part. Did not participate in the deliberation.

[1] See Report of Charlemagne Salamat Alejandro, Police Superintendent, GSC, Provincial Director, pp. 1-2; Rollo, pp. 318-319.

[2] See Memorandum of Atty. Tolentino, Jr. to Atty. Jose Balbuena, Director IV, Legal Department, Comelec, pp. 1-2; Rollo, pp. 284-285.

[3] *Ibid.*, p. 3; Rollo, p. 286.

[4] *Ibid.*, p. 4; Rollo, p. 287.

[5] *Ibid.*, p. 6; Rollo, p. 289.

[6] Rollo, pp. 303-304.

[7] *Ibid.*, pp. 25-26.

[8] Rollo, pp. 299-301.

[9] Rollo, pp. 27-29.

- [10] Rollo, pp. 290-291.
- [11] Ibid.
- [12] Ibid., pp. 30-32
- [13] Rollo, pp. 37-45.
- [14] Rollo, p.54.
- [15] Ibid., p. 46.
- [16] Ibid., pp. 157-184.
- [17] Ibid., p. 330.
- [18] Ibid., p. 392.
- [19] Filipino Engineering and Machine Shop v. Ferrer, 135 SCRA 25 (1985).
- [20] Rollo, p. 314.
- [21] Supplemental Memorandum of the Solicitor General, pp. 11-12; Rollo, pp. 433-434.
- [22] Tolentino memorandum, op. Cit., p. 14; Rollo, p. 297.
- [23] Rollo, pp. 34-35.
- [24] See Resolution No. 98-1796.
- [25] Rollo, p. 328.
- [26] Rollo, pp. 62-97.
- [27] Memorandum, p. 9; Rollo, p. 264.
- [28] 73 Phil. 288, 295-296 (1941).
- [29] Philippine Political Law, 1962 ed., pp. 383-386.
- [30] Section 2, Art. X of the 1935 Constitution.
- [31] Section 2, Art. XII (c) of the 1973 Constitution.
- [32] Section 2, Art. IX (C) of the 1987 Constitution.

[33] 19 SCRA 911-922 (1967).

[34] 25 SCRA 377, 388 (1968).

DISSENTING OPINION

PANGANIBAN, J.:

With due respect, I dissent. I submit that the Commission on Elections (Comelec) blatantly violated its express and specific statutory mandate to conduct automated elections in the Province of Sulu without any adequate legal or factual bases. Specifically, the Comelec gravely abused its discretion in the following acts:

- In peremptorily stopping the ongoing automated counting of ballots in the Municipality of Pata and in the entire Province of Sulu on the flimsy ground that three ballots for a mayoralty candidate in said municipality were not tallied by the counting machine assigned to said town
- In changing the venue and the mode of counting from automated to manual, due to alleged imminent danger of violence
- In violating its own Resolution ordering both an automated count and a parallel manual count, by actually holding only a manual count, without giving any reason for completely abandoning the automated system which was already 65 percent complete in the entire province
- In counting and appreciating the automated ballots with the use of the rules peculiar to manual elections, not to the automated election system; that is, the Comelec manually tallied the ballots in a way different from how the automated machines would have counted them; hence, the results as manually appreciated substantially differed from the machine-generated ones
- In issuing, without due process of law its assailed Minute Resolutions relating to the change in the manner and venue of counting

Let me explain each of these grounds.

1. Stoppage of Automated Count

Legally and Factually Flawed

To begin with, there is absolutely no dispute that Congress required the Comelec to conduct automated, not manual, elections in the Autonomous Region in Muslim Mindanao (ARMM), including the Province of Sulu, during the May 11, 1998 elections. Republic Act (RA) 8436 explicitly mandates the Comelec to "use an automated election system xxx for the process of voting, counting of votes and canvassing/consolidation of results"[1] in the ARMM.

However, contrary to its above clear mandate, the Comelec abandoned the ongoing automated counting of votes in Sulu during the last elections and substituted it mid-stream with the manual system. This reversion to the manual election system is nowhere authorized in the same or any other law. Clearly, the poll body has no legislative power to modify, much less to contravene, the law.[2] Neither can it assume powers not granted to it either by the Constitution or by Congress.

On the other hand, the majority justifies this reversion to the manual method as a valid exercise of the Comelec's discretion to ensure a free, orderly, honest, and credible electoral exercise, stressing that this Court's ruling is "in cadence with the movement towards empowering the Comelec in order that it can more effectively perform its duty of safeguarding the sanctity of our elections." I respectfully say, however, that such "movement" should be canalized by the proposition that the Comelec may exercise its discretion only in accordance with law and never in violation of it.

In any event, let me delve deeper into the factual and legal antecedents which led to the stoppage of the automated count, if only to demonstrate the utter lack of prudence in the Comelec's actions.

Factual Antecedents of Stoppage of Count

About 6:00 a.m. on May 12, 1998, the day after the election, while the automated counting of the ballots was being conducted at the Sulu State College, some election inspectors as well as watchers called the attention of the Comelec Task Force head in Sulu, Atty. Jose Tolentino Jr., to allegedly patent discrepancies between the printed election returns and the actual votes cast for the mayoralty candidates in the Municipality of Pata. On the spot,

Atty. Tolentino picked out three local ballots that had already been counted. He noticed that while they contained votes for a certain mayoralty candidate, such votes were not credited in the latter's favor in the precinct election return, which showed zero (0) vote for that candidate (Mr. Anton Burahan). Atty. Tolentino then took it upon himself to immediately order the suspension of the automated counting of the ballots from Pata. Tracing the error to misprinted ballots, he forthwith ordered a province-wide suspension of the automated count, on the suspicion that the printing defect was prevalent province-wide. At that point, about 65 percent of the ballots cast in Sulu were already machine-counted. Intervenor Jikiri alleged he was at the time leading the count.

I believe that Atty. Tolentino acted with grave abuse of discretion. First, he had no legal authority to order even a temporary stoppage of the counting. During the Oral Argument on September 25, 1998, he candidly admitted that he had no statutory or even regulatory basis for his action.[3] Second, the verbal manifestation of a BEI member or a watcher that a vote for a certain candidate was not reflected in the election return conferred no legal authority upon the election official to examine the ballots personally. Third, granting that Atty. Tolentino had such authority, the factual basis of his exercise of discretion was sorely insufficient. He saw only three (3) ballots out of about 200 from a single precinct in Pata, which had 27 precincts; noted that the votes for a certain mayoralty candidate, which were indicated in the three ballots, were not reflected on the election return, which instead printed zero vote for such candidate; then, without much ado, ordered the stoppage of the counting of the rest of the ballots from Pata. At the time, only 13 ballot boxes had been, and 14 more remained to be, counted. Under RA 8436, it would have taken only one (1) minute for the counting machine to process 100 to 150 ballots.[4] Thus, it would not have taken very long to finish the count for the entire municipality.

Atty. Tolentino did not even try to get the aggregate votes cast in the municipality for each mayoral candidate, in order to see if three or even 200 votes would spell a material difference in the result. Even under the manual election system, election cases are heard on the assumption that the protested ballots or returns would, if validated, change the election results. By analogy, the same logic should apply to automated elections. But Atty. Tolentino immediately assumed that the three ballots would be determinative of the election results in the municipality, where about 5,400[5] votes had been cast. Not even the manual election system allows a suspension of the entire counting process on the mere allegation that a few ballots or votes for one candidate in one precinct are questionable.

Doctrinally, it would be imprudent, even dangerous, to discard the automated system cavalierly and thereafter resort to the manual count on the flimsy basis that a few ballots were allegedly miscounted. Such holding would give losing parties and candidates a convenient device to scuttle the automated system by the simple expedient of alleging that a few ballots were improperly counted by the machine. It would give them a convenient excuse to revive and use an antiquated and fraud-ridden electoral method and thus lead to a prolonged counting and canvassing, the very evil sought to be remedied by RA 8436.

Remedy in Cases of False Returns and Questionable Ballots

Moreover, since verbal complaints of incorrect tallying by the machine were not a valid reason to suspend the counting, the charges made by the candidates' watchers should have prompted Atty. Tolentino to require the complaining parties to file their protests for proper action in accordance with law and the Comelec rules. During the canvassing (which, under the automated system, is also done separately from the counting), the adversely affected parties could have objected to the inclusion of the questioned election return and followed, by analogy, the procedure for a pre-proclamation controversy laid down in Section 243 of the OEC, as amended by Section 20 of RA 7166. Had that recourse failed, the aggrieved candidate's remedy was an election protest. Suspending and finally stopping the automated count were completely uncalled for. There simply was no basis for it.

Making matters worse, Atty. Tolentino directed the suspension of the automated count in all the 18 municipalities of Sulu, even though the alleged errors were reportedly discovered in partial returns from only six (6) municipalities -- Pata, Talipao, Siasi, Indanan, Tapul and Jolo.

If only on this basis, the assailed Comelec Minute Resolutions authorizing the manual count must be set aside and declared null and void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.[6] But there are even more odious grounds, as I will now show.

2. No Imminent

Danger of Violence

The ponencia justifies the Comelec's precipitate shift to manual counting "in view of the fast deteriorating peace and order situation caused by the delay in the counting of the votes." It pays heed to the unsubstantiated report of Atty. Tolentino, but totally ignores the PNP provincial director's Comprehensive Report on the Sulu Election[7] dated May 18, 1998, which was submitted to this Court by Private Respondent Tan. Said Report makes no mention of or reference to any incident that would substantiate Tolentino's statement. Rather, it bares the relative tranquillity of the recent electoral process in the province, viz.:

"1. The conduct of election in the province of Sulu, by her own standard, was generally peaceful sans some isolated cases of mortar shelling and failure of voting in some barangays of Panamao, ballot boxes damaged resulting from pump boat capsizing in Tongkil and failure of conducting elections in two precincts is Siasi, all of Sulu. Automated counting of the ballots, however, was stopped the day after the election when inconsistency in the print out of results were discovered in the counting machine assigned to Pata municipality. This prompted the COMELEC to order the counting to be done in Manila.

x x x x x x x x x

SIGNIFICANT INCIDENTS

"Voting in the areas assigned to Sulu PPO was generally peaceful and orderly except for some minor hitches. In Tongkil, three ballot boxes fell into the sea when the pump boat carrying them capsized. There was also allegation of ballot snatching thereat and this matter is being investigated by this PPO. In Indanan, there was a minor misunderstanding between the Ahajan brothers of Brgy. Panabuan but this was immediately resolved. In Jolo, particularly at the polling places at Hadji Butu School of Arts and Trade there was a short commotion among followers of candidates.

"In the areas covered by the 3rd MBde, violence erupted only in Talipao, and Panamao. Reportedly, there [was] gunfire heard in the outskirts of Tapul but neither opposing group reacted.

x x x x x x x x x

3. ASSESSMENT

"The conduct of election in Sulu was generally peaceful compared with the previous elections. Political rivalry was less intense; the extent of cheating was also less; and a good number of registered voters actually voted. This phenomenon may have been brought about by the fact that since there were four sets of candidates, the partisan armed groups were thinly distributed, meaning the more number of groupings, the lesser is the threat of violence."

Even assuming arguendo that imminent violence threatened the counting center, such situation would justify only the transfer of the counting venue. Even then, the concurrence of the majority of the watchers for such transfer is still required under the OEC. It does not appear on record that the consent of the watchers was ever sought, not to say given. On the contrary, Minute Resolution No. 98-1750 (dated May 13, 1998), which ordered the change of venue for the counting, was issued ex parte by the Comelec en banc, without any petition, recommendation or

proper investigation for said purpose. Such arbitrary and peremptory issuance, in violation of law, again amounted to an abusive exercise of discretion.

But, even granting *arguendo* that the transfer of the counting venue was valid, the abandonment of the automated count was definitely not a necessary legal consequence thereof. In other words, only the venue could have been changed, but not the method of counting. If the Comelec had conducted an automated count in Manila, that may even be arguably sustained. I repeat, the alleged imminent threat of violence did not at all justify the manualization of the counting process; if at all, it only authorized a change of venue of the automated count.

3. No Justification to Abandon Automated Count

Please note that the Comelec, in its Minute Resolution 98-1796[8] dated May 15, 1998, actually resolved "to conduct a parallel manual counting [i]n all 18 municipalities of Sulu xxx." [9] Originally, it would appear that the Commission intended to conduct in Manila an automated count first, and then a parallel manual count. Hence, it ordered the air-lifting to its head office of all the relevant election paraphernalia, including the automated machines.

However, the Comelec did not obey its own Resolution. Worse, it did not explain why this vital provision requiring an automated count was not implemented, and why only a manual count was conducted. I could have conceded the propriety of a parallel manual count -- which plainly means that both automated and manual counts were to be performed. Although not expressly sanctioned by law, such parallel manual count may arguably be regarded as falling within the residual regulatory authority of the Comelec. Unfortunately and inexplicably, however, only a manual count was done; the Resolution ordering an automated count was simply ignored without the Comelec giving any reason therefor.

To repeat, there was no reason at all to completely abandon the automated count. The Comelec had a duty to comply with the mandate of Congress. Yet, for unstated and I submit, unexplainable reasons, it simply substituted the will of Congress with its own arbitrary action. Clearly, the Comelec acted without or in excess of its jurisdiction.

4. Rules for Manual Elections Different from Those for the Automated System

I would like to emphasize that the resort to a manual appreciation of the ballots is precluded by the basic features of the automated election system,[10] which requires minimum human intervention, the use of a special quality of ballot paper, the use of security codes, the mere shading of an oval corresponding to the name of the candidate voted for, and the mechanized discrimination of genuine from spurious ballots, as well as rejection of fake or counterfeit ones. The automated system takes away the discretion of the boards of election inspectors (BEI) in appreciating ballots.[11]

A simple cursory reading of the rules[12] laid down in the Omnibus Election Code (OEC) for the appreciation and counting of ballots cast in a manual election easily discloses that they are inappropriate, if not downright useless, to the proper appreciation and reading of the ballots used in the automated system, wherein the names of the candidates are printed on the ballots beforehand and are not handwritten by the voters themselves, and wherein each name has a corresponding oval which must have its own exact location on the ballot, conforming to the design that has been programmed in the counting machine. In other words, the automated election system has peculiar features designed for electronic, not manual, verification.

Under the automated system, the machines are programmed to recognize or read only the presence of carbon in the ovals. To erase a vote is, in fact, not advisable (the voter may, under Comelec rules, ask for a new ballot),

because some carbon content may be left in the oval that would still be recognized and tallied by the machine. Human handling of the automated ballots will also make it all too easy to nullify the voter's will. A blank ballot (in which the voter intentionally refrained from voting for any candidate) can be easily pencil-marked in favor of a certain candidate. Or a vote can be facilely nullified by simply marking the oval of another candidate for the same office. The point is: human handling of automated ballots is fraught with dangers to the integrity of the votes therein; it actually makes the political exercise more vulnerable to electoral fraud.

To be more concrete and specific, during the physical examination of the ballots used in several precincts in Pata and Jolo, conducted pursuant to the Court's Resolution dated February 9, 1999, as well as in the operation of the counting machines to which these ballots were fed,[13] there were significant discrepancies between the results of the manual count, as reflected in the official election returns, and those of the machine count.[14] Such were brought about by the following:

- Ovals that were ink-shaded were validated by the BEIs pursuant to the OEC[15] and the Comelec rules.[16] On the other hand, these were ignored by the machines, which could detect only ovals with sufficient carbon content.
- Some ovals that were only partly shaded were not read by the machines, but were counted by the BEI, pursuant to said Comelec rules.
- In some ballots, several ovals for candidates for one office were shaded but, except for one, also crossed out or marked with an "X." The counting machine invalidated these votes, because it could not recognize the difference between an "X" mark and any other mark on the oval. All it could "read" was the carbon content, and due to the presence of carbon on more than one oval for a single office, the machine concluded that there was an "over-vote." Under the automated program, an "over-vote" is considered "no vote." However, the BEIs counted the remaining uncrossed vote, considering it the voter's true and valid vote, pursuant to the OEC rules.[17]
- Ballots on which the voter manually wrote the candidates' names were considered marked ballots by some BEIs, pursuant to the OEC. But the machines counted the votes therein and ignored such writings, as long as they were not found inside the ovals.

I could cite several other examples of why the manual count was not reflective of the machine count. In spite of the ponencia's plain admission that the OEC Rules on the appreciation of ballots "only apply to elections where the names of the candidates are handwritten in the ballots," the stark fact is that such Rules were actually (and erroneously) used here.

Indeed, the use of inappropriate Rules by the BEIs necessarily begot a misappreciation of the ballots. Such misappreciation, in turn, led to a substantial difference in the election results, as yielded by the manual and the automated counts. In sum, the manual count was not reflective of the automated count.

This Court's Ruling Sets Back Election Modernization

It must be borne in mind that, verily, the consistency and the accuracy of the machine count were the underlying factors in adopting the automated system of election. Precisely, human error, inconsistency and fraud were intended to be eliminated in the automated system. In fact, the BEIs had no role in the counting and canvassing. Thus, the resort to a manual count under the facts of this case was antithetical to the rationale and intent behind RA 8436. The very purpose of the law was defeated by the cumbersome, inaccurate and error-prone manual system of counting automated votes.

Indeed, to uphold the results of the manual count would set a dangerous precedent. It would be tantamount to

validating the arbitrary and illegal acts of the Comelec. It would provide the candidates a degenerated means to delay the proclamation of winners. It would effectively nullify the purpose of delivering speedy and accurate election results and thus defeat the election modernization ordained by Congress. Definitely, it would critically set back efforts at eliminating electoral fraud. To paraphrase then Vice President, now President, Joseph E. Estrada, the automated election system, which was prescribed as the "cure for electoral fraud," may, in the imprudent hands of an indiscreet poll body, be truly "worse than the disease."

5. Lack of Due Process in Issuance of Assailed Comelec Resolutions

The ponencia, citing the Tolentino Memorandum, states that Petitioner Loong and Intervenor Jikiri "were given every opportunity to oppose the manual count of the local ballots in Sulu." Hence, contrary to their allegations, they were not denied due process.

Again, I beg to disagree. Some factual antecedents have to be brought up to set the record straight.

The meeting among the candidates and other parties concerned, which Atty. Tolentino convened in the early afternoon of May 12, 1998, was already post facto. The talking points in that meeting related to the alleged incorrect reading of ballots for Pata, Sulu. They did not discuss the issue of whether to stop the tallying because much earlier in the morning of that same day, Atty. Tolentino had already suspended the counting in that municipality and, shortly thereafter, in the entire province. Furthermore, the group that convened did not yet take up the alleged rejection by the machines of ballots in other municipalities, since the reports thereon came only after the said meeting. And such stoppage, as I discussed earlier, was based merely on the verbal complaints of some watchers and members of the BEI and Atty. Tolentino's personal, albeit unauthorized, examination of three ballots from one precinct, which showed that votes for a certain mayoralty candidate were not reflected in the election return.

Immediately after that meeting adjourned, Private Respondent Abduasakur Tan sent his petition^[18] directly to the Comelec, requesting the immediate suspension of the automated count and the holding of a manual count in the entire Province of Sulu. In response, the Comelec en banc forthwith issued on the very same day -- May 12, 1998 -- assailed Minute Resolution 98-1747,^[19] granting the petition insofar as the votes in the Municipality of Pata were concerned.

The assailed Resolution was issued even before the report-recommendation of Atty. Tolentino was submitted to the Comelec en banc, close to midnight of that day.^[20] While the effectivity of Minute Resolution 98-1747 was expressly "subject to notice to all parties concerned," its very issuance by the Comelec en banc was obviously (1) without notice to the other candidates, (2) without any hearing at all, and (3) without an independent investigation by the Comelec. It relied totally on the contents of the petition itself.

Clearly, while the parties may have been heard by Atty. Tolentino, their inputs were definitely not communicated to nor required by the Commission en banc prior to its issuance of Minute Resolution 98-1747. Besides, the Tolentino meeting took up the problems in the Municipality of Pata only, for the alleged problems in the five other municipalities of Sulu were discovered after that meeting was adjourned already. Such meeting, therefore, did not serve as a sufficient basis for the Comelec to abandon the automated count in the entire province; to transfer the counting venue from Sulu to Manila; and to totally shift to the manual count. In making these decisions and issuing the resolutions therefor, the Comelec clearly did not accord the parties due process. It did not give them any opportunity to be heard prior the promulgation of its rulings. The Comelec simply acted on its own.

Epilogue

Special Election as the Equitable Remedy

The assailed Comelec Resolutions have heretofore been shown to be tainted with grave abuse of discretion; hence, the manual count has no legal leg to stand on. Consequently, its results cannot be upheld. That which proceeds from a void order is likewise void. The invalidity of the manual count resulted in no count at all. Equally important, the manual count was not reflective of the results of an automated count because the ballots were not appreciated in the manner the scanning machine would have counted them.

During the Oral Argument, the parties, as well as the solicitor general, agreed that an automated count was no longer possible because, after the ballots had been manually handled (and blemished or rumped in the process), the scanning machines could not accurately read all of them anymore.[21] While the great majority of the ballots could still be counted by the machines, there were those that could no longer be electronically processed -- ballots that were torn, dirty or sticky; and the damp ones that the machine found difficult to disengage.

The ultimate effect of the invalidity of the manual count and the futility of an automated count at this time is the annulment or junking of the votes of the people of Sulu in the last elections. The will of the electorate, expressed through the ballots, has been frustrated or virtually canceled by the unauthorized acts of the Comelec. There is then no basis for the proclamation of Private Respondent Tan as the duly elected governor of Sulu.

It must be pointed out, however, that the nullity of Tan's proclamation is not equivalent to a judicial disenfranchisement of the Sulu electorate. Indeed, there is no evidence showing that the voting process itself was tainted with undue irregularity. It was the counting process, rather, that was shrouded with uncertainty. The manual count, I repeat, was not the prescribed or even the appropriate method of validating the ballots intended to be electronically verified.

Time and again, the Court has held that the sovereign will must prevail over legal technicalities.[22] But when the popular will itself is placed in serious doubt due to the irregularity of the very method used in determining it, we must allow the people involved another chance to express their true choice. We simply cannot impose upon the people of Sulu one who was not their clear choice, or whose election was, at the very least, placed in serious doubt by the spuriousness of the method used in counting the votes.

The consequent loss of a legal and appropriate means to ascertain the genuine will of the voters during the last election in Sulu necessitates the holding of a special election. I believe that this is the only equitable remedy left under the circumstances, if we are to give true justice to the people of Sulu and let their sovereign will prevail.[23] Such special election will, however, concern only the position of governor of the Province of Sulu. Only this position was contested in the instant petition; only the candidates therefor have timely sought relief from this Court to assail the manual count and the subject Minute Resolutions of the Comelec. The same relief cannot be granted to the candidates for the other positions who, insofar as they are concerned, are deemed to have accepted the results of the manual count as truly reflective of the will of the people of Sulu. Their failure to object in due time to the process, as well as the results, manifests their conformity and acceptance. They are now estopped from questioning the validity of the assumption into office of the duly proclaimed winners of the other positions in the province, whose rights cannot be adversely affected in these proceedings without them being haled to and accorded their day in court.[24] Even this Court has admitted the wisdom of this caveat as it denied the late intervention of Vice Gubernatorial Candidate Abdulwahid Sahidulla.

The Need for Legislative Action

The foregoing disquisition shows that RA 8436 had not foreseen flaws in the automated system that were unrelated to the counting machines or components thereof; thus, the lacuna of the proper recourse in such event.

No remedies were expressly prescribed (1) for candidates who believe there was a wrong count or canvass by the machine, or more relevantly, (2) on whether Comelec may resort to a manual count of automated ballots, and if so, under what circumstances.[25]

Well-settled is the rule, that courts have no jurisdiction to make legislative pronouncements.[26] They have no power to fill a vacuum in the law. Thus, the Court, I submit, should not give its imprimatur to the Comelec's resort to the manual method of determining election results, where Congress has categorically prescribed the automated system. Only Congress, the legislative arm of the government, can prescribe a precise remedy that will address the flaws identified in this case. For the courts or the Comelec to do so (like a resort to manual count) would be tantamount to judicial or administrative legislation, a course diametrical to the constitutional principle of separation of powers.

WHEREFORE, I vote that the petition be GRANTED. Assailed Comelec Resolution Nos. 98-1747, 98-1750, 98-1796 and 98-1798 should be declared NULL and VOID. The manually determined election results for the position of governor of Sulu and the proclamation of Respondent Abdusakur Tan as the elected governor of said province must thus be SET ASIDE and the Comelec ORDERED to call a special election for such position as soon as practicable.

[1] § 6, RA 8436.

[2] Cortez v. Comelec, 79 Phil 350 (1947); Lawsin v. Escalona, 11 SCRA 643 (1964).

[3] I Transcript 49-50.

[4] § 7, No. 7.

[5] According to Atty. Tolentino, there were about 200 ballots contained in a ballot box (II Transcript 46). The 27 ballot boxes for the 27 precincts of Pata, Sulu would thus yield about 5,400 ballots or votes.

[6] Sanchez v. Comelec, 193 SCRA 320, January 24, 1991; Loong v. Comelec, 257 SCRA 1, May 16, 1996; Villanueva v. Court of Appeals, 259 SCRA 14, July 15, 1996; Garay v. Comelec, 261 SCRA 222, August 26, 1996; Jagunap v. Comelec, 104 Phil 204, April 24, 1981; Sarmiento v. Comelec, 212 SCRA 313, August 6, 1992; PNCC v. NLRC, 217 SCRA 455, January 22, 1993; Philippine Air Lines, Inc. v. NLRC, 225 SCRA 259, August 10, 1993; Philippine Air Lines, Inc. v. Confesor, 231 SCRA 41, March 10, 1994; Allado v. Diokno, 232 SCRA 192, May 5, 1994; Labor v. NLRC, 248 SCRA 183, September 14, 1995; San Miguel Corp. v. NLRC, 209 SCRA 494, June 2, 1992.

[7] Annex "3" to the Memorandum of Private Respondent Tan; Rollo, pp. 256 et seq.

[8] Rollo, pp. 30-32.

[9] Emphasis supplied.

[10] See Sec. 7, RA 8436.

[11] Regalado E. Maambong, "New Technologies of Modernization in Electoral Administration: The Philippine Experience," Symposium on Asian Elections in the 21st Century: A Report, January 1997, p. 30.

[12] "Sec. 211. Rules for the appreciation of ballots. -- In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the

expression of the voters' will:

"1. Where only the first name of a candidate or only his surname is written, the vote for such candidate is valid, if there is no other candidate with the same first name or surname for the same office.

"2. Where only the first name of a candidate is written on the ballot, which when read, has a sound similar to the surname of another candidate, the vote shall be counted in favor of the candidate with such surname. If there are two or more candidates with the same full name, first name or surname and one of them is the incumbent and on the ballot is written only such full name, first name or surname, the vote shall be counted in favor of the incumbent.

"3. In case the candidate is a woman who uses her maiden or married surname or both and there is another candidate with the same surname, a ballot bearing only such surname shall be counted in favor of the candidate who is an incumbent.

"4. When two or more words are written on the same line on the ballot, all of which are the surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter.

"When two or more words are written on different lines on the ballot all of which are the surnames of two or more candidates bearing the same surname for an office for which the law authorize the election of more than one and there are the same number of such surnames written as there are candidates with that surnames, the vote shall be counted in favor of all the candidates bearing the surname.

"5. When on the ballots is written a single word which is the first name of a candidate and which is at the same time the surname of his opponent, the vote shall be counted in favor of the latter.

"6. When two words are written on the ballot, one of which is the first name of the candidate and the other is the surname of his opponent, the vote shall not be counted for either.

"7. A name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor.

"8. When a name of a candidate appears in a space of the ballot for an office for which he is a candidate and in another space for which he is not a candidate, it shall be counted in his favor for the office for which he is a candidate and the vote for the office for which he is not a candidate shall be considered as stray, except when it is used as a means to identify the voter, in which case, the whole ballot shall be void.

"If the word or words written on the appropriate blank on the ballot is the identical name or surname or full name, as the case may be, of two or more candidates for the same office none of whom is an incumbent, the vote shall be counted in favor of that candidate to whose ticket belong all the other candidates voted for in the same ballot for the same constituency.

"9. When in a space in the ballot there appears a name of a candidate that is erased and another clearly written, the vote is valid for the latter.

"10. The erroneous initial of the first name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct first name of a candidate, or the erroneous middle initial of the candidate shall not annul the vote in favor of the latter.

"11. The fact that there exists another person who is not a candidate with the first name or surname of a candidate shall not prevent the adjudication of the vote of the latter.

"12. Ballots which contain prefixes as 'Sr.,' 'Mr.,' 'Datu,' 'Don,' 'Ginoo,' 'Hon.,' 'Gob.' or suffixes like 'Hijo,' 'Jr.,' 'Segundo' are valid.

"13. The use of the nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid: Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname.

"14. Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.

"15. If on the ballot is correctly written the first name of a candidate but with a different surname, or the surname of the candidate is correctly written but with different first name, the vote shall not be counted in favor of any candidate having such first name and/or surname but the ballot shall be considered valid for other candidates.

"16. Any ballot written with crayon, lead pencil, or in ink, wholly or in part, shall be valid.

"17. Where there are two or more candidates voted for in an office for which the law authorizes the election of only one, the vote shall not be counted in favor of any of them, but this shall not affect the validity of the other votes therein.

"18. If the candidates voted for exceed the number of those to be elected, the ballot is valid, but the votes shall be counted only in favor of the candidates whose names were firstly written by the voter within the spaces provided for said office in the ballot until the authorized number is covered.

"19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot.

"20. Ballots containing the name of a candidate printed and pasted on a blank space of the ballot or affixed thereto through any mechanical process are totally null and void.

"21. Circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot.

"22. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter 'T,' 'J,' and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot.

"23. Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.

"24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

"25. Ballots wholly written in Arabic in localities where it is of general use are valid. To read them, the board of election inspectors may employ an interpreter who shall take an oath that he shall read the votes correctly.

"26. The accidental tearing or perforation of a ballot does not annul it.

"27. Failure to remove the detachable coupon from a ballot does not annul such ballot."

[13] With the help of Comelec personnel, the counting machines were used only for clean or smudge-free ballots, which were fed into the machines to assure the integrity of the machine count.

[14] During this process, Comelec personnel led by Atty. Jose Tolentino Jr. actually ran the automated ballots through the scanning machines, thus showing a sampling comparison between the manual results and the machine-generated totals.

[15] § 211, No. 16.

[16] Part II, No. 8, of the Comelec Procedure for Manual Counting, dated May 23, 1998.

[17] See § 211, No. 9.

[18] Annex "1" to Comment; Rollo, pp. 121-123.

[19] Rollo, pp. 25-26.

[20] II Transcript 13-14.

[21] The caveat must be stated here, however, that during the sampling demonstration made by Comelec, which showed discrepancies in the automated and manual counts, most of the ballots could still be read by the machines. Only one or two ballots per precinct were spoiled or blemished to the point of being non-readable by the machine.

[22] *Frivaldo v. Comelec*, 257 SCRA 727, 771, June 28, 1996; *Benito v. Comelec*, 235 SCRA 436, 442, August 17, 1994, citing several cases.

[23] The ponencia rules out this remedy, arguing that a special election was not prayed for by the parties and, at any rate, can be authorized only in accordance with Sections 4, 5, 6 and 7 of the OEC. I stress however that, under the circumstances, a special election is the EQUITABLE remedy because to uphold the manual count, as the majority did, merely gave imprimatur to arbitrary acts of the Comelec and validated the inaccurate and unauthorized manual count.

[24] *Tan v. Barrios*, 190 SCRA 686, 698-699, October 18, 1990; citing *Icasiano v. Tan*, 84 Phil 860 (1949); *Busacay v. Buenaventura*, 93 Phil 786 (1953).

[25] Earlier, I opined that, by analogy, the parties could avail of pre-proclamation contests or election protests. However, such analogy cannot be extended to manual elections because no law provides for such remedy.

[26] *Santiago v. Guingona Jr.*, GR No. 134577, November 18, 1998; *Javellana v. Executive Secretary*, 50 SCRA 30, 84, March 31, 1973.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.