

ROSE MARIE D. DOROMAL, PETITIONER, VS. HERNAN G. BIRON AND COMMISSION ON ELECTIONS, RESPONDENTS.*G.R. No. 181809. February 17, 2010*

Ponente: DEL CASTILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-181809/>**DEL CASTILLO, J.:**

We reiterate settled rulings on the appreciation of election returns in this case, to wit, (1) before a certificate of votes may be used to prove tampering, alteration, falsification or any other anomaly committed in the election returns, it must comply with Sections 16 and 17 of Republic Act (RA) No. 6646,[1] (2) the exclusion of election returns on the ground of tampering must be approached with extreme caution and must be based on clear and convincing evidence, and (3) in case of discrepancy in the other authentic copies of an election return, the procedure in Section 236 of the Omnibus Election Code[2] (OEC) should be followed. For failure to comply with these rules and principles, we hold that the Commission on Elections (COMELEC) acted with grave abuse of discretion amounting to lack or excess of jurisdiction and accordingly order it to rectify the unjustified disenfranchisement of voters in this case.

This Petition for Certiorari under Rules 64 and 65 of the Rules of Court seeks to annul and set aside the COMELEC En Banc's February 1, 2008 Resolution.[3] The COMELEC En Banc affirmed its Second Division's September 12, 2007 Resolution[4] in SPC No. 07-147 which ordered the exclusion of 11 election returns in the canvassing of votes for the position of vice mayor in the Municipality of Dumangas, Iloilo.

Factual Antecedents

Petitioner Rose Marie D. Doromal (Doromal) and private respondent Hernan G. Biron (Biron) were the vice mayoralty candidates for the Municipality of Dumangas, Iloilo in the May 14, 2007 elections. During the canvassing of votes, Biron orally objected to the inclusion of 25[5] election returns. Biron anchored his objections to the inclusion of the 21 returns on the alleged missing taras[6] in Copy 4 of the contested returns, which he obtained as the standard bearer of LAKAS-CMD, the recognized dominant majority party in said elections.[7] As regards the remaining four contested returns, Biron opposed their inclusion allegedly because there was a discrepancy between the number of votes stated in the said returns and those stated in the certificate of votes issued by the Board of Election Inspectors (BEI). In view thereof, the Municipal Board of Canvassers (MBC) deferred the canvassing of the said returns. Thereafter, Biron filed his written objections and supporting evidence.

On May 18, 2007, the MBC denied[8] the petitions for exclusion. It found that there was no tampering on the number of taras for Doromal in the copy of the election return for the MBC. It also held that the copy of the election return of the MBC was complete with no material defect and duly signed and thumbmarked by the BEIs.[9]

Aggrieved, Biron appealed to the COMELEC. The case was docketed as SPC No. 07-147[10] and raffled to the Second Division. Pending the resolution of the appeal, the proclamation of the winning vice mayoralty candidate was ordered suspended.

Ruling of the COMELEC Second Division

On September 12, 2007, the COMELEC Second Division, voting 2-1, issued a Resolution partially granting Biron's appeal. It ordered the exclusion of only 11 contested election returns while at the same time ordered the inclusion of the remaining 14 election returns in the canvassing of votes, viz:

WHEREFORE, foregoing premises considered, the instant appeal is PARTIALLY GRANTED. The election returns in Precinct Nos. 17A/18A, 20A, 21A/21B, 30A/31A, 59A/60A, 122A/122B, 162A/163A, 169A, 173A/173B, 174A/174B, 192A, 202A, 204A and 207A, are hereby ordered INCLUDED in the canvass of returns for the vice-mayoralty position in Dumangas, Iloilo. The Municipal Board of Canvassers of Dumangas, Iloilo is hereby ordered to RECONVENE and PROCEED with the canvass of the said election returns and PROCLAIM the candidate who garners the most number of votes.

The election returns in Precinct Nos. 107-A, 114-A, 6A/6B, 55-A, 67A/67B, 116A/116B, 130A, 42A/43A, 90A/90B, 7A/7B and 208A/208B are hereby ordered EXCLUDED in the canvass of returns by the Municipal Board of Canvassers of Dumangas, Iloilo.

SO ORDERED.[11]

The COMELEC Second Division ordered the exclusion of the 11 election returns (subject returns) because the same were allegedly tampered or falsified. It held that eight of the 11 subject returns showed that the taras were either closed on the third or fourth vote, instead of on the fifth vote, resulting in a discrepancy between the number of taras vis-à-vis the written figures and words in the said returns. With regard to the remaining three returns, the Second Division noted a glaring dissimilarity between the votes stated in the said returns and those stated in the certificate of votes. Further, it lent credence to the affidavits of Biron's poll watchers stating that numerous irregularities attended the tallying of the votes at the precinct level. According to the Second Division, these irregularities pointed to a scheme to increase the votes of Doromal, thus, necessitating the exclusion of the subject returns.

Commissioner Rene V. Sarmiento (Commissioner Sarmiento) registered a dissent. He reasoned that the missing taras did not, by themselves, conclusively establish that the subject returns were altered or tampered. Also, the affidavits of Biron's poll watchers should not have been given weight for being self-serving. In his view, the proper recourse was not to exclude the subject returns but to order the correction of manifest errors so that the number of votes in figures and words would conform to the number of taras in the subject returns.

Thus, on September 24, 2007, the MBC reconvened and proceeded to canvass the abovementioned 14 returns. As a result, Biron emerged as the winning candidate with 12,497 votes while Doromal received 12,319 votes, or a winning margin of 178 votes. On even date, Biron was proclaimed as the duly elected vice mayor of the Municipality of Dumangas, Iloilo.

Ruling of the COMELEC En Banc

On February 1, 2008, the COMELEC En Banc affirmed the ruling of the Second Division. It held that the Second Division properly appreciated the affidavits of Biron's poll watchers given the serious allegations of irregularities that attended the tallying of votes; that the use of the certificate of votes to establish tampering in the subject returns was proper in a pre-proclamation controversy; and that an examination of the records of this case supported the Second Division's findings that the subject returns were tampered or falsified.

Commissioner Sarmiento maintained his previous dissent that the exclusion of the subject returns was improper. He further noted that in case correction of manifest errors was not viable, votes may be recounted pursuant to Section 236 of the OEC.

Issues

The issues raised by petitioner may be summarized as follows:

- The COMELEC gravely abused its discretion when it failed to compare the contested returns with the other authentic copies thereof before ruling that there was tampering or falsification of the said returns.
- The COMELEC gravely abused its discretion when it used the certificate of votes to exclude the three contested election returns considering that it cannot go beyond the face of the returns in establishing that there was tampering or falsification and considering further that said certificates did not comply with Section 17 of RA 6646.
- The COMELEC gravely abused its discretion when it gave credence to the self-serving affidavits of private respondent's poll watchers.
- The COMELEC gravely abused its discretion when it ordered the exclusion of the subject returns because, in case of falsification or tampering, the procedure under Sections 235 and 236 of the OEC should have been followed in order not to disenfranchise the voters.[12]

Petitioner's Arguments

Doromal advances several possible reasons for the missing taras in Copy 4 (i.e., copy of the dominant majority party) of the subject returns, to wit, (1) the pressure exerted by the poll clerk in accomplishing duplicate originals of the subject returns was not sufficient as to leave its mark on the succeeding pages, (2) the carbon paper had poor quality, (3) the election return papers were misaligned relative to the carbon paper, or (4) the erasures were deliberately made by Biron on Copy 4 to pave the way for the subject pre-proclamation controversy.

Further, while the instant petition was pending resolution before this Court, Doromal requested the COMELEC to open the ballot boxes where the COMELEC's copy of the subject returns (i.e., Copy 3) was safekept. On April 21, 2008, the COMELEC granted the request and ordered the opening of the ballot boxes. It thereafter allowed Doromal to photocopy Copy 3 of the subject returns found therein. On June 17, 2008, petitioner filed a Motion for Leave to File Manifestation[13] with attached Manifestation[14] before this Court summarizing her observations with respect to Copy 3 of the subject returns. She noted that some of the missing taras in Copy 4 were not found in Copy 3. With respect to the missing taras in Copy 3 just as in Copy 4, petitioner reiterated that the cause thereof was the insufficient pressure exerted by the poll clerk in accomplishing the election returns or the misalignment of the election return copies while the duplicate originals were being accomplished using carbon paper. Thus, there was no basis for the COMELEC to rule that the subject returns were falsified or tampered.

Petitioner also claims that the COMELEC never compared Copy 4 of the subject returns with the other authentic copies of the said returns as required under Section 235 of the OEC. Assuming that the COMELEC made such comparison with the other authentic copies, this was not done in the presence of petitioner in violation of her due process rights.

Anent the exclusion of the three subject returns, petitioner asserts that the COMELEC erred in using the certificate of votes to establish falsification or tampering because the COMELEC cannot go beyond the face of the returns in a pre-proclamation controversy. Assuming *arguendo* that the COMELEC may use the certificate of votes, the requirement set by Section 17 of RA 6646 was not complied with. Thus, the certificate of votes is inadmissible in evidence.

Petitioner faults the COMELEC for relying on the affidavits of private respondent's poll watchers in concluding that irregularities attended the preparation of the subject returns. Evidently, these affidavits are self-serving and of

no probative value.

Lastly, petitioner argues that assuming that the subject returns were falsified or tampered, the proper recourse would be to follow the procedure outlined in Sections 235 and 236 of the OEC and not to summarily exclude said returns. Under the aforesaid provisions, the COMELEC should have authorized the opening of the ballot boxes and thereafter ordered the BEI to recount the votes of the candidates affected and prepare a new return which shall then be used by the MBOC as the basis of the new canvass.

Private Respondent's Arguments

Private respondent contends that the points raised by petitioner are factual in nature, thus, not proper in a petition for certiorari under Rule 65 which is limited to questions of jurisdiction. He claims that the findings of the COMELEC with respect to the falsification and tampering of the subject returns must be accorded respect and even finality by this Court. Biron also points out that in making such a finding, the COMELEC Second Division compared the subject returns with the other authentic copies thereof which was affirmed by the COMELEC En Banc after the latter made its own independent examination of the records of this case.

Biron also claims that there was no denial of due process. Since a pre-proclamation controversy is summary in nature, Biron posits that the COMELEC properly appreciated the evidence in this case consisting of the pleadings and documentary evidence of the respective parties without the need of holding a formal or trial-type hearing.

He also avers that the COMELEC properly gave credence to the affidavits of his poll watchers. He emphasizes that the subject returns appear to be tampered and falsified on their face so that the affidavits were merely used to buttress or substantiate the cause of these irregularities.

Finally, Biron claims that the procedure under Sections 235 and 236 of the OEC is not applicable to this case because the same refers to the board of canvassers and not the COMELEC. Also, these provisions do not allow the COMELEC to motu proprio order the opening of the ballot boxes.

Our Ruling

The petition is meritorious.

An act done contrary to the Constitution, the law or jurisprudence; or executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias constitutes grave abuse of discretion.[15] In the instant case, we find that the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in ordering the exclusion of the subject returns. The ruling contravenes clear legal provisions as well as long standing jurisprudence on the admissibility of the certificate of votes and the appreciation of election returns. Lamentably, the refusal of the COMELEC to heed this Court's repeated pronouncements has again led to the disenfranchisement of voters in this case. The writ, therefore, lies to correct this grossly abusive exercise of discretion.

The certificates of votes are inadmissible to prove tampering, alteration or falsification for failure to comply with Sections 16 and 17 of RA 6646.

In excluding three of the 11 subject returns, specifically, those coming from Precinct Nos. 90A/90B, 7A/7B and 208A, the COMELEC relied on the alleged glaring dissimilarity between the votes stated in the said returns and those stated in the certificates of votes. Hence, it concluded that the subject returns were falsified and thereafter ordered their exclusion.

The certificate of votes, which contains the number of votes obtained by each candidate, is issued by the BEI upon the request of a duly accredited watcher pursuant to Section 16 of RA 6646. Relative to its evidentiary

value, Section 17 of said law provides -

Sec. 17. Certificate of Votes as Evidence. - The provisions of Sections 235 and 236 of Batas Pambansa Blg. 881 notwithstanding, the certificate of votes shall be admissible in evidence to prove tampering, alteration, falsification or any anomaly committed in the election returns concerned, when duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate: Provided, That failure to present any certificate of votes shall not be a bar to the presentation of other evidence to impugn the authenticity of the election returns.

While the above-quoted provision authorizes the COMELEC to make use of the certificate of votes to prove tampering, alteration, falsification or any anomaly committed in the election returns, this presupposes that the certificate of votes was accomplished in accordance with Section 16, viz:

Sec. 16. Certificates of Votes. - After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly accredited watchers. The certificate shall contain the number of votes obtained by each candidate written in words and figures, the number of the precinct, the name of the city or municipality and province, the total number of voters who voted in the precinct and the date and time issued, and shall be signed and thumbmarked by each member of the board. (Emphasis supplied)

Thus, in *Patoray v Commission on Elections*,^[16] we ruled that the certificate of votes is inadmissible to prove tampering because it was signed only by the chairperson of the BEI, whereas Section 16 required that the same be signed and thumbmarked by each member of the BEI which issued the certificate.^[17] Similarly, in *Recabo, Jr. v. Commission of Elections*,^[18] we rejected the certificate of votes because it did not state (1) the number of votes obtained in words, (2) the number of the precinct, (3) the total number of voters who voted in the precinct, and (4) the time of issuance. Further, the certificate was merely certified true and correct by an acting election officer.^[19]

In the instant case, the certificates of votes from Precinct Nos. 90A/90B^[20] and 7A/7B^[21] are defective, for they do not contain (1) the thumbmarks of the members of the BEI, (2) the total number of voters who voted in the precinct, and (3) the time of the issuance of the certificates. Likewise, the certificate of votes from Precinct 208A^[22] is defective because it does not contain (1) the names, signatures and thumbmarks of the members of the BEI, (2) the total number of voters who voted in the precinct, and (3) the time of the issuance of the certificate. Aida Pineda, private respondent's poll watcher in said precinct, claims that she prepared a certificate of votes reflective of the true tally in the election return, but the members of the BEI refused to affix their signatures thereto. Even if we were to concede that the BEI members unjustifiedly refused to sign, this would not validate the said certificate. Private respondent's remedy was to compel the BEI to issue the certificate of votes under pain of prosecution for an election offense.^[23] At any rate, we cannot admit the defective certificate because, by Pineda's own admission, she was the one who prepared the entries in the said certificate and not the BEI as required by Section 16 of RA 6646, thus raising grave doubts as to its accuracy.^[24]

Moreover, before the certificate of votes may be admitted as evidence of tampering, Section 17 requires that the certificate be duly authenticated by testimonial or documentary evidence presented to the board of canvassers by at least two members of the board of election inspectors who issued the certificate. This requirement originated from Section 11^[25] of House Bill (HB) No. 805 and was later consolidated, with minor revisions, in Section 17^[26] of HB 4046 - the precursor of RA 6646. During the period of interpellations, Representative Zarraga proposed that the aforesaid authentication requirement be dispensed with, viz:

MR. ZARRAGA. [I]n connection with Sections 16 and 17, on House Bill No. 4046, only insofar as it concerns the admissibility in evidence of the certificate of votes.

MR. PALACOL. Yes, Mr. Speaker.

MR. ZARRAGA. Under Section 17, the certificate of votes shall be admissible in evidence only when duly authenticated by testimonial or documentary evidence presented to the Board of Canvassers by at least two members of the Board of Election Inspectors who issued the certificate.

The presentation of the certificate of votes is, of course, during the proceedings. And said proceedings may be one, two or three months, probably even more, after the voting has taken place.

And under Section 16, will the certificate of votes be signed and thumbmarked by each member of the Board of Inspectors?

MR. PALACOL. Yes, Mr. Speaker.

MR. ZARRAGA. This Representation feels that this should be sufficient to consider the certificate of votes as duly authenticated, especially because at that time the members have just prepared said certificate and therefore, there should be no need to further require two members of the board subsequently because they may no longer be available to authenticate the certificate of votes.

This Representation would like to inquire from the Gentlemen if the distinguished sponsor will be willing to also amend Section 16 in such a way that the certificate of votes, when already signed and thumbmarked by each member of the board, shall be considered as duly authenticated and admissible in evidence in any subsequent proceedings.

In other words, we should already dispense with requiring two other members at a subsequent time, when they may no longer be present to authenticate a document which, in the first place, has already been signed and thumbmarked by each member of the board in accordance with the proposed Section 16 of House Bill No. 4046.

MR. PALACOL. The Gentlemen [are] assured that we are going to consider all these amendments during the period of amendments. And I always grant that the Gentlemen from Bohol will submit valuable amendments in order to ensure a clean and honest election.

MR. ZARRAGA. Thank you very much, Mr. Speaker. x x x[27] (Emphasis supplied)

It appears, however, that Representative Zarraga's proposal was no longer pursued during the period of amendments as Section 17 of HB 4046 was passed on third reading without any change in its wording as now found in Section 17 of RA 6646. The clear legislative intent was, thus, to impose the additional condition under Section 17 before the certificate of votes may be admitted in evidence to prove tampering.

The rationale of the law is perceptible. By requiring that the certificate of votes be duly authenticated by at least two members of the BEI who issued the same, the law seeks to safeguard the integrity of the certificate from the time it is issued by the BEI to the watcher after the counting of votes at the precinct level up to the time that it is presented to the board of canvassers to prove tampering. The legislature may have reasonably foreseen that the certificate may be easily altered while in the hands of the watcher in order to orchestrate a sham pre-proclamation controversy. To counterbalance this possibility, the law imposes the condition that the certificate, aside from complying with Section 16, must be subsequently authenticated at the time of its presentment to the board of canvassers in the event that it shall be used to prove tampering. This way the COMELEC may be assured that the certificate of votes issued by the BEI to the watcher of a protesting candidate contains the same entries as the one thereafter presented before the MBC to prove tampering. The procedure is consistent with the over-all policy of the law to place a premium on an election return, which appears regular on its face, by imposing stringent requirements before the certificate of votes may be used to controvert the election return's authenticity and operate as an exception to the general rule that in a pre-proclamation controversy, the inquiry is limited to the four corners of the election return.

In the instant case, the records indicate that Biron failed to comply with the requirements set by Section 17 with respect to the certificates of votes from Precinct Nos. 208A, 90A/90B and 7A/7B which he submitted in evidence before the MBC. This should have provided an added reason for the COMELEC to refuse the admission of said certificates had the COMELEC carefully examined the certificates of votes appearing in the records of this case.

In sum, the COMELEC gravely abused its discretion in admitting in evidence the aforementioned certificates of votes which did not comply with Sections 16 and 17 of RA 6646. To make matters worse, the COMELEC excluded the subject election returns on the basis of these defective certificates thereby leading to the disenfranchisement of 467 voters as per the records of this case.[28] These votes can materially affect the outcome of the elections considering that private respondent won by only 178 votes. Accordingly, the COMELEC is ordered to include the election returns from Precincts 208A, 90A/90B and 7A/7B in the canvass of the votes in this case.

The affidavits of private respondent's poll watchers are self-serving and grossly inadequate to establish the tampering of the subject returns. Similarly, the one, or, at most, two missing taras in each of the eight subject returns, without more, does not establish tampering.

In excluding eight of the 11 subject returns, specifically, those coming from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/67B, 116A/116B, 130A and 42A/ 43A, the COMELEC ruled that the said returns were tampered or falsified based on the missing taras in the other authentic copies of the said returns, viz:

[A]fter a careful inspection of the contested election returns and other authentic copies of the same, this Commission finds sufficient basis for the exclusion of some of these returns for being tampered or falsified. The exclusion of the said returns is based on the following findings:

- In the election return for Precinct No. 107-A, an examination of the same shows that the tallies or taras for the fourth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;
- In the election return for Precinct No. 114-A, an examination of the same shows that the tallies or taras for the twelfth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;
- In the election return for Precinct No. 130-A, an examination of the same shows that the tallies or taras for the fifth and seventh boxes or squares for Respondent-Appellee Doromal were closed on the fourth vote;
- In the election return for clustered Precinct Nos. 6-A and 6-B, an examination of the same shows that the tallies or taras for the seventh box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;
- In the election return for Precinct No. 55-A, an examination of the same shows that the tallies or taras for the sixth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;
- In the election return for clustered Precinct Nos. 67-A and 67-B, an examination of the same shows that the tallies or taras for the fifth box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;
- In the election return for clustered Precinct Nos. 116-A and 116-B, an examination of the same shows that the tallies or taras for the eighteenth and nineteenth boxes or squares for Respondent-Appellee Doromal were closed on the fourth vote;
- In the election return for clustered Precinct Nos. 42-A and 43-A, an examination of the same shows that the tallies or taras for the twenty-first box or square for Respondent-Appellee Doromal [were] closed on the fourth vote;

Considering that a substantial number of these election returns have the same type of discrepancy, i.e., the taras were not closed on the fifth vote, the said election returns cannot be relied upon to determine the votes in the

said precincts. Evidently, the methodical tampering of these returns permanently put in doubt their authenticity as valid bases for the results of the elections. Thus, they should be excluded from the canvass.[29]

The COMELEC also gave credence to the affidavits of private respondent's poll watchers, who stated that numerous irregularities allegedly occurred during the tallying of the votes at the precinct level.

We find the manner in which the COMELEC excluded the subject returns to be fatally flawed. In the absence of clearly convincing evidence, the validity of election returns must be upheld.[30] A conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution and only upon the most convincing proof.[31] Corrolarily, any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, which results in disenfranchisement of those who exercised their right of suffrage.[32] As will be discussed shortly, there is a patent lack of basis for the COMELEC's findings that the subject returns were tampered. In disregard of the principle requiring "extreme caution" before rejecting election returns, the COMELEC proceeded with undue haste in concluding that the subject returns were tampered. This is grave abuse of discretion amounting to lack or excess of jurisdiction.

At the outset, we find that the COMELEC placed undue reliance on the affidavits of Biron's poll watchers to establish the irregularities and fraud allegedly committed during the counting of votes. These affidavits are evidently self-serving. Thus, we have ruled that reliance should not be placed on affidavits of this nature for purposes of setting aside the validity of election returns.[33]

Furthermore, the contents of these affidavits are grossly inadequate to establish tampering. Private respondent's poll watchers, namely, Michelle Duhina and Cirilo Demadante,[34] Mary Grace Jiz-Deseo and Lito Duller,[35] Victoria Develos and Joy May De La Gante,[36] Rizal Artoro Deza III and Reno Demonteverde,[37] Cecile Alcanzarin and Horte May Dimzon,[38] Rosie Ventura,[39] and Babylyn Dedoroy and Sarah Dondoy Ano[40] stated, in substance, that: (1) some of them were not so situated in the precinct to see clearly the tallying of the votes in the election returns, (2) there was a 30 minute brownout in some of the precincts (i.e., Precinct Nos. 107A and 114A), (3) some of them were asked to affix their signatures and thumb marks ahead of the members of the BEI, (4) some of them were not given Copy 4 of the subject returns after the counting, and (5) they noticed the discrepancy between the taras and written figures only later on when they were shown Copy 4 of the election returns.

While these statements suggest that the watchers failed to assert their rights or to perform their duties under the OEC,[41] we fail to see how they established that the election returns were tampered. On the contrary, these affidavits reveal that the watchers failed to detect any anomaly during the actual tallying of the votes at the precinct level because the missing taras were discovered only later on when Copy 4 was shown to them.

Neither can we deduce from the missing taras the fraud that allegedly marred the tallying of votes therein. We have examined Copy 4 and Copy 5[42] of the subject returns as appearing in the records of this case, and we note that the said returns are regular on their face save for one or, at most, two missing taras in each of the eight contested election returns.[43] We find it significant that in some of these returns (i.e., those from Precinct Nos. 114A,[44] 55A[45] and 42A/43A),[46] while one tara is indeed missing in Copy 4, no such missing tara exists in Copy 5, although the supposed missing tara in Copy 4 is located very near the border, if not on the border, of the box in Copy 5 of the election returns. This suggests that in making the duplicate originals, the forms for Copies 2 to 7 of the election returns were not perfectly aligned with Copy 1 (i.e., the MBC's copy), resulting in the misalignment of the taras in the carbon copies of the said returns. This may explain why there appears to be a missing tara in Copy 4 of these returns. It should also be noted that the number of votes in written figures and words is not disputed as they appear to be uniform in Copies 4 and 5 of the subject returns. The discrepancy is,

thus, limited to the number of taras vis-à-vis the number of votes in written figures and words. In view thereof and in the absence of clear and convincing proof, the evidence on record fails to establish the tampering or falsification of the subject returns. At most, there are minor discrepancies in Copies 4 and 5 of the subject returns consisting of one or two missing taras.

In case of discrepancy in the other authentic copies of an election return, the procedure in Section 236 of the Omnibus Election Code should be followed.

In Patoray, we ordered the COMELEC to proceed in accordance with Section 236 of the OEC after it was determined that there was a discrepancy between the taras vis-à-vis the written figures and words in the election return.[47] With the above finding that there are minor discrepancies in the other authentic copies of the subject returns, specifically Copies 4 and 5, the proper procedure then is not to exclude the said returns but to follow Section 236, viz:

SECTION 236. Discrepancies in election returns. -- In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned. (Emphasis supplied)

The COMELEC should, thus, order the canvass of the election returns from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/67B, 116A/116B, 130A and 42A/ 43A. After canvassing, it should determine whether the total number of missing taras will affect the result of the elections. If it will not affect the result, the COMELEC should proclaim as winner the vice mayoralty candidate with the highest number of votes. On the other hand, if the total number of missing taras will affect the results of the election, the COMELEC, after due notice to all candidates concerned, should proceed summarily to determine whether the integrity of the ballot boxes (where the election returns with missing tara/s were tallied) have been preserved. Once satisfied therewith, the COMELEC should order the opening of the ballot boxes to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.[48] However, if the integrity of the ballots has been violated, the COMELEC need not recount the ballots but should seal the ballot box and order its safekeeping in accordance with Section 237 of the OEC, thus:

Sec. 237. When integrity of ballots is violated. -- If upon the opening of the ballot box as ordered by the Commission under Sections 234, 235 and 236, hereof, it should appear that there are evidence or signs of replacement, tampering or violation of the integrity of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping.

In sum, it was highly irregular for the COMELEC to outrightly exclude the subject returns resulting in the disenfranchisement of some 1,127 voters as per the records of this case.[49] The proper procedure in case of discrepancy in the other authentic copies of the election returns is clearly spelled out in Section 236 of the OEC. For contravening this legal provision, the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

We end with some observations. Had there been sufficient evidence of tampering in this case, it would still be highly improper for the COMELEC to outrightly exclude the subject election returns. In such a case, the COMELEC should proceed in accordance with Section 235[50] of the OEC which is similar to Section 236 in that the COMELEC is authorized to open the ballot box as a measure of last resort. This has been our consistent ruling

as early as in the 1995 case of *Patoray* followed by *Lee v. Commission on Elections*,^[51] *Balindong v. Commission on Elections*,^[52] *Dagloc v. Commission on Elections*,^[53] and *Cambe v. Commission on Elections*.^[54] It is quite disquieting, therefore, that despite these repeated pronouncements, the COMELEC persists in summarily excluding the election returns without undertaking the requisite steps to determine the true will of the electorate as provided in the pertinent provisions of the OEC. The paramount consideration has always been to protect the sanctity of the ballot; not to haphazardly disenfranchise voters, especially where, as here, the election is closely contested. The COMELEC's constitutional duty is to give effect to the will of the electorate; not to becloud their choice by defying the methods in the OEC designed to ascertain as far as practicable the true will of the sovereign people. Verily, the strength and stability of our democracy depends to a large extent on the faith and confidence of our people in the integrity of the electoral process where they participate as a part of democracy. That is the polestar that should have guided the COMELEC's actions in this case.

WHEREFORE, the petition is GRANTED. The COMELEC En Banc's February 1, 2008 Resolution is NULLIFIED.

The COMELEC is ORDERED to raffle SPC No. 07-147 to one of its divisions which is directed to resolve the same with deliberate dispatch in accordance with this Decision by:

- (1) Including the election returns from Precinct Nos. 90A/90B, 7A/7B and 208A in the canvassing of votes for the position of vice mayor of the Municipality of Dumangas, Iloilo;
- (2) Proceeding in accordance with Section 236 of the Omnibus Election Code, as outlined in this Decision, with respect to the canvassing of the election returns from Precinct Nos. 107A, 114A, 6A/6B, 55A, 67A/67B, 116A/116B, 130A and 42A/43A for the position of vice mayor of the Municipality of Dumangas, Iloilo;
- (3) Proclaiming the winning candidate for the position of vice mayor of the Municipality of Dumangas, Iloilo in the May 14, 2007 elections after the canvassing of the aforementioned election returns.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

[1] An Act Introducing Additional Reforms in the Electoral System and For Other Purposes. Effective: January 5, 1988.

[2] Batas Pambansa Blg. 881, effective: December 3, 1985.

[3] Rollo, pp. 68-72. The Resolution was adopted by Acting Chairman Resurreccion Z. Borra, Commissioners Florentino A. Tuason, Jr., Romeo A. Brawner, Nicodemo T. Ferrer and Moslemen T. Macarambon. Commissioner Rene V. Sarmiento dissented.

[4] Id. at 33-42; penned by Commissioner Nicodemo T. Ferrer. Presiding Commissioner Florentino A. Tuason, Jr. concurred in a separate opinion. Commissioner Rene V. Sarmiento dissented.

[5] These were the election returns from Precinct Nos. 204-A, 207-A, 202-A, 107-A, 169-A, 114-A, 20-A, 130-A, 174-A/174-B, 6-A/6-B, 55-A, 162-A/163-A, 67-A/67-B, 90-A/90-B, 21-A/21-B, 7-A/7-B, 208-A/208-B, 173-A/173-B, 116-A/116-B, 59-A/60-A, 42-A/43-A, 192-A, 112-A/112-B, and 30-A/30-B.

[6] The term *tara* refers to the lines representing one vote in the counting of votes at the precinct level as provided in Section 210 of the OEC, viz:

Sec. 210. Manner of counting votes - x x x

Each vote shall be recorded by a vertical line, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines. x x x

In *Patoray v. Commission on Elections*, [319 Phil. 564, 569 (1995)], we used the term *taras* thus:

We hold that the COMELEC's Second Division correctly ordered the exclusion of Election Return No. 661290 (Precinct No. 16), it appearing that it contained a discrepancy between the "*taras*" and the written figures. In addition, however, the COMELEC's Second Division should have ordered a recount of the ballots or used the Certificate of Votes cast in the precinct in question to determine the votes for each of the parties in this case. (Emphasis supplied)

[7] There were seven (7) copies of the election returns prepared by the BEI. These were distributed in accordance with Section 1 of RA 8173:

SECTION 1. Section 27 of Republic Act No. 7166, as amended by Republic Act No. 8045, is hereby further amended to read as follows:

SEC. 27. Number of Copies of Election Returns and their Distribution. -- The Board of Election Inspectors shall prepare in handwriting the election returns in their respective polling places, in the number of copies herein provided and in the form to be prescribed and provided by the Commission.

The copies of the election returns shall be distributed as follows: x x x

(b) In the election of local officials:

- (1) The first copy shall be delivered to the city or municipal board of canvassers;
- (2) The second copy, to the Commission;
- (3) The third copy, to the provincial board of canvassers;
- (4) The fourth copy, to the dominant majority party as determined by the Commission in accordance with law;
- (5) The fifth copy, to the dominant minority party as determined by the Commission in accordance with law;
- (6) The sixth copy, to a citizens' arm authorized by the Commission to conduct an unofficial count:

Provided, however, That the accreditation of the citizens' arm shall be subject to the provisions of Section 52(k) of Batas Pambansa Blg. 881; and

(7) The seventh copy shall be deposited inside the compartment of the ballot box for valid ballots.

[8] Records, vol. I, pp. 180-208.

[9] Id.

[10] Entitled "In the Matter of the Appeal from the Rulings of the Board of Canvassers of Dumangas, Iloilo, In BOC Case Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25".

[11] Rollo, p. 42.

[12] Id. at 258-262.

[13] Id. at 127-129.

[14] Id. at 130-183.

[15] Information Technology Foundation of the Philippines v. Commission on Elections, 464 Phil. 173, 190 (2004).

[16] Supra note 6 at 568-569.

[17] Id. at 571.

[18] 368 Phil. 277, 290 (1999).

[19] Id.

[20] Records, vol. I, p. 64.

[21] Id. at 68.

[22] Id. at 70.

[23] The unjustified refusal of the BEI to issue a certificate of votes is an election offense under Section 27(c) of RA 6646:

Sec. 27. Election Offenses. - In addition to the prohibited acts and election offenses enumerated in Sections 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense: x x x

(c) Any member of the board of election inspectors who refuses to issue to duly accredited watchers the certificate of votes provided in Section 16 hereof.

[24] Pineda stated in her affidavit, thus:

That after the counting of votes, I, Aida Pineda personally indicated with my handwriting the votes of candidates for the position of, among others, Vice-Mayor and made the members of the Board of Election Inspectors (BEI) sign the same. The votes are as follows:

c. Vice-Mayor

1. Hernan Biron, Jr. thirty one 31
2. Rose Doromal one hundred eight 108

Attached is a copy of the Certificate of Votes that I (Aida Pineda) personally prepared for clustered precinct 208A as Annex "A" and made an integral part of our affidavit.

That I, Aida Pineda, presented the Certificate of Votes that I prepared to the Chairman of BEI, Matias Eugenio Piosca but he refused to sign the said Certificate despite my insistence that he is obliged to do so under the law.

That we were surprised when we learned that the votes for Vice-Mayor Candidate Rose Doromal increased to 118 from 108 votes or was padded with ten votes in the Election Return prepared by member of BEI Darwin B. Lico.

That before I presented the Certificate of Votes (Annex "A") to the Chairman of the BEI, Matias Eugenio Piosca I, Aida Pineda double-checked the Certificate of Votes that I prepared and I determined that the votes especially for Vice-Mayor Candidate Rose Doromal was accurate at 108 votes.

That despite my presentation of the authority given by the party to get its copy of the Election Returns, the BEI did not give me the copy of the Election Returns intended for the Dominant Majority Party. (COMELEC records, vol. I, p. 299)

[25] Section 16. Certificates of Votes. - After the counting of the votes cast in the precinct and announcement of the results of the election, and before leaving the polling place, the board of election inspectors shall issue a certificate of votes upon request of the duly accredited watchers. The certificate shall contain the number of votes obtained by each candidate written in words and figures, the number of the precinct, the name of the city or municipality and province, the total number of voters who voted in the precinct and the date and time issued, and shall be signed and thumbmarked by each member of the board. The certificate shall be accomplished in duplicate with the use of carbon paper. The original copy shall be issued to the watcher and the duplicate shall be kept in the custody of the chairman of the board. Refusal on the part of the board of inspectors to issue such certificate shall constitute an election offense punishable under the Omnibus Election Code.

[26] Section 17 of HB 4046 is of the same wording as Section 17 of RA 6646.

[27] Records, House 8[th] Congress (December 7, 1987).

[28] Records, vol. II, pp. 57, 59-60.

[29] Rollo, pp. 36-37.

[30] *Casimiro v. Commission on Elections*, 253 Phil. 461, 471 (1989).

[31] *Aratuc v. Commission on Elections*, 177 Phil. 205, 235 (1979); *Pimentel, Jr. v. Commission on Elections*, 224 Phil. 260, 283 (1985).

[32] *Aratuc v. Commission on Elections*, *id.*

[33] *Casimiro v. Commission on Elections*, *supra* note 30.

[34] Duhina and Demadante stated in their joint affidavit, thus:

That before the members of the Board of Election Inspectors (BEI) finished the preparation of the Election Returns on May 14, 2007, there was a brownout in the precinct (Precinct No. 107A) for not less than thirty (30) minutes.

That we cannot clearly see the making of the tallies on the Election Returns for Local positions and only relied on the figures contained in the total number of votes and were surprised when we were shown copies of the Election Returns for our party, LAKAS-CMD with missing tallies in the votes for candidate Rose Marie D. Doromal (less than five lines for one box); records, vol. I, p. 285.

[35] Jiz-Deseo and Duller stated in their joint affidavit, thus:

That while the BEI was counting the votes, there was a brownout in the precinct (Precinct No. 114A) for not less than thirty (30) minutes.

That after the counting of votes was completed, we were requested to sign and thumb mark the original copy and all the other copies of the Election Returns even before the BEI affixed their signatures and thumb marks. However, since we were already tired and in a hurry to leave, we were not able to check and verify the tallies appearing on the other copies of the Election Returns.

That although we had the necessary authority, the BEI did not give us the copy of the Election Returns intended for the Dominant Majority Party.

That it was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that there were missing tallies (less than five lines per box) in the votes for Candidate Rose Marie D. Doromal in said copy; *id.* at 287.

[36] Develos and De La Gante stated in their joint affidavit, thus:

That during the counting of votes [in Precinct No. 130A], the official (brown) tally sheet was not placed on the board for the public to see but was placed on a table.

That the third member of the Board of Election Inspector (BEI) was a municipal employee and not a teacher.

That we did not witness the making of the tallies on the Election Returns for Local Positions and only relied on the figures contained in the total number of votes and we were surprised when we were shown copies of the Election Returns for our party, LAKAS-CMD with missing tallies (less than five lines for one box) in the votes for candidate Rose Marie D. Doromal; id. at 288.

[37] Deza III and Demonteverde stated in their joint affidavit, thus:

That during the counting of votes we were assigned to watch the member of the Board of Election Inspectors (BEI) putting the official tallies on the Election Returns for Local Positions.

After the counting of votes was completed, we were requested to sign and thumb mark the original copy and all the other copies of the Election Returns intended for the Dominant Majority Party.

It was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that the tallies appearing in said copy the same were different from the tallies in the copy for the Dominant Majority Party were irregularly placed and there were missing tallies (less than five lines in the box) for candidate Rose Marie D. Doromal in said copy; id. at 290.

[38] Alcanzarin and Dimzon stated in their joint affidavit, thus:

That I, Cecile Alcanzarin was assigned to watch the member of the BEI making the official tallies on the Election Returns for Local Positions. I was positioned in front of that member of the BEI making the official tallies since I was not allowed to position myself at the back of the BEI making it difficult for me to see the tallies on the Election Returns being made by the said members of the BEI.

That I, Cecile Alcanzarin, brought to the BEI's attention a discrepancy between the figures with votes for Vice-Mayoral candidate Hernan Biron, Jr. appearing in the tally sheet and in the Election Returns, which the BEI then corrected.

That after the counting of the votes were completed, the BEI asked us to sign and our thumb marks before the BEI even signed and thumb marked the Election Returns. The BEI also told us that the watchers could already leave the precinct.

That the member of the BEI making the official tallies on the Election Returns was positioned in a poorly lit place making it doubly difficult for me to see the tallies that he was making.

It was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that there were missing tallies (less than five lines in the box) for candidate Rose Marie D. Doromal in said copy; id. at 291.

[39] Ventura stated in her affidavit, thus:

That during the counting I was assigned to watch the member of the Board of Election Inspector (BEI) writing the official tallies on the Election Returns for the Local Elections. However, I was not able to closely monitor the conduct of the tally and just relied on the total number of votes reflected in the Election Returns without scrutinizing the individual tallies.

That after the counting of votes was complete, the BEI requested the watchers to sign and thumb mark ahead of them.

The BEI did not give the copy of the Election Returns intended for the Dominant Majority Party to the party's authorized representatives.

That it was only later when I was shown a copy of the Election Returns for the Dominant Majority Party that I noticed that there were missing tallies (less than five lines per box) for the candidate Rose Marie D. Doromal; id. at 294.

[40] Dedoroy and Ano stated in their joint affidavit, thus:

That after the counting of votes was completed, we were requested to sign and thumb mark the original copy and all the other copies of the Election Returns. However, we were not able to check and verify the tallies appearing on the copies of the Election Returns.

That it was only later when we were shown a copy of the Election Returns for the Dominant Majority Party that we noticed that there were missing tallies (less than five lines per box) in the votes for Candidate Rose Marie D. Doromal in said copy; id. at 302.

[41] Section 179 of the OEC provides:

Section 179. Rights and duties of watchers. - Upon entering the polling place, the watchers shall present and deliver to the chairman of the board of election inspectors his appointment, and forthwith, his name shall be recorded in the minutes with a notation under his signature that he is not disqualified under the second paragraph of Section 178. The appointments of the watchers shall bear the personal signature or the facsimile signature of the candidate or the duly authorized representatives of the political party or coalition of political parties who appointed him or of organizations authorized by the Commission under Section 180. The watchers shall have the right to stay in the space reserved for them inside the polling place. They shall have the right to witness and inform themselves of the proceedings of the board of election inspectors, including its proceedings during the registration of voters, to take notes of what they may see or hear, to take photographs of the proceedings and incidents, if any, during the counting of votes, as well as of election returns, tally boards and ballot boxes, to file a protest against any irregularity or violation of law which they believe may have been committed by the board of election inspectors or by any of its members or by any persons, to obtain from the board of election inspectors a certificate as to the filing of such protest and/or of the resolution thereon, to read the ballots after they shall have been read by the chairman, as well as the election returns after they shall have been completed and signed by the members of the board of election inspectors without touching them, but they shall not speak to any member of the board of election inspectors, or to any voter, or among themselves, in such a manner as would distract the proceedings, and to be furnished with a certificate of the number of votes in words and figures cast for each candidate, duly signed and thumbmarked by the chairman and all the members of the board of election inspectors. Refusal of the chairman and the members of the board of election inspectors to sign and furnish such certificate shall constitute an election offense and shall be penalized under this Code.

Section 12 of R.A. No. 6646 modified and expanded the rights and duties of the watchers, viz:

Sec. 12. Official Watchers. - Every registered political party, coalition of political parties, and every candidate shall each be entitled to one watcher in every polling place: Provided, That candidates for members of the Sangguniang Panlalawigan, Sangguniang Panlungsod or Sangguniang Bayan or for city or municipal councilors belonging to the same slate or ticket shall collectively be entitled only to one watcher.

There shall also be recognized two principal watchers, one representing the ruling coalition and the other the dominant opposition coalition, who shall sit as observers in the proceedings of the board. The principal watcher shall be designated on the basis of the recommendation of the ruling coalition, represented by the political party of the incumbent elected district representative, and of the dominant opposition coalition, represented by the political party which performed best or which polled at least ten percent (10%) of the votes in the last national election.

A duly signed appointment of a watcher shall entitle him to recognition by the board of election inspectors and the exercise of his rights and discharge of his duties as such: Provided, however, That only one watcher of each of those authorized to appoint them can stay at any time inside the polling place.

The watchers shall be permitted full and unimpeded access to the proceedings so that they can read the names of those written on the ballots being counted with unaided natural vision, consistent with good order in the polling place.

In addition to their rights and duties under Section 179 of Batas Pambansa Blg. 881, the two principal watchers representing the ruling coalition and the dominant opposition in a precinct shall, if available, affix their signatures and thumbmarks on the election returns for that precinct. If both or either of them is not available, unwilling or should they refuse to do so, any watcher present, preferably with political affiliation or alignment compatible with that of the absent or unwilling watcher, may be required by the board of election inspectors to do so.

[42] Copy 5 (i.e., copy of the dominant minority party) was submitted in evidence by petitioner before the MBC to controvert private respondent's claim that the subject returns were tampered.

[43] As stated earlier, petitioner endeavored to submit Copy 3 of the subject election returns while the instant petition was pending resolution before this Court. However, this Court is not a trier of facts, and we cannot receive such documentary evidence at this late stage in the proceedings. If it were petitioner's intention to show that Copy 3 of the subject returns did not contain missing taras, then petitioner should have done so in the proceedings before the COMELEC itself. At any rate, even if we were to assume that the Copy 3 belatedly submitted by petitioners before this Court is authentic, we note that these copies are substantially of the same import as Copy 5 of the subject returns appearing in the records of this case.

[44] Records, vol. I, p. 47 (Copy 4); vol. II p. 49 (Copy 5).

[45] Id. at 58 (Copy 4); id. at 54 (Copy 5).

[46] Id. at 78 (Copy 4); id. at 64 (Copy 5).

[47] *Patoray v. Commission on Elections*, supra note 6 at 569.

[48] See *Olondriz, Jr. v. Commission on Elections*, 371 Phil. 867, 872 (1999), where we upheld the decision of the COMELEC to open the ballot box pursuant to Section 236 of the OEC. The discrepancy between the written words vis-à-vis figures in the contested election return was 10 votes while the winning candidate won by a margin of 2 votes. Thus, it was necessary to open the ballot box to determine the true will of the electorate.

[49] Records, vol. I, pp. 44, 48, 52, 58, 56, 62, 74 and 78.

[50] Section 235. When election returns appear to be tampered with or falsified. - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance

with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

[51] 453 Phil. 277, 290 (2003). In *Lee*, we ruled:

The lack of merit of petitioner's arguments notwithstanding, the COMELEC, in ordering the exclusion of the questioned return, should have determined the integrity of the ballot box, the ballot-contents of which were tallied and reflected in the return, and if it was intact, it should have ordered its opening for a recounting of the ballots if their integrity was similarly intact. (Emphasis supplied)

[52] 459 Phil. 1055, 1070-1071 (2003). In *Balindong*, we stated:

[B]ased on Section 235 of the OEC which this Court elucidated on along with Section 236 in *Patoray v. COMELEC*, in cases where the election returns appear to have been tampered with, altered or falsified, the prescribed modality is for the COMELEC to examine the other copies of the questioned returns and if the other copies are likewise tampered with, altered, falsified, or otherwise spurious, after having given notice to all candidates and satisfied itself that the integrity of the ballot box and of the ballots therein have been duly preserved, to order a recount of the votes cast, prepare a new return which shall be used by the board of canvassers as basis for the canvass, and direct the proclamation of the winner accordingly.

The COMELEC failed to observe the foregoing procedure. As admitted in its Order dated December 13, 2001, it examined only the election returns used by the MBC, omitting to take a look at the other copies of the questioned returns or ordering a pre-proclamation recount of the votes of the candidates affected. The failure to take either step renders the poll body's action consisting of the outright exclusion of the return for Precinct 80A and the award of 88 votes in the return for Precinct 47A/48A highly questionable.

The precipitate exclusion from canvass of the return for Precinct 80A resulted in the unjustified disenfranchisement of the voters thereof. This could have been avoided had the COMELEC availed of the other courses of action mentioned in the law, namely: the examination of the other copies of the return and the recount of the votes by the BEI. (Emphasis supplied)

[53] 463 Phil. 263, 290-291 (2003). In *Dagloc*, we ruled:

Outright exclusion of election returns on the ground that they were fraudulently prepared by some members or non-members of the BEI disenfranchises the voters. Hence, when election returns are found to be spurious or falsified, Section 235 of the Omnibus Election Code provides the procedure which enables the COMELEC to ascertain the will of the electorate.

The COMELEC, therefore, gravely abused its discretion when it excluded outright the subject election returns after finding that they were fraudulent returns. Instead, the COMELEC should have followed the procedure laid down in Section 235 of the Omnibus Election Code: x x x (Emphasis supplied)

[54] G.R. No. 178456, January 30, 2008, 543 SCRA 157, 171-174. In *Cambe*, we reiterated:

In the instant case, Election Return No. 9601666 cannot be considered as regular or authentic on its face inasmuch

as the total votes cast for the vice-mayorality position, which is 288, exceeded the total number of the voters who actually voted (230) and the total number of registered voters (285). The COMELEC therefore is clothed with ample authority to ascertain under the procedure outlined in the Omnibus Election Code (OEC) the merits of the petition to exclude Election Return No. 9601666.

Sections 235 and 236 of the OEC read: x x x

x x x x

In the instant case, the MBC, without complying with Section 235 of the OEC, outrightly excluded Election Return No. 9601666. Worse, the COMELEC found nothing irregular in the procedure taken by the MBC. The precipitate exclusion from the canvass of the return for Precincts 66A and 68 resulted in the unjustified disenfranchisement of the voters thereof. (Emphasis supplied)

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