

ISMUNLATIP H. SUHURI, PETITIONER, VS. THE HONORABLE COMMISSION ON ELECTIONS (EN BANC), THE MUNICIPAL BOARD OF CANVASSERS OF PATIKUL, SULU AND KABIR E. HAYUDINI, RESPONDENTS.

G.R. No. 181869. October 03, 2009

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

In this special civil action for certiorari, the Court again determines whether or not the exclusion of certain election returns from the canvass due to allegations of irregularities and statistical improbability made by a candidate are proper grounds for a pre-proclamation controversy by which to annul the proclamation of his rival as duly-elected.

THE CASE

The Municipal Board of Canvassers (MBC) of Patikul, Sulu had earlier ruled against petitioner Ismunlatip H. Suhuri's plea for the exclusion of 25 election returns from the canvass of votes cast for the 2007 mayoralty race in Patikul, Sulu and then proclaimed respondent Kabir E. Hayudini as the duly-elected Mayor. Appealing to the Commission on Elections (COMELEC), Suhuri insisted on the invalidity of the proclamation because of the existing pre-proclamation controversy involving the exclusion of the 25 election returns. The COMELEC, Second Division, had sustained Suhuri's appeal and nullified Hayudini's proclamation, but the COMELEC en banc reversed the Second Division through the assailed resolution of January 29, 2008.

Suhuri thus assails on certiorari the January 29, 2008 resolution of the COMELEC en banc that reversed the resolution of the Second Division.[1] He claims that the COMELEC en banc thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

ANTECEDENTS

Suhuri ran for the position of Municipal Mayor of Patikul, Sulu during the May 14, 2007 national and local elections. He was opposed by Hayudini and a third candidate, Datu Jun Tarsum.[2] During the canvassing held on May 17, 2007 within the Sulu State College in Jolo, Sulu, Suhuri orally objected to the inclusion of the election returns from the following 25 precincts, namely: Precincts 09/10A, 11A/12A, 13A/14A, 15A/16A, 17A/18A, 19A/20A, and 21A/22A of Barangay Anuling; Precincts 47A/48A, 49A/50A, and 51A/52A of Barangay Bongkuang; Precincts 87A/88A, 89A/90A, 91A/92A, 93A/94A, 95A/96A, 97A/98A, and 99A/100A of Barangay Langhub; Precincts 101A/102A, 103A/104A, 105A/106A, 107A/108A, and 109A/110A of Barangay Latih; and Precincts 116A/117A, 118A/119A, and 120A of Barangay Maligay. The affected precincts carried a total of 4,686 votes.[3] He later filed with the MBC written petitions regarding such exclusion on May 17, 18 and 19, 2007.[4] He asserted that the 25 election returns were "(1) [o]bviously manufactured; (2) [t]ampered with or falsified; (3)

[p]repared under duress; and (4) [characterized by] [s]tatistical improbability."[5]

The MBC ruled against Suhuri in the evening of May 19, 2007 by rejecting his objections to the 25 election returns.[6] Then and there, he manifested his intent to appeal vis-à-vis the ruling. He filed his notice of appeal shortly thereafter.[7] In the same evening, the MBC proclaimed Hayudini as the duly elected Mayor for having obtained 7,578 votes as against Suhuri's 6,803 votes based on a complete canvass of the election returns, for a margin of 775 votes in favor of Hayudini.[8]

On May 23, 2007, Suhuri filed a petition-appeal with the COMELEC,[9] docketed as S.P.C. No. 07-118. The petition-appeal was assigned to the Second Division.

On May 25, 2007, Suhuri likewise filed an election protest ad cautelam dated May 21, 2007 in the Regional Trial Court (RTC) in Patikul, Sulu to contest the results of the elections for Municipal Mayor of Patikul, Sulu.[10] On June 28, 2007, however, the RTC held the election protest in abeyance upon Suhuri's own motion due to his pending pre-proclamation controversy in S.P.C. 07-118.

In a further move, Suhuri brought a so-called petition to declare a failure of election with urgent motion to suspend and/or annul the canvass of the election returns dated May 18, 2007,[11] referring to the results from the 25 precincts in Barangays Anuling, Bongkaung, Langhub, Latih, and Maligay, all within Patikul, Sulu. However, the COMELEC en banc denied the petition for insufficiency of evidence on October 9, 2007.[12]

On June 12, 2007, the COMELEC, Second Division, gave due course to Suhuri's petition-appeal.[13]

On July 24, 2007, the COMELEC, Second Division, ruling on Suhuri's petition-appeal, excluded the 25 questioned electoral returns from the canvass for the position of Mayor of Patikul, Sulu; and voided the proclamation of Hayudini as the duly elected Mayor.[14]

In due course, Hayudini moved for the reconsideration of the July 24, 2007 ruling of the Second Division.[15]

Initially resolving Hayudini's motion for reconsideration, Commissioners Florentino A. Tuason, Jr. and Nicodemo Ferrer voted in favor of the resolution of the Second Division, while Acting Chairman Resurreccion Z. Borra, Commissioner Romeo A. Brawner and Commissioner Rene V. Sarmiento dissented.[16] Due to the fact that the required majority vote necessary to reverse the resolution of the Second Division was not reached, the COMELEC en banc conducted a re-hearing on November 22, 2007 pursuant to Section 6, Rule 18 of the Comelec Rules of Procedure.[17] At the re-hearing, Suhuri presented 20 witnesses, who affirmed and identified their respective affidavits. For his part, Hayudini waived the cross-examination. Thereafter, the parties were required to submit their memoranda, and the appeal was then deemed submitted for resolution.[18]

On January 29, 2008, the COMELEC en banc promulgated its assailed resolution,[19] disposing:

WHEREFORE, premises all considered the Commission (En Banc) resolved as it hereby resolves to GRANT the Motion for Reconsideration. The Resolution of the Second Division is hereby REVERSED and SET ASIDE. Consequently, the proclamation of Kabir Hayudini is hereby declared VALID.

ISSUES

In his petition, Suhuri insists that:

- THE RESPONDENT HONORABLE COMMISSION ON ELECTIONS (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD TO REVERSE AND SET ASIDE THE 24 JULY 2007 RESOLUTION OF THE HONORABLE COMMISSION'S SECOND DIVISION BASED ON THE REPORT OF RESPONDENT MUNICIPAL

BOARD OF CANVASSERS BELATEDLY FILED AFTER RESPONDENT HAYUDINI'S MOTION FOR RECONSIDERATION, FOR THE SECOND TIME, HAS ALREADY BEEN SUBMITTED FOR DECISION; AND

- THE RESPONDENT HONORABLE COMMISSION ON ELECTIONS (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT THE ISSUE PROFERRED BY PETITIONER DOES NOT INVOLVE A PRE-PROCLAMATION CONTROVERSY.

RULING OF THE COURT

We uphold the assailed resolution of the COMELEC en banc.

I

Suhuri's Grounds Were Not Proper
for a Pre-Proclamation Controversy

Were Suhuri's grounds for nullifying Hayudini's proclamation as the duly elected Mayor proper for a pre-proclamation controversy?

A pre-proclamation controversy, according to Section 1, Article XX of the Omnibus Election Code, refers to:

xxx any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

Not every question bearing on or arising from the elections may constitute a ground for a pre-proclamation controversy. Section 243 of the Omnibus Election Code enumerates the scope of a pre-proclamation controversy, as follows:

Sec. 243. Issue that may be raised in pre-proclamation controversy - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235, and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

Clearly, Section 243, *supra*, limits a pre-proclamation controversy to the questions enumerated therein. The enumeration is restrictive and exclusive.[20] Resultantly, the petition for a pre-proclamation controversy must fail in the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Section 234, Omnibus Election Code); or appear to have been tampered with, falsified or prepared under duress (Section 235, Omnibus Election Code); or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Section 236, Omnibus Election Code).[21]

To be noted, too, is that in a pre-proclamation controversy, the COMELEC is restricted to an examination of the

election returns and is without jurisdiction to go beyond or behind the election returns and to investigate election irregularities.[22] For as long as the election returns appear to be authentic and duly accomplished on their faces, the Board of Canvassers cannot look beyond or behind the election returns in order to verify allegations of irregularities in the casting or counting of votes. [23]

Suhuri submits that the 25 challenged election returns were defective for being manufactured, tampered with or falsified, and for statistical improbability. He lists the following irregularities to buttress his submission, namely:[24]

- The election returns for Precinct Nos. 9A/10A and 99A/100A have no signatures and thumbmarks of poll watchers. More importantly, the respective poll clerks in the two precincts did not affix their signatures in the election returns.
- For Precinct Nos. 11A/12A, 17A/18A, 89A/90A, 91A/92A, 93A/94A and 95A/96A (6 of the 25 contested election returns), petitioner got zero (0)- a statistically improbable result.
- For Precinct Nos. 15A/16A, there appears to be two poll watchers who affixed their signatures are the same and appear to have been made by the same and one person;
- For Precinct Nos. 13A/14A, of the 210 total registered voters, respondent Hayudini garnered a perfect 210 and petitioner got one (1) - a statistically improbable result;
- For Precinct Nos. 21A/22A, the names of the members of the Board of Election Inspectors (BEI) and the poll watchers appear to have been made by only one person;
- For Precinct Nos. 49A/50, the printed names of the poll watchers of the petitioner are printed thereon without their signature, consistent with their Affidavit that they were intimidated into leaving the polling place as early as when they had just presented their appointment papers to the members of the BEI;
- For Precinct Nos. 11A/12A, there is only one poll watcher who affixed his signature;
- For Precinct Nos. 51A/52A, there is the lack of signature of the third member of the BEI;
- For Precinct Nos. 89A/90A, the entries for the precinct no., barangay, city/municipality and province are completely blank while names, signatures and thumb marks of the BEI are complete; and
- For Precinct Nos. 93A/94A, there is only one poll watcher who affixed his name and signature and with no thumb mark;[25]

Suhuri further submits that threat, violence, duress and intimidation attended the preparation of the questioned election returns. As proof, his petition-appeal has included the following affidavits,[26] to wit:

- The affidavit of Benhar S. Mohammad, attesting that the supporters of Hayudini and his party-mate, gubernatorial candidate Abdulsakur Tan, prevented him from entering the polling place where he was supposed to vote;
- The joint-affidavit of Angka J. Saradil, Nurhia J. Sidin and Muranda A. Tilah and Injang A. Ajidin, attesting that they were not allowed to vote after being identified as supporters of Suhuri; and that they saw other voters being also prevented from voting;
- The affidavit of Munning Mandun, a duly appointed watcher, attesting that the persons who cast their votes were not those appearing in the voter's list; and that the bona fide voters listed therein were prevented from casting their votes;
- The joint-affidavit of Sherilyn Sawadjaan, Nurmina Usman, Najir S. Bakil, Merhami S. Bakil, Mubin G.

Bakil, Nur-Asiya J. Jumdail and Gabir S. Jumdail, duly appointed poll watchers, attesting that they were not allowed to enter their assigned precincts by known supporters of Hayudini;

- The joint affidavit of Bennajar Jul, Nelson Jul, Rubin Ambutong and Wahab N. Sanuddin, attesting, among others, that they saw Maligay Barangay Chair Pula Juhul enter the precinct with an identified group of persons; that when affiant Bennajar Jul confronted Juhul regarding his unlawful presence in the precinct, Juhul boxed him, causing his nose to bleed; that the ballots that they had filled as registered voters were not dropped into the ballot box; and that they were told to go home by a member of the Board of Election Inspectors (BEI) of the precinct because the voting had supposedly ended as early as 1:30 pm;

- The joint-affidavit of Jarah A. Jumdail, Kahil T. Barrahani, Almezer H. Rashid, Elias O. Villamor, Anna A. Barrahani and Najar T. Jihili, attesting that Hayudini's younger brother Mindal threatened them not to go into their precincts to vote; and that they saw the companions of Mindal accomplish the ballots in said precincts in place of the bona fide registered voters therein;

- The joint affidavit of Munib A. Sabiran, Aldibar Sabiran, Nuramin J. Usman, Sarkiya Usman, and Abdulhan Bakil, duly assigned poll watchers, attesting that they were not allowed to enter their assigned precincts by known supporters of Hayudini;

- The joint affidavit of Muharram Jul, Kagayan Sanuddin, Amil Elias, Sehon Eli, Weldizon Awwalon, Tayte Sanuddin, Juljamin Sannudin, Hali Sannudin, Pathar Juli and Abduranil Sanuddin, attesting to the illegal intervention of Maligay Chair Juhul in the casting of votes by threatening them with bodily harm, resulting in their not being able to vote;

- The affidavit of Ermalyn J. Jamasali, a member of the BEI on duty in Precinct 17A/18A, attesting that BEI Chair Rolina Abubakar gave the unused ballots under duress to unidentified men who proceeded to fill them up and handed them to affiant Jamasali to drop in the ballot box; and

- The affidavit of Police Inspector Francisco K. Panisan, Chief of Police of Patikul, attesting that he received several complaints to the effect that a number of registered voters in the precincts clustered within the Anuling Elementary School were not allowed to vote; and that some voters were physically prevented from getting into their respective precincts.

In fine, Suhuri's submissions and supporting affidavits show that the election returns for Precinct Nos. 51A/52A lacked one of the necessary BEI signatures; that six of the contested election returns lacked some or all of the signatures and/or thumbmarks of the poll watchers; that another six election returns might indicate a statistical improbability of results; and that only one election return had no entries in the spaces for the precinct number, barangay, city/municipality and province.[27]

Unfortunately for the petitioner, the cited irregularities and omissions could not be the bases for granting his petition for the exclusion of the 25 election returns in a pre-proclamation controversy.

Firstly, the defects cited by Suhuri were mere irregularities or formal defects that did not warrant the exclusion of the affected election returns. Indeed, the mere attendance or presence of the formal defects did not establish the commission of palpable irregularities in the election returns. As held in *Baterina v. Commission on Elections*,^[28] the grounds for the exclusion of election returns from the canvassing as raised by the petitioners' therein -referring to, among others, the failure to close the entries with the signatures of the election inspectors, and the lack of signatures of the petitioners' watchers, both involving a violation of the rules governing the preparation and delivery of election returns for canvassing - did not necessarily affect the authenticity and genuineness of the subject election returns as to warrant their exclusion from the canvassing, being but defects in form insufficient to support the conclusion that these had been tampered with or spurious.[29]

In this regard, the Court has said that the conclusion that election returns were obviously manufactured or false and should consequently be disregarded from the canvass must be approached with extreme caution and made only upon the most convincing proof;^[30] and that only when the election returns were palpably irregular might they be rejected.^[31]

Secondly, the MBC corrected the defects before the canvass of the election returns upon finding the cause of the defects to be satisfactorily explained by the members of the Board of Election Tellers. The MBC's report bears this out, to wit:^[32]

3. Minutes of the canvass x x x will show that there were only very few election returns that were not signed by some members of the Board of Election Tellers. The Board decided to defer the canvass on those returns and issued written directives to each of the concerned Board of Election Teller to appear before the Board of Canvassers for explanation for such omission. True enough, the summoned members of the Board of Election Tellers who failed to affix their signatures in the return appeared and gave the explanation in open session that they failed to affix their signature not because there was fraud, violence or other irregularities in the preparation thereof, but such omission was caused solely and unwittingly by the fact that they were heavily sleepy, tired, hungry and miserably exhausted in the waiting for the delivery of the election returns. Prior to this, they have been in the different polling centers spread throughout the municipality of Patikul early morning on election day for the preparation of the voting and the voting proper.

4. Some testified that the counting of ballots and the preparation of election returns in their respective precinct was merely lighted by candles outside the school classrooms since the school classrooms were not enough to accommodate all the precincts for the purpose of counting and preparation of election returns. This had unwittingly contributed to the faultless and innocent omission to affix the signature.

5. In the presence of lawyers from different political parties and candidates, official watchers and before the Board of Canvassers, the members of the Board of Election Tellers affixed their signature on the previously incomplete election returns.

6. After such completion and towards the end of the canvass, not a single election return appeared to be materially defective x x x.^[33]

The COMELEC en banc expectedly approved of the MBC's actions, absent any other plausible explanation for the defects supported by substantial evidence. In the assailed resolution, the COMELEC en banc aptly stated, viz:^[34]

We meticulously re-examined the questioned election returns and they all appear to be regular and authentic. No showing of alterations and erasures could be seen on their faces. The re-examination would also show that twenty three (23) of the returns were completely signed and thumbmarked by all the members of the Board of Election Inspectors. Some were signed by at least two (2) watchers. In Precinct Nos. 47A/48A and 91A/92A, all the watchers signed the returns. Only two (2) returns, Precinct Nos. 9A/10A and 99A/100A did not contain the signatures of poll watchers, but were signed and thumbmarked by the Chairmen and Third Members. Even then, this is not a formal defect which would constitute a proper ground for exclusion. This means that the asseverations of the petitioner-appellant has no leg to lean on. ^[35]

We agree with the COMELEC en banc. The actions of the MBC were reasonable and warranted. Judicial notice is properly taken of the fact that the conduct of elections in many parts of this country, particularly in areas like Patikul, Sulu, often come under circumstances less than ideal and convenient for the officials administering the elections; and of the fact that the process of elections usually involved sleepless nights, tiresome work, and constant dangers to the lives and personal safeties of the many officials who work to see to it that the elections are orderly and peaceful and their results are obtained smoothly and with the least delay. We can easily conclude that such trying circumstances often lead to unintended omissions in form similar to those Suhuri pointed out.

Thirdly, the allegation of a statistical improbability reflected in the election returns for Precinct Nos. 11A/12A, 17A/18A, 89A/90A, 91A/92A, 93A/94A and 95A/96A (wherein Suhuri obtained zero) and for Precinct Nos. 13A/14A (wherein Hayudini garnered 210 out of the 211 total registered voters, with Suhuri being credited with one vote) lacks substance and merit.

The doctrine of statistical improbability was first pronounced in *Lagumbay v. Commission on Elections*,^[36] in which the Court upheld the power and duty of the COMELEC to reject the returns of about 50 precincts affecting the elections of Senators, because their results were "contrary to all statistical probabilities," thus:

It appearing therein that -- contrary to all statistical probabilities -- in the first set, in each precinct the number of registered voters equalled the number of ballots and the number of votes reportedly cast and tallied for each and every candidate of the Liberal Party, the party in power; whereas, all the candidates of the Nacionalista Party got exactly zero; and in the second set, -- again contrary to all statistical probabilities -- all the reported votes were for candidates of the Liberal Party, all of whom were credited with exactly the same number of votes in each precinct, ranging from 240 in one precinct to 650 in another precinct; whereas, all the candidates of the Nacionalista Party were given exactly zero in all said precincts.

Lagumbay expounded on the doctrine of statistical improbability and the doctrine's effect on the power of the COMELEC to reject the results reflected in the election returns when such returns showed *prima facie* that they did not reflect the true and valid reports of regular voting, thus:^[37]

We opined that the election result in said precincts as reported was utterly improbable and clearly incredible. For it is not likely, in the ordinary course of things, that all the electors of one precinct would, as one man, vote for all the eight candidates of the Liberal Party, without giving a single vote to one of the eight candidates of the Nacionalista Party. Such extraordinary coincidence was quite impossible to believe, knowing that the Nacionalista Party had and has a nationwide organization, with branches in every province, and was, in previous years, the party in power in these islands.

We also know from our experience in examining ballots in the three Electoral Tribunals (Presidential, Senate, and House) that a large portion of the electors do not fill all the blanks for senators in their ballots. Indeed, this observation is confirmed by the big differences in the votes received by the eight winning senators in this as well as in previous national elections; 2 almost a million votes between the first place and the eight. Furthermore, in 1965, the total number of electors who cast their votes was 6,833,369 (more or less). If every voter had written eight names on his ballot, the total number of votes cast for all the candidates would be that number multiplied by 8, namely 54,666,952. But the total number of votes tallied for the candidates for senator amounted to 49,374,942 only. The difference between the two sums represents the number of ballots that did not contain eight names for senators. In other words, some 5 million ballots did not carry eight names. Of course, this is a rough estimate, because some ballots may have omitted more names, in which case, the number of incomplete ballots would be less. But the general idea and the statistical premise is there.

The same statistical result is deducible from the 1963 election data: total number of electors who voted, 7,712,019; if each of them named eight senators, the total votes tallied should have been 61,696,152, and yet the total number tallied for all the senatorial candidates was 45,812,470 only. A greater number of incomplete ballots.

It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number; whereas all the eight candidates of the other party got precisely nothing.

The main point to remember is that there is no blockvoting nowadays.

What happened to the vote of the Nacionalista inspector? There was one in every precinct. Evidently, either he became a traitor to his party, or was made to sign a false return by force or other illegal means. If he signed voluntarily, but in breach of faith, the Nacionalista inspector betrayed his party; and, any voting or counting of ballots therein, was a sham and a mockery of the national suffrage.

Hence, denying prima facie recognition to such returns on the ground that they are manifestly fabricated or falsified, would constitute a practical approach to the Commission's mission to insure free and honest elections.

In *Mitchell vs. Stevens*, supra, the returns showed a noticeable excess of votes over the number of registered voters, and the court rejected the returns as obviously "manufactured". Why? The excess could have been due to the fact that, disregarding all pertinent data, the election officers wrote the number of votes their fancy dictated; and so the return was literally a "manufactured", "fabricated" return. Or maybe because persons other than voters, were permitted to take part and vote; or because registered voters cast more than one ballot each, or because those in charge of the tally sheet falsified their counts. Hence, as the *Mitchell* decision concluded, the returns were "not true returns . . . but simply manufactured evidences of an attempt to defeat the popular will." All these possibilities and/or probabilities were plain fraudulent practices, resulting in misrepresentation of the election outcome. "Manufactured" was the word used. "Fabricated" or "false" could as well have been employed.

The same ratio decidendi applies to the situation in the precincts herein mentioned. These returns were obviously false or fabricated -- prima facie. Let us take for example, precinct No. 3 of Andong, Lanao del Sur. There were 648 registered voters. According to such return all the eight candidates of the Liberal Party got 648 each, and the eight Nacionalista candidates got exactly zero. We hold such return to be evidently fraudulent or false because of the inherent improbability of such a result -- against statistical probabilities -- specially because at least one vote should have been received by the Nacionalista candidates, i.e., the vote of the Nacionalista inspector. It is, of course, "possible" that such inspector did not like his party's senatorial line-up; but it is not probable that he disliked all of such candidates, and it is not likely that he favored all the eight candidates of the Liberal Party. Therefore, most probably, he was made to sign an obviously false return, or else he betrayed his party, in which case, the election therein -- if any -- was no more than a barefaced fraud and a brazen contempt of the popular polls.

Of course we agree that frauds in the holding of the election should be handled -- and finally settled -- by the corresponding courts or electoral tribunals. That is the general rule, where testimonial or documentary evidence, is necessary; but where the fraud is so palpable from the return itself (*res ipsa loquitur* -- the thing speaks for itself), there is no reason to accept it and give it prima facie value.

At any rate, fraud or no fraud, the verdict in these fifty precincts may ultimately be ascertained before the Senate Electoral Tribunal. All we hold now is that the returns show "prima facie" that they do not reflect true and valid reports of regular voting. The contrary may be shown by candidate Climaco -- in the corresponding election protest.

Under *Lagumbay*, therefore, the doctrine of statistical improbability is applied only where the unique uniformity of tally of all the votes cast in favor of all the candidates belonging to one party and the systematic blanking of all the candidates of all the opposing parties appear in the election return.[38] The doctrine has no application where there is neither uniformity of tallies nor systematic blanking of the candidates of one party.[39] Thus, the bare fact that a candidate for public office received no votes in one or two precincts, standing alone and without more, cannot adequately support a finding that the subject election returns are statistically improbable. Verily, a zero vote for a particular candidate in the election returns is but one strand in the web of circumstantial evidence that the electoral returns were prepared under duress, force and intimidation.[40]

The Court has thus warned that the doctrine of statistical improbability must be restrictively viewed, with the utmost care being taken lest in penalizing fraudulent and corrupt practices - which is truly called for - innocent

voters become disenfranchised, a result that hardly commends itself.[41] Such prudential approach makes us dismiss Suhuri's urging that some of the electoral results had been infected with the taint of statistical improbability as to warrant their exclusion from the canvass in a pre-proclamation controversy. Specifically, his petition and the records nowhere show that his party-mates received a similar number of votes (or lack of any) by which to conclude that there were a unique uniformity of tally and a systematic blanking of other candidates belonging to one party.

Fourthly, Suhuri contends that threat, violence, duress and intimidation were attendant in the preparation of election returns of the 25 contested precincts. He has presented the affidavits of voters and poll watchers from the 25 precincts whose election returns he questioned;[42] the affidavit of one Ermalyn J. Jamasali, a member of the BEI of one of the precincts; and the affidavit of Police Inspector Panisan, Chief of Police of Patikul, Sulu.[43]

Yet, the affidavits, because they referred to incidents that had occurred at the various precincts during the voting, did not substantiate Suhuri's allegation of duress, threats, coercion, and intimidation during the preparation or making of the election returns. The COMELEC en banc rightly noted and pointed this out in its assailed resolution, to wit:

x x x the various affidavits presented by the petitioner do not even relate to the fact of the election returns being manufactured or prepared under duress, but to the alleged irregularities in the voting which are proper grounds in an election protest.[44]

Fifthly, BEI member Jamasali narrated in her affidavit her having personally witnessed fraud committed during the elections. Even assuming that the fraud she thereby exposed constituted an irregularity in the conduct of the elections, the incident, being isolated, did not warrant the exclusion of all the 25 election returns, but only of the return for the precinct where the fraud had occurred. However, the exclusion of the election returns from that precinct (i.e., Precinct 17A/18A), if called for, would not alter the overall result for the mayoralty contest in Patikul, Sulu,[45] considering that said precinct had only 189 registered voters. We note that Hayudini had a winning margin of 775 votes over Suhuri.

Lastly, Police Inspector Panisan's election report,[46] albeit official, would not justify the exclusion of the returns from the precincts clustered in the Anuling Elementary School. Concededly, Panisan's report, being hearsay because he had not himself actually witnessed the incidents described in the report, was unreliable and had no value for purposes of Suhuri's petition-appeal. It would not be trite to emphasize that the results of an election should not be annulled based on hearsay evidence.

II

COMELEC En Banc

Did Not Gravely Abuse Its Discretion

In a special civil action for certiorari, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent for its issuance of the impugned order.[47] Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [48] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.[49]

Suhuri did not discharge his burden as petitioner, to satisfactorily show that his grounds were proper for a pre-proclamation controversy. We cannot go to his succor, for the COMELEC cannot not look behind or beyond

the 25 contested election returns in a pre-proclamation controversy. Moreover, contrary to his urging, the COMELEC en banc did not rely mainly on the report submitted by the MBC on December 4, 2007 in order to find against him. It is clear that the COMELEC en banc took note of the matters and circumstances that Suhuri himself had submitted to its consideration when it rendered its assailed resolution. If it did not accept his submissions, it did not abuse its discretion, because it based its assailed resolution on the established facts, the law, and the pertinent jurisprudence.

Before closing, we stress that the powers of the COMELEC are essentially executive and administrative in nature. This is the reason why the question of whether or not there were terrorism, vote-buying and other irregularities in the elections should be ventilated in regular election protests. The COMELEC is not the proper forum for deciding such protests.[50] Accordingly, a party seeking to raise issues, the resolution of which compels or necessitates the COMELEC's piercing the veil of election returns that appear prima facie to be regular on their face, has his proper remedy in a regular election contest.[51]

WHEREFORE, we affirm the resolution dated January 29, 2008 issued in S.P.C. No. 07-118 by the Commission on Elections en banc, reversing the resolution dated July 24, 2007 of its Second Division; and confirm the proclamation of respondent Kabir E. Hayudini as the duly elected Mayor of the Municipality of Patikul, Province of Sulu in the local elections of May 14, 2007.

The petitioner shall pay the costs of suit.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Del Castillo and Abad, JJ., concur.

Quisumbing, J., on official leave.

Chico-Nazario and Brion, JJ., on leave.

[1] Rollo, Vol. I, pp. 33-42.

[2] Id., pp. 4-5, 112-113.

[3] Id., p. 9.

[4] Id., pp. 78-102.

[5] Id., p. 8.

[6] Id., p. 75.

[7] Id., p. 76.

[8] Id., p. 9.

[9] Id., pp. 66-74.

[10] Id., pp. 194-202.

[11] Id., pp. 112-116.

[12] Rollo, Vol. II, pp. 566-570.

[13] Rollo, Vol. I, pp. 120-122.

- [14] *Id.*, p. 45-57.
- [15] *Id.*, 272-294.
- [16] *Id.*, p. 34.
- [17] *Id.*, pp. 405-406.
- [18] *Id.*, p. 35.
- [19] *Supra*, at note 1.
- [20] *Matalam v. Commission on Elections*, G.R. No. 123230, April 18, 1997, 271 SCRA 733; *Sanchez v. Commission on Elections*, G.R. No. -78461, August 12, 1987, 153 SCRA 67.
- [21] *Sanchez v. Commission on Elections*, *supra*, at p. 68.
- [22] *Matalam v. Commission on Elections*, *supra*, at p. 734.
- [23] *Loong v. Comelec*, G.R. Nos. 107814-107815, May 16, 1996, 257 SCRA 1, 2-3.
- [24] *Rollo*, Vol. II, pp. 605-606.
- [25] Underlines are provided for emphasis only.
- [26] *Rollo*, Vol. I, pp. 205-218.
- [27] *Id.*, pp. 351-353.
- [28] *Baterina v. Commission on Elections*, G.R. Nos. 95347-49, January 6, 1992, 205 SCRA 1, 3.
- [29] *Id.*, p. 10.
- [30] *Estrada v. Navarro*, G.R. No. L-28340, December 29, 1967, 21 SCRA 1514.
- [31] *Mutuc v. Commission on Elections*, G.R. No. L-28517, February 21, 1968, 22 SCRA 662, 667.
- [32] *Rollo*, Vol. I, pp. 408-409.
- [33] Underlines are provided for emphasis only.
- [34] *Supra*, at note 1, pp. 38-39.
- [35] Underlines are provided for emphasis only.
- [36] G.R. No. L-25444, January 31, 1966, 16 SCRA 175.
- [37] *Id.*
- [38] See *Sinsuat v. Pendatun*, G.R. No. L-31501, June 30, 1970, 33 SCRA 630.
- [39] *Doruelo v. Commission on Elections*, G.R. No. L-67746, November 21, 1984, 133 SCRA 376, 377.
- [40] *Velayo v. Commission on Elections*, G.R. No. 135613, March 9, 2000, 327 SCRA 713, 743.
- [41] *Id.*
- [42] *Rollo*, Vol. I, pp. 205-218.
- [43] *Id.*, pp. 27-29.

[44] Supra, at note 1, p. 40.

[45] Rollo, Vol. I, p. 196.

[46] Id., at p. 219.

[47] Suliguin v. Commission on Elections, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

[48] Reyes-Tabujara v. Court of Appeals, G.R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

[49] Malinias v. Commission on Elections, 439 Phil 319, 330.

[50] Abes v. Commission on Elections, G.R. No. L-28348, December 15, 1967, 21 SCRA 1252, 1258.

[51] Matalam v. Commission on Elections, supra, at note 20, p. 734.

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