

**JESUS O. TYPOCO, PETITIONER, VS. COMMISSION ON ELECTIONS;
THE NEW MUNICIPAL BOARD OF CANVASSERS OF LABO,
CAMARINES NORTE, REPRESENTED BY ITS CHAIRMAN, ATTY.
RAFFY OLANO; THE NEW...**

G.R. No. 186359. March 05, 2010

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-186359/>

In *Tan v. Commission on Elections*[1] (COMELEC), this Court emphasized that the factual findings of the poll body, which has the expertise in the enforcement and administration of all election laws and regulations, are binding on this Court and must be respected because this Court is not a trier of facts[2] and is not equipped to receive evidence and determine the truth of factual allegations.[3] While this principle may admit of rare exceptions, it should apply with full force to the instant case.

Before the Court is a petition for certiorari and prohibition assailing the April 30, 2008 Resolution[4] of the COMELEC First Division and the February 24, 2009 Resolution[5] of the COMELEC en banc.

The relevant antecedent facts and proceedings follow.

In the May 14, 2007 National and Local Elections, petitioner and private respondent vied for the position of Governor in Camarines Norte. After the counting and canvassing of votes, petitioner Jesus O. Typoco was proclaimed winner with 80,830 votes, as opposed to respondent Edgardo A. Tallado's 78,287 votes.[6]

Respondent Tallado filed before the COMELEC a petition for correction of manifest error, docketed as SPC No. 07-312. He claimed that, after he reviewed and examined the figures in the Statement of Votes by Precinct (SOVP) vis-à-vis the Certificate of Canvass of Votes (COC) in the municipalities in the province, he found that, in the municipalities of Labo and Jose Panganiban, errors were committed in the transposition of votes from the SOVP to the COC. In Labo, the SOVP revealed that respondent Tallado's votes were 13,174 but when the figure was transferred to the COC, it was reduced to 11,490; whereas petitioner Typoco's votes were increased from 11,359 to 12,285. In Jose Panganiban, respondent Tallado's votes, per the SOVP, totaled 6,186; the same, however, was reduced to 5,460 when transposed to the COC. Respondent contended that if the errors were corrected, he would obtain a total of 80,697 votes and petitioner, 79,904 votes; thus, he would be the true winner in the gubernatorial race in the province.[7]

In his Answer,[8] petitioner asserted that respondent belatedly filed his petition for correction of manifest error and was guilty of forum shopping. Petitioner further countered that the SOVPs submitted by respondent were fake and obviously manufactured. Petitioner thus sought the dismissal of SPC No. 07-312.

After due proceedings, the COMELEC First Division, on April 30, 2008, rendered the assailed Resolution[9] granting respondent Tallado's petition. It ruled that, based on the COMELEC copies (in the custody of the Election Records and Statistics Division [ERSD] of the Commission) of the concerned SOVPs and COCs, the votes in Labo, as recorded in the said documents, did not correspond; while those in Jose Panganiban actually tallied. Correcting the figures in Labo, while retaining those in the latter municipality, led to the following results: Tallado, 79,969 votes; and Typoco, 79,904 votes. The First Division then disposed of the case as follows:

WHEREFORE, premises considered, the Petition is hereby partially GRANTED. The proclamation of private respondent Jesus Typoco as the winning gubernatorial candidate is hereby ANNULLED. Consequently, a New Municipal Board of Canvassers for the Municipality of Labo, Camarines Norte and a New Provincial Board of Canvassers for the Province of Camarines Norte shall hereby be constituted.

The New Municipal Board of Canvassers for the Municipality of Labo, Camarines Norte is hereby DIRECTED to: 1. CONVENE at the Session Hall of the Main Office of the Commission on Elections in Manila; and, 2. CORRECT the manifest error found in the Municipal Certificate of Canvass of Votes of the Municipality of Labo to reflect therein the actual number of votes of petitioner and private respondent as recorded in the Comelec copy of the Statement of Votes by Precinct of the Municipality of Labo, Camarines Norte; 3. SUBMIT to the New Provincial Board of Canvassers the corrected Municipal Certificate of Canvass of Votes for the gubernatorial position, with its corresponding Statement of Votes and Summary Statement of Votes.

The New Provincial Board of Canvassers for the Province of Camarines Norte is also DIRECTED to: 1. CONVENE, at the same time as the New MBOC, at the Session Hall of the Main Office of the Commission on Elections in Manila; 2. RECEIVE from the New MBOC of Labo the corrected Municipal Certificate of Canvass of Votes for the gubernatorial position from the Municipality of Labo, Camarines Norte; 3. AMEND the Statement of Votes by City/Municipality for the Province of Camarines Norte reflecting therein the actual number of votes of the gubernatorial candidates as corrected in the Municipal Certificate of Canvass of Votes for the Municipality of Labo, Camarines Norte; 4. AMEND the Certificate of Canvass of Votes and Proclamation for the Province of Camarines Norte; and 5. PROCLAIM Edgardo A. Tallado as the winning gubernatorial candidate for the Province of Camarines Norte.

The Law Department is also DIRECTED to immediately conduct the investigation of the Chairmen and Members of the Provincial Board of Canvassers of Camarines Norte and the Municipal Board of Canvassers of Labo and Jose Panganiban, Camarines Norte and other individuals of their possible involvement in the commission of electoral sabotage or any other election offense in the handling of the SOVP in the Municipality of Labo and Jose Panganiban, Camarines Norte.

SO ORDERED.[10]

Aggrieved, petitioner moved for reconsideration.[11] The motion was, however, denied by the COMELEC en banc in the further assailed February 24, 2009 Resolution.[12]

Consequently, petitioner filed, on March 2, 2009, the instant petition for certiorari under Rules 64 and 65 of the Rules of Court to annul the aforesaid resolutions of the COMELEC. Apprehensive that the resolutions would be implemented, petitioner prayed for the issuance of an injunctive relief.[13]

On the same date, the COMELEC en banc issued an Order,[14] appointing the members of a new municipal board of canvassers in the subject locality and members of a new provincial board of canvassers for purposes of, respectively, tabulating the votes for Governor for the municipality of Labo, and proclaiming respondent. The dispositive portion of the March 2, 2009 Order reads:

WHEREFORE, premises considered, the Commission en banc RESOLVED to, as it hereby RESOLVES to, DENY the prayer of Private Respondent Jesus Typoco for admission of exhibits "1" to "8-G" for the specific purposes mentioned in the Memorandum.

Consequently, relative to our February 24, 2009 Resolution, and in order to expedite proceedings with (sic) speedily and judiciously, the Commission en banc accordingly names and appoints the following members of the New Municipal Board of Canvassers (NMBOC) for Labo, Camarines Norte: Atty. Raffy Olano (Chairman); Atty. John Rex Laudiangco (Vice Chairman); and Atty. Norie Tangaro-Casingal (Secretary), which must hereafter convene at COMELEC session hall in Intramuros, Manila within three (3) days from

receipt of this Order, re-tabulate the votes for the position of Governor of Camarines Norte, prepare a new SVOP and MCOC for the municipality of Labo with the corrections, and thereafter submit the same to the New Provincial Board of Canvassers (NPBOC) of Camarines Norte.

The following are likewise named and appointed to the New Provincial Board of Canvassers of Camarines Norte and performed (sic) duties as follows: Atty. Allen Francis B. Abaya (Chairman); Atty. Manuel Lucero (Vice Chairman); and Fritzie Claire Casino (Secretary). The same NPBOC shall convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, prepare a new Statement of Votes per Municipality (SVOM) and Provincial Canvass of Votes (PCOC) as corrected, and thereafter proclaim Edgardo Tallado as the duly elected governor of the province of Camarines Norte in the May 14, 2007 elections.

Further, the Commission en banc hereby endorses this matter to the National Bureau of Investigation (NBI) for proper investigation, the results of which would be material to any further action that may be taken against any such responsible parties who may be found liable for any of the fraudulent acts alleged by the Private Respondent Typoco. For this same purpose, the NBI is hereby directed to coordinate with the COMELEC Law Department and Atty. Romulo B. Macalintal to expedite this investigation.

SO ORDERED.[15]

Significantly, the COMELEC, in the said March 2, 2009 Order, endorsed the case to the National Bureau of Investigation (NBI) for proper investigation, in view of petitioner's serious allegations that the pertinent election documents in the custody of the COMELEC were fake and spurious, and that COMELEC records were substituted in connivance with someone from the Commission.[16] The obvious intent of this endorsement was to utilize the NBI findings as basis for appropriate action against those who perpetrated the alleged fraud if, indeed, fraud had been committed. Parenthetically, Commissioner Rene V. Sarmiento dissented from the majority opinion in the March 2, 2009 Order.[17]

On March 4, 2009, petitioner filed with this Court his Urgent Motion Reiterating the Prayer for the Issuance of a Temporary Restraining Order or Status Quo Order and/or Writ of Preliminary Injunction with Motion for Leave of Court to Implead Necessary Parties and to Set for Oral Arguments,[18] principally to stop the implementation of the aforesaid March 2, 2009 Order, and the earlier assailed resolutions of the COMELEC.

Finding merit in petitioner's urgent motion, the Court, on March 5, 2009, issued a temporary restraining order (TRO) for the concerned parties to cease and desist from implementing the April 30, 2008 Resolution of the COMELEC First Division, the February 24, 2009 Resolution and the March 2, 2009 Order of the COMELEC en banc.[19]

On June 9, 2009, petitioner filed his Motion for Leave of Court to File the Herein Incorporated Supplemental Arguments,[20] attaching thereto a copy of the May 22, 2009 Progress Report[21] of the NBI. Petitioner contends in his motion that the NBI found the SOVPs in the possession of COMELEC to be spurious. On July 20, 2009, petitioner again moved for leave to incorporate his second supplemental arguments, attaching thereto the July 16, 2009 Final Report[22] of the NBI. Apparently, the NBI conducted an investigation pursuant to the March 2, 2009 Order of the COMELEC en banc, despite this Court's issuance of a TRO.

Given these antecedents, the Court in the instant certiorari petition must resolve whether or not the COMELEC committed grave abuse of discretion in its issuances ordering: (1) the correction of the manifest error in the pertinent election documents; (2) the annulment of the proclamation of petitioner; and (3) the subsequent proclamation of the winning gubernatorial candidate in Camarines Norte.

The Court finds that the COMELEC did not gravely abuse its discretion.

In a special civil action for certiorari, the burden rests on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent issuing the impugned order, decision or resolution.[23] "Grave abuse of discretion" is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof.[24] It must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[25] "Grave abuse of discretion" arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.[26]

We find that the COMELEC, in ordering the correction of manifest errors in the SOVP and COC, merely exercised its bounden duty to ascertain the true will of the electorate of the province. Proven during the proceedings before it were errors or discrepancies in the recording or transferring of votes from the SOVP of Labo to the COC, such that the votes in the latter document did not reflect the true and correct votes received by the candidates. SOVPs are the basis of COCs;[27] the two must jibe with each other. Certainly, an error in transposing the contents of one to the other only calls for a clerical act of reflecting in the said election documents the true and correct votes received by the candidates.[28] This does not involve the opening of the ballot boxes, examination and appreciation of ballots and/or election returns. All that is required is to reconvene the board of canvassers for it to rectify the error it committed in order that the true will of the voters will be given effect.[29] The previous proclamation of petitioner will not be a hindrance to the said correction. The proclamation and assumption of office of petitioner based on a faulty tabulation is flawed right from the very beginning, and may, therefore, be annulled.[30]

These matters considered, the Court agrees with the following discourse of the COMELEC First Division:

After a thorough review of the ERSD copy of the Labo SOVP we have the following findings: the ERSD copy is a carbon copy of the SOVP submitted by Petitioner. In the ERSD copy of the SOVP petitioner received a total of Thirteen Thousand One Hundred Seventy Two (13,172), while private respondent received only Eleven Thousand Three Hundred Fifty-Nine (11,359) votes. Curiously, these figures did not find its way to the Summary SOV and the Municipal COC which are attached in the ERSD copy of the SOVP. The Summary SOV and the Municipal COC shows that petitioner's total number of votes in Labo is Eleven Thousand Four Hundred Ninety (11,490) votes while that of private respondent is Twelve Thousand Two Hundred Eighty Five (12,285) votes. Clearly, therefore, even in the ERSD copy of the SOVP there is manifest error in the transposition of the votes of petitioner from the SOVP to the Summary SOV and the Municipal COC. And between the Municipal COC and the SOVP, the SOVP should take precedence since the Municipal COC simply takes its figures from those recorded in the SOVP.

In the case of the Municipality of Jose Panganiban, however, it is the SOVP submitted by private respondent (MBOC copy) which tallied with the figures found in the ERSD copy of the SOVP. Furthermore, the ERSD copy of the SOVP corresponds with the figures as found in the ERSD copy of the Municipal COC. There is, therefore, no manifest error as far as the ERSD copies of the SOVP and Municipal COC are concerned.

There are, however, some discrepancy between the MBOC copy and the ERSD copy. Some of the corrections found in the MBOC copy were made differently in the ERSD copy such as the presence of counter-signatures in one copy and none in the other, as well as the difference in style in the corrections found in the two SOVPs.

However, despite the minor inconsistencies found in the SOVP submitted by private respondent and the ERSD copy, petitioner did not raise any objections as regards these inconsistencies. In his memorandum, petitioner even nonchalantly argued that:

"In so far as the SOVs of Jose Panganiban which Comelec Manila furnished petitioner, the latter in Jose Panganiban received a vote of 5,460 while respondent Typoco received a vote of 7,741. Reconciling all the

votes for Governor in the 12 municipalities of Camarines Norte and without anymore questioning [those] coming from Jose Panganiban as furnished to petitioner by Comelec Manila, it glaringly appears that petitioner Tallado won over respondent Typoco by a majority of 65 votes as shown by herein tabulation."

Considering that no objections have been raised against the SOVPs submitted to the Commission, under the custody of the ERSD, and that based on the principle that there is a presumption of regularity in the performance of official duty in the receipt, custody and safekeeping of the SOVP with the ERSD, it is therefore reasonable to consider that the votes of the parties as found in the ERSD copies of the contended SOVPs shall prevail.

Considering the above discussion, we, therefore, deny petitioner's petition to correct manifest error as far as the Municipal COC in the Municipality of Jose Panganiban is concerned. This ruling is justified by the fact that the number of votes found in the Municipal COC matched that of the figures found in the ERSD copy of the SOVP. There is, therefore, no need to disturb the votes of the contending parties as far as their votes from the Municipality of Panganiban is concerned.

We grant, however, petitioner's prayer to correct manifest error found in the Municipal COC in the Municipality of Labo, Camarines Norte as the votes of both petitioner and private respondent as recorded in the SOVP do not correspond with their number of votes in the Municipal COC. Such discrepancy was clearly established in the ERSD copies of the SOVP and the Municipal COC of the Municipality of Labo.

During the proclamation, the number of votes of the contending parties are shown in the table below with private respondent garnering the winning votes with eighty thousand eight hundred and thirty (80,830) votes, while petitioner received only seventy eight thousand two hundred and eighty seven (78,287) votes.

Per Proclamation by the PBOC

Tallado

Typoco

Municipality

Basud

5860

6127

Capalonga

3377

5122

Daet

16745

13,286

Jose Panganiban

5,460

7,742

Labo

11,490

12,285

Mercedes

7017

7737

Paracale

5788

7776

San Lorenzo Ruiz

2705

1804

San Vicente

2130

2243

Sta. Elena

6811

5780

Talisay

4227

3958

Vinzons

6677

6970

78,287

80,830

While the grant of the petition to correct manifest error in the Municipal COC of the Municipality of Labo and as supported by the figures found in the Comelec/ERSD copy of the SOVP, the votes received by the two contending gubernatorial candidates have changed substantially. These corrected figures are shown in the table below. Please note that the votes from Labo have been corrected while that of Jose Panganiban remains the same.

Tallado

Typoco

Municipality

Daet

16745

13,286

Talisay

4227

3958

Vinzons

6677

6970

San Vicente

2130

2243

San Lorenzo Ruiz

2705

1804

Basud

5860

6127

Mercedes

7017

7737

Labo

13,172

11,359

Jose Panganiban

5,460

7,742

Paracale

5788

7776

Sta. Elena

6811

5780

Capalonga

3377

5122

79,969

79,904

Taking into consideration the corrected figures, it is shown that petitioner Tallado apparently received Seventy Nine Thousand Nine Hundred and Sixty-Nine votes (79,969), while private respondent Typoco garnered a total of Seventy Nine Thousand Nine Hundred and Four votes (79,904) giving petitioner Tallado a winning margin of Sixty-Five (65) votes.

Correspondingly, we also rule that in the light of the erroneous computation of the votes of petitioner Tallado and private respondent Typoco, the latter was erroneously proclaimed as the winning gubernatorial candidate. Such proclamation is, therefore, null and void. Corollary to this, the present petition for the correction of manifest error falls within the exception that the same can be filed beyond the five (5) day reglamentary period since the proclamation is based on an erroneous tabulation of votes, and therefore, null and void.

Apparently, as far as the Municipality of Labo is concerned, there is a clear manifestation that fake, spurious and manufactured Municipal Certificate of Canvass was used in the canvassing of the gubernatorial votes. A conspiracy has been committed to reduce the votes of Petitioner and to increase the votes of Private Respondent Typoco. This might be a case of electoral sabotage.[31]

Nevertheless, petitioner contends that the COMELEC committed grave abuse of discretion when it decided the controversy based on the ERSD copies of the SOVP. In effect, petitioner argues that the poll body erred in its factual findings.

The Court does not find merit in petitioner's argument. As stated at the outset, the appreciation of election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. The findings of fact of administrative bodies, when supported by substantial evidence, are final and nonreviewable by courts of justice.[32] This principle is applied with greater force when the case concerns the COMELEC, because the framers of the Constitution intended to place the poll body--created and explicitly made independent by the Constitution itself--on a level higher than statutory administrative organs.[33]

To repeat, the Court is not a trier of facts. The Court's function, as mandated by the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it simply erred or has a different view.[34] Time and again, the Court has held that a petition for certiorari against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process, because the COMELEC is presumed to be most competent in matters falling within its domain.[35]

In this case, the COMELEC's decision to correct the manifest error is supported by substantial evidence. The COMELEC copies of the SOVP (in the custody of the ERSD) revealed discrepancies in the transposition of the

votes from the said documents to the COC. It may be noted that the COMELEC used its own copies of the SOVP, not the copies provided by the parties. Prudence dictated that COMELEC should utilize its own copies, those in its custody, to dispel any doubt as to the integrity of the election documents.

The decision of the COMELEC--to correct the manifest errors based on its own copies of the election documents involved--cannot be hastily set aside by this Court on petitioner's bare allegation that the COMELEC (ERSD) copies are fake or spurious and have found their way to the COMELEC records anomalously. Let it be remembered that, as posited by petitioner himself, only the COMELEC, not even the NBI, has the competence to determine the authenticity of election documents, because the COMELEC is the only entity which knows the security features or secret markings of the said documents.[36] When it decided to use its own copies of the SOVP, therefore, it considered those copies as authentic or genuine, and reflective of the true will of the electorate of Camarines Norte. This act of the COMELEC enjoys the presumption of regularity. Further, since the said factual finding was made by an entity having expertise in the field, the same is binding[37] and cannot be peremptorily brushed aside by this Court.

Petitioner asserts that the COMELEC (ERSD) copies of the SOVP were found by the NBI to be spurious. Petitioner thus wants this Court to accept the NBI reports[38] without hesitation and to disregard the COMELEC findings.

The Court finds petitioner's reliance on the NBI reports misplaced. As stated earlier, the COMELEC, not the NBI, is the agency that has the competence to determine the genuineness of election documents. This proposition is supported by no less than petitioner himself. Commissioner Sarmiento also echoed the same sentiment when he expressed his dissent[39] to the referral of the case to the NBI for investigation in the March 2, 2009 Order; thus, he fittingly declared "[t]he issue involves election documents and there is no other body more competent in handling these documents than the COMELEC."

Incidentally, when the COMELEC referred the matter to the NBI, the main issue of manifest error was already resolved. The referral was only for the purpose of "determining criminal acts of falsification or interference with electoral processes"[40] and only in response to petitioner's "damning indictment [of fraud and irregularity] that impinges on the very credibility of the COMELEC." [41] In other words, the referral was not intended to aid the COMELEC, or to be used as conclusive evidence in the resolution of the petition for correction of manifest error, precisely because that issue had already been resolved and because the COMELEC has the sole competence to determine the authenticity of the concerned election documents. In view of this, the Court cannot use the NBI reports in its determination of whether the COMELEC committed grave abuse of discretion in issuing the assailed resolutions and orders.

Another reason that compels this Court to disregard the NBI report is the fact that the NBI investigation was undertaken in violation of the Court's order. The referral to the NBI was made by the COMELEC in its March 2, 2009 Order. The Court, in the March 5, 2009 TRO, expressly ordered the concerned parties to cease and desist from implementing this March 2, 2009 Order. When the case was referred by the COMELEC to the NBI, and when the NBI conducted the investigation, this Court's restraining order was already effective and in force. Both agencies, therefore, disobeyed the express order of this Court. Being the product of an act of disobedience to this Court's order, the NBI investigation and the report cannot be made the basis of this Court's resolution of the case.

Finally, the Court does not find merit in petitioner's contention that a recanvass of the election returns (ERs) should be undertaken in order to truly determine the mandate of the electorate. Let it be noted that the original petition filed before the COMELEC, one for correction of manifest errors, was a pre-proclamation controversy which, ordinarily, does not involve the opening of ballot boxes or the examination and appreciation of ballots

and/or election returns. Furthermore, the ERs were never introduced in evidence in the proceedings below. Evidently, there is no basis for this Court to conduct a retabulation of ERs. Also, as correctly stated by the Office of the Solicitor General, "the remedy of recanvass of [ERs] is patently illegal, as this would take the form of an election protest, particularly a retabulation of [ERs] under A.M. No. 07-4-15-SC." [42]

If the Court were to tabulate the results reflected in the ERs, it would, in effect, convert itself into a board of canvassers. This would entail a function which, obviously, this Court, in a petition for certiorari, cannot perform.

In sum, the petition must, of necessity, fail.

WHEREFORE, premises considered, the petition for certiorari and prohibition is DISMISSED.

SO ORDERED.

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

Carpio, J., no part, due to relation to a party.

Velasco, Jr., please see dissenting opinion.

Peralta, J., on official leave.

Del Castillo, J., join the dissent of J. Velasco Jr.

[1] G.R. Nos. 166143-47 and 166891, November 20, 2006, 507 SCRA 352, 380.

[2] Juan v. Commission on Elections, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128.

[3] Ang Bagong Bayani-OFW Labor Party v. COMELEC, 412 Phil. 308, 341 (2001).

[4] Penned by Presiding Commissioner Romeo A. Brawner (deceased), with Commissioner Moslemen T. Macarambon, concurring; rollo, pp. 33-44.

[5] Penned by Commissioner Nicodemo T. Ferrer, with Chairman Jose A.R. Melo, Commissioners Leonardo L. Leonida, Lucenito N. Tagle, and Armando C. Velasco, concurring; and Commissioner Rene V. Sarmiento, dissenting; id. at 45-83.

[6] Rollo, p. 40.

[7] Id. at 104-112.

[8] Id. at 120-133.

[9] Supra note 4.

[10] Rollo, pp. 42-43.

[11] Id. at 84.

[12] Supra note 5.

[13] Rollo, pp. 26-28.

[14] Id. at 253-263.

[15] Id. at 259-260.

[16] Id. at 222-223.

- [17] Id. at 261-263.
- [18] Id. at 244-252.
- [19] Id. at 238-240.
- [20] Id. at 438-442.
- [21] Id. at 443-459.
- [22] Id. at 571-627.
- [23] Suliguin v. Commission on Elections, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233.
- [24] Guerrero v. COMELEC, 391 Phil. 344, 352 (2000).
- [25] Sen. Defensor Santiago v. Sen. Guingona, Jr., 359 Phil. 276, 304 (1998).
- [26] Cabrera v. Commission on Elections, G.R. No. 182084, October 6, 2008, 567 SCRA 686, 691.
- [27] Milla v. Balmores-Laxa, G.R. No. 151216, July 18, 2003, 406 SCRA 679, 684.
- [28] Bince, Jr. v. COMELEC, 312 Phil. 316, 336 (1995).
- [29] Tatlonghari v. Commission on Elections, G.R. No. 86645, July 31, 1991, 199 SCRA 849, 856.
- [30] Id. at 858.
- [31] Rollo, pp. 38-41.
- [32] Idulza v. Commission on Elections, G.R. No. 160130, April 14, 2004, 427 SCRA 701, 707-708.
- [33] Japzon v. Commission on Elections, G.R. No. 180088, January 19, 2009, 576 SCRA 331, 350.
- [34] V.C. Cadangen v. Commission on Elections, G.R. No. 177179, June 5, 2009, 588 SCRA 738, 745-746.
- [35] Japzon v. Commission on Elections, *supra* note 33.
- [36] Rollo, p. 247.
- [37] Alejandro v. Commission on Elections, G.R. No. 167101, January 31, 2006, 481 SCRA 427, 445.
- [38] Rollo, pp. 443-459, 571-627.
- [39] Id. at 261-263.
- [40] Id. at 258.
- [41] Id.
- [42] Id. at 332.

DISSENTING OPINION

VELASCO, JR., J.:

With due respect, I dissent.

A summary of the pertinent facts is as follows:

In the May 14, 2007 elections, both Typoco and Tallado were candidates for the Office of the Governor of the Province of Camarines Norte. Typoco won the election with 80,830 votes, while Tallado garnered 78,287 votes or a margin of 2,543.

Previously, during the canvassing proceedings of the Provincial Board of Canvassers (PBOC) of Camarines Norte, Tallado objected to the inclusion of the Certificate of Canvass (COC) from the Municipalities of Paracale, Jose Panganiban, and Labo on the ground that they were falsified, tampered, and manufactured. The objections were subsequently denied by the PBOC, which prompted Tallado to appeal the rulings of the PBOC to the Commission on Elections (COMELEC). The cases were docketed as SPC Nos. 07-78, 07-79, and 07-80.

On May 25, 2007, the COMELEC Second Division issued an Omnibus Resolution dismissing the appeal. Consequently, on May 29, 2007, the PBOC convened and proclaimed Typoco as the governor-elect of Camarines Norte.

On June 4, 2007, Tallado filed a Motion for Reconsideration of the May 25, 2007 Omnibus Resolution. Likewise, he filed a Petition for Annulment of Proclamation of Typoco, which was docketed as SPC No. 07-243. The petition was, however, subsequently dismissed by the COMELEC Second Division in a Resolution dated August 22, 2007, prompting Tallado to move for its reconsideration on September 3, 2007.

On September 11, 2007, the COMELEC Second Division denied Tallado's Motion for Reconsideration of the May 25, 2007 Omnibus Resolution.

On September 17, 2007, Tallado filed a Petition for Correction of Manifest Error before the COMELEC, docketed as SPC No. 07-312. He contended that the proclamation of Typoco as governor-elect of Camarines Norte was void, since it was predicated on void certificates of canvass coming from the Municipal Board of Canvassers (MBOC) of Labo and Jose Panganiban, Camarines Norte.

Answering, Typoco averred that the petition was filed out of time and Tallado submitted manufactured Statement of Votes by Precinct (SOVP).

On November 28, 2007, the COMELEC First Division conducted a hearing on the petition and, thereafter, ordered the parties to submit their respective memoranda.

In the meantime, the COMELEC en banc issued a Resolution dated January 30, 2008 in SPC No. 07-243 dismissing Tallado's Motion for Reconsideration of the August 22, 2007 Resolution, which dismissed the Petition for Annulment of Proclamation of Typoco.

On April 30, 2008, the COMELEC First Division promulgated the assailed Resolution in SPC No. 07-312 granting the petition and annulling the proclamation of Typoco while ordering the proclamation of Tallado as the winner.

On May 8, 2008, Typoco filed a motion for reconsideration contending that he was denied due process, followed by an Urgent Omnibus Motion for Leave of Court to Admit Supplemental Argument in support of his motion for reconsideration and to set the case for hearing.

On February 16, 2009, the COMELEC en banc conducted a hearing regarding Typoco's Omnibus Motion, as well as his motion for reconsideration. The COMELEC en banc then directed the parties to submit their respective

memoranda.

On February 24, 2009, the COMELEC en banc issued a Resolution affirming the findings of the COMELEC First Division denying the Motion for Reconsideration.

Aggrieved, petitioner Typoco filed the instant petition on February 26, 2009.

In the meantime, on March 2, 2009, the COMELEC en banc issued an Order denying Typoco's request to admit certain exhibits,[1] including ten (10) representative samples of the election returns, which were submitted to prove that Tallado's SOVPs did not match the results in the election returns. It further appointed new members for the MBOC of the Municipality of Labo, as well as for the PBOC of Camarines Norte, to re-tabulate the votes for the position of Governor of Camarines Norte, to prepare new election documents, and to proclaim Tallado as the winning candidate. Lastly, the COMELEC ordered the National Bureau of Investigation (NBI) to investigate the fraudulent acts alleged by Typoco. The dispositive portion reads:

WHEREFORE, premises considered, the Commission en banc RESOLVED to, as it hereby RESOLVES to, DENY the prayer of Private Respondent Jesus Typoco for admission of exhibits "1" to "8-G" for the specific purposes mentioned in the Memorandum.

Consequently, relative to our February 24, 2009 Resolution, and in order to expedite proceedings x x x speedily and judiciously, the Commission en banc accordingly names and appoints the following members of the New Municipal Board of Canvassers (NMBOC) for Labo, Camarines Norte: x x x which must hereafter convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, re-tabulate the votes for the position of Governor of Camarines Norte, prepare a new SVOP and MCOC for the municipality of Labo with the corrections, and thereafter submit the same to the New Provincial Board of Canvassers (NPBOC) of Camarines Norte.

The following are likewise named and appointed to the New Provincial Board of Canvassers of Camarines Norte and performed duties as follows: x x x The same NPBOC shall convene at COMELEC session hall in Intramuros, Manila, within three (3) days from receipt of this Order, prepare a new Statement of Votes per Municipality (SVOM) and Provincial Canvass of Votes (PCOC) as corrected, and thereafter proclaim Edgardo Tallado as the duly elected governor of the province of Camarines Norte in May 14, 2007 elections.

Further, the Commission en banc hereby endorses this matter to the National Bureau of Investigation (NBI) for proper investigation, the results of which would be material to any further action that may be taken against any such responsible parties who may be found liable for any of the fraudulent acts alleged by the Private Respondent Typoco. For this same purpose, the NBI is hereby directed to coordinate with the COMELEC Law Department and Atty. Romulo B. Macalintal to expedite this investigation.

SO ORDERED.[2] (Emphasis supplied.)

Upon endorsement of the said Order from COMELEC, the NBI conducted an investigation of the two sets of SOVPs submitted by both parties. The NBI was able to examine four (4) copies of the SOVPs: the first copy coming from the Office of the Provincial Election Supervisor of Camarines Norte; the second, from the Parish Pastoral Council for Responsible Voting, Camarines Norte Chapter; the third (blue carbon copy), from the Election Records and Statistics Department (ERSD); and the fourth, from the MBOC for Labo.

On May 22, 2009, the NBI released a Progress Report[3] with the following findings:

After the investigation conducted so far, the undersigned Agents of the National Bureau of Investigation (NBI) assisted by other investigators, hereby state their findings, thus:

That the First Copy (black copy/original copy) of the Statement of Votes by Precinct (SOVP) Nos. 0006482,

0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Office of the Provincial Election Supervisor of Camarines Norte, Provincial Capitol, Daet, Camarines Norte represented by Atty. MAICO JULIA to the NBI for examination are SPURIOUS.

That the Second Copy (red carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Parish Pastoral Council for Responsible Voting - NAMFREL, Camarines Norte Chapter, Daet, Camarines Norte represented by Fr. NORBERTO EYULI to the NBI for examination are GENUINE.

That the Third Copy (blue carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Election Records & Statistics Division, Comelec, Intramuros, Manila represented by Atty. JUANA S. VALEZA to the NBI for examination are SPURIOUS.

That the Fourth Copy (green carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Municipal Board of Canvassers (MBOC) for Labo, Camarines Norte represented by Mr. VIRGILIO VERAS to the NBI for examination are GENUINE.[4] (Emphasis supplied.)

After a careful examination of the facts and law applicable to the case, I submit that the petition should be granted.

Existence of Forum-Shopping

At the outset, it should be pointed out that COMELEC erroneously entertained the Petition for Correction of Manifest Errors filed by Tallado, since such petition already constituted deliberate and willful forum shopping.

The COMELEC Rules of Procedure provides that "the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect." [5]

Accordingly, the certification against forum shopping is required under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, to wit:

Sec. 5. Certification against forum shopping. -- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

In a complaint or other pleading initiating an action in court, the plaintiff or principal party shall certify as to three undertakings: (1) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (2) if there is such other pending action or claim, he should make a complete statement of the present status of said action or claim; and (3) if he should thereafter learn that the same or similar action has been filed or is pending in any court, tribunal, or quasi-judicial agency, he shall report that fact within five (5) days therefrom to the court where his complaint or initiatory pleading has been filed. Failure to comply with these requirements shall be cause for dismissal of the case without prejudice or with prejudice but only upon motion and after hearing. The submission of a false certification or the non-compliance with any of the undertakings therein may subject the party to indirect contempt of court. If the party's or his counsel's acts constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal of the case with prejudice.

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (1) identity of parties, or at least such parties represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. These requisites are also constitutive of the requisites of *auter action pendant* or *lis pendens*.^[6]

In the present case, the records reveal that not only did Tallado fail to declare in the certification against forum shopping in his Petition for Correction of Manifest Errors the existence of his Motion for Reconsideration of the dismissal of his Petition for Annulment of Proclamation of Typoco (SPC No. 07-243) then pending before the COMELEC,^[7] but he also engaged in willful and deliberate forum shopping.

It would be apropos to review the factual milieu of the case at this juncture. The first cases, docketed as SPC Nos. 07-78, 07-79, and 07-80, filed by Tallado were objections to the inclusion of the COCs from the Municipalities of Paracale, Jose Panganiban, and Labo on the ground that they were falsified, tampered, and manufactured. Thereafter, he filed a second case--a Petition for Annulment of Proclamation of Typoco. Still unsatisfied, he filed the Petition for Correction of Manifest Error, his third case, saying that the proclamation of Typoco is void, since it was based on void COCs from the municipalities aforementioned. In effect, each of these three cases is anchored on the same ground--void COCs.

Applying the test to determine the existence of forum shopping to the facts of the case, it is easily decipherable that forum shopping indeed exists. First, there is identity of parties. Tallado is the petitioner in all three (3) cases against Typoco as respondent. Second, the relief prayed for is founded on the same facts, i.e., void COCs for the Municipalities of Labo, Jose Panganiban, and/or Paracale. And third, the resolution of the COMELEC in SPC Nos. 07-78, 07-79, and 07-80 regarding the authenticity of the COCs is a decision on the merits which amounted to *res judicata*. Thus, Tallado could no longer question Typoco's proclamation based on the same COCs in the subsequent Petitions for Annulment of Proclamation and Correction of Manifest Error.

Such fact of deliberate and willful forum shopping should have prompted COMELEC to dismiss outright the Petition for Correction of Manifest Error.

Existence of Grave Abuse of Discretion

The ponencia finds that the COMELEC did not gravely abuse its discretion in the instant case ratiocinating that the appreciation of election documents involves a question of fact that is best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. Further, it says that

the findings of fact of such agency, when supported by substantial evidence, are final and cannot be reviewed by courts of justice. While such is the general rule, the principle admits of certain exceptions. In *Life Assurance Company Ltd. v. Court of Appeals*, this Court enumerated the exceptions, to wit:

It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; x x x (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record x x x.[8] (Emphasis supplied.)

In the instant case, there are two conflicting sets of SOVPs, and by deciding the petition of Tallado solely on the basis of the ERSD copy of the SOVP, such act by the COMELEC constituted grave abuse of discretion.

First, there were glaring discrepancies between the two (2) sets of SOVP submitted by the parties. On the one hand, petitioner Typoco avers that he obtained his copy of the SOVP from the Office of the Election Officers in the municipalities of Labo, while private respondent Tallado claims that he secured his copy of the SOVP from the Office of the Provincial Election Supervisor (OPES), allegedly as certified by the latter.

Tallado alleges that based on his copy of the SOVP, his total number of votes in the Municipality of Labo is 13,172, while Typoco received only 11,359 votes. When the said figures were, however, copied to the Municipal COC, Tallado's votes were reduced to only 11,490 votes, while those of Typoco were increased to 12,285 votes.

But Typoco contends in his petition that the election documents used by respondent COMELEC in issuing the questioned resolutions, which nullified the 2,543 vote-lead of Typoco, and in declaring Tallado as the winner, are fake and spurious. He further asserts that the copies provided by Tallado are also fake and spurious.

Typoco counters that the correct total numbers of votes are those found in the Municipal COC, which shows that Tallado received only 11,490 votes, while Typoco garnered 12,285 votes. Typoco further argues that these figures are supported by the SOVP (MBOC copy), which he obtained from the Offices of the Election Officer of Labo.

In such a scenario, the COMELEC should not have decided based on the ERSD copies of the SOVP alone. It departed from settled jurisprudence when it did not make use of the election returns and simply relied on the SOVP copy of the ERSD. As the ponencia stated, "[T]he original petition filed before the COMELEC, one for correction of manifest errors, is a pre-proclamation controversy which, ordinarily, does not involve the opening of ballot boxes, examination and appreciation of ballots and/or election returns." In order, however, to determine the true and genuine results of the elections, this Court has constantly ruled that the best evidence is the election returns themselves, and not the certificate of votes or SOVPs.

In *Garay v. COMELEC*,^[9] the Court held that "[a] certificate of votes does not constitute sufficient evidence of the true and genuine results of the election; only election returns are, pursuant to Sections 231, 233-236, and 238 of B.P. Blg. 881."

Again in *De Guzman v. COMELEC*,^[10] the Court stated that "in an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the election returns would be the best evidence." (Emphasis supplied.)

Moreover, the ponencia pounds on the fact that this Court can only look at records and materials brought to the COMELEC's attention and consideration by the parties. But it neglects to take into account the long standing principle that procedural rules are but tools to accomplish the ends of justice, and it is always in the power of the Court to suspend its own rules whenever the purposes of justice require.[11] Similarly, it would be wise to remember that election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand in the way if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. In election cases this Court has an imperative duty to ascertain, by all means within its command, who are the real candidates voted by the electorate.[12]

Thus, in the higher interest of substantial justice, this Court decided to use the election returns in the precinct subject of the petition to finally determine the actual votes cast in favor of the contending parties. Such action has been upheld by the Court in *Mastura v. COMELEC*.^[13] In *Mastura*, two (2) congressional candidates were vying for the first district of Maguindanao during the May 8, 1995 elections. One of the candidates, Didagen P. Dilangalen, objected to the inclusion of the COC of the Municipality of Matanog on the ground that the same was allegedly tampered. The Court ruled that the act of COMELEC in ordering the production and examination of the election returns was proper. Noteworthy is the fact that *Mastura* involved a pre-proclamation controversy and yet the COMELEC reviewed the election returns. This is contrary to the argument of the Office of the Solicitor General that "the remedy of recanvass of election returns is patently illegal, as this would take the form of an election protest, particularly a retabulation of election returns under A.M. No. 07-4-15-SC."

Although such a task could have very well been delegated to the COMELEC, time constraints strongly argued against a remand and compelled this Court to review the election returns themselves.

Accordingly, by Resolution on July 28, 2009, the Court directed the COMELEC to present for examination the COMELEC copy of all the 163 election returns of Labo, Camarines Norte under the custody of the ERSD. As a measure then to discern the will of the electorate, the Court took it upon itself to make a verification. In compliance with the said resolution, the COMELEC submitted copies of E.R. Nos. 3000501 to 3000663 on August 11, 2009. Upon inspection, the election returns were found to be regular.

Subsequently, on September 29, 2009, the Court issued another resolution requiring the parties to submit their comments on the results of the election returns. Petitioner Typoco confirmed the genuineness and due execution of the election returns in his comment. He further stated that the results also confirmed the findings of the NBI that the SOVPs used by COMELEC in annulling his proclamation were not genuine.

On the other hand, respondent Tallado raises the argument that the review of the election returns is not within the power of the Court. He argues that reviewing the said election returns would transgress the principle that the Court is not a trier of facts. Furthermore, he contends that the findings of fact of the COMELEC are final and non-reviewable. Lastly, he states that any review of "precursor documents" is anathema to the summary nature of pre-proclamation controversies.

Had the majority only looked at the evidence before the Court, the returns would have carried the day for Typoco:

Election Return No.

Precinct No.

GOVERNOR

Tallado, Edgardo A.

Typoco, Jesus Jr. O.

3000501

1A

92

43

3000502

2A

104

39

3000503

3A

100

25

3000504

4A & 5A

129

33

3000505

6A

110

18

3000506

7A

98

23

3000507

8A

90

40

3000508

9A

76

46

3000509

10A & 11A

104

89

3000510

12A

50

94

3000511

13A

66

75

3000512

14A

48

61

3000513

15A & 16A

136

86

3000514

17A

56

39

3000515

18A

79

56

3000516

19A

73

43

3000517

20A

67

47

3000518

21A

71

68

3000519

22A & 23A

86

75

3000520

24A

92

53

3000521

25A

56

29

3000522

26A & 27A

101

42

3000523

28A & 29A

90

64

3000524

30A

100

40

3000525

31A

100

46

3000526

32A

85

40

3000527

33A

86

59

3000528

34A

60

73

3000529

35A

63

64

3000530

35B & 36A

95

105

3000531

37A & 38A

43

97

3000532

39A & 40A

53

107

3000533

41A & 42B

117

67

3000534

43A

27

127

3000535

44A & 44B

31

143

3000536

45A & 46A

23

166

3000537

47A & 48A

129

85

3000538

49A & 50A

81

139

3000539

51A

86

63

3000540

52A

100

45

3000541

53A

47

82

3000542

54A & 55A

51

69

3000543

56A & 57A

117

56

3000544

58A & 59A

58

118

3000545

60A

53

71

3000546

61A

42

53

3000547

62A & 63A

74

113

3000548

64A

68

77

3000549

65A

41

55

3000550

66A & B

78

81

3000551

67A

80

54

3000552

68A

67

80

3000553

69A & B

100

87

3000554

70A

97

41

3000555

71A & 72A

69

69

3000556

73A & 74A

82

91

3000557

75A & B

44

104

3000558

76A & 77A

67

104

3000559

78A & 79A

77

113

3000560

80A

78

70

3000561

81A & 82A

107

110

3000562

83A

53

95

3000563

84

39

78

3000564

85A

77

66

3000565

86A

50

39

3000566

87A

45

92

3000567

88A

26

71

3000568

89A & B

73

88

3000569

90A & 91A

82

132

3000570

92A & 93A

115

43

3000571

94A

10
80
3000572

95A & 96A

78
73
3000573

97A

92
43
3000574

98A & 99A

98
72
3000575

100A

40
75
3000576

101A & 102A

60
69
3000577

103A & 104A

61
91
3000578

105A

53

76

3000579

106A & 107A

76

74

3000580

108A & B

73

55

3000581

109A & 110A

91

56

3000582

111A

87

52

3000583

112A & 113A

101

58

3000584

114A & 115A

147

31

3000585

116A & 117A

82

72

3000586

118A & 119A

76

78

3000587

120A & 121A

55

125

3000588

122A

69

85

3000589

123A

73

66

3000590

123B & 124A

80

41

3000591

125A & B

84

82

3000592

126A & B

74

95

3000593

127A

89

61

3000594

128A

61

21

3000595

129A & 130A

84

92

3000596

131A

35

110

3000597

132A

48

101

3000598

133A & B

52

118

3000599

134A & 135A

65
111
3000600

136A & B

85
88
3000601

137A

82
62
3000602

138A & 139A

107
83
3000603

140A

47
103
3000604

141A & 142A

63
105
3000605

143A & 144A

86
120
3000606

145A & B

90

51

3000607

146A

12

84

3000608

147A & 148A

46

120

3000609

149A

62

78

3000610

150A

30

64

3000611

151A

39

105

3000612

152A

20

50

3000613

153A & 154A

71

86

3000614

155A & 156A

67

83

3000615

157A

76

70

3000616

158A & 159A

98

77

3000617

160A

68

72

3000618

161A & 162A

65

89

3000619

163A & B

76

72

3000620

164A

66

63

3000621

165A

38

65

3000622

166A

64

61

3000623

167A

49

44

3000624

168A

71

62

3000625

169A

40

52

3000626

170A

64

66

3000627

171A

61

58

3000628

172A

86

56

3000629

173A & 174A

60

109

3000630

175A & 176A

89

91

3000631

177A

71

60

3000632

178A

34

31

3000633

179A & 180A

58

122

3000634

181A

70

87

3000635

182A

58

96

3000636

183A

39

77

3000637

184A

29

75

3000638

185A

65

93

3000639

186A

27

60

3000640

187A

20

125

3000641

188A & B

24
163
3000642

189A

64
79
3000643

190A

52
84
3000644

191A & 192A

38
158
3000645

193A & 194A

77
87
3000646

195A & 196A

101
79
3000647

197A

77
65
3000648

198A & 199A

100

50

3000649

200A & 201A

78

101

3000650

202A & 203A

98

87

3000651

204A

30

39

3000652

205A & 206A

90

78

3000653

207A & B

75

77

3000654

208A

60

59

3000655

209A

51

58

3000656

210A & 211A

105

91

3000657

212A

88

54

3000658

213A

80

42

3000659

214A

77

72

3000660

215A

51

75

3000661

216A

54

37

3000662

217A & 218A

102

83

3000663

219A & 220A

65

133

4678

5857

From the table above, it is very clear that the election returns mirror the SOVPs submitted by Typoco, and not the SOVPs submitted by Tallado. As such, Typoco's copies of the SOVPs obtained from the Municipal Election Officer of Labo, Camarines Norte reflect the true will of the electorate in the said municipality.

Second, the COMELEC failed to consider the annexes attached to the Answer of Typoco in SPC No. 07-312, namely: (1) the COC of votes for the Municipality of Labo filed with the ERSD; (2) the respective affidavits of Provincial Election Supervisor (PES) Atty. Said Ali Maganduga and MBOC Chairperson Rosendo Vales; and (3) certified true copies of the genuine SOVPs for the Municipality of Labo. These documents should have been admitted, as these are relevant and material to the determination of the genuineness of the SOVP copy of the ERSD and that of the Labo Municipal Election Officer. If admitted, these documents tend to show that the SOVP copy of the ERSD is spurious and cannot be the sole basis for the resolution of the petition. The February 24, 2009 COMELEC en banc Resolution affirming the findings of the COMELEC First Division relied on the SOVP copy deposited with the ERSD on the ground that said document enjoys the presumption of regularity until proved otherwise. The point is that the disputable presumption has been successfully overturned by the SOVP copy of the Labo Municipal Election Officer. Moreover, the COMELEC should have taken cognizance of the affidavit of PES Atty. Said Ali Maganduga, who attested that the Form 20-A-2 used for the SOVP copy of the ERSD did not conform to the genuine forms printed and distributed by the COMELEC for use in the May 14, 2007 elections, and that the questioned ERSD SOVP was duly certified and issued by an unauthorized employee.

While Tallado claims his copy of the SOVP came from the OPES which allegedly certified the copy, Atty. Maganduga denies having certified such document and even goes so far as to declare that Tallado's SOVP is fake and manufactured. In his affidavit, Atty. Maganduga states:

11. The latest petition is clearly unfounded, suffers incurable defects, and lacking the element of Good Faith. It is susceptible to outright dismissal for the following reasons, to wit:

11.1

The machine copies of Statement of Votes by Precincts being kept by the Office of the Provincial Election Supervisor and duly certified as such to be the true copies of the Original Statement of Votes by Precincts from the Municipalities of Labo and Jose Panganiban, and sets forth in the Petition for Correction of Manifest Error, are not reflective of a genuine or authentic copies of Statement of Votes by Precincts, after having been compared with the Statement of Votes by Precincts, being kept by the Office of the Election Officer of both Municipalities of Labo and Jose Panganiban;

11.2

The entries of votes made in the Spurious or fake Statement of Votes by Precincts being kept by the Office of the Provincial Election Supervisor were clearly tampered, falsified, and obviously bloated in favor of Mr. E. Tallado, the herein petitioner;

11.3

The papers used (Form 20-A-2) did not conform to the genuine Statement of Votes by Precincts printed and distributed by the Commission of Elections to different cities and municipalities all over the Philippines in connection with the May 14, 2007 National and Local Elections;

11.4

The original or genuine copies of the Statement of Votes by Precincts being kept inside the ballot box were all missing and fake or spurious Statement of Votes by Precincts were deliberately mixed with other genuine documents;

11.5

The substitute spurious or fake Statement of Votes by Precincts were duly certified and issued by unauthorized employee of the Office of the Provincial Election Supervisor thereby making the same appear as genuine or authentic documents.[14] (Emphasis supplied.)

COMELEC likewise arbitrarily failed to consider the affidavit of Labo MBOC Chairperson Rosendo Vales, who attested that the SOVP copy of the ERSD was tampered and fabricated, thus:

6. As all members of the Tabulating Committee for the Local Position had lately reviewed/recomputed all entries in the SVOP and the CCV copies for the MBOC Labo, Camarines Norte on October 8, 2007, all entries in the SVOP and the CCV copies for the MBOC Labo, Camarines Norte, and compared the findings to the attachments of the petition, [w]e staunchly conclude and assert:

- That the petitioner's [Tallado] claim of alleged error committed by the committee/board is an act of dancing with his own shadow.
- That the Statement of Voter per Precincts attached by the petitioner [Tallado] to his petition had been cunningly TAMPERED and FABRICATED purposely to attack and destroy the veracity of the Certificate of Canvass of Votes of the municipality of Labo and the province of Camarines Norte eventually, like in his early multifaceted self-serving attempts and complaints; and
- Further, petitioner [Tallado] by criminal intent and purpose, had to the extent forged and/or had caused the forging of the signatures of the members and staff of the board in order to give semblance to his attached SVOP as faithful reproduction of the original.[15](Emphasis supplied.)

Included also in the documents submitted by Vales before the COMELEC was a machine copy of the Summary Statement of Votes with serial number 0991195,[16] showing that Tallado garnered 11,490 votes, while Typoco got 12,285 votes. These figures match the documents submitted by Typoco and the election returns.

Notwithstanding the compelling nature of the pieces of evidence Typoco adduced and the facts they tended to prove or were deducible therefrom, COMELEC simply ignored or considered them without provable value as to be worthy of evaluation. Those pieces of evidence by themselves appear to be compelling as to arouse, at the minimum, reasonable suspicion that the respective copies of the SOVP Tallado presented and in the possession of the ERSD were both spurious and/or tampered. Unfortunately, COMELEC still opted to rely on the results reflected in the ERSD copy of the SOVP. A thorough investigation of conflicting SOVPs and a comprehensive

inquiry into the precursor documents of the SOVPs, more particularly the election returns in the poll body's custody, would have been the logical approach to take. In fine, COMELEC looked at what *Pecson v. Commission on Elections*[17] referred to as the "wrong material considerations" as basis to annul the proclamation of Typoco as governor-elect. *Pecson*, while not on all fours with the present case, teaches that the use by the court or adjudicating body of wrong considerations in arriving at a decision constitutes grave abuse of discretion.[18] Of similar tenor albeit dealing with an entirely different subject, was what the Court said in *Almeida v. Court of Appeals*, thus: "[A] court abuses its discretion when [in granting or denying injunctive relief], it x x x fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors x x x or misapplies its factual or legal conclusions." [19]

Considering that the determinative issue in this case revolves around the genuineness of the SOVP copies, it behooves the COMELEC, in line with its duty to ascertain the true will of the electorate--the voting will of the people of Labo, in this instance--to have asked government experts to determine which of the conflicting SOVPs was valid before deciding the Tallado petition. Or at the very least, it should have, given the uncertainties prevailing on the ground, remanded the case to the provincial election officer, with an instruction to look into the relevant election documents to determine who the real winner was.

The Court has certainly taken stock of the COMELEC's order to the NBI to investigate the issue of the genuineness of the SOVP copy of the ERSD. But it cannot be overemphasized that the COMELEC took this course of action only after denying Typoco's motion for reconsideration. In net effect, COMELEC merely went through the motion of ordering an investigation as to the authenticity of critical documents, but without intending to use the results of the probe to assist it arrive at a judicious, precise conclusion.

As it were, the results of the examination conducted by experts from the Questioned Documents Division of the NBI buttressed the finding that the SOVPs turned over by the MBOC of Labo were genuine, while the SOVPs yielded by the ERSD of the COMELEC were spurious. The NBI progress report states in part:

That the Fourth Copy (green carbonized impression) of the Statement of Votes by Precinct (SOVP) Nos. 0006482, 0006483, 0006484, 0006485, 0006486, 0006487, 0006488 and 0006489 for Local Positions from Labo, Camarines Norte during the May 14, 2007 Elections which were turned over by the Municipal Board of Canvassers (MBOC) for Labo, Camarines Norte represented by Mr. VIRGILIO VERAS to the NBI for examination are GENUINE.[20]

The NBI Report, while not necessarily binding on the COMELEC or the Court, elaborated on the fact that the Labo MBOC SOVPs jibed with the SOVPs submitted by the Parish Pastoral Council for Responsible Voting-NAMFREL, Camarines Norte Chapter; these SOVPs were also found to be genuine. On the other hand, the SOVPs turned over by the Election Records and Statistics Division of COMELEC were found to be spurious.

Furthermore, the testimonies[21] of Labo MBOC Vice-Chairperson Roberto Villaflores, Tabulator Roberto Ramirez, Tabulator Vivencio Maigue, and Chief Assessor Igmedio Estrella gathered by the NBI also confirmed the fake and spurious character of the SOVPs obtained from the ERSD, as well as the SOVP turned over by the OPES.

In all then, COMELEC was confronted with enough related substantial evidence, the combined effect of which points to the obvious fact that the SOVPs Tallado adduced were spurious, if not tampered documents. Sadly, the poll body, without so much of an explanation, refused to look at these pieces of evidence, the relevant considerations in this case, in arriving at its ruling. And with the path it chose to take, COMELEC veritably latched its final determination as to who won the 2007 gubernatorial race in Camarines Norte on spurious election documents. To borrow from *Almeida*, a court grossly abuses its discretion when, for its case disposition, it relies

on clearly erroneous factual anchors and/or considers irrelevant factors. The spurious SOVP copy of the ERSD is doubtless an "irrelevant factor" adverted to, a clearly wrong quantity to predicate a ruling on. The COMELEC's reliance thereon as basis for its assailed resolutions cannot but be tagged as a whimsical and capricious exercise of discretion.

Upon the foregoing considerations, I cannot, with due respect, plausibly sustain the ruling of the COMELEC in annulling the proclamation of Typoco and proclaiming Tallado as the winning gubernatorial candidate based on the SOVPs from the ERSD. I declare that, indeed, petitioner Typoco is the duly elected Governor of Camarines Norte. Accordingly, the proclamation made by the PBOC on May 29, 2007 ought to stand.

In this electoral contest, we are called upon to protect the sovereign will of the people of Camarines Norte and not to stifle or frustrate it. Thus, the Court must employ all means bestowed upon it to safeguard the rule of the majority. If this means going through the motion of mathematically adding the votes, should the situation so demands, so be it. The will of the electorate must be heeded.

Therefore, I vote to grant the petition.

[1] Exhibit "1" - Xerox copy of the upper portion of page 1 of the purported FAKE SOVP; Exhibit "2" - Xerox copy of the upper portion of a genuine SOVP for the municipality of Labo; Exhibit "3" - sheet of paper attached and stapled thrice to the Summary Statement of Votes for the Municipality of Labo with the note "PAGE 1 SOVP (FAKE); Exhibit "4" to "4-G" - Eight (8) sheets of SOVPs of Labo filed with the Election Records and Statistics Department (ERSD); Exhibit "5" - Certificate of Canvass of Votes for the Municipality of Labo filed with the ERSD; Exhibits "6" and "7" - the respective affidavits of Provincial Election Supervisor Atty. Said Ali Maganduga and MBOC Chair Rosendo Vales; Exhibits "7" to "7-I" - ten (10) representative samples of the election returns, copy of the dominant majority party; and Exhibits "8" to "8-G" - certified true copy of page 1 of the genuine SOVPs for the Municipality of Labo.

[2] Rollo, pp. 317-318.

[3] Id. at 443-463.

[4] Id. at 455.

[5] Rule 41, Part IX (1993).

[6] Rural Bank of the Seven Lakes (S.P.C.), Inc. v. Dan, G.R. No. 174109, December 24, 2008, 575 SCRA 476, 485-486.

[7] COMELEC records, Volume I, p. 11.

[8] G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[9] G.R. No. 121331, August 28, 1996, 261 SCRA 222, 229.

[10] G.R. No. 159713, March 31, 2004, 426 SCRA 698.

[11] Adams v. Clark, 61 Cal.2d 775, 394 P.2d 943, 40 Cal.Rptr. 255, August 31, 1964; citing Pickett v. Wallace, 54 Cal. 147, 148; Ansco Const. Co. v. Ocean View Estates, 169 Cal.App.2d 235, 241, 337 P.2d 146. See Ginete v. Court of Appeals, G.R. No. 127596, September 24, 1998, 296 SCRA 38; De Guzman v. Sandiganbayan, G.R. No. 103276, April 11, 1996, 256 SCRA 171.

[12] Tatlong-Hari v. COMELEC, G.R. No. 86645, July 31, 1991, 199 SCRA 849; citing Julianio v. Court of

Appeals, No. L-27477, July 28, 1967, 20 SCRA 808.

[13] G.R. No. 124521, January 29, 1998, 285 SCRA 493.

[14] COMELEC records, pp. 97-98.

[15] *Id.* at 59-60.

[16] *Id.* at 66-67.

[17] G.R. No. 182865, December 24, 2008, 575 SCRA 634.

[18] *Id.* at 649; citing *Almeida v. Court of Appeals*, G.R. No. 15912, January 17, 2005, 448 SCRA 681.

[19] *Almeida*, supra note 18, at 695; citing 42 Am. Jur. pp. 576-577.

[20] *Rollo*, p. 455.

[21] Mr. Roberto Villaflores (Vice-Chairperson, MBOC, Labo) testified, among others, that "the original copies colored black turned over by the OPES, Camarines Norte and the carbon copy colored blue turned over by the ERSD, Comelec, Manila are both spurious." NBI Progress Report, p. 7; *id.* at 449.

Mr. Roberto A. Ramirez (Tabulator) testified, among others, that the SOVPs emanating from the ERSD and OPES "are fake." NBI Progress Report, pp. 7-8; *id.* at 449-450.

Mr. Igmedio Estrella (Chief Assessor), who signed the eight sets of SOVPs of the Municipality of Labo, said that his "handwritten name" and the "handwriting" on the "blue copies" of the SOVPs (the one in the custody of the ERSD) "are not his handwriting." NBI Progress Report, pp. 8-9; *id.* at 450-451.

Mr. Vivencio Maigue (Tabulator) also testified that his handwriting on the said SOVPs from the ERSD "are not his handwriting." NBI Progress Report, p. 9; *id.* at 451.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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