

**CORAZON M. ESPINO, PETITIONER, VS. HON. CALIXTO ZALDIVAR,
COMMISSION ON ELECTIONS, AND PATRICIO Dumlao,
RESPONDENTS.***G.R. No. 22325. December 11, 1967*

Ponente: SANCHEZ, J.

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Original petition for certiorari and prohibition to annul the proclamation of Patricio Dumlao - made on January 2, 1964 by the substitute board of canvassers of Nueva Vizcaya - as Governor-elect of said province. We declined to issue the writ of preliminary injunction prayed for to stop respondent Patricio Dumlao "from asserting or exercising any power, prerogative or duties pertaining to the Office of Provincial Governor"; the Commission on Elections from taking any action to implement its resolutions and orders leading to the proclamation on January 2, 1964 just stated; and then Assistant Executive Secretary Calixto O. Zaldivar (now an Associate Justice of this Court) from implementing in any manner the Presidential decision recognizing respondent Dumlao as Provincial Governor.

The facts, so the record discloses, are as follows:

Registered candidates for Governor of Nueva Vizcaya in the November 12, 1963 elections were petitioner Corazon M. Espino and respondent Patricio Dumlao.

On November 19, 1963, Dumlao lodged with the Commission on Elections (Comelec) a petition praying that Comelec direct the provincial board of canvassers of Nueva Vizcaya to use Comelec's copies of the election returns from six precincts in the Municipality of Aglipay, Nueva Vizcaya, because till then, the Provincial Treasurer had not received the copies corresponding to him.

On November 20, 1963, Comelec issued an order enjoining the board from canvassing the election returns without Comelec's prior order. On December 2, 1963, the board nonetheless proceeded to canvass the returns from the entire province. The copies of the election returns from the six precincts of Aglipay for the Provincial Treasurer, were received in the afternoon of that day - December 2, 1963.

Meanwhile, on December 3, 1963, Comelec directed by wire its representative in Nueva Vizcaya, Atty. Saturnino L. Mayor, to authorize the use of the long delayed returns copies for the Provincial Treasurer covering the six precincts aforesaid, provided that the delay in their transmission was satisfactorily explained, and provided further that said returns were not tampered; "otherwise board of canvassers shall use election returns copies for municipal treasurer Aglipay." Atty. Mayor advised the board of canvassers of this directive. He asked that he be given a chance to investigate and satisfy himself of the existence of the two conditions. He was overruled by the board. Instead, the board proceeded to tally the votes in Aglipay using the election returns copies for the Provincial Board.

On December 4, 1963, Atty. Mayor made an examination of the copies for the Provincial Treasurer, of the returns from the six precincts of Aglipay. His findings: (1) the envelopes containing said returns were slit at the bottom;

(2) the paper seals of the returns inside were already broken; and (3) the words and figures in the returns bore visible traces of erasures.

The comparative figures explanatory of the discrepancy, as stated in the petition herein, are as follows:

A G L I P A Y

PROV. TREAS, COPIES MUN, TREAS, COPIES

Pres. Nos.

ESPINO

DUMLAO

Prec. Nos.

ESPINO

DUMLAO

1

309

2

1

109

202

2

182

38

2

132

88

3

209

9

3

119

99

4

214

8

4

154

68

5

196

17

5

96

112

6

189

2

6

129

62

Atty. Mayor ordered the suspension of the canvassing. But the order was ignored. Atty. Mayor, on the same day, reported the matter in two telegrams to Comelec which dispatched a wire to the Provincial Fiscal, chairman of the board of canvassers, thus:

"Our Atty Mayor reported that provl board canvassers refused to obey Commission instructions that on his findings election returns from Aglipay copy provl treas already tampered provl board canvassers shall use election returns from Aglipay copy of mun trees pd you are instructed to advise provl board canvassers Com-mission order to use in provl canvass election returns from Aglipay copy of mun tress and their disobedience will result suspension members provl board canvassers and annulment canvass made for said municipality".

This was confirmed by Comelec's resolution of December 5. On the same day, December 5, 1963, the board ordered the tabulation of the results; and adopted a resolution suggesting a judicial recount because of the difference in the number of votes cast in the six precincts of Aglipay appearing in the Municipal Treasurer's returns copies and those of the Provincial Treasurer.

On December 7, 1963, the board of canvassers filed with Comelec a motion praying for the reconsideration of the telegraphic order to use the Municipal Treasurer's copies of the election returns for Aglipay. Respondent Patricio Dumlao opposed, in turn petitioned for the suspension and substitution of the members of the board of canvassers of Nueva Vizcaya. Hearing on the board's motion for reconsideration, and Dumlao opposition thereto and counter-petition, started on December 18, 1963, was concluded on December 23, 1963. At the hearing, Atty. Efcio Acosta, member of and in representation of the board of canvassers, was present.

On December 26, 1963, Comelec issued its resolution directing the board to canvass the votes by using the

Municipal Treasurer's copies, instead of those of the Provincial Treasurer, in the six precincts of Aglipay, and thereafter to proclaim the candidates elected. On the same day, Comelec relayed this resolution to the Provincial Fiscal, chairman, and Governor Jose G. Espino and the Provincial Treasurer, members of the board of canvassers.

The petition herein (par. XIV thereof) states that on the very same day, December 26, the board of canvassers signed the certificate of canvass and proclamation, and proclaimed Corazon M. Espino, who obtained 18,836 votes, as Governor-elect, over Patricio Dumlao, who garnered 18,476 votes.

The return of respondent Dumlao (p. 10 thereof) contrariwise avers that no meeting of the board took place on December 26; that the members thereof who signed the alleged certificate of canvass and proclamation did so in different places and on different dates posterior to December 27 when the board received Comelec's resolution of December 26.

Significant to note are the following: (1) the Provincial Treasurer's copies of the returns were used in tallying the votes; (2) one of the signers of the certificate was Jose G. Espino, then Provincial Governor and husband of the first proclaimed Governor-elect Corazon M. Espino; and (3) Provincial Fiscal Juan P. Aquino, chairman, did not sign the certificate of canvass and proclamation.

On December 28, 1963, the Provincial Fiscal, chairman of the board, wired Comelec: "Received your two telegrams stop have set meeting board of canvassers to canvass December thirty nine o'clock morning stop have informed by telegram members board canvassers in their city addresses because they are not here." [1] The date was later moved to January 1, 1964 at 9:00 a.m. at the request of the members of the board of canvassers, per letter received by Comelec from their Chairman on December 29.

On December 29, 1963, Corazon M. Espino filed a petition for certiorari before this Court, L-22278, questioning the power of the Comelec to issue the December 26, 1963 resolution. This was withdrawn on January 4, 1964 allegedly upon being officially notified of her previous proclamation. She took her oath of office after midnight of December 31, 1963.

On the scheduled date and time for canvass (January 1, 1964, 9:00 a.m.), not one of the members of the board appeared. The Comelec representative, Atty. Jose Toledo, was then in possession of the copies of the election returns from the six precincts of Aglipay, for the Municipal Treasurer of Aglipay. Atty. Toledo waited till 11:00 a.m. To avoid delay, Atty. Toledo conducted a personal investigation to ascertain the whereabouts of the absconding members of the board. He was accompanied by three PC members. The group went to the residences of the board members, inquired from residents of the places, to no avail. As none of them could be located, on telegraphic petition of Atty. Toledo, Comelec on the same day authorized him by telegram to appoint their substitutes.

Thus, the original members:

- (1) Gavino Pe Benito, Provincial Treasurer, Member
- (2) Lorenzo Purificacion, Provincial Auditor, Member
- (3) Artemio Tiangco, Highway District Engineer, substitute for Vice-Governor, Member
- (4) Efcio Acosta, Board Member
- (5) Ramon Purugganan, Register of Deeds, in lieu of a Provincial Board Member, Member
- (6) Jose G. Espino, Governor, Member, and
- (7) Juan P. Aquino, Provincial Fiscal, CHAIRMAN

were replaced by the following substitutes:

- (1) Melecio A. Genato, First Assistant Fiscal, who acted in lieu of the Provincial Fiscal, CHAIRMAN
- (2) Miguel M. Guevara, Clerk of Court, CFI, NV, Member
- (3) Rodolfo Q. Agbayani, Deputy Clerk of Court, CFI, Member
- (4) Tomas P. Maddela II, Municipal Judge, Bayombong, Nueva Vizcaya, Member
- (5) Honorato A. Mendoza, Officer-in-Charge, DHO, acting in lieu of the District Health Officer who has retired from government service, Member
- (6) Ramon V. Purugganan, Register of Deeds, Member, and
- (7) Eulogio de Guzman, Div. Supt. of Schools, Member.

On January 2, 1964, the newly constituted board convened and tallied the votes. For the returns from the Municipality of Aglipay, the board used the figures appearing on the Municipal Treasurer's copies. Result: Respondent Patricio Dumlao, who obtained 19,031 votes as against petitioner's 18,278 votes, was proclaimed Governor-elect. Except for Ramon V. Purugganan, Register of Deeds, and Eulogio de Guzman, Division Superintendent of Schools, who were absent, the certificate of canvass and proclamation was signed by all the substitute members of the board. These proceedings were confirmed by the Comelec in its January 4, 1964 resolution.

The Office of the President, thru then Assistant Executive Secretary Calixto O. Zaldivar, announced that the Executive Department would recognize Dumlao as the duly elected Governor, unless competent courts declare otherwise.

Hence, this petition.

Three main questions call for resolution: They are: (1) Is Comelec with authority to direct the board of canvassers to disregard the Provincial Treasurer's copies of the returns from six precincts of Aglipay, and in lieu thereof, to use the Municipal Treasurer's copies? (2) May Comelec order a canvass after the original board of canvassers allegedly has proclaimed petitioner? (3) Was the board of canvassers, which proclaimed Patricio Dumlao Governor-elect, duly constituted?

1. Petitioner points to Comelec's want of authority to declare as falsified the Provincial Treasurer's copies of the election returns from the six precincts of Aglipay and to direct the use of the Municipal Treasurer's copies thereof in canvassing the votes.

First to the premise. The controlling facts found by Comelec appears in the resolution of December 26, 1963, viz:[2]

"The controlling facts of this case which find support on the records hereon as well as on the evidence introduced during the hearing of this case before the Commission are the following: that the boards of election inspectors for the six precincts of Aglipay, Nueva Vizcaya, placed paper seals on all copies of the election returns, including copies for the provincial treasurer, before putting them in their corresponding envelopes, with the envelopes themselves likewise sealed with paper seals for the purpose, and that the copies of the election returns and their envelopes for the provincial treasurer were in proper condition when delivered to the municipal treasurer of Aglipay for posting as registered mail; that on the day following the election, or on November 13, 1963, the respective chairmen and/or poll clerks of said six precincts of Aglipay delivered to the municipal treasurer, as ex-officio, postmaster, of said municipality the provincial treasurer's copies of the election returns of Aglipay for posting as registered mail; that these six copies of the election returns for the

provincial treasurer, posted on November 13, 1963 did not arrive at the Office of the Provincial Treasurer of Nueva Vizcaya until December 2, 1963, or in other words, they were unduly delayed in the mail, as according to an employee of the post office in Manila, who testified during the hearing hereon, mail matters from Aglipay, under regular circumstances, arrive at Bayombong, Capital of Nueva Vizcaya, a week after its posting in Aglipay; that the envelopes containing the election returns herein involved, when received by the provincial treasurer do not bear the postmark of the post office in the municipality of Jones, Isabela, where they are supposed to be routed on their way thru the mail from Aglipay to Bayom-bong, the capital of Nueva Vizcaya; that when these six envelopes containing said copies of the election returns for the municipality of Aglipay were delivered to the pro-vincial treasurer, they were all securedly tied together by abaca twine; that when the envelopes were opened in the presence of the provincial board of canvassers, they were already with slits at their other ends; that when said copies of election returns themselves were presented for canvassing, the votes for candidates Dumlao and Mrs. Espino bear signs of erasures and tampering, with the votes for candidates Dumlao and Mrs. Espino changed in a way that would alter the result of the election; that a comparison made during the hearing in the Commission of the copies of the election returns for, the pro-vincial treasurer, the municipal treasurer, the Commission on Elections, and the Nacionalista Party show that the entries of votes for Candidates Dumlao and Mrs. Espino in the copies of the election returns for, the Commission on Elections, the municipal treasurer, and the Nacion-alista Party do not show any erasures and that said votes are all the same, whereas in the provincial treasurer's copies which bear erasures and superimpositions, the votes for said candidates are different from those appearing in the aforesaid three copies of the election returns; and that the chairmen of the six precincts of Aglipay, who testified during the hearing in the Commission, all categorically declared that the erasures and alterations on the entries of votes for Candidates Dumlao and Mrs. Espino appearing in the provincial treasurer's copies of the election returns were not made by them, and that the true and correct votes of Candidates Dumlao and Mrs. Espino are those which appear in the copies of the election returns for, the Commission on Elections, the municipal treasurer, and the Nacionalista Party, all of which do not bear any erasures."

It may be well to emphasize the fact that the tampering of the election returns in the six precincts is decisive of the result. If the genuine copies of the Municipal Treasurer were used, as it was used by the second board of canvassers, respondent Dumlao wins. If, on the other hand, the tampered returns for the Provincial Treasurer aforesaid were considered, then petitioner Espino would sit.

Petitioner's case on this point is mainly made to rest on Section 163 of the Revised Election Code, which reads:

"SEC. 163. When statements of a precinct are contradictory. - In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected." [3]

Implicit in the statute just quoted is that differences in the number of votes given a candidate should result from contradiction in the different returns, as prepared and signed by the inspectors. We do not discern in the law a purpose to throw the burden on courts where it is patent - as is the case here - that tampering of the returns occurred after they have left the hands of the election inspectors, just to pave the way for the proclamation of a candidate in whose favor falsification was resorted to. To tie up the hands of the board of canvassers in the situation here presented is to wink at a brazen form of wrongdoing to subvert the people's will, and in mockery crown the loser with victory. Correctly then, canvassers are given quasi-judicial powers to determine whether the return is genuine and to disregard one which is obviously a forgery.[4] Along parallel lines, this Court, in *Nacionalista Party vs. Commission on Elections*, 85 Phil. 149, 157, 158, declared that the canvassing board could

accept as correct those returns transmitted to it "which are in due form"; that they must "be satisfied of the genuineness of the returns - namely, that the papers presented to them are not forged and spurious"; and that "where the returns are obviously manufactured, x x x the board will not be compelled to canvass them."

Petitioner cites the following from *Chiongbian vs. Commission on Elections*, L-19202, December 11, 1961:

"Wherefore, we believe the Commission acted cor-rectly in holding there was no valid proclamation and in ordering the Board to reconvene to make a valid one. But we do not believe it has powers to order the Provincial Board [of Canvassers] to use in such new canvass the copies in its possession of the returns of Precinct No. 7 of Tangub and Precinct No. 2 of Concepcion. In our opinion, a situation has arisen wherein the proclamation should be suspended to enable one party to seek a recount under Sec. 163 of the Revised Election Code; there being now before the Board a discrepancy between the copy in the provincial board's possession and that on file with the Commission on Elections."

The *Chiongbian* case bears analysis. There, discrepancy existed between the words and figures in one return and a variance in the result from two precincts between the Provincial Treasurer's copy and the copy of the Comelec. This discrepancy was not attributed to tampering or obvious fraudulent practices. Naturally, the facts in the *Chiongbian* case precisely called for the application of Section 163 because all copies were "authentic copies." The mistake could be attributed to clerical error. Therefore, as provided in said codal provision (Sec. 163), the remedy is to ask the Court of First Instance for a recount of votes cast in the pre-cincts involved for purposes of determining "which is the true statement or which is the true result of the count of the votes" cast therein, for the office in question.

Unlike the *Chiongbian* case, the dispute before this Court does not involve contradictory statements between two copies of the elec-tion returns. Here, one is falsified after the election returns were signed by and left the hands of the inspectors, and this is confirmed by the testimony of the chairmen of all the six precincts in Aglipay here involved.

And then as Comelec, in its resolution of December 26, 1963, aptly observed:

"In the *Chiongbian* case (*supra*), the election return in question arrived at the office of the provincial treasurer in the normal course and time of mail transmission and in proper condition. In the present case, all the six copies of the election returns, following a common pattern, un-accountably disappeared for a relatively long period of time, and then arrived at the place of canvassing with the envelopes containing them already opened at one end, the paper seals on the election returns themselves already broken, and the entries of votes for the candidates for the office of governor already falsified. The said elec-tion returns therefore arrived at the place of canvassing in violation of the basic regulations of the Commission and provisions of the Election Law designed to preserve their integrity and validity. In short, what were pre-sented to the board of canvassers for canvassing were, specifically with respect to the votes for the candidates for office of governor, no longer election returns, but spurious statements which cannot be used in the canvass."

Really, to allow canvassing with the falsified copies of the returns and thereafter require respondent Dumlao to procure recounting, is to stir up inducement to fraudulent schemes to defeat the voters' will.

Besides, to stave off indiscriminate application of Section 163, heretofore quoted, this Court, in *Lawsin vs. Escalona*, L-22548, July 31, 1964 (citing *Parlade vs. Quicho*, L-16259, December 29, 1959), made the pronouncement that -

"judicial recount of votes under Section 163 - 'is a special authority conferred on the Court and must be restrictively construed, so as not to extend to other cases that may, more or less, bear some resemblance to the situation des-cribed in said sections'; that the discrepancy between the statement and another copy or other authentic copies thereof (mentioned in sections 163 and 168) means a variance exist-ing between copies of the

statement of the election returns presented by the local treasurers to the respective boards of canvassers, 'exclusively', as stated in *Calang vs. Miranda*, 86 Phil. 316, 320; and that a discrepancy between the election returns and a certificate issued to the watchers is not a ground for a recount, because said certificate is not the authentic copy of the statement of election returns contemplated by the law.

x x x

The special nature and limited scope of the summary judicial recount provided by section 168 of the Election Code is admittedly aimed at delaying as little as practicable the proclamation of the winning candidate, without prejudice to a thorough revision of the election results in proper cases by means of the corresponding election protest, which is the normal process provided for the purpose. To multiply the grounds for a recount of votes before a proclamation by the board of canvassers is made has the effect of downgrading the election protest as a remedy, and to prolong the periods during which the contested positions will remain without an occupant, thereby provoking suspicion, conjecture, and unrest."^[5]

Comelec, by specific articulation in Section 3 of the Revised Election Code, possesses supervisory powers over board of canvassers. The latter cannot, with impunity, disregard any order of the Comelec made in pursuance of the Comelec's constitutional duty of enforcement and administration of all laws relative to the conduct of elections,^[6] and of insuring free, orderly, and honest elections. It certainly is within the realm of Comelec's concerns to direct that only genuine returns be considered where, as here, dastardly attempts were made to subvert the people's choice by a resort to patently doctored returns.^[7] To interpose objection thereto is to deny protection to the sanctity of the ballot.

2. Petitioner assails Comelec's order for a new board of canvassers to canvass the votes after the original board allegedly has proclaimed petitioner.

We go deep into the question of whether the original board of canvassers actually signed the certificate of canvass on the date appearing on the face thereof (December 26, 1963) as alleged by petitioner. Or, whether there was no such meeting of the board on that date, and the signatures were procured at different times and places after December 27, 1963, as alleged by respondent.

Sufficient is the record to give us the proper bases for the resolution of this question. Reference is made to the following: Comelec, on December 5, 1963, directed the board of canvassers to use in the canvass the Municipal Treasurer's copies of the returns - not those of the Provincial Treasurer - from Aglipay, with the warning that disobedience will result in suspension and annulment of the canvass made for said municipality. On December 7, 1963, the board filed a motion to reconsider that order. This motion was denied on December 26, 1963. And yet, six members of this board, purportedly without waiting for this resolution of the Comelec (the Provincial Fiscal not included), on the very same day, December 26, 1963, allegedly signed the certificate of canvass and proclamation declaring petitioner Corazon M. Espino Governor-elect.

That no meeting was actually held by the board of canvassers on December 26, 1963 is borne by three indubitable documents.

First. The telegram of the Provincial Fiscal, board chairman, of December 28, 1963 advising Comelec that he had set the board meeting to canvass - not recanvass - for December 30, 1963. He did so after he had received telegraphic notice of the December 26 resolution.

Second. The letter of the same Chairman to Comelec dated December 29, 1963 (received on the same day) stating that "[i]n view of the request of the other Members of the Board, x x x I therefore inform the Commission that I am transferring the scheduled canvass x x x to January 1st at 9:00 a.m., x x x."

If it were really true that a meeting was had on December 26, 1963, it seems strange that the certificate of canvass and proclamation aforesaid does not bear the signature of the Provincial Fiscal. He is the Chairman; he directs the course of action of the board; he calls the members to meetings. Instead, after receipt of Comelec's resolution of December 26, this responsible official twice set the dates for canvass, in line with Comelec's said resolution. If there was a canvass on December 26, the Provincial Fiscal, the board chairman, would have known it. He could have told Comelec on those two occasions that there was no need to meet to canvass; there was already a complete canvass, and the certificate of canvass and proclamation had already been signed, on December 26, 1963.

Third. The petition for certiorari and prohibition filed in this Court on December 29, 1963 by petitioner Corazon M. Espino against Comelec, the provincial board of canvassers of Nueva Vizcaya, and Patricio Dumlao (L-22278) praying for the annulment of Comelec's two resolutions: that of December 5, 1963 directing the use of copies for the Municipal Treasurer of Aglipay of election returns from that municipality, instead of those for the Provincial Treasurer; and the other resolution of December 26, 1963, in effect denying the board of canvassers' motion to reconsider, reiterating the directive set forth in the resolution of December 5. Paragraph 11 of that petition in L-22278 is revealing. It reads:

"11. That the resolutions of the respondent Commission [December 5 and 26] is [are] prejudicial to the rights and interest of herein petitioner in that the use of the municipal treasurer's copy will amount to a re-canvass, will unduly delay her proclamation and her assumption of the office of Provincial Governor of Nueva Vizcaya; and tantamount to usurpation by respondent Commission on Elections of judicial power vested only in the Courts;".[8]

This averment, verified on oath by petitioner herself, betrays the fact that as of the date of the petition for certiorari and prohibition - December 29, 1963 - the certificate of canvass and proclamation of Corazon M. Espino as Governor-elect had not yet been signed. For, in the quoted averment in paragraph 11, petitioner complained of the possible undue delay in her proclamation and assumption of office of Provincial Governor.

There is no question in our mind that if it were true that the board of canvassers actually met and signed the certificate of canvass and proclaimed Corazon M. Espino Governor-elect on December 26, 1963, Jose G. Espino - then the Provincial Governor and one of those who signed the certificate - would have lost no time to inform the alleged Governor-elect of her proclamation. Are the Espinos not husband and wife? Not even the naive would take for a fact that as late as December 29, 1963 - three days after the alleged proclamation - Corazon M. Espino was still ignorant thereof, such that for that reason she was impelled to file the aforesaid petition for certiorari and prohibition.

With a certificate of canvass and proclamation thus antedated, the six members of the original board of canvassers (the Provincial Fiscal not included) had sought to confront respondents Comelec and Dumlao with a fait accompli, to force Dumlao to seek relief in the courts of justice, and to fraudulently open the way for petitioner to sit as Governor pending judicial determination. This is an attitude which this Court unhesitatingly rejects.

This Court has been firm in upholding the power of the Comelec to investigate irregularities in the canvass of election returns, suspend proclamation of elected candidates and, if warranted, annul the canvass.[9] In fact, the very case of Chiongbian, upon which petitioner leans heavily for support, makes the following avowal of the Comelec's supervisory power:

"This Court finds no sufficient reason to doubt the accuracy of the Commission's findings and agrees that the proclamation, if any, made by the provincial board of canvassers, was null and void, ab initio, for disregard of its instructions issued before the date of the elections. x x x. [The proclamation] was made in disregard of the instructions of the Commission, the attention of the Board having been previously called to the discrepancy

between the words and the figures in one of the returns, and to the obvious alterations in the returns of Precinct No. 2 of Concepcion and Precinct No. 7 of Tangub, and the Com-mission's representative having furthermore ordered suspension of the canvass in view of such irregularities."

Where, as in this case, with contumacy, the original board of canvassers disobeyed Comelec's order to use genuine copies of returns, and instead made an irregular proclamation of one of the candidates with the use of unassailably falsified copies of returns which are decisive of the result of the election, Comelec is, certainly, with power to direct a canvass with the use of genuine documents.[10] For, that proclamation of the original board of canvassers is null and void.[11] And, for pur-poses of a canvass, substitutes for the erring members of the board of canvassers may be appointed.[12]

3. Last to be considered is whether or not the substitute board of canvassers, which proclaimed respondent Patricio Dumlao Governor-elect, was validly constituted.

The text of Section 158, Article XI of the Revised Election Code, reads:

"SEC. 158. Provincial board of canvassers. - The provincial board of canvassers shall be composed of the provincial governor, the members of the provincial board, the provincial treasurer, the provincial auditor and the provincial fiscal. In Manila and other chartered cities it shall be composed of the mayor, the municipal board or city council and the city fiscal."

We observe, however, that the original provincial board of canvassers was composed of the following:

- (1) Provincial Governor - Jose G. Espino
- (2) Provincial Vice-Governor - substituted by Artemio Tiangco, Highway District Engineer
- (3) Member, Provincial Board - Efcio Acosta
- (4) Member, Provincial Board - substituted by Ramon V. Purugganan, Register of Deeds
- (5) Provincial Treasurer - Gavino Pe Benito
- (6) Provincial Auditor - Lorenzo Purificacion, and
- (7) Provincial Fiscal - Juan P. Aquino, as Chairman of the Board,

The record does not show the reason for the substitution of the Vice Governor by the Highway District Engineer; and that of a member of the Provincial Board by the Register of Deeds.

Their substitutes are:

- (1) Melecio A. Genato, First Assistant Fiscal - Chairman
- (2) Miguel M. Guevara, Clerk of Court, CFI, NV - Member
- (3) Rodolfo Q. Agbayani, Deputy Clerk of Court - Member
- (4) Tomas P. Maddela II, Municipal Judge, Bayombong, Nueva Vizcaya - Member
- (5) Honorato A. Mendoza, Officer-in-Charge, DEC - Member
- (6) Ramon V. Purugganan, Register of Deeds - Member, and
- (7) Eulogio de Guzman, Div. Supt. of Schools – Member.

Section 159, Article XI of the Revised Election Code, provides:

"SEC. 159. Incapacity and substitution of provincial canvassers. - In cases of absence or incapacity for any cause of the members of the provincial board of canvassers, the Commission on Elections may appoint as substitutes the superintendent of schools, the district engineer, the district health officer, the register of deeds, the clerk of Court of First Instance, or the justice of the peace of the capital. In chartered cities the Commission may appoint the officers corresponding to those enumerated."

It will be seen right away that only (1) the Division Superintendent of Schools, Eulogio de Guzman; (2) the Register of Deeds, Ramon V. Purugganan; (3) the Municipal Judge of Bayombong, Tomas P. Maddela II; and (4) the Clerk of Court of First Instance, Miguel M. Guevara, are amongst those specific officials set forth in Section 159. In addition, (5) the Officer-in-Charge of the District Health Office, Honorato A. Mendoza, qualifies under Section 159 because at that time the District Health Officer had already retired. The District Engineer, Artermio Tiangco, should be the number (6) substitute. But he could not have been appointed as such because he was, though a substitute, one of those original members of the board who could not be located. To complete the membership under Section 158 to seven (7), the Provincial Fiscal should also be in. But his whereabouts, too, were unknown. In his absence, the First Assistant Fiscal headed the office. So, the appointment of First Assistant Fiscal Melecio A. Genato, as Chairman, was proper. The Assistant Provincial Fiscal acts for and in the absence of the Provincial Fiscal.

The result is that the only member of the substitute board whose official designation does not appear in Sections 158 and 159 is Deputy Clerk of Court Rodolfo Q. Agbayani.

The members of the substitute board of canvassers, who met on January 2, 1964 and signed the certificate of canvass and proclamation of respondent Patricio Dumlao as Governor-elect, are the following:

- (1) Melecio A. Genato - First Assistant Fiscal, Chairman
- (2) Tomas P. Maddela II - Municipal Judge, Bayombong, Nueva Vizcaya, Member
- (3) Miguel M. Guevara - Clerk of Court, Court of First Instance, Nueva Vizcaya, Member
- (4) Honorato A. Mendoza - Officer-in-Charge, District Health Office, Member, and
- (5) Rodolfo Q. Agbayani - Deputy Clerk of Court, Court of First Instance, Member and Secretary.

Two of the members of the new board, namely, Ramon V. Purugganan, Register of Deeds, and Eulogio de Guzman, Division Superintendent of Schools, were absent thereat.

Considering that there are seven members of the provincial board of canvassers, four constitute a quorum.^[13] Even if Agbayani were eliminated, still there is a quorum. This is composed of the first (4) in the list just mentioned. The result is that the certificate of canvass and proclamation of Patricio Dumlao is valid.

But we do not stop here. There is still the question as to whether or not Rodolfo Q. Agbayani, Deputy Clerk of Court, Court of First Instance, could legally be appointed as member of the substitute board, given the fact that he is not one of the officials designated in either Section 158 or 159.

Section 3, Article I of the Revised Election Code, provides that Comelec "may suspend from the performance" of "duties relative to the conduct of elections" any provincial, municipal, and city officials designated by law to perform such duties "who shall fail to comply with its instructions, orders, decisions, or rulings and appoint their temporary substitutes." Of course, whether the substitutes qualify under the law is another matter altogether. Adverting to Section 159 of the Revised Election Code, we find that the Comelec may appoint as substitutes the persons therein named, (1) the superintendent of schools, (2) the district engineer, (3) the district health officer, (4) the register of deeds, (5) the clerk of the Court of First Instance, or (6) the justice of the peace of the capital.

Unquestionably, if the officials just named are available, Comelec has no choice. They should first be harnessed into the service.

But the situation that the case before us presents, requires analysis. Pointed out earlier is the fact that, by statute (Section 158 of the Election Code), the provincial board of canvassers consists of seven members: the provincial governor; the three members of the provincial board; the provincial treasurer; the provincial auditor; and the provincial fiscal. There is a gap. For, all the seven were unavailable. And Section 159 following provides only for six substitutes.

Our view is that Deputy Clerk Agbayani was lawfully named as the seventh member of the board. His appointment - a necessity to complete the membership - is not assailed on the ground that he is not qualified to do the work of canvasser. In fact, we should say that with his position, he is presumed to be unbiased and with sufficient learning to perform the duties of a member of the board.

Canvassing and proclamation of provincial elective officials are matters of public concern. The Revised Election Code, we are sure, does not countenance unnecessary delay in proclamation. The interests of the province so demand. The law would not require that canvassing and proclamation be stopped, and resume only until such time as all the officials mentioned in Sections 158 and 159 would undertake to perform the task by the election law imposed upon them. True it is that coercive measures could be adopted. Comelec may institute contempt proceedings under Rule 64 of the Rules of Court.[14] It may even recommend to the President the removal of the said officials on grounds of non-feasance, malfeasance or misfeasance.[15] These measures alone, we are constrained to state, will only spawn further delays in the canvassing and proclamation.

We, therefore, hold that the appointment of Deputy Clerk Rodolfo Q. Agbayani as member of the substitute board of canvassers for the Province of Nueva Vizcaya, is valid.

As we reach this conclusion, we are not unaware of the decision of this Court in *Torres vs. Ribo*, 81 Phil. 44. But *Torres vs. Ribo* is not to be read as applicable here. In that case, of the six members required to constitute the board of canvassers, five made the first proclamation of November 22, 1947 declaring Mamerto S. Ribo elected to the office of Provincial Governor of Leyte. Four constitute a quorum. Two of the members, namely, substitutes Vicente Tizon, Assistant Civil Engineer, and Evaristo Pascual, Chief Clerk of the Division Superintendent of Schools, in the words of this Court, "acted without appointment, commission, or any color of title" (at p. 50). With these two eliminated, there was no quorum (at p. 51). Therefore, the proclamation was void. It is true that in the *Torres* case (p. 48) statement was made that the express enumeration in Section 159 of the Revised Election Code "excludes other officers" upon the principle of *expresio unius est exclusio alterius*. But our case is out of the area in which this principle is controlling. All those in Section 159 were - except when unavailable - taken in as substitutes. It just so happened that seven members are required by Section 158 and Section 159 provides only for a list of six substitutes. Necessarily, one must be taken from elsewhere. Verily, differences in basic facts between the *Torres* case and the present induce different legal conclusions. In the first, the substitutes were no substitutes at all; here, the substitutes were legal substitutes.

To conclude, we must say that in the resolution of the problems which here confront us, we have in mind the following guidelines drawn by the late Chief Justice Jose Abad Santos, thus:

"The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created - free, orderly and honest elections. We may

not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically - not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions."^[16]

The net result is that the certificate of canvass and proclamation of Patricio Dumlao as Governor-elect of the Province of Nueva Vizcaya, made by the substitute board of election inspectors on January 2, 1964 and confirmed by Comelec on January 4, 1964, is valid and binding.

We, accordingly, vote to dismiss the petition herein. Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, JBC, Dizon, Makalintal, Bengzon, Ruiz Castro, Angeles, and Fernando, JJ., concur. Zaldivar, J., did not take part.

[1] Emphasis supplied.

[2] Emphasis supplied.

[3] Emphasis supplied.

[4] 29 C.J.S., pp. 342-343.

[5] Emphasis supplied.

[6] Cauton vs. Commission on Elections, L-25467, April 27, 1967.

[7] This Court, in the Cauton case, *supra*, made the following pronouncement:

"x x x The Commission on Elections has a duty to enforce this law, and it has the duty to see to it that the election returns to be used for canvassing must be genuine and authentic, not falsified or tampered with. Where the election returns produced by the provincial treasurer have been shown to have been tampered or falsified, it is certainly within the power of the Commission on Elections to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns, x x x."

[8] Emphasis supplied.

[9] *Mintu vs. Enage*, L-1836, December 31, 1947; *Ramos vs. Commission on Elections*, 80 Phil. 722; *Abendante vs. Relato*, 94 Phil. 8; *Lacson vs. Commission on Elections*, L-16261, December 28, 1959; *Santos vs. Commission on Elections*, L-16413, January 26, 1960; *Chiongbian vs. Commission on Elections*, L-19202, December 11, 1961; *Albano vs. Arranz*, L-19260, January 31, 1962; *Olano vs. Ronquillo*, L-17912, May 31, 1963; *Javier vs. Commission on Elections*, L-22248, January 30, 1965; and *Cauton vs. Commission on Elections*, *supra*.

[10] *Olano vs. Ronquillo*, *supra*.

[11] *In pari materia*: *Santos vs. Commission on Elections*, *supra*.

[12] *Javier vs. Commission on Elections*, *supra*.

[13] *Santos vs. Commission on Elections*, *supra*.

[14] Section 5, Revised Election Code.

[15] Section 3, *id.*

[16] *Sumulong vs. Commission on Elections*, 73 Phil. 288, 294-295; *emphasis supplied*.

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