

CARLOS BATINO, JR., ESTEBAN MENDOZA, AGAPITO MENDOZA, LEOVIGILDO RAFOLS, CORNELIO MARZAN, REGINO PANGJULAN, AND MARCIAL DIMAPILIS, PETITIONERS, VS. HON. COMMISSION ON ELECTIONS,...*G.R. No. 53354. July 22, 1985*

Ponente: DE LA FUENTE, J.

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Petition for certiorari to annul and set aside the respondent Commission's resolution upholding the board of canvasser's exclusion of the election returns from Voting Centers Nos. 11 and 19, Tagaytay City,[1] the implementing Memorandum[2] and the Certificate of Canvass and Proclamation,[3] as well as all acts and proceedings subsequent thereto. It is also prayed therein that the Board of Canvassers for Tagaytay City be ordered "to canvass the [aforementioned] election returns ... and together with the canvass already made [with respect to] 26 election returns, to proclaim immediately the winning candidates, on the basis of such completed canvass of the 28 election returns." [4]

Petitioners Carlos Batino, Jr., Esteban Mendoza, Agapito Mendoza, Leovigildo Rafols, Cornelio Marzan, Regino Pangjulan and Marcial Dimapilis, together with herein respondent Benjamin Erni, were the Nacionalista Party (NP) candidates in the 1980 local elections for Mayor of Tagaytay City, Vice-Mayor and members of the Sangguniang Panglungsod of said city, respectively. Private respondents Hilario R. Maglabe, Jose Noel B. Benitez, Emmanuel P. Tolentino, Eufonio G. Erni and Jose A. Mojica, together with Ligaya Toledo, Tagumpay Reyes and Delia Bronquesa, were the respective standard bearers of the Kilusang Bagong Lipunan (KBL).

Tagaytay City was listed by respondent Commission as one of the "problem areas" in the 1980 local elections. A special action team of the Commission was accordingly assigned to Tagaytay City which was placed under its direct control and supervision. The canvass of the votes cast was made by the City Board of Canvassers at the central office of the Commission, which canvass was terminated on February 20, 1980. On the said date, after completion of its canvass of 26 election returns (excluding those of Voting Centers Nos. 11 and 19), the Board issued a unanimous ruling setting aside the two election returns from said voting centers and elevating the matter to the respondent Commission for resolution. The Board made no proclamation of the winning candidates on the basis of the 26 election returns. The parties were, thereafter, required by the said Commission to submit their respective position papers.[5]

On March 1, 1980, the respondent Commission issued its questioned resolution wherein it "declared as spurious or manufactured" the election returns from Voting Centers Nos. 11 and 19, and excluded the two returns from the canvass of votes. The Commission also directed the board of canvassers to convene immediately and upon completion of the canvass to "proclaim the winners". The Commission issued an implementing Memorandum on March 2, 1980. As directed, the Board completed its canvass and thereafter announced the final results,[6] to wit:

Name of Candidates

Votes obtained

Office of the Mayor

1. Hilarion R. Maglabe 3,116 (KBL)
2. Carlos B. Batino, Jr. 2,737 (NP)
3. Juan S. Napone 3 (IND)

Office of the Vice-Mayor

1. Noel Benitez 3,070 (KBL)
2. Esteban Mendoza 2,675 (NP)

Office of the Sangguniang Panglunsod

1. Benjamin Erni
2,726 (NP)
 2. Emmanuel Tolentino 2,649 (KBL)
 3. Agapito Mendoza 2,610 (NP)
 4. Eufronio Erni 2,607 (KBL)
 5. Jose Mojica 2,507 (KBL)
 6. Leovigildo Rafols 2,480 (NP)
 7. Ligaya Toledo 2,461 (KBL)
 8. Tagumpay Reyes
2,440 (KBL)
 9. Cornelio Maraan 2,425 (NP)
 10. Delia D. Bronquesa 2,425 (NP)
 11. Regino Panghulan 2,391 (NP)
 12. Marcial Dimapilis 2,279 (NP)
- (party affiliation supplied)

In this petition for certiorari, it is claimed that "had the election returns from Voting Centers Nos. 11 and 19 been canvassed and not nullified by the respondent Honorable Commission, petitioners Carlos Batino, Jr. and Esteban Mendoza would have been ... the duly elected City Mayor and Vice-Mayor, respectively, and their co-petitioners

Agapito Mendoza and Leovigildo Rafols would have been the duly elected second and third members, respectively, of the Sanggunian instead of being the third and sixth members thereof" and petitioners Maraan, Panghulan and Dimapilis "would have been ... the duly elected 4th, 5th and 6th members of the Sanggunian, respectively." [7]

The question raised by the petitioners for resolution is whether or not the respondent Commission gravely abused its discretion amounting to lack or excess of jurisdiction. The questioned resolution sets forth the findings and conclusions of the said Commission as follows:

"This Commission has taken into consideration the following circumstances in arriving at its finding that the election return for Voting Center No. 11 is spurious or manufactured: (1) The incident on January 18 and 19 when Mrs. Batino disrupted a conference of public school teachers with the Acting Election Registrar of Tagaytay, obviously sowing the seeds of fear psychologically among the public school teachers; (2) The intimidation made upon the members of the Comelec Special Action Team asking them to leave Tagaytay and let the intimidators alone; (3) The delay in the counting of the votes as reported by the Comelec Special Action Team, to await the trend in the other centers; (4) the issuance of the Certificate of Votes of candidates, dated January 30, 1980, when in fact, the counting was done only on January 31, 1980; (5) the use of five instruments of writing in the preparation of the election return, indicating that it was prepared by one who was not conversant with the nature of the paper on which the election return was printed; (6) the claim of Mrs. Concepcion Baybay, Chairman of the CEC that she did not know of the characteristics of the chemically treated paper of the election return, when in fact she was a veteran member of the CEC, having served as chairman for the same Voting Center in 1978, all these indicating collusion — either out of fear or volition with the perpetrators who manufactured the spurious election return; and (7) the other various election irregularities reported by the Comelec Special Action Team and the Acting Election Registrar of Tagaytay.

"xxx xxx xxx

"With respect to the election return from Voting Center No. 19, the Commission rules that the large percentage of excess number of voters over the number of votes or ballots cast is evidence that it is a spurious or manufactured election return which does not reflect the true will of the voters.

"In this Voting Center No. 19, the election return states that: (1) the number of registered voters is 512; (2) the number voters who actually voted is 469; (3) number of ballots found in the compartment for valid ballots is 315; (4) 10 valid ballots were withdrawn from the compartment, for spoiled ballots, for having been mistakenly placed therein.

"From the above figures it is difficult to explain how the number of voters who actually voted is 469, when the number of valid ballots is 315 plus 10 (from the compartment for spoiled ballots) or a total of 325. There were 469 voters and yet there are only 325 valid ballots. It is either that 144 ballots were spirited out of the ballot box, or actually only 325 voted, but the number of votes has been increased to 469 to favor certain candidates. There is here 144 in excess of the valid ballots numbering 325, or 44.3% of the actual votes cast. This very large percentage points to but one logical conclusion: the election return from Voting Center No. 19 was prepared without regard to the ballots in the ballot box, in other words, spurious or manufactured." [8]

In the case *Aratuc vs. Commission on Elections, et al.*, [9] it was pointed out inter alia, that "the certiorari jurisdiction" of this Court "over orders, rulings and decisions of the Comelec is not as broad as it used to be" and "should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process." Accordingly, We have "invariably followed" this principle: "in the absence of jurisdictional infirmity or error of law of the utmost gravity, the conclusion reached by respondent Commission on a matter that falls within its competence is entitled to utmost respect," as succinctly stated in the case of *Sido* [10] by the learned Chief Justice. And, according to the 1978 Election Code, the decisions, orders or rulings of the Commission in pre-proclamation controversies are "final and executory". [11]

Besides, the petitioners' challenge is basically directed against the sufficiency of evidence considered and relied upon by the Commission. Their petition calls for a "digging into the merits and unearthing errors of judgment," which is not proper in certiorari proceedings.[12] As a rule, factual findings of the Commission cannot be reviewed by this Court[13] and are binding provided they are supported by substantial evidence.[14] After all, the Commission is in a "peculiarly advantageous position" to decide political controversies[15] or "better position to appreciate and assess the vital circumstances closely and accurately".[16] We may disagree with its findings and conclusions as to which voting center should be excluded, "but still a case of grave abuse of discretion would not come out" unless it is clearly shown that it acted "whim-sicallly or capriciously or without any rational basis".[17]

As earlier noted, the matter passed upon by the respondent Commission was a pre-proclamation controversy over the exclusion of two election returns. Its decision was promulgated on March 1, 1980, or two months after the January 30, 1980 local election. Respondent Maglabe and the other private respondents were proclaimed the winning candidates on March 2, 1980. They forthwith took their respective oaths of office and assumed thereafter their respective elective positions, discharging since then the duties and functions thereof. This petition for certiorari was filed with this Court on March 12, 1980.

In several cases[18] arising from pre-proclamation controversies, this Court has spelled out the governing rule: A pre-proclamation case is no longer viable after the date of the election (January 30, 1980) if there was no pending petition before this Court as of said date and a proclamation of the winning candidate was thereafter made. The exception: where the questioned ruling was "issued by the Commission on Elections before the January 30, 1980 election" and the matter was "then elevated to this Court before such election, the issue thus presented should be resolved.[19] The instant case does not fall within the purview of said exception. Dismissal of the petition is thus warranted, without prejudice to appropriate proceedings being filed by the parties concerned in the proper forum so that there can be a full-dress hearing for the presentation of all relevant evidence on the factual and legal aspects, with observance of procedural due process and with confrontation and examination of the witnesses, etc.

WHEREFORE, the petition should be, as it is hereby, **DISMISSED** without prejudice to the filing of appropriate proceedings in the proper forum, if desired by the parties concerned, within a period of ten (10) days from notice.

IT IS SO ORDERED.

Makasiar, Plana, Escolin, Relova, Gutierrez, Jr., Cuevas, and Alampay, JJ., concur.

Teehankee, J., see separate dissenting opinion.

Fernando, C.J., Aquino, Conception, Jr., Abad Santos, and Melencio-Herrera, JJ., no part.

[1] dated March 1, 1980, Annex W, Petition; pp. 91-111, rollo.

[2] dated March 2, 1980, Annex Q, Petition; p. 84, id

[3] Dated March 2, 1980, Annex R, Petition; p. 85, id

[4] p. 43, id

[5] See Annex L, Petition, pp. 75-77, id; and Annex I, Answer of respondent Maglabe, pp. 214-235, id

[6] Annex R, Petition, *supra*.

[7] Page 19, rollo.

[8] pp. 109-111, rollo.

- [9] 88 SCRA 251, 272; Sabeniano v. Comelec, 101 SCRA 289, 311.
- [10] Sidro vs. Comelec, 123 SCRA 759, 762.
- [11] Sec. 175, 1978 Election Code; Omar v. Comelec, 102 SCRA 611.
- [12] Aratuc v. Comelec, supra, at p. 271.
- [13] Lucman v. Dimaporo, 33 SCRA 387.
- [14] Bashier v. Comelec, 43 SCRA 238.
- [15] Lava v. Lopez Vito, 73 Phil. 390; Sumulong v. Comelec, 73 Phil. 288.

[16] 88 SCRA 251, 256.

- [17] id, p. 255.
- [18] Venezuela vs. Comelec, 98 SCRA 790; Villegas vs. Comelec, 99 SCRA 582; Arcenas vs. Comelec, 101 SCRA 437; Singco vs. Comelec, 101 SCRA 420; Aguinaldo vs. Comelec, 102 SCRA 1; Laguda vs. Comelec, 102 SCRA 857; Agcaoili vs. Comelec, 103 SCRA 350; Mitmug vs. Comelec, 103 SCRA 455; Jagunap vs. Comelec, 104 SCRA 204; Mogueis vs. Comelec, 104 SCRA 576; Faderanga vs. Comelec, 105 SCRA 123; Pasion vs. Comelec, 109 SCRA 238; Disini vs. Comelec, 119 SCRA 511; and Resurreccion vs. Comelec, 127 SCRA 1.
- [19] See cases of Venezuela, Villegas, Arcenas, Singco, Aguinaldo, Pasion and Disini, supra, among others.

DISSENTING OPINION

TEEHANKEE, J.:

This is another pre-proclamation controversy where petitioners have questioned as arbitrary respondent Comelec's exclusion from the canvass of the returns from 2 out of 28 voting centers (with a total of less than 7,000 votes), thereby wiping out the winning margin of petitioners' ticket for the officials of Tagaytay City in the January 30, 1980 elections, only to be told now that the six-year term is about to expire, that their remedy is an election protest.

It should be stated, by way of explanation, that the case was originally assigned to Justice Antonio P. Barredo, who before his compulsory retirement on October 1, 1982 had circulated his proposed 35-page draft of decision setting and the Comelec's questioned exclusion of the two returns and ordering their inclusion in a re-canvass that would result in the proclamation of petitioners as the winners, subject to respondents being the ones to file a proper election protest, but his draft failed to muster the required concurrence of eight members of the Court. And so, the inevitable delay, while awaiting his replacement.

The petition recites a litany of grievances against Comelec actions, that in the trenchant language of my colleague, Mr. Justice Vicente Abad Santos, represents "another instance where the Commission on Elections did not live up to the high expectations of the people and of this Court. The vast powers entrusted to the Comelec by the Constitution and statutes should have given it a sober sense of responsibility. Instead it has even dealt unfairly with this Court. Add to this its flip-flopping resolutions and we have a constitutional body whose credibility has been seriously eroded"[1]

Petitioners' grievances are herewith reproduced, since they depict the complaints generally presented against the Comelec, in the hope that proper measures principally by the Comelec as well as by the law-makers may be taken

to prevent their recurrence and impression that its actions are less than objective and impartial:

"Grounds of the Petition

"Petitioners, with due respect to the Honorable Commission on Elections, respectfully submit:

"a) That the Resolution dated March 1, 1980 of the Honorable Commission on Elections, let alone the manner in which it was antedated, is an arbitrary, whimsical and capricious exercise of discretion and shocking and grave abuse thereof amounting to an excess of or without jurisdiction;

"b) That the precipitate relief without any valid and justifiable reason at 10:00 o'clock in the evening of a Sunday, March 2, 1980, of the members of the Board of Canvassers, namely: Atty. Benjamin Cariño, Salvador Empaynado and Alan Guro, by respondent Honorable Commission on Elections and the simultaneous appointment of respondents Attys. Antonio Evangelista, Rodolfo Lopez and Ricardo Guirnalda in their stead apparently to railroad, as it did the implementation of its Resolution, is an arbitrary, whimsical and capricious exercise of discretion and a grave abuse thereof amounting to an excess of or without jurisdiction;

"c) That without any form or mode of service of a copy of the Resolution in question on herein counsel, the same may not produce any legal effect and, therefore, its immediate execution and implementation, let alone on a Sunday night, is void and illegally deprived petitioners of their constitutional right to due process of law;

"d) That the failure and lack of service on herein counsel of the implementing memorandum, and the actual implementation thereof by respondents Evangelista, Lopez and Guirnalda without notice to, and in the absence of, herein counsel or his duly authorized representative, constitutes a flagrant violation of the constitutional rights of petitioners to due process;

"e) That while the canvass process was unusually, unreasonably and scandalously delayed and protracted, the undue haste, on the other hand, with which the Resolution of March 1, 1980 was implemented, renders such implementation null and void

"f) That the Resolution of respondent Honorable Commission is illegal, void and unconstitutional as it disenfranchised 1,060 (591 in Voting Center No. 11 and 469 in Voting Center No. 19) out of less than 7,000 voters who actually voted;

"g) That assuming without admitting that valid and legally sufficient grounds exist justifying the exclusion from canvass of the returns from Voting Centers Nos. 11 and 19, failure of election necessarily results in the territories involved in said voting centers and inasmuch as the election therein affects the result and determines the final outcome of the elections in Tagaytay City, respondent Honorable Commission should have ordered a special election in said territories involved, so that, not having done so but instead illegally railroaded the canvass and proclamation of the parties above-mentioned, respondent Honorable Commission committed a grave abuse of discretion and acted without or in excess of jurisdiction."

What the Comelec did here, after protracted delay in the prompt canvassing and proclamation of the winners as mandated by the law was one month later and without previous notice to replace the board of canvassers, order the exclusion as "spurious and manufactured" of two authentic returns (which wiped out petitioners' winning margin) and the proclamation of their opponents.

Specifically, the questioned Comelec actions on the two returns which it ordered to be excluded from the canvass are:

1. Flip-flopping on the exclusion of Voting Center 11 return per its questioned resolution of March 1, 1980, when in a previous resolution of February 5, 1980 it had already denied respondent Mag-labe's petition for exclusion of said return on the ground of being "obviously manufactured," and ruled "that the grounds alleged in Maglabe's petition are grounds proper for an election protest;" and

2. Motu proprio ordering the exclusion of the Voting Center 19 return as "spurious or manufactured," when not even respondent Maglabé had ever questioned it nor included it in previous petitions for its exclusion.

The improper exclusion of these two returns from Batino's bailiwicks served to wipe out the winning margin of Batino over Maglabé of 131 votes and to give Maglabé a "winning" margin of 379 votes.

With all the 28 voting center returns properly counted, without exclusion, Batino is the clear winner over Maglabé with a margin of 131 votes (3,477 for Batino against Maglabé's 3,346 votes).

In Voting Center 11 (with 591 votes cast, well within the total number of registered voters), petitioner Batino obtained a majority of 337 votes against Maglabé (445 against 100 votes). In Voting Center 19 (with 469 votes cast, well within the total of 512 registered voters), petitioner Batino obtained a majority of 165 votes against Maglabé (295 votes against 130 votes). So, petitioner Batino's total margin in these two voting centers was 510 votes.

With the exclusion of the 2 returns, Batino was deprived of the 740 votes cast therein in his favor while Maglabé lost only the 230 votes he garnered therein. Batino thereby suffered a net loss of 510 votes, which wiped out his winning margin of 131 votes over Maglabé. This resulted in a net gain and "winning" margin for Maglabé of 379 votes (3,116 votes for Maglabé against Batino's greatly reduced 2,737 votes).

Retired Justice Barredo, ponente of the much-invoked and often-misapplied ruling in *Aratuc vs. Comelec*^[2] dealt specifically with the said questioned Comelec actions and found them to be totally untenable. With his consent, I have adopted the pertinent portions thereof, which are reproduced hereinbelow. His exposition on the limitations of *Aratuc* should likewise be illuminating.

Overview of wrongful exclusion of the 2 returns

"In any event, putting and for later resolution in a more appropriate case where the legal import of the abdication, so to speak, of a board of canvassers of its prerogatives in such situations should be inevitably decisive or pivotal, We note, at the outset, that in regard precisely to the validity of the election returns herein involved (those from Voting Centers 11 and 19), it is an uncontroverted fact that earlier, herein respondent Maglabé had already filed with the Comelec a petition for the annulment of the election returns in Voting Centers 10, 11, 12, 16, 20-A, and 20-B, on the grounds, inter alia, that the election returns therefrom are obviously manufactured, invoking precisely the purported report dated January 31, 1980 of an Atty. Edgar Talingdan, to which We shall refer more particularly later, and the report also of Mrs. Teresita C. Baybay, acting election registrar of Tagaytay on February 1, 1980, which petition was even amended on February 6, 1980 to include the election returns from Voting Centers 3, 5, 8, 8-A, 9 and 9-A. Thus, the return from Voting Center No. 19 was not included in any of said petitions. Acting thereon, on February 5, 1980 the Comelec issued its resolution No. 8910, Annex C of the petition herein, DENYING them, 'considering', per the resolution, 'that the grounds alleged in the petition are grounds proper for an election protest.' In other words, after having already resolved that the grounds alleged by herein private respondents are more proper in an electoral protest insofar as the return from Voting Center No. 11 is concerned, and notwithstanding that the return from Voting Center No. 19 was never earlier questioned, in its resolution herein challenged, Comelec nevertheless rather strangely took it upon itself to order that said returns be not included in the canvass.

"To Our mind, such unusual actuation is reason enough, why despite Our recognition in *Aratuc vs. Comelec*, 21 SCRA 251, of the broader powers of the Commission on Elections under the present Constitution, compared to those in the Old Charter, the Court has deemed it warranted that it pass squarely on the issues raised in the petition at hand. As much as possible, the Supreme Court prefers to leave the resolution specially of factual matters relative to elections to the Comelec, absent a showing of arbitrariness, caprice and grave abuse of discretion. But

where the Commission reverses itself without any stated, much less plausible ground, or acts on the basis of obviously unsubstantial evidence which this Court has examined and scrutinized for its own satisfaction, it is better in the public interest and for more reassuring protection of the integrity of suffrage, regarding which the Constitution by necessary implication authorizes the Supreme Court to supervise the Comelec, it would not be keeping faith with Our oath of office if We did not act accordingly as the situation, as We see it in God's light, demands. Accordingly, We resolved to give the instant petition due course." (Emphasis supplied)

Specifically, on Voting Center 19

"In other words, the Comelec found it mystifying that whereas, in said return, according to the figures appearing on the blank for 'total number of ballots found in the box for valid ballots' are 3, 1 and 5 or 315, on the blank for 'total number of voters who actually voted,' the figures are 4, 6 and 9 or 469 and on that basis alone instantly jumped to the conclusion that there were 144 ballots missing and yet counted or tallied in spite of the fact that they did not exist.

"What is at once striking, in this connection, is that nowhere in the impugned resolution of March 1, 1980 is there any indication that Comelec made any honest effort to unravel the 'mystery', if it was so. Nor does the Solicitor General's answer on behalf of the Commission try to add a bit to the latter's rationalization.

"The truth of the matter, however, is that there was substantial evidence before the Commission reasonably and believably clarifying the seeming irregularity that speciously baffled it. The chairman, Sofia Bañanola and poll clerk, Felisa V. Olivar, both public school teachers, of the voting centers in question gave statements under oath that the 'mysterious' 315 was merely the result of their error in addition, considering how tired they were, having worked continuously the whole day for long hours up to their preparation of the return. They explained that in their weariness they did not actually count anymore the number of ballots in the box for valid ballots but just added the votes of the two candidates for mayor which totalled 425, 10 of which were found in the compartment for spoiled ballots, hence, the probability that the 315 did not include those 10 which came from the compartment for spoiled ballots.

"Totally ignoring, however, such explanation given by two public school teachers in connection with the performance of the additional public functions imposed upon them by law, Comelec conjectured that in the return at issue, it must have been made to appear that the number of voters who actually voted was 469 'to favor certain candidates.' It does not appear that there was any report or statement whatsoever supporting such deduction. And, as We see it, there is actually nothing strange in 469 voters voting in a voting center with 512 registered voters. The other way around would, indeed, have somewhat had the appearance of anomaly, that is, if only 325 voters out of 512 had voted. Besides, to practically accuse the two public school teachers concerned of bad faith and fraud on the basis of mere conjecture, in the absence of any evidence whatsoever of partisanship or favoritism on their part and in the face of their sworn explanation of an error in addition which anyone in their situation, tired and fatigued after more than three quarters of a day of continuous work, could have committed, is to unjustly degrade the integrity and moral uprightness of the public school teachers who have been precisely chosen to replace partisan election inspectors.

"It is of much relevancy to point out again at this juncture that in their earlier petitions questioning some returns, which the Comelec denied, that Voting Center No. 19 was never included, thereby indicating that the present incident involving the same is but a desperate afterthought. Moreover, the members of the Court have examined minutely the Comelec copy of the said return, and We have been unable to perceive anywhere thereon what would usually appear as badges of irregularity or indicia of any improperly motivated alterations. We believe that what happened with the preparation of the election return in Voting Center No. 19 could have happened in

numberless other voting centers. We, therefore, consider Comelec's complete disregard of the explanation, reasonable and plausible, in Our view, of the chairman and poll clerk aforementioned of the number 315, a grave abuse of discretion which in the interest of plain justice and truth, this Court is called upon to correct. Accordingly, We hold that the elimination of the return in question from the canvass is unwarranted. If respondents feel that the shallow conjecture of the Comelec is indeed factual, they have the remedy to prove that point on the basis of actual evidence, not on mere inferences and deductions, in an electoral protest." (Emphasis supplied)

Specifically, on Voting Center 11

"The circumstances related to the return from Voting Center No. 11 are less simple, albeit the Comelec reasoning in annulling the same suffers from and reveals the same tendency on its part, as in the case of Voting Center No. 19, to make a mountain out of a mole hill. It branded innocuous features of the said return as cardinal violations of some of its rule as governing the preparation of returns and paid no heed whatsoever to the realities of the situation.

"We are not impressed, in the light of all relevant circumstances extant in the records before Us, that the grounds thus relied upon and the conclusion of the Comelec based thereon constitute sufficient legal obstacles for Us, in the light of Aratuc, not to disturb its action complained of in the petition herein. The answers of the private and public respondents argue mainly that under jurisprudential precedents this Court is bound to uphold the conclusions of the Comelec, particularly on factual matters, absent any well-founded showing of manifest arbitrariness and/or grave abuse of discretion and when there is substantial evidence to support the same. While, indeed, We recognize it as constitutionally grounded that Our certiorari prerogatives in electoral proceedings should be exercised as sparingly as possible, to the end that the Commission on Elections, which has been specially established in the Constitution for the purpose and is thus more adequately equipped and better situated than the Supreme Court to evaluate evidence in proclamation controversies, may attain full status as the constitutional guardian of the honesty, purity and orderliness of elections, and as the 'sole judge,' in fact, of all election contests, whether local or national, We are of the considered view, however, that the people's faith in the electoral processes in this country would be firmer and more unshakable, if this Court were to exercise its certiorari jurisdiction in instance where there are, as in the instant case, discernible earmarks of deviation from the requirements either of due process or the demands of elementary fairness and justice. A decision of the Comelec or of any judicial or quasi-judicial body which is not supported by substantial evidence is an affront to the rule of law and must accordingly be struck down as being of no legal value at all." (Emphasis supplied)

On my part, I have always maintained that "The Court's decision in Aratuc — with a bare majority of eight, of whom only two remain with the Court as of now[3] — itself recognized that "the effects of an error of judgment may not differ from that of an indiscretion" and it is "reserved to the Supreme Court to insure the faithful observance of due process (only) in cases of patent arbitrariness." [4] The late Chief Justice Fred Ruiz Castro squarely asserted this Court's power to set aside errors of judgment and law as tantamount to grave abuse of discretion, asserting in his dissent (concurring in by Justices Felix V. Makasiar and Ameurfina Melencio Herrera) that "I squarely traverse the statement that no grave abuse of discretion can be imputed to the Comelec. The grave misgivings I have above articulated demonstrate what to my mind constitute the size and shape of the remissness of the Comelec. And more compelling and overriding a consideration than the over-wrought technicality of 'grave abuse of discretion' is the fundamental matter of the faith of the people of Region XII in the electoral process. There will always be the nagging question in the Minds of the voters in that Region as to the legitimacy of those who will be proclaimed elected under the Comelec resolution should the Court refuse to direct that body to continue the meticulous search for legitimacy and truth." [5] The same is fully applicable to the fundamental

matter of the faith of the people in the electoral process anywhere else in the country, and specifically, to the city and electorate involved in the case at bar.

I had likewise stressed in my separate dissenting opinion in *Garcia vs. Comelec*[6] which is of application here, *mutatis mutandis*, that "(T)he broad powers given to Comelec under the 1973 Constitution merely incorporate the liberality with which the Court has always treated the Comelec's performance of its duty to guard against the use and inclusion of false, tampered or manufactured returns as per the cases of *Usman* and *Aratuc* cited in the majority opinion. This does not mean that Comelec may flip or flop as it wishes in any given case. It is governed by the decisive criterion of the law and the controlling doctrinal jurisprudence... Where Comelec goes against the law and controlling jurisprudence, it commits a grave abuse of power and discretion and the Court must strike down its arbitrary action, if it is not to abdicate its responsibility of judicial review under the Constitution and 'slip into a judicial inertia.'"[7]

Finally, I regret to note that the Comelec has again in this case applied a double standard against petitioners in not applying the established doctrine and jurisprudence that where there is actual voting, election returns must be accorded *prima facie* status as bona fide reports of the result of the count of the votes for canvassing and proclamation purposes, without prejudice to the matter being threshed out through proper evidence in an election protest. (*Bashier vs. Comelec*[8] and *Anni vs. Izquierdo*[9] In *Gadon vs. Gadon*,[10] the Court stressed that "the disenfranchisement of electors is not to be declared except upon the strongest evidence of an intention to prostitute the purity of suffrage." The Comelec, particularly, is well aware of this basic doctrine, having generally applied it in numerous pre-proclamation cases, such as in the last election for assemblyman in Antique, where it ruled that "In the absence of clear and convincing evidence that said returns are tampered they can not be excluded. We need not emphasize the legion of settled jurisprudence that a conclusion that an election return is obviously manufactured or false and should consequently be disregarded in the canvass must be approached with extreme caution and only upon the most convincing proof. The resulting disenfranchisement of those who exercised their right of suffrage by a reckless and outright nullification should be avoided."[11] The trouble is that in selected cases, as in the case of Assemblyman Pimentel of Cagayan de Oro City,[12] it just disregarded the doctrine and disenfranchised 29,937 voters by excluding the returns from 87 voting centers comprising one-fourth of the entire electorate on the basis of 87 self-serving partisan affidavits (1 affidavit per voting center) and in many other cases such as the case at bar similarly disenfranchised the voters in selected voting centers — just 2 returns representing 740 votes out of 1060 votes cast therein for petitioner Batino and his ticket, but whose arbitrary nullification (1 return was not even questioned but excluded *motu proprio*) completely altered the result in favor of their opponents.[13]

Accordingly, I vote to grant the petition to set aside Comelec's questioned exclusion of the two returns.

[1] *Ticzon vs. Comelec*, 103 SCRA 671, 739.

[2] 88 SCRA 251 (1979).

[3] Of the eight member majority, only Chief Justice Fernando and Justice Hermogenes Concepcion Jr. remain in the Court. The other six, namely, Justices Antonio P. Barredo, ponente, Felix Q. Antonio, Guillermo S. Santos, Ramon C. Fernandez, Juvenal K. Guerrero and Pacifico de Castro are now retired. Justices Teehankee, Aquino and Abad Santos took no part.

[4] *Idem*, at page 271.

[5] *Idem*, at page 287.

[6] 105 SCRA 250, 311.

[7] NLRB vs. Brown, 13 Law Ed. 2d 839.

[8] 43 SCRA 263.

[9] 57 SCRA 705.

[10] 9 SCRA 661.

[11] PPC Nos. 33-84 and 88-84 entitled "Evelio B. Javier vs. Provincial Board of Canvassers and Arturo F. Pacificador;" emphasis supplied.

[12] G.R. No. 68113, Dec. 19, 1984.

[13] See G.R. No. 68351-52, Padilla vs. Perez, July 9, 1985.

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