

LEONOR A. GARCIA, PETITIONER, VS. THE HONORABLE COMMISSION ON ELECTIONS, THE CITY BOARD OF CANVASSERS OF CABANATUAN CITY COMPOSED OF EDILBERTO B. REGALADO AS CHAIRMAN AND MELVIN...

G.R. No. 53793. June 29, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The subject of the instant certiorari proceedings is the resolution of the COMELEC dated March 27, 1980 in Pre-Proclamation Case No. 44 entitled "In Re: Petition for Nullification and/or Exclusion of Election Return, etc.; Honorato C. Perez, Sr., petitioner" and the minute resolution of the COMELEC dated April 16, 1980 denying the motion for reconsideration filed on March 31, 1980 by herein petitioner, Leonor A. Garcia, in said pre-proclamation case.

The records show that herein petitioner, Leonor A. Garcia, was the official candidate of the Lapiang Pag-kakaisa ng Bayan (LPB) for the position of mayor of the city of Cabanatuan in connection with the January 30, 1980 local elections.

Private respondent Honorato C. Perez, Sr. was the incumbent mayor of Cabanatuan City prior to the January 30, 1980 local elections. He was the official candidate for the same office under the banner of the Kilusang Bagong Lipunan (KBL).

On January 30, 1980 the City Board of Canvassers for Cabanatuan City with City Election Registrar Wilfredo Navarro as chairman, convened and started the canvass of the election returns for the City of Cabanatuan.

On January 31, 1980, herein private respondent Honorato C. Perez, Sr. filed a petition with the re-spondent Board of Canvassers of Cabanatuan City praying for the suspension of the canvass and proclamation of the winning candidates for the office of city mayor and vice mayor of Cabanatuan City on the ground that in various voting centers/precincts in 18 barangays, the votes cast for the KBL were not credited in their favor in spite of protests made by KBL watchers, thus rendering said election returns in the 18 barangays mentioned in private respondent's petition defective; and that the votes/ballots in question are of sufficient quantity to substantially affect the results of the elections. In said petition, herein private respondent further prayed that a recounting of the ballots be ordered (Annex "B", pp. 73-74, rec.).

Also on January 31, 1980, a telegram was sent by the chairman of the COMELEC to Atty. Wilfredo Navarro, in his capacity as chairman of the City Board of Canvassers for Cabanatuan City, the contents of which read:

"IN VIEW PETITION FILED BY KBL CANDIDATE HONORATO PEREZ ALLEGING RAMPANT PARTICIPATION OF FLYING VOTERS CMA MASSIVE TERRORISM AND VOTE BUYING AND CONSIDERING THE SAME TO BE IN DUE FORM CMA YOU ARE HEREBY INFORMED THAT COMMISSION HAS RESOLVED TO SUSPEND THE CANVASS OF THE RESULTS OF THE

ELECTION FOR MAYOR THAT CITY AFFECTING ALL VOTING CENTERS STOP NOTIFY ALL PARTIES CONCERNED STOP YOU ARE HEREBY INSTRUCTED TO SECURE PROPER GUARDS TO ENSURE THAT INTEGRITY OF RETURNS IS PROTECTED STOP ACKNOWLEDGE RECEIPT HEREOF AND ACTION TAKEN END COMMISSION ON ELECTIONS

LEONARO B. PEREZ

CHAIRMAN" (Annex "A", p. 59, rec.).

On February 1, 1980 private respondent filed an amended petition dated January 31, 1980, this time before the COMELEC praying "for exclusion and/or annulment of election returns, suspension of canvassing and proclamation, and for annulment of certificates of candidacy of Lapiang Pagkakaisa ng Bayan (LPB) candidates in the City of Cabanatuan" on the grounds that herein petitioner, Leonor Garcia, has resorted to "massive vote-buying", "terrorism", "rampant participation of flying voters", non-counting of KBL votes in favor of KBL candidates and other election irregularities committed in various voting centers/precincts, including those in Barangay Aduas, Dimasalang, Bantug Bulalo, San Isidro and Supermarket (Annex "C", pp. 76-79, rec.).

On the same day that the amended petition of private respondent was filed, that is, on February 1, 1980, respondent COMELEC, pursuant to its Resolution No. 1430 (4), sent to Cabanatuan City a COMELEC Special Action Team No. 9, composed of Lt. Col. Francisco V. Samala, Atty. Benigno R. Lapitan, and Atty. Jose Balbuena, members, to "exercise direct and immediate supervision and control in the area of assignment over all COMELEC personnel and law enforcement agencies, government officials and their personnel whenever placed under COMELEC deputation or control" and transmitted to Atty. Wilfredo Navarro, chairman of the Board of Canvassers of Cabanatuan City, the following memorandum:

"MEMORANDUM TO: ATTY. WILFREDO NAVARRO

City Election Registrar

Cabanatuan City

"This is to officially inform you and the City Board of Canvassers of Cabanatuan City that Lt. Col. Francisco V. Samala of Comelec Special Action Team No. 9 had a direct telephone talk with Chairman Leonardo B. Perez who reaffirms the authenticity of the telegraphic order dated January 31, 1980 to you to suspend the canvass of the results of the election for mayor in Cabanatuan City.

"The Chairman further said that you will be held in contempt and declare all proceedings null and void should your Board disobey the above-mentioned COMELEC order.

COMELEC SPECIAL ACTION TEAM NO. 9

s/t LT. COL. FRANCISCO V. SAMALA

Member

s/t ATTY. BENIGNO R. LAPITAN

Member

s/t ATTY. JOSE BALBUENA

Member"

On February 2, 1980 the City Board of Canvassers of Cabanatuan City proclaimed herein petitioner, Leonor Garcia, and her running mate, Dr. Romeo Ortiz, as the elected city mayor and city vice mayor of Cabanatuan City

and also proclaimed all the eight (8) candidates of the KBL as the winning candidates for the Sangguniang Panglungsod of Cabanatuan City (Annex "D", p. 80, rec.) "notwithstanding the aforestated orders of the COMELEC suspending the canvassing and proclamation" (p. 60, rec.).

On February 4, 1980 private respondent filed before the COMELEC an urgent ex-parte motion to declare proclamation null and void (Annex "E", pp. 82-86, rec.).

On February 5, 1980 private respondent Perez filed a second amended petition before the COMELEC alleging, among others, that the incumbent Governor Eduardo Joson of the province of Nueva Ecija, a KBL candidate, did not support private respondent's candidacy but instead helped and supported the candidacy of herein petitioner by utilizing the military as well as armed supporters of the incumbent governor in subverting the will of the electorate of Cabanatuan City by resorting to massive fraud, terrorism, vote-buying and other election irregularities (Annex "F", pp. 87-92, rec.).

On February 6, 1980, acting on the petition filed by herein private respondent and the report of the Special Action Team sent to Cabanatuan City stating that the canvass of votes by the City Board of Canvassers was made in the presence of armed men who exerted pressure on the said Board, respondent COMELEC set aside the proclamation earlier made by the City Board of Canvassers and constituted a new Board of Canvassers. The COMELEC likewise ordered the transmission of all the election returns to the central office for the purpose of recanvass (Annex "G", p. 94, rec.).

Subsequently, herein petitioner filed an action with the Supreme Court to stop respondent COMELEC from implementing its resolution of February 4, 1980 but said petition was dismissed (Annex "H", p. 95, rec.).

Consequently, on February 26, 1980, the new City Board of Canvassers, headed by Edilberto Regalado as chairman, commenced the recanvass of the election returns during which herein private respondent presented before the board his documentary evidence; the recanvass resumed the following day, February 27, and up to February 28, 1980.

On February 29, 1980, petitioner submitted to the new Board of Canvassers her documentary evidence.

On March 3, 1980, private respondent filed before the same board his memorandum dated March 3, 1980 in support of his contention seeking the nullification and/or exclusion of all election returns pertaining to forty (40) voting centers in nine (9) barangays of Cabanatuan City, namely:

Barangay Voting Center No.

1. Aduas 1, 2, 2-A, 3, 4, 5, 5-A, 6,
7, 7-A, 8, 8-A or 13, 9,
10, and 10-A;
2. ACCFA (San Juan) 1, 1-A or 2;
3. Bantug Bulalo 1, 2, and 3;
4. Dimasalang 1, 2, 3, 4 and 5;
5. Fatima 1, 2, and 3;
6. San Isidro 1 and 2;
7. San Josef Norte 1, 2, 3 and 4;

8. San Roque 1, 2 and 3; and

9. Supermarket 1.

These election returns were questioned or contested by private respondent Perez on various grounds, including rampant terrorism, gun-point preparation of ballots, wanton vote-buying, participation of flying voters, connivance and collusion with the members of the Citizens Election Committee (Annex "J", pp. 171-184, rec.).

On March 5, 1980, herein petitioner filed her memorandum before the Board praying that all the election returns in all the voting centers in the nine (9) barangays contested by private respondent be included in the canvass for being authentic and genuine, not false or manufactured (Annex "K", pp. 185-200, rec.).

On March 5, 1980 the City Board of Canvassers issued a resolution, pertinent portions of which read:

"xx xx xx.

"In the assessment of the evidence submitted, both for and against, the board was guided by the controlling fundamental principles on the extent of the powers of boards of canvassers.

"‘The canvassing board is merely a ministerial body. It is empowered only to accept as correct, returns transmitted to it which are in due form, and to ascertain the result as appears therefrom’ (18 Am. Jur. p. 346) x x x. ‘The canvassers are to be satisfied of the genuineness of the returns, that is, that the papers presented to them are not forged or spurious, that they are the returns, and are signed by the proper officers; but when so satisfied they may not reject any returns because of informalities in them or because of fraudulent practices in the election’ (Sangki vs. Commission on Elections, Dec. 26, 1967, 21 SCRA p. 1397 citing Dizon vs. Provincial Board of Canvassers) x x x.

"It is within this context that the Board hereby rules on the evidence submitted, as follows: Exhibits A, A-1, A-2, A-3, B, B-1, B-2, B-3; Exhibits J & J-1 insofar as they allege terrorism, vote-buying and other irregularities committed during the election in Cabanatuan City; Exhibits L to L-8 inclusive; Exhibits M to M-16, inclusive, insofar as they allege the commission of anomalies in the election, the presence of armed men, misreading of ballots by the citizens election committee, refusal of the citizens election committees to recognize the watchers of candidate Honorato Perez and allow them to observe the proceedings in the voting center, vote-buying and coercion of voters into voting for a particular candidate; Exhibits N to N-4 insofar as they allege irregularities in the voting, vote-buying and coercion of voters; Exhibits O to O-6; Exhibits P to P-8 insofar as they allege the presence of armed men within the vicinities of the voting centers, coercion of voters, wrong appreciation of ballots, irregular voting procedures and refusal of the citizens election committees to recognize KBL watchers and to allow them to observe the proceedings in the voting center; Exhibits Q to Q-3 insofar as they allege that many flying voters were allowed to vote, irregular voting procedure, coercion of voters, vote-buying, presence of armed men and refusal of the citizens election committees to allow the KBL watchers to observe the proceedings in the voting center; Exhibits R to R-3; Exhibits T to T-5 insofar as they allege coercion of voters, wrong appreciation of ballots, the presence of armed men, irregular voting procedures, and refusal of the citizens election committees to recognize KBL watchers and allow them to observe the proceedings in the voting center; and Exhibits S to S-4 are all not admitted for the reason that the grounds alleged therein are not proper grounds for exclusion of election returns during canvassing by the board of canvassers. ‘The question of whether or not there had been any terrorism, vote-buying and other irregularities in the election should be ventilated in a regular election protest and not in a petition to enjoin the board of canvassers from canvassing the returns’ (City Board of Canvassers of Tacloban City, et al vs. Moscoso, et al., GR No. L-16365, Sept. 30, 1963).

"Exhibits D-1 to D-4, E, F, G to G-3, H to H-3, 1 to 1-1, J-3, J-3, K to K-2, U to U-1, 'V' (adopted as Exh. '15' by Garcia) W to W-1, X to X-1, Y, Z, BB, CC, DD, EE, and FF are likewise not admitted as being irrelevant and immaterial to the issues at bar.

"Exhibits M-3, M-4, M-5, M-6, M-10, M-13, M-14 insofar as they allege that the election returns were not prepared by the members of the citizens election committees of voting centers 1-A, 2, 2-A, 3, 6, 8 and 8-2, respectively, of Barangay Aduas; Exhibit N-1 insofar as it alleges that the returns in Voting Center No. 1 and 2 of Barangay Bantug Bulalo were made under the supervision of the leaders of candidate Leonor Garcia and Governor Joson; Exhibit P-7 insofar as it alleges that the returns in Voting Center No. 3 of Barangay Fatima was not prepared by the citizens election committee; Exhibit Q-1 insofar as it alleges that the election return of Voting Center No. 2 of Barangay San Isidro was not based on the actual votes cast in said center as the citizens election committee of said center did not count the votes cast; Exhibit T-2 insofar as it alleges that the election return in Voting Center No. 1 of Barangay Supermarket was a manufactured return for the reason that no counting of the votes was actually conducted by the citizens election committee of said center, are all admitted.

"In refutation of the statements in the foregoing admitted exhibits, candidate Leonor Garcia has submitted affidavits executed by the citizens election committees of the aforementioned voting centers testifying to the fact that they (the citizens election committees) canvassed the votes cast, that they prepared the election returns personally; and, that said election returns contain the true and correct results of the election held in their respective voting centers (Exhibits 1-B, 1-C, 1-D, 1-E, 1-I, 1-L, 1-M, 7-C, 6-A); 9-A (joint affidavit of the Barangay Council and the Kababaihang Barangay and watchers of the LBP). The foregoing exhibits submitted by candidate Leonor Garcia are admitted. The other exhibits submitted by candidate Leonor Garcia are rejected as being immaterial and irrelevant.

"xxx xxx xxx xxx.

"It is, therefore, the ruling of this Board that all the forty (40) contested election returns should be included in the canvass for Cabanatuan City" (pp. 46--50, rec.).

Likewise, in its session on the same day, March 5, 1980, the City Board of Canvassers informed the parties that the canvassing of the forty (40) contested election returns will begin on the following day, March 6, 1980 (Annex "L", p. 206, rec.).

On March 6, 1980 the board convened and proceeded with the canvass and the result was that petitioner, Leonor Garcia, obtained 27,618 as against 25,391 votes obtained by respondent Perez (Annex "1", p. 229, rec.).

On March 6, 1980 private respondent herein filed a notice of appeal with urgent ex-parte motion for suspension and/or deferment of canvass pending resolution on appeal dated March 6, 1980 before the COMELEC (Annex "N", pp. 218-220, rec.) questioning the March 5, 1980 resolution of the Board of Canvassers and reiterating the same grounds raised in private respondent's petition filed before the Board.

Acting on the appeal of respondent Perez, the COMELEC issued an order dated March 6, 1980 restraining the proclamation of the winners in the canvass held by the City Board of Canvassers (Annex "O-1", p. 223, rec.).

Immediately upon receipt of the restraining order issued by the COMELEC, herein petitioner filed a motion for reconsideration dated March 6, 1980 (Annex "P", pp. 224-228, rec.).

On March 11, 1980, without acting on the motion for reconsideration filed by petitioner, respondent COMELEC heard the case wherein the parties, assisted by their respective counsels, presented oral arguments, dispensed with presentation of testimonial evidence and agreed to submit the case after filing their respective memoranda.

On March 14, 1980 herein private respondent submitted his supplementary memorandum before the COMELEC (Annex "O", pp. 231-251, rec.); and on March 17, 1980 petitioner herein submitted her supplementary memorandum (Annex "R", pp. 252-273, rec.).

On March 27, 1980 respondent COMELEC issued a resolution the dispositive portion of which reads:

"WHEREFORE, in view of all the fore-going considerations, the Commission is of the considered opinion and so holds as follows:

"1. To grant the instant appeal of herein petitioner and the City Board of Canvassers is hereby ordered to exclude from the canvass the forty (40) questioned election returns;

"2. To order the City Board of Canvassers to proclaim immediately the winning candidates based on the result of the recanvass after excluding the election returns as mentioned and specified in paragraph No. 1 hereof.

"3. This resolution is without prejudice to the right of any of the parties to file an election protest within the period of ten (10) days from the proclamation to be made as herein provided, and other criminal charges as they may deem proper and necessary" (Annex "A", p. 71, rec.).

On March 27, 1980 herein petitioner filed before the COMELEC an urgent ex-parte motion to hold in abeyance implementation of the said resolution by the COMELEC dated March 27, 1980 (Annex "S", pp. 281-282, rec.).

In spite of said urgent ex-parte motion, the City Board of Canvassers convened and proceeded to canvass the election returns pursuant to the resolution of the COMELEC dated March 27, 1980, resulting in the proclamation of respondent Perez as the winner in the mayoralty race with 22,179 votes over petitioner who obtained 20,071 votes in Annex "T" (p. 283, rec.) or 20,068 votes as stated at the hearing on November 8, 1980 before this Court.

On March 31, 1980 petitioner filed a motion for reconsideration of the resolution of respondent COMELEC dated March 27, 1980 (Annex "U", pp. 284-309, rec.), which was opposed by private respondent on April 12, 1980 (Annex "V", pp. 311-320, rec.).

On April 16, 1980, the COMELEC issued a resolution (Annex "A-1", p. 72, rec.) which reads as follows:

"9641 (PP Case No. 44). For the same reasons as stated in the Resolution dated March 27, 1980 and for lack of merit, the Commission has RESOLVED to DENY the motion for reconsideration dated March 29, 1980 and filed by respondents-appellees Leonor A. Garcia, et al., the following March 31, 1980."

Hence, the present petition for certiorari.

Petitioner impugns the findings of respondent COMELEC on the following grounds:

A

"THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION, CAPRICIOUSLY, ARBITRARILY AND WITHOUT DUE PROCESS WHEN IT HELD THAT 6 ELECTION RETURNS WERE WRITTEN BY ONE AND THE SAME PERSON AND 3 ELECTION RETURNS WERE PREPARED BY 2 DIFFERENT PERSONS BASED ON THE FINDINGS OF THE COMELEC HANDWRITING EXPERT, CONSIDERING THAT DURING THE ENTIRE PROCEEDINGS FROM THE NAVARRO BOARD TO THE REGALADO BOARD TO THE COMELEC EN BANC, NO EVIDENCE AT ALL WAS PRESENTED BY EITHER PARTIES NOR UNDER-TAKEN BY THE COMELEC CONCERNING HANDWRITING EXPERTS.

B

"THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION, CAPRICIOUSLY, ARBITRARILY AND IN INDIFFERENT DISREGARD OF THE LAW WHEN IT HELD THAT THE 20 ELECTION RETURNS WERE TAMPERED OR MANUFACTURED AND SHOULD NOT HAVE BEEN INCLUDED IN THE CANVASS BECAUSE THE SIGNATURES/INITIALS OF ALL THE MEMBERS OF THE CITIZENS ELECTION COMMITTEE DO NOT APPEAR AFTER THE LAST TALLY OF THE VOTES FOR EACH CANDIDATE CONSIDERING THAT IN SUCH A SITUATION THE REMEDY UNDER

SECTION 172 OF THE ELECTION CODE OF 1978 IS TO SUMMON THE MEMBERS OF THE CITIZENS ELECTION COMMITTEE TO CORRECT SUCH OMISSION IN FORM OR DATA AND NOT TO ANNUL THE ELECTION RETURNS AND DISENFRANCHISE THE VOTERS THEREAT.

C

"THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION, CAPRICIOUSLY, ARBITRARILY AND OMITTED TO WEIGH PERTINENT CON-SIDERATIONS WHEN IT RULED THAT 20 OTHER ELECTION RETURNS BE EXCLUDED FROM THE CANVASS ON THE GROUND THAT THESE 20 RETURNS WERE PREPARED THRU CRIMINAL COLLUSION OF MEMBERS OF THE CITIZENS ELECTION COMMITTEE THRU THE INTERVENTION AND/OR DICTATION OF ARMED MEN OF PETITIONER HEREIN WITHOUT STATING WHICH AMONG THE 20 WERE PREPARED VOLUNTARILY THRU CRIMINAL COLLUSION OR INVOLUNTARILY THRU DICTATION OF ARMED MEN.

D

"THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION, CAPRICIOUSLY, ARBITRARILY AND OMITTED TO WEIGH PERTINENT CONSI-DERATIONS WHEN IT TOOK INTO CONSIDERATION EVENTS WHICH OCCURRED AND REPORTED TO IT THRU VARIOUS SELF-SERVING TELEGRAMS AND LETTERS BY THE LEADERS OF RESPONDENT HEREIN, BEFORE AND DURING THE ELECTIONS AS AGAINST THE FINDINGS, AFTER INVESTIGATION, MADE BY THE CHIEF OF THE PHILIPPINE CONSTABULARY, MAJOR GENERAL FIDEL RAMOS CONCURRED BY THE PRESIDENT OF THE PHILIPPINES FINDING THAT THE COMPLAINTS OF RESPONDENT HEREIN AND HIS BROTHER-IN-LAW ASSEMBLYMAN ANGEL CONCEPCION, WERE COMPLETELY BASELESS, FALSE, EXAGGERATED, UNCORROBORATED, AND UNSUBSTANTIATED AND INTENDED MERELY AS A FACE-SAVING DEVICE TO RATIONALIZE THEIR (RESPONDENT'S) POLITICAL SURVIVAL IN NUEVA ECIJA IN THE WAKE OF THEIR RESOUNDING DEFEAT.

E

"THE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION, CAPRICIOUSLY, ARBITRARILY, IN INDIFFERENT DISREGARD OF THE LAW, AND OMITTED TO WEIGH PERTINENT CONSI-DERATIONS WHEN IT RELIED ON THE AFFIDAVITS OF PAID KBL WATCHERS AND SYMPATHIZERS THAT THERE WERE MASSIVE VOTE-BUYING, FLYING VOTERS, TERRORISM AND OTHER ELECTION IRREGULARITIES AS AGAINST THE AFFIDAVITS AND SWORN STATE-MENTS OF ALL THE PUBLIC SCHOOL TEACHERS WHO SERVED AS MEMBERS OF THE CITIZENS ELECTION COMMITTEE IN ALL THE 40 VOTING CENTERS WHOSE 40 ELECTION RETURNS HAVE BEEN EXCLUDED BY THE COMELEC. EVEN GRANTING, WITHOUT ADMITTING THAT THERE WERE MASSIVE VOTE-BUYING, FLYING VOTERS, TERRORISM AND OTHER IRREGULARITIES, THESE ARE NOT GROUNDS FOR ANNULMENT OF ELECTION RETURNS BUT GROUNDS FOR AN ELECTION PROTEST" (pp. 15-17, Petition).

The main issue raised by petitioner before US in this petition for certiorari is whether or not respondent COMELEC has acted with grave abuse of discretion in ordering the exclusion from the canvass of the forty (40) election returns from the forty (40) voting centers contested by private respondent herein.

I

The resolution of the respondent COMELEC dated March 27, 1980 shows the following pertinent facts:

"xxx xxx xxx xxx.

"For the purpose of affording the parties concerned, particularly petitioner Perez and the opposing candidate Leonor Garcia, the opportunity to further ventilate their respective contentions before the Commission, and to enable it to physically examine the 40 questioned election returns, the appeal was set for hearing on March 11, 1980 with notice to all the parties and/or their respective lawyers.

"At the hearing on March 11 both parties assisted by their respective lawyers presented oral arguments, dispensed with the presentation of testimonial evidence, and agreed to submit the case after filing their respective memoranda; and their memoranda are now attached to the records of the case;

"The main issue to be resolved is whether or not the City Board of Canvassers of Cabanatuan City has erred in including in its canvass all the forty (40) contested election returns pertaining to forty (40) voting centers of nine (9) barangays of Cabanatuan City.

"xxx xxx xxx xxx.

"The City Board of Canvassers has ruled in favor of including the 40 contested election returns on the principal ground that it is merely a 'ministerial body', without any power 'to go behind the returns' and inquire into its integrity and authenticity, citing the case of Sangki v. Comelec, Dec. 26, 1967, 21 SCRA p. 1397; 18 Am. Jur. p. 346 & 29 CJS p. 431. But this doctrine no longer prevails. At present, the Commission on Elections is vested with broad powers and functions under the 1973 Constitution and the 1978 Election Code; it has direct control and supervision over the board of canvassers (Sec. 164, 1978 Election Code); it has the exclusive power to enforce and administer all laws relative to the conduct of elections for the purpose of insuring free, orderly and honest elections, and to perform such other functions as may be provided by law (Sec. 2/1/ & /8/, Art. XII /C/, 1973 Constitution; Sec. 185, 1978 Election Code; Sec. 17, Batas Pambansa Blg. 52).

"xxx xxx xxx xx.

"The 40 election returns pertaining to 40 voting centers from 9 barangays in Cabanatuan City, namely, Aduas, San Juan (ACCFA), Bantug Bulalo, Dimasalang, Fatima, San Isidro, San Jose Norte, San Roque and Supermarket, are sought to be excluded by petitioner on the following grounds mentioned in his memorandum: 1) massive terrorism, threats and coercion; 2) gun-point preparation of ballots; 3) election returns prepared thru criminal collusion of members of the Citizens Election Committees; 4) election returns prepared thru intervention and/or dictation of armed men of Candidate Garcia; 5) rampant vote buying; 6) flying voters and manufactured ballots; 7) exclusion and disenfranchisement of duly registered voters, inclusion of voters not registered by means of collusion C.E.C (Citizens Election Committee) which allowed voters to vote by identification not under oath; 8) premature closure of polling places; and 9) forcible exclusion of poll watchers of the petitioner and the public.

"Contrary to respondent's contention, the aforesaid grounds are not 'new grounds' for they are mentioned in the numerous affidavits presented before the Board of Canvassers; and the latter even ruled on their admissibility.

"A close scrutiny of the disputed 40 election returns has revealed the following:

"1. By comparative examination and analysis among and between the handwritings appearing in six (6) election returns which are grouped into two (2) shows distinct and significant writing characteristics, hence they are WRITTEN BY ONE AND THE SAME PERSON.

Voting Center Number Barangay

5 Dimasalang

4 ACCFA (San Juan)

3 62

7 Aduas

6 Aduas

1 Supermarket

"2. Other observations:

Voting Center No. Barangay Findings

4 (48) San Josef Norte Entries written by two different persons

3 Bantug Bulalo -do?

2 (48) San Josef Norte -do?

1 San Isidro No signatures/ initials of all the members

after the entry of votes for each candidate

1-A (2) ACCFA -do?

1-A (2) Aduas -do?

3 48 -do?

5 Dimasalang -do?

2 Aduas -do?

1 Bantug Bulalo -do?

3 2 Aduas -do?

4 2 Aduas -do-

3 Dimasalang No signatures/initials of all the members after

the entry of votes for each candidate

4 48 San Josef -do?

3 62 -do?

8 Aduas -do?

13 2 Aduas -do-

"As to be noted above, twenty (20) election returns appear to have been tampered and/or manufactured and should not be included in the canvass.

"On the grounds that certain election returns were prepared thru criminal collusion of members of the Citizens Election Committee thru the intervention and/or dictation of armed men of Candidate Garcia, there are additional twenty (20) election returns which appear to have been adversely affected thereby, to wit:

"1. From Barangay Aduas - Voting Centers Nos. 1, 4-A, 5, 7-A, 9, 10 & 15;

"2. From Barangay Bantug Bulalo - Voting Center No. 2;

"3. From Barangay Dimasalang - Voting Centers Nos. 1, 2 & 4;

"4. From Barangay Fatima - Voting Centers Nos. 1 & 3;

"5. From Barangay San Isidro - Voting Center No. 2;

"6. From Barangay San Josef Norte - Voting Centers Nos. 1 & 3;

"7. From Barangay San Roque - Voting Centers Nos. 1, 2 & 3;

"8. From Barangay San Juan (ACCFA) - 1.

"Although the foregoing conclusions pointing to certain traces of irregularities in the election returns specified above could be as they are easily detected by any layman's eyes, nevertheless, the Commission utilized its own handwriting experts who confirmed the same findings thereon of the chairman and members of the Commission.

"xxx xxx xxx" (pp. 51-57, rec.).

II

It is the stand of the petitioner that the respondent COMELEC acted with grave abuse of discretion in holding that 6 election returns were written by one and the same person and 3 election returns were prepared by 2 different persons, because:

"x x x During the entire proceedings from the Navarro Board in Cabanatuan City to the Regalado Board in the office of the Comelec in Manila to the oral arguments and hearing before the Comelec en banc in Manila, no evidence at all was presented concerning the handwriting experts of the Comelec making such findings. These findings were made by the Comelec only after the parties have submitted their respective memoranda and the case has been deemed submitted for resolution. When the resolution was being prepared therefore, these findings by the handwriting experts of the Comelec were sought by the Comelec to confirm their layman's finding that six returns were prepared by one person and three returns were prepared by two persons. PETITIONER HEREIN OR HER UNDERSIGNED COUNSEL WERE NEVER INFORMED NOR FURNISHED COPY OF THESE ALLEGED FINDINGS. An opportunity therefore was not afforded the petitioner herein to refute the alleged findings of the handwriting experts of the Comelec. This is a clear case of disregard of constitutional due process" (p. 19, rec.).

WE cannot sustain the stand of the petitioner. WE are convinced that the respondent COMELEC acted within its authority in evaluating the handwritings found on each of the forty contested election returns and in seeking the confirmation of the handwriting experts in its conclusion that six (6) election returns were written by one and the same person and three (3) returns were prepared by two persons, indicating that the same are manufactured returns.

Likewise, WE are not in accord with the argument of the petitioner that she was denied due process because she was not afforded the opportunity "to refute the alleged findings of the handwriting experts of the Comelec." Such contention is without merit. At the outset, it should be recalled that at the hearing on March 11, 1980 before the COMELEC, the parties dispensed with the presentation of testimonial evidence, and merely prepared oral arguments and submitted the case for decision after filing their respective memoranda. Petitioner therefore waived further presentation of evidence.

It should also be emphasized that the findings of the COMELEC that six (6) of the excluded election returns were written by one and the same person and three (3) other returns were prepared by two different persons, indicating that said returns are manufactured, were not solely on the findings of the handwriting experts of the COMELEC. The findings of the handwriting experts vis-a-vis the nine (9) election returns merely served to confirm what the COMELEC has found after it conducted "a close scrutiny of the disputed 40 election returns." Thus, as stated by the respondent COMELEC:

"Although the foregoing conclusions pointing to certain traces of irregularities in the election returns specified above could be as they are easily detected by any layman's eyes, nevertheless the Commission utilized its own handwriting experts who confirmed the same findings thereon of the chairman and members of the Commission" (p. 57, rec.).

It is clear therefore from the aforesaid findings of the respondent COMELEC that there was absolutely no necessity on the part of the petitioner to refute any further the findings of the handwriting experts as the COMELEC had already made a prior conclusion based on evidence independent of the findings of the handwriting experts. Moreover, any further proceedings touching on the findings of the handwriting experts of the COMELEC would only serve to delay the disposition of the case and would not, in any way, alter the findings of the Commission after it had closely scrutinized the contested election returns. Thus, in the case of *Aratuc vs. Commission on Elections* (88 SCRA 251, 281), WE affirmed the authority of the COMELEC to decide on contested election returns even without the aid of experts, using only "common sense and perception".

Petitioner further argues that "the six (6) voting centers whose returns were allegedly written by one and the same person are geographically located in different barangays each between one to three kilometers away from the other". It is the stand of the petitioner that it was impossible for a man to prepare the election returns in the six voting centers; she contends that "this feat is contrary to natural law and would require superhuman capacity."

But, as pointed out by petitioner herself, only 1 to 3 kilometers separated the six (6) voting centers. Under such a given situation, it would still be physically possible for a person to go from one voting center to another and perform his assigned task with ease, considering that in any election, means of transportation are always readily made available by the candidates to their leaders and followers for any political activity. As aptly pointed out by the Solicitor General:

"x x x. Since motorized transportation was admittedly existing in the city of Cabanatuan, the distances mentioned were not insurmountable. As for the amount of work involved in preparing the returns, there is nothing in the record nor on the faces of the returns to show that the individual responsible for it was under any definite time constraints to carry out his task."

Moreover, judging from the tension obtaining - as the records will bear out - before, during and after the election in Cabanatuan City, which was apparently generated by the intense rivalry between the two contending political protagonists, this Court cannot close its eyes to the possibility that the election returns contested by herein private respondent could have been prepared before election day, or even on election day and distributed among the different voting centers with the connivance of the members of the Citizens Election Committee, if they were not terrorized.

III

Petitioner likewise assailed the respondent COMELEC's order to exclude fourteen (14) other election returns which did not bear the signatures or initials of the members of the Citizens Election Committees after the entry of votes for each candidate. Petitioner advanced the argument that under such circumstances, the respondent COMELEC should have summoned the members of the committees and directed them to supply the omitted

signatures or initials pursuant to Section 172 of the Election Code of 1978.

Said Section 172 provides that: "If it should clearly appear that some requisites of form or data had been omitted in the election returns, the board shall return them by the most expeditious means, to the corresponding election committee for correction. x x"

It is patent that Section 172 imposes such a duty on the board of canvassers, not on the COMELEC. When the law imposes a duty or confers a power on the COMELEC, it expressly mentions the COMELEC by name. Typical examples are Sections 171, 173, 174 and 175.

Moreover, the correction of the omission of the signatures or initials of the members of the citizens election committee after the entry of votes for the candidates, could not be among the requisites inform or data that could be corrected under Section 172; because Section 156 requires that the signatures of all the members of the citizens election committee shall "be affixed in full view of the public, immediately after the last vote recorded, or immediately after the name of the candidate who did not receive any vote" in the voting center itself soon after the counting of all the votes. Such signatures shall close the entry of votes for each candidate. Obviously therefore, the correction of the election returns by the election committee pursuant to Section 172 can only be made when the said election returns are returned by the board of canvassers to such election committee for such correction long after all the votes have been counted and long after the entry of the votes counted for each candidate.

Evidently, the omission of the signatures or initials of the members of the citizens election committees in the 14 election returns raises serious doubts as to the authenticity and genuineness of said returns. To OUR mind, such omissions "stamp the election returns with the indelible mark of falsity and irregularity, and, consequently, of unreliability, and justify their exclusion from the canvass" (Usman vs. Commission on Elections, 42 SCRA 686). WE are therefore of the considered view that the respondent COMELEC was well within its authority in excluding the aforestated returns upon its findings that the same "appear to have been tampered and/or manufactured."

IV

Herein petitioner further assigns as error the COMELEC's appreciation of events which occurred before and during the election and which were reported through the various telegrams (pp. 57-58, rec.) sent to the COMELEC by concerned citizens of Cabanatuan City. Petitioner belied the reported election irregularities contained in the various telegrams - among which was the involvement of the local PC command in the conduct of the election in Cabanatuan City - by relying on the investigation report (pp. 278-279, rec.) submitted by Brigadier General Vicente E. Eduardo, Regional Commander, PC/INP RECOM 3, to the PC Chief, Major Gen. Fidel V. Ramos, denying the involvement of the constabulary in partisan politics in Cabanatuan City.

However, the investigation report of Brig. Gen. Vicente E. Eduardo relied upon by herein petitioner, was obviously tainted with bias, hence, unreliable, considering that his son was a candidate in one of the towns of Nueva Ecija and, understandably, any adverse report from him relative to the conduct of election in his area of responsibility would be prejudicial to, if not a black mark on, his record and performance as PC/INP Regional Commander.

Petitioner likewise assailed as error when the COMELEC accorded more weight to the affidavits of witnesses adduced by private respondent Perez as against the affidavits and sworn statements of the public school teachers who served as members of the citizens election committees in the con-tested voting centers. This issue, as raised by herein petitioner, was squarely met by the COMELEC when it noted that:

"xxx xxx xxx.

"To contradict the affidavits presented on behalf of petitioner the respondents have likewise adduced affidavits of the teachers who were members of the Citizens Election Committees in the voting centers in controversy. It was noted that most of their affidavits are verbatim copies of one another, hence, of doubtful credibility. Besides, as against the sworn statements of petitioner's affiants constituting direct and positive evidence, those of respondent's were general denials and thus partake of the nature of negative evidence; and as between positive and negative evidence, the well-established rule affords greater weight and credence to the former (Francisco, *The Revised Rules of Court*, Vol. VII, 1973 ed. pp. 4-5).

"As pointed out, correctly, by petitioner, teachers Lucita Apolonio and Lydia Domingo have categorically admitted they were forced to sign their affidavits (Exh. AA); and also, the members of the Citizens Election Committees who executed affidavits contrary to those submitted by petitioner were 'hostile and ill-motivated' for they have been charged by petitioner of 'rampant violation of the election code and other election irregularities before the Commission on Elections' (Exh. U).

"Indeed, it is difficult to believe that the numerous election irregularities adversely affecting the genuineness and authenticity of the questioned election returns could have been effected without the knowledge and consent or collusion of the members of the Citizens Election Committees concerned; and for which reason, the charges filed against them should be investigated. So that respondent's argument sustained by the City Board of Canvassers regarding the presumption that official duty was performed, has been strongly and adequately controverted by the totality of the facts and circumstances borne out by the evidence on record in the case at bar" (pp. 69-70, rec.).

V

WE have painstakingly examined the affidavits submitted by both parties which are now part of the records in the case at bar and WE are satisfied that the COMELEC was indeed justified in according more credence to the affidavits of the witnesses of private respondent Perez over that of the opposing affidavits of the members of the Citizens Election Committees concerned.

It is clear to US that the affidavits submitted by respondent Perez are more consistent with the evidence of fraud and other election irregularities found by the COMELEC on the face of the election returns in controversy. The affidavits submitted by herein private respondent showed specific allegations of terrorism, vote-buying, use of flying voters, non-counting of KBL votes in favor of the KBL candidates, use of force and intimidation by the followers of petitioner Garcia in the counting of ballots and in the preparation of the election returns. In contrast, the affidavits and sworn statements of petitioner's witnesses were surprisingly identical or similar and consisted mainly of general denials, hence, cannot be accorded greater weight and credence. Moreover, two members of the Citizens Election Committee, both public school teachers, subsequently revealed that they were coerced into signing the affidavits for the petitioner.

Apart from the foregoing, as deserving of serious consideration are the reports (which will be quoted later) of Lt. Col. Francisco V. Samala, head of the Comelec Special Action Team (COMSAT) in Cabanatuan City, and Major Rogelio S. De Joya, Station Commander INP, Cabanatuan City, which confirmed the wholesale violations of the Election Code on prohibited acts, such as terrorism, vote-buying and other election irregularities by the men and followers of herein petitioner. The same reports also deplored the apparent lack of cooperation on the part of the military to follow the directives of the Special Action Team in the disposition of troops in critical areas in Cabanatuan City where armed men were reportedly sighted. The reports likewise mentioned the adamant refusal of the City Board of Canvassers, headed by Wilfredo Navarro, to stop the proclamation of candidate Garcia in spite of the telegram sent by Chairman Leonardo B. Perez ordering said board to suspend the proclamation (pp. 64-68, rec.).

Appropriate it is to say at this juncture that, in the case at bar, the petitioner failed to show patent and grave abuse by respondent COMELEC of its authority to exclude from the canvass election returns which are, on their faces, obviously tampered with and/or manufactured. In upholding this authority, WE have had the occasion to say that:

“The broad power of the Comelec, conferred upon it by the Constitution, to enforce and administer 'all laws relative to the conduct of elections' and to decide all administrative questions affecting elections 'for the purpose of insuring free, orderly and honest elections', has been the key in the resolution of many pre-proclamation controversies involving the integrity and authenticity of election returns. Invoking the aforestated power of the Comelec, we justified the action and upheld the authority of the Comelec to order the exclusion of 'obviously manufactured' returns (*Lagumbay vs. Climaco and Comelec*, 16 SCRA 175), or tampered returns (*Cauton vs. Comelec and Sanidad*, 19 SCRA 911), or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity (*Pacis vs. Comelec*, 25 SCRA 377; *Antonio Jr. vs. Comelec, et al.*, 32 SCRA 319), emphasizing the duty of the Comelec to see to the use and inclusion in the canvass of only genuine and regular election returns for determining the true result of the election.

"xxx xxx xxx.

"In the performance of its duty to guard against the use and inclusion of returns prepared under circumstances showing their falsity in the canvass of election returns, the Comelec should not be hampered in the choice of effective means and methods to fully ascertain the genuineness and regularity of disputed election returns. To establish the indubitable existence of any such circumstances - necessarily not evident from an examination of the election returns themselves - demands recourse to proof independent of the election returns or to evidence aliunde" (*Usman vs. Commission on Elections*, 42 SCRA, 667, 686-687, underscoring supplied).

And as far back as *Cauton vs. Commission on Elections* (19 SCRA 911, 921-922), this Court, speaking through the late Justice Zaldivar, stressed that:

"x x x. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created - to promote free, orderly, and honest elections. The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with. x x x" (underlining supplied).

And lately, in *Aratuc vs. Commission on Elections*, supra, this Court finally stated that:

"x x x. We might disagree with the Comelec as to which voting center should be excluded or included, were We to go over the same records Our-selves, but still a case of grave abuse of discretion would not come out, considering that Comelec cannot be said to have acted whimsically or capriciously or without any rational basis, particularly if it is considered that in many respects and from the very nature of our respective functions, becoming candor would dictate to Us to concede that the Commission is in a better position to appreciate and assess the vital circumstances closely and accurately x x x " (88 SCRA 251, 281, underscoring supplied).

Finally, in resolving the main issue raised by the petitioner herein, the respondent COMELEC correctly took into account the totality of the facts and circumstances obtaining before, during and after the elections in Cabanatuan City, all "pointing to the unworthiness for inclusion in the canvass of the questioned election returns." The COMELEC cited the following noteworthy events and circumstances:

"As early as January 19, 1980, petitioner as Acting Mayor of Cabanatuan expressed in writing his serious concern and apprehension regarding the presence of armed men outside and inside the compound of Ex-Mayor

Mario S. Garcia, husband of respondent Leonor A. Garcia, 'some of whom are reportedly men wanted by the law who are given sanctuary in his premises' and to preserve peace and order in Cabanatuan City he (petitioner) requested the Provincial Commander, thru the Station Commander, to take immediate steps 'to determine who these armed men and under what authority of law they carry firearms' (Exh. A).

"On January 30, 1980, several telegrams were sent to and received by the Chairman of the Comelec, as follows:

'INFORMING YOU OF TUMULTUOUS CABANATUAN CITY ELECTIONS CHARACTERIZED BY RAMPANT VOTE BUYING CMA PROLIFERATION OF FLYING VOTERS CMA TERRORISM AND OPEN HARASSMENT OF ELECTORS AND PARTY WARD LEADERS LEADING TO HIGH PERCENTAGE OF VOTERS UNABLE TO VOTE STOP COMELEC CONTROL THIS CITY NEVER FULLY IMPLEMENTED DUE TO REFUSAL OF LOCAL MILITARY COMMAND TO COOPERATE WITH SPECIAL COMELEC TASK FORCE LED BY COLONEL SAMALA STOP WIDESPREAD FEAR THAT CONTINUING TREND OF DIRTY POLITICS (WOULD LEAD TO CHAOS CMA VIOLENCE CMA AND THE OVERALL THWARTING OF THE PEOPLES WILL STOP THE NUEVA ECIJA PRESS AND RADIO CLUB URGENTLY REQUEST THAT IF SITUATIONS COULD NOT BE CHECKED, CMA CABANATUAN CITY ELECTIONS BE SUSPENDED LEST LOCAL SITUATION DETERIORATES COMPLETELY.

PETE SALAZAR

NEPRC PRESIDENT (Exh. B)'

'MAPITAGANG IPINAGBIBIGAY ALAM SA INYO ANG MASAMANG PANGYAYARI SA ELEKSIYONG ITO SA AKING BARANGAY DIMASALANG LUNGSOD NG KABANATUAN HINTO KALAT ANG BILIHAN NG BOTO AT PANANAKOT NG MGA ARMADONG LALAKI KUNG KAYA'T MARAMING TAO ANG HINDI MAKABOTO HINTO NAKIKIUSAP KAMI NA ULITIN ANG ELEKSIYON UPANG MALAMAN KUNG SINONG MGA TAO ANG TALAGANG GUSTO NG BAYAN HINTO

JOSE JAVIER

KAPITAN BARANGAY DIMASALANG

(Exh. B-1)'

'MORE THAN SIXTY BARANGAY CAPTAINS IN CABANATUAN CITY APALLED AT OPEN MOCKERY OF CABANATUAN CITY ELECTIONS CHARACTERIZED BY WHOLESAL ANOMALIES AND TERRORISM COMMITTED BY LOCAL OPPOSITION PARTY LAPIANG PAGKAKAISA NG BAYAN IN COOPERATION WITH GOVERNOR JOSON AND WITH OBVIOUS TOLERATION OF LOCAL MILITARY UNITS IN DEFIANCE OF COMELEC CONTROL WITH SPECIAL COMELEC TASK FORCE UNDER COLONEL SAMALA WHICH COMELEC SPECIAL TASK FORCE WAS NOT ABLE TO FULLY IMPLEMENT STOP RAMPANT VOTE BUYING AND OPEN HARASSMENT OF LOCAL ELECTORATE CMA WARD LEADERS CMA AND EVEN PRECINCT ELECTION BOARD VIRTUALLY NEGATE ELECTION SAFEGUARDS STOP WIDESPREAD PANIC AND FEAR OF PRESENT AND POST ELECTION VIOLENCE GRIPPING LOCAL CITIZENRY SPECIALLY IN THE BARANGAYS STOP RESPECTFULLY URGE STEPS BE TAKEN TO REMEDY THIS SITUATION OR SUSPEND ELECTIONS TO PREVENT INJUSTICE AND DISREGARD OF POPULAR WILL STOP

FRANCISCO REYES**ABC PRESIDENT**

(Exh. B-2)'

'VIGOROUSLY PROTESTING AGAINST RAMPANT VIOLATION OF ELECTION LAWS IN CABANATUAN CITY ELECTIONS INCLUDING WHOLESAL ANOMALIES CMA VOTE BUYING CMA WIDESPREAD TERRORISM AND PROLIFERATION OF GOONS AND GUNS STOP COMELEC TASK FORCE LED BY COL SAMALA UNABLE TO FULLY IMPLEMENT COMELEC CONTROL OF CITY DUE TO RECALCITRANCE OF LOCAL MILITARY UNITS WHO TOGETHER WITH NUEVA ECIJA GOVERNOR EDUARDO JOSON WHO SUPPLIES LOGISTICS FOR MAKING THIS ELECTION A VIRTUAL MOCKERY OF SUFFRAGE STOP URGENTLY IMPLORE YOU TO TAKE IMMEDIATE STEPS TO CORRECT SITUATION OR SUSPEND ELECTION TO PREVENT COMPLETE BREAKDOWN OF PEACE AND ORDER THIS CITY STOP

RICARDO AGAPITO**KBL CAMPAIGN MANAGER**

(Exh. B-3)' /pp. 57-59, rec./.

"xxx xxx xxx.

"In a report dated February 2, 1980 to the Chairman, Comelec, Lt. Col. Francisco V. Samala, member of the COMSAT No. 9, states:

'1. Pursuant to COMELEC office order dated January 28, 1980, COMELEC SPECIAL ACTION TEAM NO. 9 for Nueva Ecija and Cabanatuan City, composing of Lt. Col. Francisco V. Samala, Atty. Benigno Lapitan and Atty. Jose Balbuena, effected the placement of the police force of Cabanatuan City under COMELEC control and supervision on January 29, 1980.

'2. Invoking the provisions of COMELEC Resolution No. 1430, COMSAT No. 9 requested the Commanding General, First Tabak Division of the Philippine Army to immediately organize at least three (3) companies of Special Forces, with radio and other necessary equipment to constitute the strike force which will be utilized to help police the elections at the disposal and deployment of COMSAT No. 9.

'3. Lateral and direct coordinations were made by the COMSAT with the military and police authorities in Fort Magsaysay and Cabanatuan City that henceforth, the police force of Cabanatuan City, except for the routine and ordinary duties, should not perform any other duties or assignments unless so directed by the COMSAT.

'4. In accordance with the arrangements made, thirty (30) PA troops were dispatched from Fort Magsaysay for detail in Cabanatuan the night of January 29, 1980 upon request of the KBL on grounds of alleged terrorism and vote buying. Mayor Perez, KBL candidate for Mayor however subsequently complained that none of the troops actually arrived.

'5. About 200 men from First Tabak Division and Special Warfare Brigade were made available to the COMSAT. They came to Cabanatuan at about 2:00 P.M. after they have voted in camp. These troops were distributed to the different towns and barangays upon request of those concerned. Surprisingly enough, however, is the fact that in Cabanatuan City only KBL has requested for the detail of troops to various barangays in the city and more surprisingly was the continuous complaint of people that none of the soldiers detailed by COMSAT No.

9 by means of orders to the Provincial Commander was ever seen in the places designated. Yet, everytime inquiries were made to verify the complaint, the office of the Provincial Commander gave the assurance that the troops were dispatched strictly in accordance with the COMSAT written directives. COMSAT was bombarded with complaints from Mayor Perez, Assemblyman Angel Concepcion and KBL leaders that none of our directives for the disposition of troops in Cabanatuan City was ever implemented up to the early morning of January 31. This was one of the reasons terrorism, vote buying and other election irregularities were allegedly perpetrated by the opposition candidates publicly known to be supported by Governor Joson of Nueva Ecija.

'6. On January 31, at about noon time, Mayor Honorato Perez showed to to the COMSAT members the telegram order of Chairman Leonardo B. Perez to the City Election Registrar to suspend the canvassing of election returns, COMSAT immediately prepared a written communication to Atty. Wilfredo Navarro quoting the text of the telegram and instructing him to comply therewith. However, subsequent check made by Lt. Col. Samala and Atty. Balbuena at City Hall showed that the City Board of Canvassers had no intention to comply with the above-mentioned telegram order as the Board of Can-vassers has decided to proceed with the canvass. In the presence of Atty. Navarro, ex-Mayor Garcia, husband of opposition candidate for Mayor Leonor Garcia, and his ward leaders, all in belligerent and intimidating attitude said that the Board of Can-vassers will not comply with the order for three reasons, namely: that they have not seen the original document; that the grounds cited in the order are not the grounds provided for by law for the suspension of the can-vassing of election returns; and they doubt the authenticity of the signature of Chairman Perez. They were vehemently opposing the order inasmuch as they have already sacrificed a lot, exerted efforts, spent their resources and would not allow the suspension of the canvassing of election returns even if it should mean the shedding of blood. It was very noticeable that the city hall where the canvass was being held were surrounded by heavily armed men, some in uniform and some look like civilians.

'7. Immediately Lt. Col. Samala and Atty. Balbuena went to the Bureau of Telecommunications and placed a person to person long distance tele-phone call to Chairman Perez. When informed of the development and incident above-mentioned, the Chairman instructed Lt. Col. Samala to inform the members of the City Board of Can-vassers that they will be held in contempt and declare all proceedings null and void should they disobey the order to stop the canvass of election returns. Consonantly, a written memorandum to the board was (illegible) sent by COMSAT. This notwithstanding, the City Board of Canvassers proceeded not only with the canvassing but also with the proclamation of Mrs. Leonor Garcia, the opposition candidate, as the elected mayor of Cabanatuan City, her running mate Romeo Ortiz as vice-mayor, and the eight candidates of the KBL for councilors as councilors?elect" (pp. 64-66, rec.).

After Election Report of Major Rogelio S. de Joya, Station Commander INP, Cabanatuan City, dated February 12, 1980, states:

"xxx xxx xxx.

"c. Assessment. - the post election situation in the city of Cabanatuan is quite tense. Unofficial reports of the 30 January 1980 election broadcast over the radio showed that the mayoral candidate of the Lapiang Pagkakaisa ng Bayan were leading. All the Sangguniang Panglungsod candidates of the KBL were likewise leading. In the early morning of 31 January 1980, the City Hall was completely swamp(ed) with military personnel both from the Nueva Ecija PC/INP and the Special forces of the Army Brigade in Fort Magsaysay. The canvassing of votes was being under-taken when Chairman Leonardo Perez of the Comelec issued an order to stop the same upon petition of Mayor Honorato C. Perez on various grounds but in spite of that order the City Board of Canvassers composed of the Comelec registrar of Cabanatuan City Atty. Wilfredo Navarro as Chairman and City Fiscal Benjamin Cabie and City Superintendent of School Mrs. Sabina J. Ferrer as members proceeded with the canvassing of votes and proclaimed the following as winners in the 30 January

1980 elections;

"For City Mayor Dra. Leonor A. Garcia LPB

For Vice Mayor Dr. Romeo Ortiz LPB

For Councilors

Charito E. Fabros - KBL

Fred Tan - KBL

Augusto de Guzman - KBL

Renan Morfe - KBL

Dr. Rodolfo Reyes - KBL

Ruperto Franco - KBL

Francisco Reyes - KBL

Juanito Ballesteros - KBL

Votes garnered by each of the above can-didates is not available. On 3 February 80, the Comelec in Manila issued an order declaring that the proclamation of can-didates made by the Board of Canvassers on 1 February 1980 was illegal, unlawful and therefore considered null and void. Atty. Wilfredo Navarro was quoted in saying that during the entire canvassing of votes he was under duress and extreme physical pressure caused by the presence of military and civilian both armed with long firearms. From the period January 31 up to 9 February 1980, the city hall was guarded by the special forces of the Army Brigade. During that period rumors/gossips circulated in the city that the city hall will be burned and the city market will be the object of arsonist. This created tension and fear among the city populace. Leaflets were distributed in the city public market by unidentified person inciting people to revolt in the event that the proclaimed winners in the city election cannot assume office. Barangay captain of Daan Sarile, Obrero, D.S. Garcia and others complained to the mayor and same was relayed to the Station Commander that armed men can be seen in the immediate vicinity of their house with the end in view of threatening them. These people are afraid to give state-ment in spite of the fact that some of them were identified.

"d. Incident that happened during election day. - Cabanatuan City Police Station was placed under Comelec control and that order was relayed by Lt. Col. Samala, head of the Comelec COMSAT 9. I was informed that contingent of special forces of Army Brigade will be assigned in Cabanatuan City Police under my operational control for possible assignment/deployment in the critical barangays of this city. When election day came in spite of several follow up made both by Mayor Perez and the under-signed Station Commander, no augmentation troop came. Repeated calls from Mayor Perez, candidate for Mayor of the KBL, requesting the deployment of troops in the following barangays pursuant to the request of Barangay Captains who feared armed men visiting the following places to wit: Bakod Bayan, Samon, Pamaldan, etc. but no troops were given to me for assignment in said places so I was forced to dispatch a handful of my men only in a few places reported by Mayor Perez as I don't have enough men. At one time Mayor Perez reported the presence of armed men in Barangay Bagong Sikat, San Josef Norte, Lagare, Crisostomo and Mabini and when operatives of this Station responded they gave chase to an owner jeep bearing plate number J-845 loaded with armed men but to no avail. However, one of the occupants of said jeep was identified as Feling Samonte resident of Aduas, Cabanatuan City. Unidentified person/passenger of said jeep threw the firearm they were carrying near the East Central School and said firearm was brought to this Headquarters. This case is still under investigation and same was reported to that Headquarters but up to this time the failure of the PA contingent to reach their assigned Barangays despite order from the Com-mission on Election Action Team remains a mystery. No

killing has been committed during the entire period but Mayor Perez reported massive terrorism and vote buying in several Barangays.

"xxx xxx xxx" (pp. 66-68, rec.).

WE agree with the COMELEC that the totality of the facts and circumstances as borne out by the evidence on record has sufficiently overcome the prima facie value of the contested election returns in Cabanatuan City.

The remaining issue raised by the petitioner relates to her allegations that if there were massive vote-buying, flying voters, terrorism and other election irregularities during the elections, these are not grounds for annulment of the election returns but grounds for an election protest. This contention is untenable. In the early case of *Lagumbay vs. Climaco and Comelec*, supra, this Court upheld the authority of the COMELEC to order the exclusion of "obviously manufactured" returns, or tampered returns as held in *Cauton vs. Comelec and Sanidad*, supra, or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity, as held in *Pacis vs. Comelec* and *Antonio vs. Comelec*, et al. cases, supra.

Furthermore, Section 175 of the Election Code of 1978, in no uncertain language, states:

"The Commission shall be the sole judge of all pre-proclamation contro-versies and any of its decisions, orders or rulings shall be final and executory: It may, motu proprio or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 hereof."

Finally, the COMELEC'S broad power under the present Constitution has gained judicial recognition. The rationale is aptly stated by Chief Justice Fernando in the recent case of *Villegas vs. Commission on Elections*, et al. (G.R. No. L-52463, September 4, 1980):

"A novel provision in the present constitution is that empowering the Commission on Elections to be 'the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the National Assembly and elective provincial and city officials.' Thus, its competence is greater than that formerly found in the 1935 constitution which is limited to the 'enforcement and administration of all laws relative to the conduct of election.' x x x. Its authority to decide pre-proclamation controversies is still one of its functions." Consequently, the herein petition must fail.

G. R. No. 54277

The instant certiorari proceedings seeks to review the resolution of the COMELEC dated June 18, 1980 in Election Protest Case No. 80-92 entitled "*Leonor A. Garcia versus Honorato C. Perez, Sr.*" and the order of the COMELEC dated July 10, 1980, denying the motion for reconsideration filed on July 2, 1980 by the herein petitioner.

The antecedent facts of the case are as follows:

On March 27, 1980, the COMELEC, in Pre-Proclamation Case No. 44 entitled "*In Re: Petition for Nullification and/or Exclusion of Election Returns, etc., Honorato C. Perez, Sr., Petitioner*", promulgated a resolution, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing considerations, the Commission is of the considered opinion and so holds as follows:

"1. To grant the instant appeal of herein petitioner and the City Board of Canvassers is hereby ordered to exclude from the canvass the forty (40) questioned election returns;

"2. To order the City Board of Canvassers to proclaim immediately the winning candidates based on the result

of the recanvass after excluding the election returns as mentioned and specified in paragraph No. 1 hereof;

"3. This resolution is without prejudice to the right of any of the parties to file an election protest within the period of ten (10) days from the proclamation to be made as herein provided, and other criminal charges as they may deem proper and necessary" (Annex "B", p. 51, rec.).

Consequently, on March 27, 1980, the City Board of Canvassers of Cabanatuan City proclaimed the herein petitioner Perez as mayor-elect of Cabanatuan City (Annex "C", p. 52, rec.).

On March 31, 1980, herein private respondent Garcia filed a motion for reconsideration of the resolution of the COMELEC dated March 28, 1980 (Annex "D", pp. 53-79, rec.).

On April 16, 1980, the respondent COMELEC issued a resolution denying the motion for reconsideration filed by private respondent (Annex "E", p. 80, rec.).

On April 7, 1980, herein private respondent Garcia filed with the COMELEC an election protest ex abundante ad cautelam entitled "Leonor A. Garcia versus Honorato C. Perez, Sr.", and docketed as Election Protest Case No. 80-92 (Annex "F", pp. 81-87, rec.).

On April 19, 1980, the herein petitioner Perez filed before the COMELEC his answer with special and affirmative defenses and counter protest (Annex "G", pp. 88-95, rec.).

In a separate motion likewise filed on April 19, 1980, herein petitioner prayed that his special and affirmative defenses be considered as valid grounds for dismissal of the election protest ex abundante ad cautelam filed by private respondent (Annex "H", pp. 97-98, rec.).

On May 7, 1980, private respondent filed before the Supreme Court a petition for certiorari entitled "Leonor A. Garcia versus The Honorable Commission on Elections, et al." docketed as G.R. No. 53793, seeking to set aside the resolution of the COMELEC dated March 27, 1980 and the minute resolution dated April 16, 1980.

Likewise, on May 7, 1980, private respondent filed her opposition to petitioner's motion dated April 18, 1980, alleging that the election protest case was filed ex abundante ad cautelam and therefore, all actions and proceedings should be held in abeyance (Annex "I", pp. 99-107, rec.).

On April 25, 1980, respondent COMELEC conducted a preliminary hearing on the special and affirmative defenses during which the parties herein argued and later submitted said incident for resolution.

On May 15, 1980, a resolution was issued by the respondent COMELEC, the dispositive portion of which is quoted as follows:

"WHEREFORE, in view of all the foregoing facts and circumstances, the Commission has RESOLVED TO DISMISS the instant election protest dated and filed on April 7, 1980; to reiterate and confirm the proclamation of protestee HONORATO C. PEREZ, Sr. as the duly elected City Mayor of Cabanatuan City, Nueva Ecija; and consequently, to dismiss the counter-protest and protestant Garcia's claim for damages" (Annex "J", pp. 108-117, rec.).

On June 5, 1980, private respondent filed a motion for reconsideration of the COMELEC resolution dated May 15, 1980 (Annex "K", pp. 118-132, rec.).

On June 17, 1980, herein petitioner filed an opposition to the motion for reconsideration dated June 5, 1980 (Annex "L", pp. 133-145, rec.).

On June 18, 1980, respondent COMELEC issued a resolution, the dispositive portion of which reads:

"1. To grant the motion for reconsideration dated and filed on June 5, 1980 by protestant Leonor A. Garcia on the specific ground aforementioned, hereby ordering the reinstatement of the instant election protest case filed ex abundante ad cautelam;

"2. To defer action on the instant election protest ex abundante ad cautelam until after Pre-Proclamation Case No. 44 is finally resolved and terminated; and

"3. To order the reinstatement of the counter-protest of protestee Honorato C. Perez, Sr., but likewise holding in abeyance any further action thereon" (Annex "A", pp. 23-24, rec.).

On July 2, 1980, petitioner filed a motion for partial reconsideration dated July 1, 1980 (Annex "M", pp. 146-149, rec.).

Subsequently, on July 10, 1980, the COMELEC issued an order denying the motion for partial reconsideration for being "unmeritorious" and further stating that "no further motion for reconsideration from either party shall be entertained as the final decision of the Supreme Court in G.R. No. 53793 is being awaited" (Annex "A-1", p. 25, rec.).

Hence, this petition.

Petitioner raised the following

"GROUNDS FOR THE PETITION

I

"THE COMELEC ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AND IN INDIFFERENT DISREGARD OF THE LAW WHEN IT REVERSED ITS OWN PREVIOUS RESOLUTION THAT ELECTION PROTEST CASE NO. 80-92 IS A MERE MOTION FOR RECONSIDERATION OF ITS RESOLUTION ORDERING THE EXCLUSION OF 40 ELECTION RETURNS FROM THE CANVASS OF VOTES AND A DUPLICATION OF THE PRE-PROCLAMATION CASE NO. 44 WHICH IS NOW ON CERTIORARI WITH THE HONORABLE SUPREME COURT.

II

"THE COMELEC ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AND IN INDIFFERENT DISREGARD OF THE LAW WHEN IT HELD THAT IT IS PREMATURE TO DISMISS ELECTION PROTEST CASE NO. 80-92 IN THE SENSE THAT IT IS MERELY A PETITION OF PROTEST EX ABUNDANTE AD CAUTELAM.

III

"THE COMELEC ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND IN INDIFFERENT DISREGARD OF THE LAW WHEN IT GRANTED THE MOTION FOR RECONSIDERATION AND REINSTATED ELECTION PROTEST CASE NO. 80-92.

"ADDITIONAL GROUNDS OF THE PETITION

IV

"THE CONTINUANCE OF THE INSTANT CASE WILL NOT ALTER THE RESULT OF THE ELECTION IN CABANATUAN CITY.

V

"WHATEVER DECISION THE HONORABLE SUPREME COURT MAY RENDER IN G.R. NO. 53793 WILL RENDER THE ELECTION PROTEST CASE NO. 80-92 MOOT AND ACADEMIC."

The only issue raised is whether or not the COMELEC was correct in reinstating the election protest ex abundante ad cautelam filed by herein private respondent Garcia.

In her election protest ex abundante ad cautelam, private respondent Garcia seeks the revision, re-appreciation and recounting of all the votes cast in the forty (40) voting centers whose election returns were ordered excluded by the Commission in a resolution promulgated on March 27, 1980, not because of any defect or irregularity in the election or any act committed by the Citizens Election Committee, but because "the votes in the 40 voting centers were not counted in the over-all total of the results of the election x x x" (p. 83, rec.). This practically is the same issue raised in and depends on the resolution of G.R. No. 53793, supra.

Like the petition in G.R. No. 53793, the herein petition equally cannot prosper.

WHEREFORE, THE PETITIONS IN BOTH CASES ARE HEREBY DISMISSED WITHOUT PREJUDICE TO THE CONTINUATION OF THE ELECTORAL PROTEST FILED ON APRIL 7, 1980 BY LEONOR A. GARCIA AGAINST HONORATO C. PEREZ, SR., AND WITHOUT COSTS.

Barredo, Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Fernando, C.J., concurs in the result, with an expression of his views in a separate opinion.

Teehankee, J., dissents in Case G.R. No.53793 and concurs in Case G.R. No. 54277 in a separate opinion.

Aquino, J., in the result.

Concepcion, Jr., J., no part.

Melencio-Herrera, J., reserves his vote.

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SEPARATE OPINION CONCURRING IN THE RESULT

FERNANDO, C.J.:

The scholarly and comprehensive opinion for the Court by Justice Makasiar represents a thorough inquiry into the factual and legal aspects of the two petitions before us. From the premises laid down, it does not admit of doubt that it has full and ample support from the decisions relied upon by him. Although there is for me sufficient justification for viewing the matter in a different light, I concur in the result for reasons to be set forth.

1. As noted in the dissenting and concurring opinion of Justice Teehankee, the ruling in *Laguda v. Commission on Elections*,^[1] decided on February 20, 1981, where I was the ponente, could have been decisive. For me, that should be the general rule. It would, to my mind, result in reducing the number of pre-proclamation controversies

and thus lessen the burden not only on the Commission on Elections but even on this Court, when regrettably long after the election with the victorious candidate proclaimed, the losing party would still insist on its pre-proclamation aspect. Laguda, however, as noted by Justice Teehankee "apparently /has/ not taken roots", an appraisal which I hope will no longer hold true in the near future. Nonetheless, in the opinion of the Court as well as that of *Olfato v. Commission on Elections*,^[2] likewise penned by Justice Makasiar, this Court under circumstances that impel such an approach, applied the principle announced in *Usman v. Commission on Elections*,^[3] *Cauton v. Commission on Elections*,^[4] and *Aratuc v. Commission on Elections*.^[5] For a majority of my brethren then, these decisions have not, in the language of Justice Laurel "lost their virtuality."

2. Nor can it be said that there is no juristic support for a diversity of result in cases which apparently are not dissimilar. It is for me one of the merits of the decision-making process if instead of a single rule at one extreme and the exact opposite on the other, usually labeled an exception, there is instead a continuum. Its utility to serve the cause of justice is to me quite apparent. Instead of mutually exclusive categories of black and white, there may be a penumbra which, in the language of Justice Holmes "may shade from one extreme to the other." That would allow for the individualization of justice, depending on the peculiar environmental facts of each case. To quote from Morris Cohen: "It would thus seem that life demands of law two seemingly contradictory qualities, certainty or fixity and flexibility; the former is needed that human enterprise be not paralyzed by doubt and uncertainty, and the latter that it be not strangled by the hand of the dead past."^[6] This is true especially of public law, where there is a need for a principle broad enough to bring within its compass diverse and varied circumstances. It would go far in solving the eternal conflict between rule and discretion, which dates back to Aristotle.

3. That is from the conceptual standpoint. Nor is the approach thus taken based solely of what to me is dictated by legal theory. What had transpired since the January 30 election yields support for the conclusion reached. As far back as March 27, 1980, respondent Perez was proclaimed as winner by the City Board of Canvassers in the electoral contest. He, therefore, assumed the functions of City Mayor. He continues to do so. He has been discharging the duties for more than a year. To grant the petition in G.R. No. 53793 would result in setting aside the proclamation of respondent Perez so that petitioner Garcia could be proclaimed and thereafter hold such office. Considering the lapse of time, it occurs to me that to allow at this time such transfer of the position would hardly be in the public interest. There would be instability once again in the situation, which as a result of a bitter electoral contest has not been too peaceful. In a choice of what step to take, given the range of discretion possessed by this Court, it is my view that our decision is not tainted by unfairness and is not oblivious to the realities of the present state of affairs.

Hence my concurrence in the result. It is now up to respondent Commission to assure a prompt determination of the matter with full and unimpeded opportunity for both parties to prove their respective claims.

[1] G.R. No. 53747. Justice Concepcion Jr. did not take part.

[2] G.R. No. 52749, March 31, 1981.

[3] L-33325, December 29, 1971, 42 SCRA 667.

[4] L-25467, April 27, 1967, 19 SCRA 911.

[5] L-49705-09, February 8, 1979, 88 SCRA 251.

[6] Cohen, *Law and the Social Order*, 261 (1933).

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SEPARATE DISSENTING AND CONCURRING OPINION

TEEHANKEE, J.:

I dissent from the majority judgment in the first and main case (G.R. No. 53793) dismissing the petition filed by petitioner Leonor A. Garcia to set aside the questioned Comelec resolution whereby it summarily and with grave abuse of discretion ordered the exclusion from the canvass and nullification of forty election returns in the January 30, 1980 elections for the mayoralty of Cabanatuan City (totalling 9,762 votes or representing about 20% of the total of some 53,530 votes cast and thereby depriving Leonor of her electoral victory margin of 2,356 votes and making Honorato C. Perez, Sr. instead appear as the winner by some 1,000 votes) on the basis of mere self-serving affidavits of said respondent Perez' partisan and paid KBL watchers, according more credence thereto than official affidavits of all the public school teachers comprising the Citizens Election Committees in the forty voting centers in question, notwithstanding that said official affidavits were duly buttressed by the presumption of regular performance of official duty and by unimpeached official minutes of the voting and official investigations and reports by the PC Chief of Constabulary and INP Director-General, Major General Fidel V. Ramos, to President Ferdinand E. Marcos that Perez' and Assembly-man Angel Concepcion's complaints against the PC/INP in the province of Nueva Ecija were "false and exaggerated" and "without factual basis" and "intended merely as a face-saving device . . . in the wake of their resounding defeat" and indicative of "an emerging pattern of complaints by losing candidates to blame their political defeats on the PC/INP rather than to admit their rejection by the people." [1] (On the basis of said official reports, "the President (had) clear(ed) Lt. Col. Fontanilla and ordered return as Prov.'l Comdr. of Nueva Ecija"). [2]

I concur with the judgment in the second case (G.R. No. 54277) dismissing Perez' petition and sustaining the Comelec resolution of June 18, 1980 which set aside its previous dismissal of, and reinstated Leonor Garcia's cautionary election protest against Perez and allowed the same to continue and to be properly determined on the merits. It would be the grossest injustice if after having deprived in summary proceedings Leonor Garcia of her proclamation on February 2, 1980 by the regularly constituted canvassing board and of her electoral victory, the Comelec would yet deprive her of her basic and legal right to prosecute her election protest, as the original midnight Comelec resolution of May 15, 1980 [3] sought to do (with then retiring Chairman Leonardo B. Perez of the then 5-member Commission abstaining).

I. Re: the first and main case (G.R. 53793) –

As may be seen from the majority decision itself, on the basis of the voting and canvass of the election returns Leonor emerged as the indisputable winner of the mayoralty elections of Cabanatuan City over the then incumbent Mayor Perez with a commanding margin of 2,356 votes out of 53,530 votes cast and was duly proclaimed as such by the city board of canvassers on February 2, 1980.

Perez progressively filed a series of petitions to nullify the winning margin of Leonor: first, on January 31, 1980 a petition for recount of the votes in 18 barangays alleging deficient returns in that KBL votes for him were allegedly not counted; then he filed on February 1, 1980 an amended petition for exclusion of the returns in 5 barangays and for opening of the ballot boxes and recounting the votes, alleging that Leonor had resorted to "massive vote buying", "terrorism", "flying voters", "non-counting of KBL votes" and other election irregularities;

and on February 5, 1980, he filed still a second amended petition for exclusion of all returns from 9 barangays and a recount of the ballots alleging the commission of the same irregularities as in his first amended petition.

Respondent Comelec lost no time in accommodating Perez. On February 1, 1980, it ordered suspension of the canvass upon receipt of Perez's first petition (but the same was not honored because of justified doubt as to its authenticity, since only a xerox copy of the chairman's order of suspension was produced and not a copy duly issued by the telegraph office) and it dispatched a special Comelec team headed by Lt. Col. Francisco V. Samala "to exercise direct and immediate suspension and control". On February 6, 1980, the Comelec further set aside the February 2, 1980 proclamation of Leonor, and constituted a new board of canvassers replacing the original board and directed that all election returns be brought to Manila for canvassing at its offices in Manila.

Pursuant to the Comelec's instructions, the new canvassing board headed by Edilberto Regalado commenced the recanvass in Manila and after hearing the parties and receiving their documentary evidence, the Comelec's own board denied Perez's petition for exclusion of the 40 contested election returns (exclusion of which would wipe out 6,550 votes of Leonor as against 3,212 votes of Perez, and wipe out the 3,338 vote margin of Leonor therein and leave her a net loser to Perez by some 1,000 votes in the remaining 176 voting centers whose votes alone would be canvassed). The canvassing board correctly ruled, following the "polestar" doctrine of *Aratuc vs. Comelec*[4] that "the question of whether or not there had been any terrorism, vote-buying and other irregularities in the election should be ventilated in a regular election protest"[5] and that "extreme caution" must be exercised and "only upon the most convincing proof" may election returns be rejected as "obviously manufactured or false".

So for a second time, the Comelec's own canvassing board had properly determined Leonor to be the undisputable winner of the election and was set to proclaim her again on March 6, 1980 following the Comelec's own policy resolution No. 9440 directing the proclamation of winning candidates notwithstanding the pendency of pre-proclamation cases, when it was nevertheless prevented by a contrary restraining order of the Comelec.

After hearing the oral argument of the parties but without receiving any additional evidence (although it turned out later it uni-laterally and ex-parte called in its handwriting experts without even informing the prejudiced party Leonor thereof nor furnishing her with copy of their alleged findings), the Comelec then issued its questioned Resolution of March 27, 1980 ordering the exclusion of the 40 returns in question and nullification of the decisive and unbeatable winning margin of 3,338 votes obtained by Leonor in said 40 voting centers and therewith the proclamation of Perez as the winner with a margin of 1,111 votes, which was forthwith done by its canvassing board.

This action of the Comelec was arbitrary and with grave abuse of discretion amounting to lack of jurisdiction and in violation of law and the Court's controlling doctrinal jurisprudence and criteria.

1. In overruling its own board of canvassers and ordering the exclusion from the canvass of the 40 election returns on the basis of the self-serving affidavits of the partisan and paid watchers of Perez of alleged vote-buying and terrorism, etc., all stated in mere generalities, the Comelec preferred to believe the word of these paid partisans of Perez and rejected the official affidavits of all the public school teachers comprising the Citizens Election Committees of the 40 voting centers concerned denying and belying their partisan charges and further disregarded the presumption of regular performance of official duty by the teachers. Worse, the Comelec repudiated and gave no credence to the official findings of the investigation made by the P.C. Chief, Major General Fidel V. Ramos (whose credibility rating can be taken note of as among, if not, the highest in the military hierarchy) that the charges were and are "false" and "without factual basis" and were but "a face-saving device in the wake of /Perez'/ resounding defeat" at the polls. And worst of all, the Comelec likewise repudiated and gave no credence to the President's own evaluation and approval of the PC Chief's official investigation report and findings -

contrary to the deference and credence due thereto.

2. The majority opinion rejects summarily PC Chief General Ramos' official report, without citing any substantial evidence or hard facts, on the bare speculative conclusion that "the investigation report of Brig. Gen. Vicente E. Eduardo relied upon by herein petitioner, was obviously tainted with bias, hence unreliable, considering that his son was a candidate in one of the towns of Nueva Ecija and, understandably, any adverse report from him relative to the conduct of election in his area of responsibility would be prejudicial to, if not a black mark on, his record and performance as PC/INP Regional Commander." [6] Such conclusion is to say the least unkind, reflecting as it does on the integrity of the PC/INP Regional Commander as well as on the actions of the PC Chief who verified and transmitted the official report and of the President who approved the same. What has been lost sight of is that the affidavits of Perez' paid and partisan watchers do not give any specifics or details as to how many voters of Perez were driven away from each voting center, how many flying voters were able to vote in each voting center, and who were the armed men "terrorizing" at the precincts and their number, so much so that even at this late date there have been no charges, much less prosecutions that have been brought to our attention. The total unworthiness of these face-saving affidavits is all the more brought home when it is considered that Perez was the incumbent mayor and dominant KBL candidate with all the resources of the city and party organization behind him as against his opponent newcomer Leonor who was running under the banner of a newly organized small local party, the Lapiang Pagkakaisa Ng Bayan.

3. The decisive criterion of the law and the controlling doctrine of the Court's jurisprudence, cited in the majority opinion but unfortunately not applied herein, down to the oft-cited leading case of *Aratuc vs. Comelec* [7] is that "where it has been duly determined after investigation and examination of the voting and registration records that actual voting and election by the registered voters had taken place in the questioned voting centers, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters, but must be accorded prima facie status as bona fide reports of the results of the voting for canvassing and proclamation purposes. Where the grievances relied upon is the commission of irregularities and violation of the Election Law the proper remedy is election protest (*Anni vs. Isquierdo et al*, L-35918, June 28, 1974)."

As further stressed therein, canvassing boards and the Comelec must exercise "extreme caution" in rejecting returns and may do so only upon the "most convincing proof" that the returns are obviously manufactured or fake. "Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, with the resulting disenfranchisement of those who exercised their right of suffrage." [8] Here, the 40 election returns, per admission of the parties are clean and do not contain erasures or superimpositions and the signatures thereon of the Citizens Election Committee members are admittedly genuine.

Thus, in the therein cited precedent of *Anni vs. Izquierdo* [9] "(T)he Court set aside the questioned Comelec resolution which ordered the outright exclusion and rejection of the returns of 89 precincts from 7 Sulu municipalities as 'manufactured returns' (because of excess votes) and thereby excluded over 5,000 votes for petitioner notwithstanding the admitted existence of actual voting therein and their having been duly verified by the Comelec examination of the registration and voting records to have been validly cast by the duly registered voters, which if not arbitrarily rejected, were much more than sufficient to maintain petitioner's margin of victory over respondent for the third and last provincial board member seat of Sulu." In *Villalon* [10] as well as in *Tagoranao* [11] the Court likewise set aside the Comelec resolutions which excluded the canvass of the returns in some decisive precincts (spelling the margin of victory or defeat for the protagonists) on the ground of excess votes since "We would not say there is 'most convincing proof' of excess votes which would authorize the conclusion that the pertinent return is 'obviously manufactured,' 'utterly improbable and clearly incredible' and

should be disregarded in the canvass, thereby resulting in the elimination from the count of the honest votes cast therein," stating further that "the function of separating the honest (votes) from the dishonest ones . . . belongs exclusively to the electoral tribunals or to the courts in respect to local elections" in the corresponding election protest.

In the oft-cited case of *Bashier vs. Comelec*[12] the Court once again stressed that where "there was actual voting, in the absence of strong evidence establishing the spuriousness of the returns, the basic rule of their being accorded prima facie status as bona fide reports of the result of the count of the votes for canvassing and proclamation purposes must be applied, without prejudice to the questions being tried on the merits with the presentation of all competent evidence, testimonial and real, in the corresponding electoral protest."

The Court took the occasion to explain therein that in the said cases involving the election of delegates to the 1971 Constitutional Convention of Lanao del Sur as well as in the other cases of *Diaz*[13] (involving the returns from Sagada, Mt. Province in the 1970 election of delegates for the Constitutional Convention) and of *Usman*[14] (involving the 1970 Lanao del Norte election of Constitutional Convention delegates), it had allowed evidence aliunde and the Comelec's examination of the voting records to determine and verify whether spurious returns had been manufactured by "fake voting done by a handful of persons" . . . "in /these/ critical areas where fabricated and spurious returns have been the rule rather than the exception"; but that such exclusion of the returns was uncalled for when there is no question that there has been actual voting and regular returns duly prepared and submitted at the end of the voting by the election inspectors (now C.E.C. members), as in the present case.

4. The case of *Leonor* is much stronger than in any of the above-cited cases. -

- There is no question that actual voting had been conducted on election day at the hours set by law;
- Cabanatuan City is right in the heart of Central Luzon with the election properly supervised by the Comelec as well as by the police and constabulary authorities with ready access to the public media, whereby irregularities and terrorism could be immediately reported and malefactors apprehended in flagrante delicto;
- Cabanatuan City has never been stained with the reputation of the critical areas in the North or South "where fabricated and spurious returns have been the rule rather than the exception";
- There is not even any question here of any excess votes recorded over the number of registered voters nor of the notorious fraud hallmarks of practically blanking the opponent with zero votes. *Leonor* bested *Perez* in these precincts by a margin of 2 to 1, even in *Perez*' own bailiwicks; and
- The self-serving charges of alleged terrorism made by the official candidate of the predominant KBL against his lady opponent were immediately investigated and found to be "false" and "without factual basis" by official report of the PC Chief to the President who cleared the same and reinstated the provincial commander.

5. Prescinding from the foregoing controlling jurisprudence and criteria that call for the setting aside of the Comelec's arbitrary and summary exclusion and nullification of the 40 returns in question, a brief rundown of the specifics will readily show the lack of factual and evidentiary basis for the Comelec's action:

(1) Comelec excluded 6 returns on its own evaluation and conclusion supposedly confirmed by its handwriting experts that they were written by one and the same person "indicating that the same are manufactured returns." [15] This was denial of due process, as correctly averred by *Leonor* since no evidence at all was presented during the entire proceedings before the canvassing board in Cabanatuan City nor before the Comelec in Manila. Such alleged opinion and findings of the handwriting experts were unilaterally and motu proprio sought by Comelec ex-parte and only after the submittal of the case on the basis of the documentary evidence

duly submitted by the parties and were revealed for the first time only in the questioned Comelec resolution itself. Leonor was never even informed of such alleged findings nor afforded the opportunity to refute the alleged findings.

Leonor's submittal that such a feat was a physical superhuman impossibility because the precincts were located at least 1 to 3 kilometers from each other and for one person to have filled up the said returns (writing the names of a total of 40 candidates for governor, vice governor and the Sangguniang Panglalawigan and for mayor, vice mayor and the Sangguniang Panglungsod, the respective votes for each candidate as tallied as well as for the plebiscite on the extension of tenure of members of the judiciary, sum up the total in words and figures therefor and sign the names of three public school teachers for each of the returns) would have required "superhuman capacity and speed" since by midnight of election day, all returns had already been submitted to the city election registrar in the heart of the city.

The majority opinion's rejection of Leonor's plaint of denial of due process on the ground that "the parties dispensed with the pre-sentation of testimonial evidence . . . and (she) therefore waived further presentation of evidence" begs the question and in no way justifies Comelec's resort to evidence aliunde (after submittal of the case) by way of the alleged findings of its handwriting experts without according Leonor due process by informing her thereof and giving her the opportunity to refute the same.[16]

The majority opinion's speculation in response to Leonor's contention of physical impossibility of one person writing all the returns within the time involved based on "common sense and perception" that "this Court cannot close its eyes to the possibility that the election returns contested by herein private respondent could have been prepared before election day, or even on election day and distributed among the different voting centers with the connivance of the members of the Citizens Election Committee, if they were not terrorized"[17] certainly cannot be substituted for the lack of hard and substantial evidence to support Comelec's arbitrary conclusion or its speculation, specially since not even Perez has even questioned that actual voting took place in all the precincts, and that the returns were thereafter submitted in due course to the canvassing board.

(2) Comelec excluded 17 other returns (3 because "entries (were) written by two different persons, and 14 because there were "no signatures/initials of all the members after the entry of votes for each candidate." [18]) As to the 3 returns where entries were written by 2 different persons, this cannot nullify the returns because it is commonplace in elections that such entries be made by two of the three public school teachers - CEC members, and Comelec made no finding, as it could not because these were not questioned at all on this ground, that the entries were not made by the teachers - CEC members, and instead capriciously nullified the returns. As to the other 14 other returns where the entries are not closed with the teachers' signatures or initials, there is no legal basis whatever to justify Comelec's action because Section 172 of the 1978 Election Code precisely mandates that where "some requisites as to form or data had been omitted in the election returns, the /canvassing/ board shall return then by the most expeditious means to the corresponding election committees for correction." Such omissions which do not affect at all the integrity of the returns cannot bring about the disenfranchisement of the innocent voters therein to the prejudice of their valid choice and nullify their votes, as Comelec has arbitrarily done. It must be regretfully stated that the majority opinion's ratiocination that "Section 172 imposes such a duty on the board of canvassers, not on the Comelec"[19] cannot stand. Comelec may very well direct the board to comply with the mandate of Sec. 172 and send back the returns to the election committees to do the ministerial job of closing the entries with their initials. But, really, as stressed in Aratuc "it is of decisive importance to bear in mind that under Section 168 of the Revised Election Code of 1978 the /Comelec/ shall have direct control and supervision over the board of canvassers and that "/as/ a superior body or office having supervision and control over another /the canvassing board/, /Comelec/ may do directly what the latter is supposed to do or ought to have

done." [20] As Comelec had taken over from the second canvassing board it itself had constituted in re-placement of the original board and stopped it from proclaiming Leonor, it became its duty to apply the corrective provisions of the law under Section 172, not to nullify the returns.

Also, to say that "the omission of the signatures or initials" which happens many times because of ignorance of the rules, haste, oversight or the lateness of the hour, "stamps the election returns with the indelible mark of falsity and irregularity" using the language of Usman, [21] equating that case with the case at bar is unfair and unkind, to say the least. A perusal of Usman will readily show that there is no comparison: In Usman Comelec conducted an examination and analysis of the voters' fingerprints and signatures "more than sufficed to completely overcome the prima facie value of the 42 election returns from Karomatan, strongly belying their integrity and authenticity. These circumstances definitely point, not merely to a few isolated instances of irregularities affecting the integrity and authenticity of the election returns, but to an organized, well-directed large-scale operation to make a mockery of the elections in Karomatan." This was further buttressed "by the very high percentage of voting in the 42 precincts of Karomatan - with 100% voting in 10 precincts and with more than 100% voting in 10 precincts" and "the notorious election record of Karomatan in previous elections since 1953 indicating a phenomenal increase in the voting population." [22] No such thing could be said of the election in Cabanatuan City, where admittedly there was regular and actual voting, as certified by the teachers - C.E.C. members themselves and the official report of the PC Chief duly approved by the President himself.

(3) Comelec excluded and nullified the remaining 20 other returns (for a total of 40 returns) cavalierly on general "grounds that certain election returns were prepared thru criminal collusion of members of the C.E.C. thru the intervention and/or dictation of armed men of candidate Garcia" [23] without any specification of which of said returns were prepared voluntarily thru criminal collusion and which were prepared forcibly at the dictation of armed men, and who were the public school teachers - C.E.C. members who committed the criminal collusion and who were the victims of the armed men, none of whom were likewise identified. Such generalities based on self-serving affidavits of Perez' henchmen certainly do not come up to the standard of the clearest and most convincing evidence that would justify the nullification of the returns and the disenfranchisement of the innocent voters. Up to this late date, there have not been any results of the investigation of Perez' charges as ordered by the Comelec in its resolution.

At bottom, as indicated at the onset, the self-serving affidavits of Perez' paid partisan watchers fall far short of constituting "the most convincing proof" that would warrant rejection of the returns in the face of the official affidavits of the public school teachers - CEC members attesting to the regularity of the election processes and buttressed by the presumption of regular performance of official duty. The downgrading of the teachers' affidavits as "surprisingly identical or similar and consist(ing) mainly of general denials, hence, cannot be accorded greater weight and credence" despite their execution by public officials in the performance of official duty must not be allowed to stand, since the fact that affidavits by a party "are of one style or wording is nothing unusual, since in actual practice, the words of an affidavit are not necessarily those of the affiant and when the same matter is to be attested to, almost invariably, the affidavits of several persons appear to be identical mutatis mutandis, without minimizing in any significant degree their intrinsic worth for the purpose for which they have been prepared." [24]

The majority opinion's acceptance at face value of Perez' affidavits as "more consistent with the evidence of fraud and other irregularities found by the Comelec" [25] cannot stand scrutiny as already discussed hereinabove.

Much less can said affidavits be given credence over the official investigation report of the PC Chief as approved by no less than the President that the same are "false and exaggerated" and "intended merely as a face-saving device" for Perez' "resounding defeat". The trivia and self-serving statements reproduced in the majority

opinion[26] are the best evidence of the correctness and veracity of the PC Chief's investigation report. As admitted in the very election report sub-mitted by Perez, quoted in the majority opinion, "no killing has been committed during the entire period but Mayor Perez reported massive terrorism and vote-buying in several barangays." [27]

6. Perez' proper recourse is an election protest, as held by the Court in the recent case of Laguda vs. Comelec, [28] penned by the Chief Justice for a unanimous Court, (which however has apparently not taken roots yet despite the host of other precedents.) The case's background is identical to that at bar, with Laguda who failed in his attempt at reelection as municipal mayor seeking the suspension of the canvass on the ground of "alleged electoral frauds or irregularities . . . the alleged threats and presence of subversive and terrorist elements." But the Comelec correctly ruled therein (as it likewise rule in Sampaco, [29] Villegas [30] and Leviste [31] and many other cases) - unlike in the case at bar - that the grounds are "proper grounds for an appropriate election contest wherein /the loser/ may ventilate his grievances." In sustaining the Comelec, the Court held that "an inquiry on the grounds . . . would necessarily entail the pre-sentation of conflicting testimony. To pass on such a complex matter in a summary proceeding would be to run the risk that the decision arrived at would not reflect the realities of the situation. It could even be susceptible to the charge that the whole truth did not come to light. Under the circumstances, an election protest clearly is the more appropriate remedy." The case at bar is the most eloquent proof of the validity of the said pronouncements of this Court.

7. In discussing Leonor's petition questioning the Comelec action of excluding the 40 questioned returns and thus depriving her of her commanding margin of victory (as determined twice by the original canvassing board as well as the second board constituted by Comelec itself) the majority opinion ruled that "the petitioner (Leonor) failed to show patent and grave abuse by respondent COMELEC of its authority to exclude from the canvass election returns which are, on their faces, obviously tampered with and/or manufactured." [32] Herein lies the fatal premise and lack of factual and legal basis for the questioned Comelec action - as shown extensively hereinabove, in no way do said returns show that they are "on their faces, obviously tampered with and/or manufactured." Perez asked for a useless recount but Comelec erased Leonor's decisive 3,338-vote margin by excluding the 40 precincts.

Consequently, the Comelec action must be set aside as "capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law tradition." [33]

The broad powers given to Comelec under the 1973 Constitution merely incorporates 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. [34] 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 reaffirmed in Aratuc itself as the "polestar", which I beg to state once again, that where as in this case there has been actual voting, the election returns must be accorded prima facie status as bona fide reports of the voting for canvass and proclamation purposes and the proper remedy in case of complaints of election irregularities is the election protest. 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." [35]

I therefore vote for the granting of Leonor Garcia's petition to set aside the Comelec resolution, and with the proper inclusion in the canvass of the 40 returns wrongfully excluded, to proclaim her as the duly elected mayor of Cabanatuan City.

II. Re the second case (G.R. 54277), as already indicated, it would be the grossest injustice, given the majority judgment in the first case upholding Comelec's exclusion of the 40 returns that deprived Leonor Garcia of her decisive margin of victory, if she were to be de-prived even of her right to make "the whole truth come to light" in the appropriate election protest where the question of inclusion or exclusion of the 40 returns could be properly "tried on the merits with the presentation of all competent evidence, testimonial and real,"[36] instead of summary pre-proclamation proceedings with mere affidavits. I vote therefore, with the majority in this second case, in its dis-missal of Honorato C. Perez, Sr.'s petition which would set aside the Comelec resolution that reinstated Leonor Garcia's election protest ad cautelam for proper determination after trial on the merits.

[1] Annexes R-1, R-2 and R-3, petition.

[2] Exh. 21, at page 275, Record.

[3] Issued on the eve of the retirement on May 17, 1980 of three members of the Comelec. See the writer's separate opinion in G.R. No. 53962, Omar vs. Comelec, February 3, 1981.

[4] 88 SCRA 251, 283 (1979).

[5] Idem, at page 283.

[6] At pages 20-21.

[7] 88 SCRA 251, 282-283, per Barredo, J. emphasis copied.

[8] Id. at page 282, citing Anni vs. Izquierdo, 57 SCRA 692 per Teehankee, J.; Villalon vs. Comelec, 34 SCRA 594 per Barredo, J.; and Tagoranao vs. Comelec per Fred Ruiz Castro, J., 22 SCRA 978.

[9] See fn. 8.

[10] 34 SCRA, at page 605, emphasis supplied.

[11] See fn. 8.

[12] 43 SCRA 238, 263, per Teehankee, J.

[13] 42 SCRA 426, per Reyes, J.B.L., J.

[14] 42 SCRA 670, per Fred Ruiz Castro, J.

[15] Majority opinion, at page 17.

[16] Ang Tibay vs. Court of Industrial Relations, 40 OG. 7th Supp. 29.

[17] Majority opinion, at page 19.

[18] Idem, at pages 15-16.

[19] Majority opinion, at pages 19-20.

[20] 88 SCRA at page 273.

[21] Majority opinion, at page 20, citing Usman vs. Comelec, 42 SCRA at page 686.

[22] Idem at pages, 687, 688.

[23] Majority opinion, at page 16.

[24] *Sinsuat v. Pendatun*, separate opinion of Barredo, J. 33 SCRA 630, 695.

[25] *Idem*, at page 22.

[26] *Idem*, at pages 25-33.

[27] *Idem*, at pages 32-33, emphasis supplied.

[28] G.R. No. 53747, Feb. 20, 1981.

[29] G.R. 53454, March 25, 1980.

[30] G.R. 52463, Sept. 4, 1980.

[31] G.R. 52687, Feb. 26, 1980.

[32] Majority opinion at page 23.

[33] *Panaligan vs. Adolfo*, 67 SCRA 176.

[34] At pages 23-24.

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

[36] *Bashier vs. Comelec*, 43 SCRA at page 263.

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