

**BREN Z. GUIAO, PETITIONER, VS. COMMISSION ON ELECTIONS,
ABER P. CANLAS, PROVINCIAL BOARD OF CANVASSERS OF
PAMPANGA AND MANUEL LUCERO, RESPONDENTS.***G.R. No. 68056. July 05, 1985*

Ponente: ALAMPAY, J.

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On July 24, 1984, a verified Petition for Certiorari was filed with this Court by Petitioner Bren Z. Guiao, seeking the review and reversal of the Resolution of the Respondent Commission on Elections (COMELEC) issued en banc on July 18, 1984 in PPC Case No. 32-84 where the Commission en banc, by a vote of 5 to 1, with Commissioner Ramon H. Felipe, Jr., dissenting, denied petitioner's motion for declaration of nullity of the proclamation of respondent Aber Canlas as Assemblyman for Pampanga, made by the Provincial Board of Canvassers of said province on May 17, 1984, in connection with the May 14, 1984 elections, pending the hearing on appeal of the said PPC Case No. 32-84 before the Commission en banc.

The antecedent facts of this case disclose that on May 14, 1984, at seven o'clock in the evening, the Provincial Board of Canvassers met at the Conference Hall, Provincial Capitol in San Fernando, Pampanga, to canvass the election returns from the voting centers in the province. The contending political parties, the KBL, and the UNIDO, were duly represented in the said Board as the election returns were being canvassed. By 11:30 o'clock in the evening of May 16, 1984, the canvass of all election returns from all the voting centers of Pampanga had been completed without any objection raised by anyone to any of the canvassed returns. Thereafter, the Board proceeded to tally the total number of votes received by each candidate and the tabulation of the votes disclosed that the four candidates who received the highest number of votes and won in the election for the Batasan were the following:

Juanita L. Nepomuceno - - - - - 246,231

votes

Egmidio L. Lingad - - - - -

227,111

“

Rafael L. Lazatin - - - - -

211,288

“

Aber P. Canlas - - - - - 203,856

“

Petitioner Bren Z. Guiao garnered fifth place with 195,583 votes.

After the canvass was completed, and only at about 12:50 A.M. of May 17, 1984, did petitioner submit to the Board of Canvassers his written objections to the inclusion in the canvass of election returns from approximately 31 various voting centers of different municipalities. Petitioner based his challenge on the following grounds:

"Incomplete, duress, intimidation, falsified obviously manufactured, threats, coercion, Comelec's copy used not authentic, statistically improbable, and persons in Saudi Arabia were made to appear as if they had voted."

The belatedness of the submission of these written objections of the petitioner notwithstanding, the Board of Canvassers nevertheless set the same for hearing at eleven thirty in the morning of that very date, May 17, 1984. The Chairman of the Board of Canvassers, Atty. Manuel Lucero also sent to the Commission on Elections a memorandum, stating and informing that the —

"Objections were raised after the completion of the canvass and requesting that the Provincial Board of Canvassers in Pampanga be authorized to proclaim the winning candidate based on the results of the completed canvass without prejudice to the outcome of the hearing on the objections."

In a resolution dated May 17, 1984, the COMELEC granted the aforesaid request of the Chairman of the Provincial Board of Canvassers. The petitioner's objections were later dismissed by the Board of Canvassers for failure to substantiate the same. It also appears that at said hearing, there was presented to the Board the request of the petitioner, thru his counsel Atty. Suarez, that subpoena be issued to the members of the Citizens Election Committee from various voting centers enumerated in the written objections. Said request was denied by the Board on the grounds that said petitioner's counsel should have been ready with his evidence to support his objections, the hearing being summary in nature and also to preclude further delay in the proclamation of the winning candidates. (Minutes of the Meeting of the Provincial Board of Canvassers held on May 17, 1984).

Thereafter, the proclamation of the winning candidates was finally agreed upon by the Board and at 6:00 P.M. of May 17, 1984, the Board proclaimed the winning candidates, which included the respondent Aber P. Canlas, as among the Assemblymen-elect with 200,856 votes. The corresponding certificate of canvass and proclamation of the candidates-elect was issued, duly signed by all the members of the Board of Canvassers, including the representatives of the Dominant Party, UNIDO.

On May 18, 1984, in an urgent petition filed with the COMELEC, petitioner prayed that the Board of Canvassers be restrained from further proceeding with the hearing in connection with the canvassing of the results of the Batasan election in Pampanga and for the annulment of all proceedings held by said Board on account of its denial of petitioner's motion to identify, mark and introduce documentary evidence and its refusal to issue "subpoenas to summon his witnesses from various municipalities." The action of the Provincial Board is complained of by petitioner as constituting denial of his constitutional right to present his evidence.

On May 22, 1984, another verified petition was filed with the COMELEC for the annulment of the proclamation of respondent Aber P. Canlas, on the ground that such was made in violation of Section 54 of Batas Pambansa Blg. 697, and consequently, premature and with denial of petitioner's right to due process.

The case for annulment of the proceedings of the Provincial Board of Canvassers and proclamation of Aber Canlas was docketed in the COMELEC as Case No. PPC 32-84. It was heard by the First Division of the COMELEC and was considered submitted for resolution after the submission of the respective Memorandum of

the contending parties.

In its resolution dated June 28, 1984, by a vote of 2 to 1, the First Division of the COMELEC dismissed petitioner's suit but without prejudice to the filing by the latter of an election protest. Said resolution was appealed by the petitioner to the COMELEC en banc.

At the hearing on July 18, 1984, before the COMELEC sitting en banc, of the appeal made by the petitioner herein, the latter through his counsel, asked for a ruling from the Commission on his Motion to Press Annulment of Premature Proclamation of Respondent Aber P. Canlas, dated July 13, 1984, and filed with the Commission on July 14, 1984. Herein petitioner invoked the ruling of the Supreme Court in the case of *Javier vs. COMELEC*, promulgated on June 14, 1984, in G.R. No. 67594, wherein it was stressed that where a proclamation has been issued before the expiration of the five-day period for appeal, such proclamation due to its prematurity should be set aside. However, Respondent Commission in open session, at said hearing of July 18, 1984, by a vote of 5 to 1, with Commissioner Ramon H. Felipe, Jr. dissenting, denied the aforesaid motion of petitioner upon the consideration of said Commission that the facts of the *Javier vs. Pacificador* case cited by petitioner are different from the case at bar and, therefore, the rulings therein relied upon by petitioner are inapplicable to the subject case.

Upon its denial of petitioner's Motion for Annulment, the Commission then ordered Appellant Guiao to present evidence in support of his appeal but as the latter's counsel was not ready to do so, and because petitioner had asked time to elevate to the Supreme Court the denial by the Commission of his aforesaid Motion, continuation of the hearing of Petitioner's appeal was reset by the COMELEC to July 25, 1984, for the reception on said date of the evidence of both contending parties, unless a restraining order is issued by the Supreme Court. The Commission also gave advice in open session that if at the scheduled resumption of the hearing of July 25, 1984, petitioner-appellant Guiao would not be ready with his evidence, it will consider the case before it as submitted for resolution.

On July 24, 1984, petitioner filed with this Court the instant Petition for Certiorari with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Restraining Order, to enjoin the COMELEC from proceeding with the hearing on July 25, 1984.

On July 25, 1984, a supplemental petition was filed with the Court by petitioner Guiao. He manifested therein that at the hearing of his appeal under PPC No. 32-84 before the COMELEC on same said date, he had pointed out to the Commission sitting en banc that he had already filed the instant Certiorari proceedings before the Supreme Court which case was docketed as G.R. No. 68056; that he had raised fundamental legal issues which petitioner claims to partake the character of a prejudicial question necessitating the resolution thereof before a hearing on the merits of his appeal should be made by the Commission; and that for petitioner to present his evidence to the COMELEC, may be construed as a waiver or renunciation of the legal questions raised by him in the Certiorari proceedings. In his supplemental petition, petitioner Guiao assailed the denial by the Chairman of the Commission of his verbal request for the deferment for forty-eight (48) hours of the said hearing of July 25, 1984, in order to enable him to obtain the restraining order from the Supreme Court, which he had applied for. Petitioner bewailed not only the verbal denial of his Motion for Reconsideration of the COMELEC's Order refusing deferment of the hearing but also the fact that the Chairman of the COMELEC also considered the case as submitted on the merits and for resolution by the Commission without evidence on the part of the petitioner.

This Court in its resolution promulgated on July 26, 1984, resolved among other things, to:

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"(b) SET the plea for the issuance of a temporary restraining order for hearing on Tuesday, July 31, 1984 at

11:00 A.M. Aquino, J., voted to dismiss the petition on the ground that the Commission on Elections' resolution of July 18, 1984, sought to be reviewed, is interlocutory. For him, it is the decision to be rendered by respondent Commission as announced by it at the hearing on July 25, that can be reviewed. Abad Santos and Gutierrez, Jr., JJ., took no part."

As petitioner was unable to secure any restraining order from this tribunal, the COMELEC en banc, in its sixty-page resolution promulgated on August 4, 1984 (Rollo, 163) by a vote of 6 to 1, with Commissioner Ramon H. Felipe, Jr., dissenting, upheld the validity of the proclamation of Respondent Aber Canlas and dismissed the petitioner's appeal to the Commission.

In this connection, the COMELEC in its said resolution stated among other things, the following:

"Considering the attempt of the Petitioner to summon and examine before the board of canvassers all Chairmen and members of the Citizens Election Committee of the voting centers he is questioning, we believe that this indeed can adequately and more properly be done in a full-blown hearing in an election protest.

"We are in full accord with the findings and conclusions of the majority Resolution of the First Division appealed from and finding no illegality or irregularity in the composition of the board of canvassers the validity of the proclamation of candidate ABER CANLAS by the provincial board of canvassers of Pampanga must be, as it is hereby, upheld and sustained.

"WHEREFORE, all the foregoing premises considered, the majority Resolution of the First Division sustaining the validity of the proclamation of Assemblyman ABER CANLAS made by the Provincial Board of Canvassers of Pampanga in connection with the May 14, 1984 election is hereby AFFIRMED and accordingly the appeal of the Petitioner-Appellant BREN GUIAO is hereby DISMISSED.

"SO ORDERED." (Rollo, pp. 221-222)

On August 14, 1984, a Notice of Appeal was filed by petitioner through his counsel from the initial resolution of the First Division dated June 28, 1984, affirming the proclamation of the winning candidates by the Provincial Board of Canvassers of Pampanga in connection with the May 14, 1984 elections; the Order of the COMELEC sitting en banc dated July 25, 1984, denying the petitioner's Motion for the Cancellation of the Hearing on said date; and the en banc resolution dated August 4, 1984, affirming the majority resolution of the First Division sustaining the proclamation of Assemblyman Aber Canlas made by the Provincial Board of Canvassers of Pampanga and accordingly dismissing the appeal of the appellant Bren Guiao. Said notice of appeal was filed on the ground that these challenged orders are contrary to the facts and applicable law and jurisprudence.

On August 15, 1984, petitioner filed with this Court a supplemental petition for Certiorari and review incorporating therein the proceedings that had transpired in the COMELEC in connection with his appeal in PPC No. 32-84. In this supplemental petition, petitioner submitted as Annex B thereof (Rollo, 158) the order of the COMELEC dated July 25, 1984, which denied petitioner's request for the deferment of the scheduled hearing of petitioner's appeal in PPC No. 32-84 before the Commission on said date. In said Order, the COMELEC recited the proceedings which transpired in said case and stated among other things, the following:

"In view of the express order of this Commission as can be seen from the above quoted order dated July 18, 1984, which was given in open session on said date, and even assuming that petitioner's counsel was able to get a certified copy of said order only yesterday, July 24, counsel has been well advised beforehand that unless restrained by the Supreme Court, the Commission would receive the evidence of both parties at today's hearing.

"It is also clear from the order of July 18 that if petitioner would not be ready with his evidence at today's hearing, the Commission will consider the instant case as submitted for resolution.

"The trouble is, petitioner's counsel has assumed he would be able to secure a restraining order from the Supreme Court prior to this morning's hearing. Failing to do so, he now asks for another postponement.

"At any rate, petitioner's counsel should have been ready with his evidence this morning. This is what is expected of him, and which he should know as a practicing lawyer. Counsel should not take this Commission for granted or assume that another postponement would be granted at his instance.

"Counsel's fear that should he commence with the introduction of evidence he might be deemed to have waived his objections raised in the Supreme Court, is both flimsy and groundless. In the first place, he has not even given this body the courtesy of furnishing it a copy of his alleged petition in the Supreme Court, hence, we are not formally aware of his allegations therein. We cannot rely on his bare manifestation orally presented. If he has raised the question of jurisdiction he should know that said issue may be raised at any stage of the proceedings.

"It is, therefore, clear to us that petitioner and his counsel are merely engaged in dilatory maneuvers. The records show that the Commission had previously postponed the hearing of this case upon motion of petitioner's counsel on two (2) previous occasions, the last of which was done in the interest of justice. So that this Commission now feels it had already accorded petitioner more than sufficient time within which to prosecute its appeal before it en banc." (Rollo, pp. 159-160; Order of July 25, 1984, Annex B of Supplemental Petition for Review on Certiorari).

On August 21, 1984, this Court resolved to require respondent to comment on respondents' supplemental petition for review on Certiorari and counsel for petitioner to file a Reply to the Comment of the Solicitor General for Respondent COMELEC dated August 9, 1984; and noted the Manifestation filed by counsel for private respondent Canlas dated August 20, 1984, adopting COMELEC's comment.

Public respondent's comment on the supplemental petition was submitted on October 9, 1984 and on October 22, 1984 private respondent, by his counsel, likewise filed a similar comment pursuant to this Court's directive. We find no Reply submitted by petitioner to the comment of the Solicitor General for respondent COMELEC, dated August 9, 1984.

Considering the petition and the other pleadings in support of the same and in connection therewith or in controversion thereof, We find no merit in petitioner's case. Accordingly, the appeal of petitioner-appellant Bren Guiao should be dismissed for being untenable.

Firstly, it is petitioner's submission that the annulment of the proclamation made by the Provincial Board of Canvassers which is claimed to be void ab initio should pertain to respondent Aber P. Canlas only and should not extend to the other proclaimed candidates, Nepomuceno, Lingad and Lazatin, who with the petitioner, are affiliated with the UNIDO.

As all the aforementioned candidates elect were proclaimed together and at the same time, the validity of that proclamation made by the Provincial Board of Canvassers which is now challenged by petitioner as void ab initio cannot be susceptible of division and must be accepted or rejected in its totality. It cannot be null and void as to one proclaimed winning candidate and valid with respect to other similarly proclaimed under the same action taken by the Provincial Board of Canvassers.

Significantly, petitioner apparently concedes and accepts the validity of the proclamation of the three (3) UNIDO candidates, who with him stood as the official candidates of said political party in the May 14, 1984 elections. He declares that he does not question the proclamation of the said UNIDO candidates and that their proclamation is now final. (Memorandum for Petitioner, dated June 20, 1984, page 3). With this inconsistent posture taken by petitioner, the merit of his petition in this case is irretrievably lost.

Petitioner makes mention of Section 56 of Batas Pambansa No. 697 which permits the partial or advance proclamation of any winning candidate whose election will not be affected by the outcome of a pre-proclamation controversy. This connotes the absence of any proclamation made yet by the Board of Canvassers. This particular provision cited by petitioner does not however support a conclusion that where a proclamation of all the winning candidates has already been made and the issue is the validity of that singular act of proclamation, there can be sanctioned a partial annulment of that single proclamation. Absent any reference to a specific provision of law or legal precedent which expressly sanctions a partial annulment of a proclamation, it becomes plainly illogical to hold that a single act done can be valid and invalid at the same time.

But aside from the aforementioned observations, there is nothing on the record nor is there any basis in law that can justify the setting aside of the proclamation of respondent Aber Canlas as the elected Batasan Pambansa member.

It is pertinent here to consider the pronouncements made by the COMELEC en banc in its said resolution of August 4, 1984, sustaining the proclamation of respondent Aber Canlas.

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"Section 54 states that any candidate, political party or coalition of political parties, contesting the exclusion or inclusion in the canvass of any election returns shall submit their written objections to the Chairman of the Board of Canvassers.

"The question now is when should these written objections be submitted?

"From the provision of said Section 54 it can clearly be inferred that these written objections must be submitted or manifested in order that it can be reflected in the minutes of the canvass during the actual canvassing of the election returns, that is, during the second stage of the proceedings as pointed above since it is only during this stage that the board determines the inclusion or exclusion of the returns by opening and examining the returns to verify the authenticity and genuineness of the same.

"The summary nature of the proceedings require that the written objections be filed only during this stage because it is only during this stage of the canvass when the inclusion or exclusion of any return is in issue and being passed upon by the board. If during this stage, after the board has examined the returns and ruled to include them to the canvass with the acquiescence or approval of the representatives of the political parties and without any objection written or verbal, from any of the candidates or their representatives, they are included in the canvass and the parties are estopped from questioning the inclusion of the returns in the canvass and from denying the admissibility of said returns for purposes of the canvass after the second stage of the canvass.

"This must be so since at the third stage of the canvass, the inclusion or exclusion of any election return is no longer in issue. The issue in this third stage is the correctness or incorrectness of the mathematical computation and tabulation of the total votes received by the candidates as a result of the canvass.

"Once the correctness of the mathematical computation of the result of the canvass during this stage is determined and as established by the board of canvassers, the fourth stage remains to be a formality which should not be delayed by frivolous, imaginary and untimely unsubstantiated objections to election returns, intended to prevent or hinder the proclamation of the winning candidates.

"That these written objections must be submitted during the second stage, that is during the actual canvassing of the election returns, becomes express when said Section 54 states "The Board shall defer the canvass of the contested returns and shall not make any ruling thereon until after all the uncontested election returns have been canvassed.

"How can the board of canvassers defer the canvass of the contested returns if these written objections are submitted after the second stage, that is after the canvassing of said returns?

"To allow these written objections to prosper after the canvassing would be requiring the board of canvassers to re-open the canvass of election returns all over again which otherwise was regularly conducted without any objection from the political party representatives and the candidate or their representatives. This would not be in keeping with the summary nature of the canvass proceedings.

"We cannot sanction a procedure that would destroy the summary nature of the canvass proceedings and would open the flood gates of unsubstantiated petitions after the results are known under the guise of written objections under Section 54 to prevent the proclamation of the winners in an election considering the propensity of the losing candidates to put up all sorts of obstacles to prevent such proclamation in an open display of unwillingness to accept defeat.

"It is undisputed, as it is admitted and established, that the written objections of the Petitioner was submitted to the board of canvassers during the third stage of its proceedings, that is, at the time when the board was already summing up to total votes received by the candidates. Clearly, it was filed beyond the second state, i.e., beyond the period of the actual canvassing of the returns when the inclusion or exclusion of said returns was being determined and ruled upon by the canvassers.

"Since the Petitioner's objections were not timely and seasonably filed, we, therefore, find and so hold that Section 54 of Batas Pambansa Blg. 697 cannot be availed of by the petitioner under the established facts in this case.

"The board of canvassers would have been within its legal prerogatives to have proclaimed the winding candidates without obtaining the authority to proclaim from this Commission."

In the light of the incontrovertible chronology of facts and events, it is obvious that the petition in this case is devoid of merit.

Petitioner's written objections to the inclusion in the canvass of the questioned election returns were not timely presented. The time to object in writing to any election return should be when such return is being examined by the Board of Canvassers and before the number of votes therein reflected are tallied. Thus Section 54 of Batas Pambansa Blg. 697, provides in part:

"Any candidate, political party or coalition of political parties, contesting the exclusion or inclusion of the canvass of any election returns shall submit their written objections to the Chairman of the Board of Canvassers. The Board shall defer the canvass of the contested returns and shall not make any ruling thereon until after the uncontested election returns have been canvassed x x x."

The aforecited provision clearly directs that the Board defer the canvass of the contested return and make no ruling regarding the same until after the canvass of the uncontested returns. It follows that the written objections should be made before the votes reflected in the return are tallied, which is the canvass proper.

In *Abrigo vs. COMELEC*, G.R. No. 31374, Jan. 21, 1970, 31 SCRA 26, 15, it was categorically ruled that "The law envisions that while the board is doing its work in canvassing the returns and tallying the result, its attention should be called to any question which could affect its work, so as to enable the said board to decide whether "to defer the canvass or to continue with it."

Considering that in the case at bar, petitioner presented his written objections only after the canvass of all the election returns or after the votes reflected in all returns had been tallied, the belatedness of the submission of petitioner's written objection renders futile its challenge the canvass already accomplished by the Board. The Board has its legal obligation, after canvass of the returns, to proclaim the elected candidates (*Abes vs. Commission on Elections*, G.R. No. 38348, Dec. 15, 1967, 21 SCRA 125, 1256). As a matter of fact, it even appears that Mrs. Sylvia Antonio, daughter of Assemblywoman-elect Juanita Nepomuceno, who ran under the

UNIDO banner, herself belied the petitioner's claim of alleged irregularities and other illegal acts. (See En Banc Resolution of COMELEC, dated August 4, 1984, page 6). Thus the certificate of canvass and proclamation of the Candidates-Elect significantly carried the written and unqualified conformity of the representative of the UNIDO, the party to which petitioner belongs. (Rollo, 65)

Petitioner was not denied his right to contest the election returns before the Board of Canvassers. The Dominant Opposition Party, which was the UNIDO, under which banner the petitioner ran, was represented in the Board of Canvassers and in all the Citizens Election Committees and at all stages of the canvass. All throughout the process of the canvass of the election returns there was no showing that any election return was challenged by any of the representatives of the parties up to the time the canvass was completed.

It was only after an appreciable length of time after the completion of the canvass that petitioner's counsel interposed his objection to the inclusion of a certain number of the returns. The tardiness of the objection would be reason enough to dismiss said objection and proceed with the proclamation. Apparently to dispel any acrimonious challenge to its actions, the Board thru its Chairman, prudently solicited authority from the COMELEC to proclaim the winning candidates without prejudice to ruling on the petitioner's objection which the Board then set for hearing at eleven thirty in the morning of that very same day, May 17, 1984. COMELEC granted the request of the Board to proclaim the winning candidates.

In the morning of May 17, 1984, the Board of Canvassers reconvened to hear the matter of petitioner's written objections. On that day instead of presenting his witnesses, petitioner requested for the issuance of subpoena ad testificandum to summon members of the various Citizens Election Committee. The Board of Canvassers rejected this request which was considered as dilatory. Consequently, the Board dismissed the petitioner's written objections for failure to substantiate the same.

Subsequently, the Board was able to proclaim on that same date the winning candidates with the corresponding Certificate of Canvass of Returns and Proclamation of Candidates signed by all the members of the Board of Canvassers, including the UNIDO representative.

Regarding this matter, the electoral Commission sitting en banc very succinctly stated in its Resolution dated August 4, 1984, the following:

"The board of canvassers acted correctly and in accordance with law in dismissing the written objections of the petitioner for not only because it was not timely and seasonably filed but also because the petitioner failed to establish prima facie the indubitable existence of the fraud, irregularities or circumstances constituting the grounds of his written objections.

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"Canvass proceedings are primarily administrative and summary in nature, and a strong prima facie case backed up by a specific offer of the evidence and indication of its nature and importance has to be made out to warrant the reception of evidence aliunde and the presentation of witnesses and the delays necessarily entailed thereby. (Ilarde vs. Comelec, et al., 31 SCRA 72, 81).

"Consequently, we have been consistent in holding, as we hereby hold in this case, that mere allegations of duress, coercion, fraud, terrorism or other similar irregularities unaccompanied by prima facie proof or showing thereof cannot be sustained as sufficient to invalidate election returns which otherwise are clean on their faces. Such allegations without prima facie proofs are mere conjectures and deductions which cannot legally destroy the prima facie value of election returns for purposes of the canvass. And we add, such allegations without prima facie proofs when submitted after the actual canvass of election returns could very well be classified as after thoughts intended to delay or derail the proclamation of winning candidates.

"In passing, we find it noteworthy, if not amusing, that in some voting centers questioned by the petitioner, he obtained more votes than Respondent as shown hereunder."

[Reference was made to twenty voting centers in Florida and Sta. Ana, Pampanga, where petitioner Bren Guiao had in fact won over Respondent Aber Canlas] (Rollo, 173-174)

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Resort to general objections have long been proscribed by this Court. Such cannot justify the exclusion of election returns from the canvass. Otherwise, the paralyzation of canvas-sing and proclamation proceedings leading to a vacuum in government offices could easily be brought about. (Ilarde vs. COMELEC, G.R. No. 31446, Jan. 23, 1970, 31 SCRA 72, 81).

In his attempt to prove the alleged duress, intimidation, threats and coercion in the preparation of the questioned returns, petitioner bewails the unwillingness of the Board of Canvassers to subpoena the members of the Citizens Election Committee to testify before said Board. We find no cause to fault the Board in this regard. To have acceded to the petitioner would have made the Board a full dress hearing body in ascertainment of issues of fact far beyond its authority to perform.

In Lucman vs. Dimaporo, G.R. No. 31558, May 29, 1979, 33 SCRA 387, 405-407, this Court stated that the function of a Provincial Board of Canvassers is purely ministerial in nature. Quoting from Demafiles vs. Commission on Elections, L-28396, December 29, 1967, 21 SCRA 1462, 1466, this Court then said:

"First a canvassing board performs a purely ministerial function — that of compiling and adding the results as they appear in the returns transmitted to it. This is the teaching in Nacionalista Party v. Commission on Elections; "the canvassers are to be satisfied of the genuineness of the returns — namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied, xxx they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the elections." Thus, they cannot pass upon the validity of an election return, much less exclude it from the canvass on the ground that the votes cast in the precinct from whence it came are illegal." (Citing 85 Phil. 149, 157-158 (1949).

There is more compelling reason to be guided by such judicial guidelines. If the Provincial Board of Canvassers had acquiesced to receiving the testimonial evidence which the petitioner sought to obtain and later present, it would have been obliged to allow respondent Aber Canlas, a similar opportunity to submit contro-verting testimonial evidence. The resulting effect would be for said Board to unduly usurp the functions given exclusively to the COMELEC to adjudicate such a pre-proclamation controversy.

It would not have served any gainful purpose for the Board to issue the subpoenas desired by petitioner because Section 50 of Batas Pambansa Blg. 697 provides that the Commission on Elections shall have exclusive jurisdiction over all pre-proclamation controversies. Consequently, the Board is precluded from entertaining requests the nature of which would be for the purpose of having members of the Citizens Election Committee testify before the Board on the duress, intimidation, terrorism, and other election irregularities alleged by petitioner. It is a well-entrenched rule in our jurisprudence that Boards of Canvassers have no power to pass upon election frauds and irregularities as questions of illegal voting and fraudulent practices are passed on by another tribunal. (Sanki vs. COMELEC, G.R. No. 28359, Dec. 26, 1967, 21 SCRA 1392; citing Dizon vs. Prov. Board of Canvassers, 52 Phil. 4, 57-58).

As there was no useful result that could be obtained in issuing the subpoena asked for by petitioner from the Board whose authority to grant such requests for the avowed purpose would be even dubious, this Court finds no reason whatsoever to fault the refusal of the Board to issue those subpoenas.

Petitioner repeatedly insists that what was submitted to the COMELEC for resolution, is limited to the issue alone of the validity of the proclamation of respondent Aber Canlas among the winning candidates. Petitioner assails such proclamation made on May 17, 1984 by the Provincial Board of Canvassers. He invokes Section 54 of Batas Pambansa Blg. 697 which recites that "The Board shall not proclaim any winning candidate unless authorized by the Commission and any proclamation made in violation thereof shall be null and void ab initio."

But as exhaustively discussed and pointed out in the resolution of the COMELEC of August 4, 1984 which affirmed the resolution of the First Division of said Commission, promulgated on July 28, 1984, the Commission had approved, in a minute resolution dated May 17, 1984, the earlier memorandum request of Atty. Manuel C. Lucero, Acting Director, Region III, San Fernando, Pampanga and Chairman of the Provincial Board of Canvassers, for authority to proclaim the winning candidates in the May 14, 1984 Batas Pambansa election in said constituency. (Re solution of COMELEC, dated August 4, 1984, on pages 4-5).

Factually, there was such prior authorization to proclaim the winning candidates, including respondent Aber Canlas. Properly, there was even no need under the established facts in this case for the formality of an authorization considering that petitioner's objections not having been timely and seasonably filed, Section 54 of Batas Pambansa Blg. 697 cannot consequently be availed of by petitioner, as was rightfully so considered by the COMELEC in its resolution of August 4, 1984.

Petitioner falls back on another contention which is that under Section 54 of Batas Pambansa Blg. 697 the Board could not make the proclamation nor could it have been rightfully authorized by the COMELEC before the lapse of the five-day period to appeal to the COMELEC ruling of the Board on his written objections to the canvass.

But as already above-discussed, due to petitioner's inaction and tardiness, petitioner cannot insist on the applicability of said provision.

But even if said Section 54 has to be considered, it can be readily realized from reading thereof that the prohibition therein for the Board not to proclaim any winning candidate, is premised on the basic assumption that the Board of Canvassers had deferred the canvass of the contested returns and would still have to rule on whether or not such contested returns would be included or not in the canvass. Such situation which would be the justification for the prohibition not to proclaim never arose in the case at bar. As no election return was ever contested from the time the canvass was started until the tally of votes were completed, consequently, no ruling can then be expected for the Board to make and which could be the subject of the appeal contemplated under Section 54. If no such ruling has to be made by the Board of Canvassers it would follow that there would be no reason for the prohibition to proclaim the winning candidates and that the five-day period to appeal to the COMELEC, prescribed in the second paragraph of Section 54 need not be reckoned at all. The recourse left to the petitioner in the matter of his objections interposed after the tally is to be found elsewhere.

What is indeed more proper is the application of Section 56 of said Batas Pambansa Blg. 697 which allows a party to file a petition with the Commission to annul or suspend the proclamation of any candidate. The mere filing of such petition to annul or suspend the proclamation of any candidate does not however automatically deprive the Board of Canvassers of its authority to proclaim. Neither would filing such a petition at once negate a proclamation which said Board might have already made. Under said provision, it is clearly specified that what is only suspended is the running of the period to file an election protest or quo warranto proceedings. We discern no legal impediment to the proclamation made by the Respondent Board of Canvassers. No violation of Section 54 of Batas Pambansa Blg. 697 can be rightfully imputed to said Board.

The contention of petitioner that the Acting Regional Director of Region III, Atty. Manuel Lucero acted as Chairman of respondent Provincial Board of Canvassers of Pampanga to the exclusion of the Provincial Election

Officer of said province and that consequently, there was an illegal composition of the said Board is plainly untenable.

As the records of the Commission show, as early as May 7, 1984, Atty. Silvestre Bello, Assistant Executive Director for Operations, submitted to Chairman Vicente M. Santiago, Jr. for approval a Memorandum-List of the proposed Chairmen of the Board of Canvassers, stating therein the following:

"x x x For the provinces, the Chairmen are the respective Provincial Election Supervisors, except in Pampanga, Romblon and Tawi-Tawi, while the supervisor of Capiz has been detailed in the regional office in Iloilo City x x x."

To the said memorandum, a list was attached indicating that for Region III, the proposed Chairmen of the Board of Canvassers would be:

'xxx xxx xxx xxx

"Region III —

"1. Demosthenes Aguinaldo -

—

Bataan

2. Orbito Pangan -

—

Bulacan

3. Rolando Sta. Maria -

—

Nueva Ecija

4. Manuel C. Lucero -

—

Pampanga

5. Orlando Capitulo -

—

Tarlac

6. Eleuterio Rivera -

—

Zambales

'xxx xxx xxx xxx

(Underlining supplied)

The said memorandum and list were approved, also on May 7, 1984, by Chairman Vicente M. Santiago, Jr. and on May 8, 1984, Assistant Executive Director Silvestre Bello, Jr. sent the corresponding advice by telegram to Atty. Manuel Lucero.

As explained by the Commission, en banc, in its resolution of August 4, 1984:

"In the Batasang Pambansa election on May 14, 1984, in all cases when the City Election Registrar or Provincial Election Officer, is a non-lawyer or only holding such office in acting capacity, lawyers from other offices of the Commission on Elections, has been proposed and designated as Chairmen of the Board of Canvassers concerned as shown in the foregoing Memorandum and List submitted by Atty. Silvestre Bello, Jr. to the Chairman of the Commission on Elections.

"One of the Provincial Boards of Canvas-sers where a lawyer from another office of the Commission was designated as Chairman thereof in lieu of the Provincial Election Officer was in the province of Pampanga because the position of Provincial Election Officer of said province was and still is vacant. Although there was a designated officer-in-charge in the person of Atty. Carlos Magno Mallari, he was also the Election Registrar of San Fernando, Pampanga. Considering that he would be occupied by his duties as Election Registrar of San Fernando, Pampanga, it was imperative to designate another qualified Comelec lawyer to act as Chairman of the Provincial Board of Canvassers of Pampanga for the May 14, 1984 elections.

"Atty. Manuel Lucero was proposed and eventually designated considering (a) his experience as Acting Regional Election Director, Region III, San Fernando, Pampanga, and (b) the proximity of his office to the venue of the provincial canvass in Pampanga which by law was the session hall of the Sangguniang Panlalawigan in San Fernando, Pampanga.

"There was, therefore, no irregularity in the designation of Atty. Manuel Lucero as his designation as Chairman of the Provincial Board of Canvassers of Pampanga was lawful and properly authorized by the Commission thru its Chairman Vicente M. Santiago, Jr." (pp. 56-57; Rollo, 218-219)

We find nothing concrete or substantial in the averments of petitioner sufficient to refute and disprove the matters above attested to by an overwhelming majority of the Commission en banc.

Furthermore, the petition to annul the proclamation and to nullify the proceedings of the Board of Canvassers has now become moot. Petitioner had already filed with the COMELEC a verified petition, dated May 18, 1984, assailing the action taken by the Board in refusing to issue the subpoenas for members of the Citizens Election Committee to testify in view of his objections to the election returns. Another petition was later filed by him with the COMELEC on May 22, 1984, to annul the proclamation of the respondent Aber Canlas. These two petitions are no less in the nature of an appeal from the Board's dismissal of his written objections and were already duly resolved by the COMELEC. Sec. 50 of Batas Pambansa explicitly states that "The Commission on Elections shall be the sole judge and shall have exclusive jurisdiction over all pre-proclamation controversies." To set aside the proclamation and allow the petitioner to appeal again to the COMELEC on the dismissal of his written objections and on the proclamation of respondent Aber Canlas as the winning candidate, would be but an exercise in redundancy.

Furthermore, the resulting effect of depriving the province of Pampanga of representation during the period of petitioner's appeal should not be countenanced as he has, after all, the remedy of an election protest, which both

the Board of Canvassers and the Commission on Elections recognized.

WHEREFORE, the petition for review in this case is hereby dismissed for lack of merit, with costs against the petitioner herein.

SO ORDERED.

Makasiar, Concepcion, Jr., Escolin, Relova, Cuevas, and De la Fuente, JJ., concur.

Fernando, C.J., concurs in the ponencia of J. Alampay, in the separate concurring opinion of J. Aquino, and in concurring and dissenting opinion of J. Melencio-Herrera.

Teehankee, J., see separate dissenting opinion.

Plana, J., in the result.

Abad Santos and Gutierrez, Jr., JJ., no part.

CONCURRING OPINION

AQUINO, J.:

I concur. There is absolutely no ground for setting aside the proclamation. There was no pre-proclamation controversy in this case. The grounds relied upon by Bren Z. Guiao were not raised at all before or during the canvass of the election returns. They were invoked by him after the canvass was finished.

The Comelec acted in accordance with section 54 of the 1984 Batasang Pambansa Election Law in authorizing the proclamation. The grounds relied upon by Guiao are proper for an election protest.

There is no dispute as to the facts. At 7 p.m. on May 14, 1984 the Provincial Board of Canvassers started the canvassing of the election returns at the Conference Hall in San Fernando, Pampanga with four canvassing units, each of which was composed of five members, three from the Ministry of Education and one representative each for the KBL and the UNIDO coalition.

The Board was composed of Manuel Lucero, acting regional election director as chairman; Florante C. Parong, assistant provincial schools superintendent; Sergio C. Inocentes, provincial auditor; Carmelino Roque, KBL representative, and WILFREDO I. UNTALAN, UNIDO-LABAN representative.

During the canvass, all questioned returns were referred to the Board for resolution. It was only when the UNIDO-LABAN representative signified his approval that the returns were included in the canvass. The canvassing was finished at 11:30 p.m. of May 16, 1984.

At 11:45 p.m. Bren Z. Guiao, accompanied by his counsel, entered the Conference Hall, examined the minutes prepared by the canvassing units, took notes and left after borrowing a copy of the 1984 Election Law. The tabulation of votes was finished at shortly after midnight or in the early morning of May 17, 1984.

At about ten to 1 a.m. on May 17 Guiao and his counsel reappeared at the Conference Hall and filed written objections wherein he questioned the inclusion of election returns from certain voting centers on the grounds of "incomplete, duress, intimidation, falsified, obviously manufactured, threats, coercion, Comelec copy used not authentic, statistically improbable, and persons in Saudi Arabia were made to appear as if they had voted" (Exh. B). These charges were not raised during the actual canvass by the canvassing units. The Board agreed to hear

Guiao that morning.

The Board members signed the statement setting forth the votes obtained by each candidate for the entire province (Exh. 5). The tabulation showed that Juanita L. Nepomuceno, Emigdio L. Lingad and Rafael L. Lazatin, all UNIDOS, and Aber P. Canlas, KBL, obtained the highest number of votes. Canlas obtained 203,856 votes while Guiao, who was fifth, obtained 195,583 votes.

In the meantime, Lucero asked the registrar of Angeles City to submit to the Comelec Chairman in Manila a memorandum for authority to proclaim the winning candidates. The memorandum was received in the Comelec main office at 9 a.m. on May 17.

The Comelec on that same date authorized the Board to proclaim the winning candidates after noting that the objection that the election returns were incomplete, falsified and manufactured was not raised during the canvass.

In the afternoon of May 17, the Board heard Guiao. It limited the hearing to the objections not apparent on the face of the election returns such as duress, coercion, threats and intimidation. Guiao failed to substantiate his charges.

Sylvia Nepomuceno-Antonio, daughter of Assembly-woman-elect Nepomuceno and overall coordinator of all UNIDO representatives and watchers during the canvass, publicly announced to a crowd in the Conference Hall that the election was clean, honest, peaceful and orderly.

The Board of Canvassers, including the UNIDO member, then signed the Certificate of Canvass of Returns and Proclamation of the winning candidates, Nepomuceno, Lingad, Lazatin and Canlas.

The next day, May 18, Guiao filed a petition with the Comelec to annul the proceedings of the Board. Later, he asked the Comelec to annul the proclamation because it was allegedly in violation of the Election Law which provides:

"SEC. 54. Contested election returns.— Any candidate, political party or coalition of political parties, contesting the exclusion or inclusion in the canvass of any election returns shall submit their written objections to the Chairman of the Board of Canvassers. The board shall defer the canvass of the contested returns and shall not make any ruling thereon until after all the uncontested election returns have been canvassed. The board shall not proclaim any winning candidate unless authorized by the Commission, and any proclamation made in violation hereof shall be void ab initio.

"The ruling of the board may be elevated to the Commission by the party adversely affected, by filing a verified petition within five days from notice thereof. After due notice and hearing, the Commission shall decide the case within ten days after the case has been submitted for resolution."

The First Division of the Comelec in its resolution of June 28 affirmed the proclamation. It reiterated its view that objections to the election returns must be made during the actual canvassing thereof so that they could be reflected in the minutes of the canvass. It is at that juncture when the proclamation controversy arises. Thereafter, the candidates can no longer question the inclusion or exclusion of the election returns from the canvass.

As indicative of the untenableness of Guiao's objections, the Comelec pointed out that in certain voting centers in Floridablanca and Sta. Ana questioned by Guiao, the election returns show that he garnered more votes than Canlas.

Guiao appealed to the Comelec en banc which ruled on July 18 to maintain the status quo as to the proclamation. Guiao brought the case on certiorari to this Court on July 24.

In its comprehensive 60-page banc resolution of August 4, 1984, the Comelec noted that everytime the case was

called "Guiao was not ready to present his evidence". He had been given more than two months to present such evidence but he never presented it if he had any (pp. 196-7, Rollo).

The Comelec upheld the resolution of June 28 of its First Division. The banc resolution was the one subject to review on certiorari by this Court and not the interlocutory orders of June 28 and July 18 and 25.

The Comelec did not commit any grave abuse of discretion in sustaining the proclamation of Canlas. It had authorized the proclamation because, as already noted, no objections to the canvass were seasonably filed by Guiao. The UNIDO representative did not object to the proclamation. Guiao's remedy is to file an election protest.

The second sentence of section 54 speaks of deferring the canvass of the contested returns. This clearly implies that the objections should be made before the canvass or, if not practicable, during the canvass. What is implicit in the law is as much a part of the law as that which is expressed.

In fact, the so-called pre-proclamation controversy may start during the registration of voters, during the actual voting and during the counting of votes. A candidate noting any irregularity may register his objections then and there and reiterate them when the election returns are canvassed. It would be too late for him to do so after the canvass but before the proclamation.

It is noteworthy that Guiao, in assailing the proclamation of Canlas, is in effect also attacking the proclamation of Nepomuceno, Lingad and Lazatin, his co-partisans, which he never intended to do. That inconsistency shows his indefensible stand. His case is hopeless and frivolous. He should accept defeat gracefully.

CONCURRING OPINION

FERNANDO, C.J.:

It is not amiss, to my mind, to restate what I appended to my signature to the opinion of the Court. Thus: "The Chief Justice concurs in the ponencia of Justice Alampay and in the separate opinions of Justices Aquino, concurring, and Melencio-Herrera, concurring and dissenting, in the latter only insofar as she affirmed 'that under Section 54 of BP Blg. 697, written objections to the inclusion or exclusion of election returns should be presented to the board during the 'canvassing stage' or stage 2.'" Nonetheless, I feel compelled to write a separate concurrence in view of the reports in the media that there has been an unusual delay in the disposition of this case. Nothing can be further from the truth.

1. The authoritative doctrine on contemptuous publication arising from the exercise of freedom of speech and of the press during the pendency of a case is the clear and present danger principle. As announced in *Cabansag v. Fernandez*:^[1] "To be so the danger must cause a serious imminent threat to the administration of justice."^[2] In support of the above statement, the earlier American Supreme Court decisions of *Bridges v. California*,^[3] *Pennekamp v. Florida*,^[4] and *Craig v. Harvey*^[5] were relied upon. In the language of *Bridges*: "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."^[6]

2. The respect for press freedom is one thing. To allow a public misconception as to reasons for a decision not being promulgated even after a draft opinion was prepared – one mistakenly conceived as reflecting the decision reached — is entirely a different matter. It is precisely to disabuse the minds of those who might have been misled and to set forth the facts with accuracy that there is a need to write this opinion.

3. While this case was placed on the agenda on December 6, 11 and 13, 1984, the deliberation was inconclusive.

The time was inadequate as there was a hearing scheduled on December 6 and 13. On January 10, 1985, the case was placed on the agenda. The matter was deliberated fully. While opposing views were aired, the recommendation of Justice Ameurfina Melencio-Herrera was for dismissal, the objections having been raised after the canvassing was over. A draft of an opinion was to be prepared by her. Justice Teehankee, who argued for a different approach asked that his view be accorded full consideration in its preparation. The draft opinion was accordingly written and circulated. It differed from what was agreed upon. She came to the conclusion that the petition had merit. Justice Alampay was not in agreement, and, according to him, sent a copy of his opinion to Justice Melencio-Herrera. I was likewise approached by some other members that the case be placed on the agenda anew as they could not agree to such draft opinion. Accordingly, on the session of February 19, 1985 that was done. It was evident that the prevailing view was to dismiss the petition, the objections having come too late. It was felt, however, that nothing would be lost if there be another day of deliberation. Accordingly, on a Friday, March 15, 1985 — not an ordinary day for the Court to sit en banc — there was a special session called precisely for this purpose. It was then that after an extended discussion, the Court concluded with finality that the petition should be dismissed on the above doctrine enunciated. Even Justice Melencio-Herrera agreed, as shown by her separate opinion in concurrence and dissent. She dissented "in so far as it is held, following the COMELEC Resolution of August 4, 1984, that because petitioner's written objections were filed late, petitioner is precluded from availing of Section 54. Precisely, petitioner was entitled to a ruling on that point on appeal, but he was deprived of that right granted him by law." [7] Justice Alampay was asked to prepare the ponencia.

4. That he did. The opinion of the Court was circulated and eventually reached Senior Justice Teehankee on April 29, 1985. It took him some time to prepare his exhaustive dissent. It is quite understandable. He was not only the Chairman of the First Division but likewise was acting Chief Justice the first fifteen days of May. I was then on an official trip to lecture before the Richardson School of Law and the East-West Center of the University of Hawaii on the Influence of American Constitutional Law on the Philippine Legal System. He was also preparing his dissent in the Padilla case. Considering the singular tenacity with which he clings to his view and the nature of the controversy, plus his extensive discussion of any legal issue raised, it did take him some time before his dissent reached the Office of the Chief Justice. That is the whole story, plain and unvarnished. As mentioned, there is not an iota of truth as to any decision having been reached other than the one now promulgated.

5. May I take this opportunity likewise to say that there is nothing unorthodox in Justices changing their minds. A draft opinion is what it is — a draft. It is precisely prepared for the purpose of determining how many votes it can command. It may happen that if after a careful study, there is a departure from the view previously reached in the deliberation of the Court, all that needs be done is to explain why. There could be further discussion then. Similarly, one who could not agree with what was circulated could write his own opinion to be considered along with the draft opinion. As to the practice in the United States Supreme Court, this is what Justice Frankfurter one time wrote to a colleague: "'The phrase so often heard around the conference table that 'every vote is tentative' is not an empty utterance. The full scope of its meaning is derived from the fact that no case is decided until * * * the decision is announced from the bench.' And he recalled that 'at least one important case, since I've been here, was held up for decision as we marched to take our seats on the bench, because shortly before there was a change in the voting.'" [8]

6. May I say further that what occurred in this case was by no means unusual. While ever desirous of disposing of cases with promptitude and dispatch, I have not curtailed the right of my brethren to give the fullest consideration to any issue of law on which they propose to write an opinion. I am grateful to Justice Gutierrez, Jr. for this judicious appraisal of why at times cases could not be disposed of as speedily as they might otherwise be: "From the moment I joined this Court, I have seen the Chief Justice continuously appeal to all of us to give appropriate priority to death penalty and life imprisonment cases, to see how all labor cases, may be expedited, to look for

older cases that may have become moot so they can be dismissed in minute resolutions, and to otherwise press for early resolution of pending cases and, at the same time, unfailingly congratulate his Court whenever statistics on decided cases show that a little back patting is warranted." [9] Further: "However, as expressed every now and then by Senior Associate Justice Claudio Teehankee, our concern for expedited action should not result in cutting short deliberations on any petition until the views of all the Justices desiring to comment have been fully heard. The Supreme Court is a collegiate court and full and free deliberations are the index of collegiality." [10]

7. One last point. Justice Makasiar and I are of the view that the right to appeal is not lost even if a situation mentioned in the opinion of Justice Melencio-Herrera would present itself. Section 175 of the Election Code applies. It reads thus: "Suspension and annulment of proclamation. — The Commission shall be the sole judge of all pre-proclamation controversies 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." [11]

[1] 102 Phil. 152.

[2] Ibid, 165.

[3] 314 US 252 (1941).

[4] 328 US 331 (1946).

[5] 331 US 367 (1947). The latest decision of the American Supreme Court in point is *Wood v. Georgia*, 370 US 375 (1962), reiterating the clear and present danger principle.

[6] 314 US 252, 263.

[7] Separate opinion of Justice Melencio-Herrera, 1.

[8] Baker, *Miranda: Crime, Law and Politics*, 150 (1983).

[9] Separate opinion of Justice Gutierrez, Jr., in *People v. Caruncho*, G.R. No. 57804, January 23, 1984, 127 SCRA 16, 49.

[10] Ibid.

[11] Section 175 of The 1978 Election Code. The grounds are material defects in election returns, tampered or falsified election returns, and discrepancies in election returns.

CONCURRING AND DISSENTING OPINION

MELENCIO-HERRERA, J.:

I concur in that, under Section 54 of BP Blg. 697, written objections to the inclusion or exclusion of election returns should be presented to the Board during the "canvassing stage" or stage 2. In the case at bar, petitioner filed his objections during the "summing up stage" or stage 3, after the tally for the five candidates with the highest number of votes had been completed although it was before the "Certificate of Canvass and Proclamation" (Exhibit "8") had been prepared by the Board. Petitioner's objections, therefore, were belatedly filed.

I dissent, however, in so far as it is held, following the COMELEC Resolution of August 4, 1984, that because petitioner's written objections were filed late, petitioner is precluded from availing of Section 54. Precisely, petitioner was entitled to a ruling on that point on appeal, but he was deprived of that right granted him by law.

I am of the view that the authority to proclaim sought by the Board and the authorization to so proclaim given by the COMELEC, both sought and given before the Board had even ruled on the objections, deprived petitioner of the right to appeal. It was in clear violation of Section 54 of BP Blg. 697, reading as follows:

"SEC. 54. Contested election returns. — Any candidate, political party or coalition of political parties, contesting the exclusion or inclusion in the canvass of any election returns shall submit their written objections to the Chairman of the Board of Canvassers. The board shall defer the canvass of the contested returns and shall not make any ruling thereon until after all the uncontested election returns have been canvassed. The board shall not proclaim any winning candidate unless authorized by the Commission, and any proclamation made in violation hereof shall be void ab initio.

"The ruling of the board may be elevated to the Commission by the party adversely affected, by filing a verified petition within five days from notice thereof. After due notice and hearing, the Commission shall decide the case within ten days after the case has been submitted for resolution."

The foregoing provision unequivocally grants the party adversely affected by the ruling of the Board five days from notice within which to appeal. In this case, the Board dismissed petitioner's objections on May 17 and in the afternoon of the same day, at 6:00 P.M., the proclamation was made. No chance whatsoever was given to petitioner to appeal the ruling of the Board dismissing his objections to the COMELEC. By authorizing the proclamation even before it had known of the resolution of the Board on the objections, the Board and the COMELEC had "pre-empted" petitioner's right to avail of an appeal. It was tantamount to "railroading" the proclamation and thwarting the very purpose of Section 54, which is obviously to do away with the past practice of "grabbing the proclamation at all costs and prolonging the protest." The view that the COMELEC authorization was not actually needed because of the untimeliness of the objections further irreparably foreclosed petitioner's right to appeal. The fact remains that such an authorization was sought by the Board and granted by the COMELEC and all the contested proceedings taken under the aegis of Section 54.

It is within the realm of possibility that if appeal had been allowed it would have been dismissed. Notwithstanding, the point is that petitioner would not have been denied procedural due process and fidelity to Section 54, BP Blg. 697, would have been accorded.

The Petitions filed by petitioner on May 18 and May 22 before the COMELEC cannot be said to be in the nature of an appeal considering that a proclamation had already been made. The intendment of Section 54 is to allow an appeal prior to proclamation. There can be no proclamation except after the right to the 5-day period for appeal has been given the party adversely affected.

The authorization to proclaim sought by the Board and the authority to proclaim given by the COMELEC were both premature. They were in clear contravention of Section 54 of BP Blg. 697 and deprived petitioner of his right to procedural due process.

DISSENTING OPINION

TEEHANKEE, J.:

The main issue admittedly joined by the protagonists is the validity or invalidity of the May 17, 1984 proclamation of respondent Aber P. Canlas as the winner of the fourth Batasan seat for the province of Pampanga as against petitioner Bren Z. Guiao who had filed formal objections to the inclusion in the canvass of various election returns which would alter the result (considering that only a narrow margin of 8, 273 votes separated them, viz. respondent's 203, 856 tallied votes as against petitioner's 195, 583 votes).

I vote for the granting of the petition and the setting aside of the premature proclamation on the authority of section 54 of B.P. Blg. 697 which declares such proclamations null and void ab initio, as applied in this Court's unanimous Resolution of June 14, 1984 in *Javier vs. Comelec*[1] which set aside the premature proclamation therein made "before the expiration of the five-day period for appeal" of the canvassing board's questioned rulings to the Comelec, although "provisionally" authorized by the Comelec, and for the following considerations:

1. The separate dissent of Mme. Justice Herrera pointedly stresses that the cited section "unequivocally grants the party adversely affected by the ruling of the Board five days from notice within which to appeal. In this case, the Board dismissed petitioner's objections on May 17 and in the afternoon of the same day, at 6:00 P.M., the proclamation was made. No chance whatsoever was given to petitioner to appeal the ruling of the Board dismissing his objections to the COMELEC. By authorizing the proclamation even before it had known of the resolution of the Board on the objections, the Board and the COMELEC had 'pre-empted' petitioner's right to avail of an appeal. It was tantamount to 'railroading' the proclamation and thwarting the very purpose of Section 54, which is obviously to do away with the past practice of 'grabbing the proclamation at all costs and prolonging the protest' The authorization to proclaim sought by the Board and the authority to proclaim given by the COMELEC were both premature. They were in clear contravention of Section 54 of BP Blg. 697 and deprived petitioner of his right to procedural due process."[2]
2. The only way to enforce the salutary intent of the law of preventing railroading and grabbing of proclamation is to enforce without exception its provision declaring null and void ab initio all such proclamations prematurely made or improvidently authorized before the expiration of the statutory five-day period to appeal the canvassing board's questioned rulings and the Comelec's determination of the appealed case within the statutory ten-day period counted from submission of the case. In effect, the law outlaws all such proclamations made before determination on timely appeal of the prejudicial questions raised for inclusion or exclusion of election returns. The clear intent of the law is to remove the incentive and means for such proclamation-grabbing-and-railroading by outlawing the proclamation so obtained, by analogy with the Bill of Rights' outlawing all uncounselled confessions and removing the incentive on the part of state and police officers to secure the same.[3]
3. The Comelec action sustaining the canvassing board's restrictive interpretation that finds no justification in the wording of the law, to wit, that written objections must be submitted "during the actual canvassing of the returns" and that the candidate objecting to certain returns thereafter even though the third stage of tabulating the returns from the various canvassing units and making the proclamation has not yet been completed, is "estopped from questioning the inclusion of the returns in the canvass and from denying the admissibility of said returns for purposes of the canvass after the second stage of the canvass" enshrines "technical virtuosity" and ignores the glaring reality that the Comelec's main constitutional task is "to ascertain that only genuine returns, as against forged, spurious or manufactured or gun-point returns, are used" for the canvass and proclamation of the true winner chosen by the electorate. Accordingly, such assertions of estoppel were long ago rejected by this Court in *Antonio vs. Comelec*[4] wherein we ruled that there can be no estoppel from questioning coerced or irregular returns despite failure of the affected candidate to attend or be represented at the canvassing or to file his objections during the canvassing. The "unqualified" signature of Unido's representative on the certificate of

canvass and proclamation likewise cannot be invoked in estoppel against petitioner. Such signature could not be deemed as unwitting waiver of petitioner's strong protest and formal written objections against the questioned returns and proclamation, as proscribed by the law (section 54). This doctrine of non-estoppel is based on the basic and fundamental premise in election cases that the candidates-protagonists are mere incidents and that the real party in interest is the electorate whose true will must be determined without technicalities and equivocations.

4. The governing statute, section 54, provides only that the candidate or political party questioning the inclusion/exclusion of returns "shall submit their written objections to the chairman of the board of canvassers." There is no justification for the Comelec's dividing the canvass proceedings into the preparatory, canvassing and the summing up or tabulation stage preparatory to proclamation. As aptly stated by Commissioner Ramon Felipe, Jr. in his dissent, "(P)etitioner has proven and respondent admitted that the former filed his objections to the election returns verbally at first during the actual canvass, which he reduced into writing (typewritten) and filed before the tabulation or summing up of the results was completed. The undersigned believes that this is sufficient compliance with the requirement of Sec. 54, BP Blg. 697." [5] After citing the physical impossibility of "preparing and filing written objections immediately during the canvass of a particular election return" and of "anticipating the defects in the Board's copy of said election returns, as the dominant opposition party's copy thereof may appear clear and untampered," Commissioner Felipe correctly holds that "the formal filing of such written objections at the 3rd or summing up stage of the proceedings is sufficient for all legal intents and purposes." The filing of petitioner's formal written objections to the inclusion of returns which would alter the result and outcome of the election at the third or tabulation stage involved after all a procedural matter and it was well within the Board's inherent authority as well as within the letter and spirit of the law to accept and consider the written objections. Assuming *arguendo* that there were a statutory provision and rules that such objections must be submitted during the Comelec-dictated second stage, still this would be a mere directory period which is subject to reasonable extension - which is what petitioner sought when he presented at the 3rd stage (before the summing up of the proceedings) the written objections and formalized the verbal objections timely given earlier (during the second stage of canvassing). To deny such extension and reject the objections out of hand as not having been timely filed is grave abuse of discretion and denial of substantive due process and fair play.

5. The more important and substantive matter is to determine the true results from genuine returns by accepting petitioner's objections and receiving his evidence in support thereof. Only thus, to paraphrase the late Justice Jose P. Laurel does the judiciary fulfill its solemn duty to give efficacy and not stifle or frustrate the voice of the enfranchised citizen as a part of popular sovereignty and as the ultimate source of the established authority. [6] As the late U.S. Chief Justice Earl Warren wrote: "Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized ..." and "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us ... To the extent that a citizen's right to vote is debased, he is that much less a citizen." [7]

6. (a) Viewed in the above context of the letter and spirit of the law, the Comelec majority's rejection of petitioner's formal written objections as "not timely and seasonably filed" after the second stage of canvassing and before the third stage of tabulation is based on pure technicality. Its ratiocination that "(T)o allow these written objections to prosper after the canvassing would be requiring the board of canvassers to reopen the canvass of election returns all over again which otherwise was regularly conducted without any objection ..." is hollow, in that after all, the election returns are separately stored in ballot boxes for the purpose and it's just a matter of minutes to open the ballot boxes and segregate the questioned returns for purposes of considering and ruling on the objections against their inclusion. In the Pimentel-Roa case in Cagayan de Oro City, despite there being no record of any writ-ten objections from Roa questioning 175 of the total contested 228 election returns as

"completed before the counting of the ballots was finished" (but which returns were all found to be authentic, without any discrepancy, and duly signed by the members of the citizens election committees, with Pimentel having no inspector nor representative in the canvassing board) - the Comelec, without even examining the returns which it had represented to be indispensable to enable it to resolve Roa's pre-proclamation case, nevertheless proceeded to resolve the case and order the exclusion of 87 returns and annul one-fourth (29, 937) of the total votes cast (and wipe out Pimentel's victory margin over Roa of 4, 682 votes), ruling that "The Board of Canvassers failed to give petitioner Roa an opportunity to present and substantiate his written objections to the questioned election returns" and announced that it would deal separately with its own last-minute handpicked replacement for the regular chairman for "alleged negligence or partiality in the loss of the written objections."

(b) There clearly appears a double standard here. Comelec here did not apply the same standard it used in Pimentel that Pimentel's opponent Roa should have been given by the board an opportunity to present and substantiate his objections. Here, Comelec and the board gave petitioner Guiao no such opportunity. Neither did Comelec require the presentation of the questioned returns used in the canvass, as it did in Pimentel's case. As already pointed out in *Mme. Justice Herrera's* dissent, *supra*, the board peremptorily dismissed Guiao's objections on May 17, and at 6:00 p.m. if the same day proclaimed his opponent, with alleged Comelec authorization which Comelec issued without knowing of the board's resolution on the objections, thus "railroading the proclamation" and "[allowing] the past practice of 'grabbing the proclamation at all costs and prolonging the protest' " — which has been categorically outlawed by the governing law (section 54) which declares null and void ab initio all such premature and improvident proclamations. (See *supra*, par. 2 hereof) It certainly appears to be more than coincidence that the losing party in these diametrically conflicting actions of the Comelec pertains to the "fragmented opposition."

(c) Here, as in the *Nueva Vizcaya* case (*Padilla vs. Perez*) whose decision is being released with this case, the majority stressed that the undesirable effect of "depriving the province of representation during the period of petitioner's appeal should not be countenanced, as he has, after all, the remedy of an election protest." But the decision has not applied the same standard in the case of Pimentel who was ousted as a sitting Member of Parliament thru the decision of a Comelec division of three which annulled the decisive votes of 29, 937 voters in 87 voting centers on the basis of stereotyped partisan 87 affidavits (one affidavit per voting center) and deprived Cagayan de Oro City of his representation as the duly proclaimed winner of the election. Moreover, the decision has by-passed the question previa and basic jurisdictional and constitutional issue that only the Comelec en banc can resolve contests involving members of the Batasang Pambansa and order the ousting of a sitting member of parliament (like Pimentel) under Art. XIIC, section 3 of the Constitution. Finally, the decision has not afforded petitioner Guiao here the same relief of the Supreme Court itself examining the questioned 227 election returns and proceeding to open the ballot boxes (even though no discrepancy whatever was found by it) and recount all the 29,973 ballots - all in a pre-proclamation proceeding.

7. Respondent commission's ruling (as upheld by the majority) that petitioner cannot "inconsistently" question as null and void ab initio the proclamation of respondent Canlas as the only non-Unido candidate alleged to have won the fourth seat of Member of Parliament of the province of Pampanga which petitioner claims should rightfully be his, and that the proclamation of the four, including respondent Canlas, must be on an all-or-nothing basis — "cannot be susceptible of division and must be accepted or rejected in its totality"-[8] is another glaring instance of enshrining "technical virtuosity". Indeed, it would be "plainly illogical"[9] - to borrow a phrase — for petitioner Guiao to seek the total annulment of the proclamation of his three UNIDO teammates who unquestionably garnered the first three seats (with plurality votes which are beyond his reach and are not affected by the outcome of the controversy), when all that he questions is the fourth seat which he claims to have been "grabbed" from him by respondent through the questioned returns. Section 56 of B.P. Blg. 697 precisely

authorizes the "partial proclamation of any winning candidate whose election will not be affected by the outcome of the controversy" and necessarily, the partial annulment of a premature or improvident wholesale proclamation as to the proclaimed candidate (respondent Canlas in this instance) whose election is affected by the outcome of the controversy.

8. Decisive of the nullity ab initio of the premature and improvident proclamation of respondent is also section 53 of B.P. Blg. 697 which mandates that

"SEC. 53. Contested composition or proceedings of the board. — When the composition or proceedings of the board is contested, it shall immediately make a ruling thereon with notice to the party contesting who, if adversely affected, may refer the matter to the Commission within five days after the ruling, with proper notice to the board. The Commission, after due notice and hearing, shall decide the case within ten days from the filing of the case. During the pendency of the case, the board shall suspend the canvass unless the Commission orders the continuation or resumption thereof."

As stated in Commissioner Felipe's dissent^[10] "before the actual canvassing started, Atty. Willie Untalan, representing the UNIDO in the board, had already questioned (the) authority to act as chairman" of Atty. Manuel Lucero in place of the Provincial Election Supervisor in the person of Atty. Carlos Magno Mallari, OIC of the office. Petitioner brings out the strange fact that from the time he "went to respondent Comelec on May 18, 1984, up to now [July 24, 1984 - date of filing of the petition at bar] no one there has confirmed that it did send a telegram to Atty. Lucero to take over as chairman of respondent board."

Thus, Commissioner Felipe in his dissent cites the inability of Atty. Lucero himself at the hearing held on June 6, 1984 to show the source of his authority to take over as chairman of the canvassing board and failure to show any valid cause for relieving the Provincial Election Supervisor (the regular chairman, as provided in section 44 of B.P. Blg. 697) who was admittedly present at the time of the canvassing, as rendering invalid ab initio respondent's "railroaded" proclamation, as follows:

"Considering that the sole issue in the present proceedings as agreed upon by the parties is whether the proclamation of respondent Aber P. Canlas by the Provincial Board of Canvassers of Pampanga in the May 14, 1984 elections is valid or not, I vote to set aside said proclamation on the following grounds:

a) Under Sec. 44 of Batas Pambansa 697, the Provincial Board of Canvassers shall be composed of the Provincial Election Supervisor, as Chairman, Provincial Fiscal, as Vice-Chairman and the Provincial Superintendent of Schools, and 2 representatives from each of the ruling party and the dominant opposition party in the constituency concerned entitled to be represented, as members.

"In the case at bar, it appears from the testimony of Acting Regional Director of Region III, Atty. Manuel C. Lucero, at the hearing of this case that he acted as Chair-man of the Provincial Board of Canvassers of Pampanga in said elections upon a telegram from 'Operations COMELEC' designating him as Chairman of said Provincial Board of Canvassers. When asked to produce the telegram, he said he did not bring it. When asked where the Provincial Election Supervisor was at the time of the canvassing he said that he was present there also. No reason has been adduced by the respondents as to why the Provincial Election Supervisor, who was present and available at the canvassing, was unceremoniously replaced by a mere telegraphic message which has not even been presented in evidence.

"In addition, Sec. 1 of COMELEC Res. No. 1679 provides that the COMELEC shall have control and supervision over the Board of Canvassers and may motu proprio relieve at any time any member thereof from office for cause and appoint a substitute. The undersigned, therefore, holds that in the absence of such cause, the alleged substitution of the Provincial Election Supervisor by the Acting Regional Director as Chairman of the Provincial Board of Canvassers, is illegal. The above-cited provision of Batas Pambansa 697 and COMELEC Res. No. 1679 are mandatory, as held by the Supreme Court:

'Where a member of the Board of Canvassers designated by law is excluded from the canvassing by reason of which he did not participate therein, the canvass and the resulting proclamation are both null and void.' (Pacis vs. COMELEC, et al., 22 SCRA 539 [1968])"[11]

Indeed, petitioner was denied due process in respondent's "railroading" respondent's proclamation at 6:00 p.m. of May 17, 1984 and not giving him a chance to appeal to the Comelec respondent Lucero's ruling in favor of his own eleventh hour take-over as chairman, and rushed to proclaim respondent Canlas in gross violation of the express mandate of the above-cited law that "during the pendency of the case, the board shall suspend the canvass unless the Commission orders the continuation or resumption thereof." Respondent commission's lengthy and belated explanation in its decision of August 4, 1984[12] which does not explain why at the hearing of June 6, 1984 no explanation could be made as to Atty. Lucero's takeover nor as to the source of his authority and as to which the three members of the Comelec first division which conducted the said hearing were obviously unaware of - cannot cure the fatal defect of nullity ab initio of respondent Canlas' proclamation. As already stressed hereinabove,[13] the only way to enforce the salutary intent of the law of preventing railroading and grabbing of proclamation in this instance, thru arbitrary changes in the composition of the board or arbitrary proceedings (such as respondent Lucero's summary dismissal of petitioner's objections, arbitrary continuation of the canvass despite the challenge to his taking over as chairman, and precipitate proclamation of respondent Canlas without any documented Comelec authorization in gross violation of sections 53 and 54 of B.P. Blg. 697) is to enforce without exception its provision ordering ipso jure the suspension of the canvass.

9. As to the alleged prior authorization requested on May 17, 1984 by respondent Lucero ex parte from Comelec to make the proclamation "without prejudice to the outcome of the hearing on the objections that will be conducted at 11:30 a.m. today" and which was allegedly given by 6:00 p.m. of the very same day, this was a patent violation of the letter and spirit of the law, having been made before the expiration of the 5-day period for appeal and Comelec's determination of the appeal. The illegality thereof is made even more evident by the undisputed fact that Comelec gave the alleged authorization, even before the canvassing board had acted on and dismissed petitioner's written objections. The law clearly outlaws such precipitate proclamations supposedly authorized without knowledge or information of the basic facts and circumstances on which to make an intelligent decision.

Petitioner specifies his complaints of denial of due process and grave abuse in that "(D)uring the hearing on June 6, 1984 in respondent Comelec, Atty. Lucero could not produce a copy of his own supposed letter-request for such authority to proclaim, much less a copy of such authority. Yet copies of these were attached to Mr. Canlas' memorandum filed with respondent Commission on June 13, 1984. . . . There are badges that Exhibits 6 and 7 are arguably spurious or even obviously manufactured,"[14] and "(T)he purported minutes of the proceedings before respondent Board on May 17, 1984 (Exh. 4 of Annex D hereof) mentioned nothing about any request sent to respondent Comelec for authority to proclaim nor about the existence of any such supposed authority. These developments, if true, would have been contemporaneously recorded, which is not possible with remedial afterthoughts." They indeed raise the most serious questions as to the existence or genuineness of Comelec's alleged authority to proclaim, which is borne out by the fact already adverted to hereinabove that not even the three members of the Comelec first division which held the hearing were themselves aware of the existence of such alleged authority. Witness Commissioner Felipe's dissent:

"b) Furthermore, said Acting Regional Director alleged that he was authorized by the COMELEC to make the proclamation in question on the 'say-so' of a certain Atty. Antonio Ramos, who brought his letter-request to the COMELEC, Manila. Again, he could not produce at said hearing any written authority, thereby raising doubts as to the existence of said authority at the time that proclamation was made on May 17, 1984, considering that before the actual canvassing started, Atty. Willie Untalan, representing the UNIDO in the Board had already

questioned his authority to act as Chairman." [15]

10. To allow the Comelec decision based on pure technicality and arbitrary rejection of petitioner's bona fide objections to the last-minute substitution of the canvassing board chairman and irregular proceedings of the board due to the substitute chairman's biased actions and disregard of the mandatory legal provisions for suspension of the canvass and non-proclamation of the candidates affected by the controversy is to sanction gross violations of the provisions designed to avoid "rail-roading" of proclamation and "grabbing the proclamation at all costs and prolonging the protest" and grave denial of substantive and procedural due process. To say that petitioner has the remedy of an election protest is to beg the question and sidetrack the very issue of nullity ab initio of the proclamation. For brevity's sake, I reproduce by reference my separate dissent in the case of Carlos M. Padilla vs. Comelec, [16] insofar as mutatis mutandis, the legal considerations therein are applicable to the case at bar.

[1] G.R. Nos. 67994-67995.

[2] Emphasis supplied.

[3] Cf. Magtoto vs. Manguerra, 63 SCRA 4 (1975) and writer's separate opinion at pp. 27-30.

[4] 32 SCRA 319 (1970), per retired Justice J.B.L. Reyes; see writer's separate opinion at pp. 342-355.

[5] Page 127, Record.

[6] Moya vs. Del Fierro, 69 Phil. 199, 204 (1939).

[7] Peralta vs. Comelec, 82 SCRA 30 (1978); see writer's dissenting opinion at pp. 106-107; emphasis supplied.

[8] Majority decision, at page 8.

[9] Idem, at page 9.

[10] Record, pages 126-127.

[11] Record, pp. 125-126; emphasis supplied.

[12] Majority decision at pp. 17-19.

[13] Supra, paragraph 2 hereof.

[14] Petition at pp. 12-13, Record

[15] Record, pp. 126-127.

[16] G.R. Nos. 68351-52.

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