

AQUILINO Q. PIMENTEL, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, KILUSANG BAGONG LIPUNAN, AND PEDRO N. ROA, RESPONDENTS.

G.R. No. 68113. November 19, 1985

Ponente: MAKASIAR, C.J.

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MAKASIAR, C.J.:

Petitioner Aquilino Pimentel Jr. seeks in his original petition

(1) to enjoin respondent Comelec

(a) from enforcing its resolution dated June 20, 1984 and July 10, 1984, and

(b) from further proceeding with PPC No. 16-14,

alleging lack of jurisdiction on the part of Comelec over the subject matter and over his person (pp. 2-23, Vol. I, rec.).

In his urgent motion dated and filed on October 25, 1984, petitioner prays for the issuance of a writ of preliminary prohibitory injunction and/or temporary restraining order to enjoin respondents from enforcing the decision of the Second Division of re-spondent Comelec promulgated on October 24, 1984 (pp. 341-349, Vol. 2, rec.), and to cite the Presiding Commissioner and two members of the Second Division for contempt of court for disobeying the temporary restraining order issued by this Court on August 9, 1984 and modified on August 16, 1984.

In the May 14, 1984 elections for assemblyman for the lone seat in Cagayan de Oro City, the following candidates with their respective political parties, filed their certificates of candidacy:

Aquilino Q. Pimentel.....

PDP-LABAN

Pedro N. Roa..... KBL

Guerrero Adaza Mindanao Alliance

Galvino Jardin

Magnaye Alsar

"After the casting of the ballots, the Board of Canvassers for Cagayan de Oro City (Board) convened at 7:18 P.M. of election day with the following as its composition:

"Chairman

—

Atty. Jose B. Amarga

Members

—

Fiscal Noli T. Catli

—

Supt. Teodoro P. Dano

—

Atty. Arturo Legaspi — KBL Representative

—

Atty. Graciano Neri Jr. — MA Representative

"Considering that at that time there were no election returns available for canvass, the Board temporarily adjourned and resumed at 10:15 of the same night, at which time there were 20 election returns from 20 voting centers. The canvass, upon motion of PDP-Laban was again adjourned and reset for the following day May 15, 1984 at 9:00 in the morning. (Minutes, Page 1).

"The canvass terminated at 7:00 P.M. of May 16, 1984 and the Board proclaimed Pimentel as the winner with a vote of 63,784. The other candidates received the following votes:

1. Pedro N. Roa 59,102
2. Guerrero A. Adaza 2,472
3. Galvino Jardino..... 496
4. Elsal Magnaye 205

(Minutes, Page 104).

"After the proclamation, a series of pleadings of petitioner were received by the Commission on Elections Commission in Manila" (Comelec Decision of Oct. 24, 1984, pp. 390, 391, Vol. II, rec.).

It is to be noted that, prior to the elections, the PDP-LABAN asked the Comelec that it be accredited as the dominant opposition party in Cagayan de Oro City. The Comelec, however, denied PDP-LABAN's request and, instead, accredited the Mindanao Alliance as the dominant opposition party in Cagayan de Oro City for the May 14, 1984 elections.

Not being recognized as the dominant opposition party, the PDP-LABAN, therefore, was not entitled to have any representative in the citizens election committee and in the city board of canvassers. Only the KBL and the Mindanao Alliance were duly represented because they were the ones recognized by the Comelec.

Shortly before the City Board of Canvassers convened on May 14, 1984 to canvass the election results, Atty. Bernardita F. Cabacungan, the City Election Registrar of Cagayan de Oro City, was relieved by the Regional

Director of the Comelec Region X of her duty as Chairman of the City Board of Canvassers and replaced by the Regional Legal Officer, Atty. Jose B. Amarga. The order of relief (Annex "A", p. 25, rec.) was contained in a telegram dated May 9, 1984 sent by the Assistant Director of Operations of the Comelec, Silvestre H. Bello, Jr., to the Regional Election Director of Comelec, Region X.

In the evening of May 14, 1984, the Board convened to start the canvassing. No canvassing however was made because of the request for postponement made by a representative of the PDP-LABAN which was granted by the Board notwithstanding objections raised by the KBL and Mindanao Alliance representatives. The canvassing was reset for the following day, May 15, 1984.

On May 15, 1984, during the canvassing, private respondent Pedro N. Roa, thru his duly authorized representatives, filed with the Board of Canvassers a petition for the exclusion from the canvass of 53 election returns from 53 voting centers (Annex "3-Roa", p. 205, rec.), to wit: 288, 284, 298, 301, 303, 305, 302, 312, 310, 309, 271, 351, 245, 372-A, 347, 353, 280, 260-A, 282, 358, 357, 287, 294, 295, 300, 278, 277, 205, 109, 258, 279, 288, 345, 367, 255-A, 255, 253, 359, 249-A, 220, 224, 247-A, 247, 248, 215, 224-A, 228-A, 231, 238, 198, 372-A, 363 and 238-A. Private respondent herein alleged that the questioned election returns were fatally defective, irregularly prepared, not properly identified and submitted to the Board of Canvassers, and appear to be tampered with or contain discrepancies.

Likewise, during the canvassing on May 15, 1984, Atty. Arturo Legaspi, KBL representative in the Board, objected in writing to the inclusion in the canvass of three (3) bundles of election returns coming from voting centers nos. 21-199, inclusive, except those coming from voting centers nos. 109 and 198; on the ground that the manner of their delivery and transmittal was not in accordance with Section 46 of BP 697; each bundle tied only by a plastic ribbon, and not placed in a padlocked ballot box (Affidavit of Atty. Arturo Legaspi marked as Annex "4-Roa", p. 206, rec.).

The City Board of Canvassers, however, overruled all the objections raised by herein private respondent.

On May 16, 1984, on the basis of the results of its canvass, the Board proclaim petitioner Aquilino Q. Pimental Jr. as the winning candidate for assemblyman in Cagayan de Oro City, having garnered the highest number of votes (63,784) as against private respondent's 59,102 votes.

On May 17, 1984, private respondent herein filed with respondent Comelec a "Petition for certiorari and Prohibition with Preliminary Injunction or Restraining Order" entitled: KILUSANG BAGONG LIPUNAN and/or PEDRO N. "OLOY" ROA, KBL CANDIDATE, Petitioners, versus CITY BOARD OF CANVASSERS of CAGAYAN DE ORO CITY, Respondent, without impleading herein petitioner Aquilino Q. Pimentel Jr. as party respondent (Annex "C", pp. 27-31, rec.). In this petition, private respondent herein assailed the proceedings of the Board of Canvassers and the inclusion of the election returns from 53 voting centers.

On the same day, May 17, 1984, private respondent filed with Comelec an "Urgent Appeal" — docketed as Pre-Proclamation Case No. 16-84 — entitled: KILUSANG BAGONG LIPUNAN and/or PEDRO N. "OLOY" ROA, KBL CANDIDATE, Petitioner-Appellant, versus CITY BOARD OF CANVASSERS OF CAGAYAN DE ORO CITY, Respondent/Appellee, for annulment of canvass and proclamation and appointment of substitute board of canvassers (Annex "D", pp. 32-37, rec.), again, without impleading Pimentel Jr. as party respondent.

On May 18, 1984, private respondent filed another pleading, "Supplement to Urgent Appeal dated May 17, 1984" entitled: KILUSANG BAGONG LIPUNAN and/or PEDRO N. "OLOY" ROA, KBL CANDIDATE, Petitioner/Appellant, versus CITY BOARD OF CANVASSERS OF CAGAYAN DE ORO CITY, Respondent/Appellee, praying for annulment of canvass and proclamation and appointment of substitute board of

canvassers, likewise without impleading Pimentel Jr. as party respondent (Annex "E", pp. 38-40, rec.).

On May 19, 1984, private respondent herein filed with Comelec, central office, by registered mail, a pleading captioned "Petition for Exclusion of Election Returns and to Declare Void Ab Initio Proclamation of 'Nene' Pimentel," this time expressly impleading Pimentel as party respondent. Said petition assailed the inclusion in the canvass of 176 election returns from Voting Centers Nos. 21 to 199 excluding Voting Centers Nos. 198 and 109 (Annex "K", pp. 77-83, rec.).

The aforesated pleading was mailed by Atty. Jesus V. Agana, one of the counsels of private respondent, to Comelec, Manila, on May 19, 1984 under Registry Receipt No. 31543, Post Office of Cagayan de Oro City. This mail matter is certified by Romeo C. Salcedo, Postmaster No. 6, of Cagayan de Oro City to have been "dispatched to destination under Bill No. 247." However, Comelec said it did not receive the above-mentioned pleading. Private respondent, however, annexed a copy of the aforementioned pleading to his opposition to Motion to Dismiss, which private respondent herein filed on June 14, 1984.

Atty. Jose B. Amarga, Chairman of the Board of Canvassers of Cagayan de Oro City, was furnished on May 19, 1984 a copy of the aforementioned pleading under Registry Receipt No. 31541, which Atty. Amarga received on May 21, 1984 as per return card (Exhibit "F", Exhibits of Roa, Vol. V, rec.). Petitioner Pimentel was likewise furnished a copy of the same pleading under Registry No. 31542, which was received by Pimentel on May 21, 1984 as per return card signed by a certain Mr. Chavez, Pimentel's agent (Annex "7-Roa," p. 211, rec.).

On May 22, 1984, the respondent Comelec set for hearing Pre-Proclamation Case No. 16-84. Atty. Raul Gonzales, who was then in the Comelec office for another case, entered his appearance for Aquilino Q. Pimentel Jr. and undertook to contact herein petitioner Pimentel Jr. as well as apprise him of the hearing scheduled on May 24, 1984.

On May 24, 1984, Atty. Raul Gonzales appeared for herein petitioner Pimentel. Private respondent herein, thru counsel, furnished Atty. Gonzales copies of his petition, urgent appeal, supplemental to urgent appeal as well as exhibits (Annex "J", pp. 75-76, rec.). No copy of private respondent's "Petition for Exclusion of Election Returns and to Declare Void Ab Initio Proclamation of 'Nene' Pimentel" was furnished to Atty. Gonzales.

During the hearing before the Comelec (Second Division) on May 24, 1984, Cagayan de Oro City Fiscal Noli Catli, a member of the Board of Canvassers, testified before the respondent Commission. Fiscal Catli categorically admitted, upon questioning by Commissioner Jaime Opinion, that during the canvassing held on May 15, 1984, private respondent Pedro N. Roa, thru duly authorized representatives, objected in writing to the inclusion in the canvass of 53 election returns from 53 voting centers as well as to 176 election returns which arrived in three bundles tied with plastic ribbons. Fiscal Catli likewise admitted that the Board overruled all objections raised by Roa's representatives and decided to include in the canvass each and every election return objected to, and, thereafter, proclaimed herein petitioner Aquilino Q. Pimentel Jr. as the winning candidate, without authority from the Comelec in Manila (pp. 14-16, Decision of Comelec dated Oct. 24, 1984).

At the hearing on May 31, 1984, Atty. Gonzales appeared again for petitioner Pimentel and considering that the petitioner has not yet filed his responsive pleading, respondent Comelec gave him three (3) days within which to file such pleading and reset the case for June 5, 1984.

On May 30, 1984, herein petitioner, thru counsel Atty. Joker Arroyo, filed a Motion to Dismiss on the ground that the respondent Commission has no jurisdiction over the person of petitioner Pimentel for the reason that petitioner Pimentel has not been formally impleaded as party respondent by herein private respondent (petitioner therein) Pedro N. Roa.

On June 14, 1984, private respondent filed an Opposition to petitioner's Motion to Dismiss alleging that: (a) Petitioner Pimentel has been impleaded as party respondent in a "Petition for Exclusion of Election Returns and to Declare Void Ab Initio Proclamation of 'Nene' Pimentel"; and (b) petitioner Pimentel is not an indispensable party because:

- (1) the case before the Comelec is an appeal from the ruling of the City Board of Canvassers, thus Comelec exercises appellate jurisdiction;
- (2) final determination could be had of the appeal without joining Pimentel.

On June 5, 1984, Comelec (Second Division) issued an Order which reads as follows:

"After extensive oral arguments this morning, the parties are hereby given a period of five (5) days from today within which to simultaneously submit their memoranda on all the issues raised in today's hearing, including the appeal and the request for the production before this Commission, of the Provincial Board of Canvassers' copies of the election returns now in Cagayan de Oro City. After the submission of these memoranda, this case shall be considered submitted for resolution by this Commission."

On June 20, 1984, respondent City Board of Canvassers filed its answer to the petition filed by private respondent.

On June 20, 1984, respondent Comelec issued the first questioned resolution (Annex "G", pp. 43-50, rec.), the dispositive portion of which reads:

"In view of the foregoing, the Commission (Second Division) resolved:

"a) To deny the Motion to Dismiss;

"b) To order the records of the proceedings of the Board of Canvassers including the minutes, the pleadings, documents and submission filed before said Board by the parties, and the election returns contested during the canvassing namely: 21 to 199, 205, 220, 224, 224-A, 228-A, 231, 238, 238-A, 245, 247, 247-A, 248, 249, 249-A, 253, 255, 255-A, 258, 260-A, 277, 278, 282, 284, 287, 288, 294, 295, 298, 300, 302, 303, 305, 310, 312, 345, 347, 353, 357, 358, 359, 361, 376 and 373-A be brought to the Commission on Election, Manila, not later than June 25, 1984.

"In this connection, the Chairman of the Board of Canvassers of Cagayan de Oro City, Jose Amarga Jr. is hereby directed to bring the aforementioned election documents and paraphernalia and election returns with prior notice to the petitioner and Aquilino Pimentel, Jr. and informing these parties as to the date (June 25, 1984) and time said election documents and election returns shall be brought to Manila including the transportation to be taken. The Chairman of the Board of Canvassers is hereby also directed to provide adequate security of the transporting of these election documents and election returns to Manila and to allow the parties to accompany these election returns and documents to the Commission on Elections office in Manila.

"The Provincial Commander of Misamis Oriental is hereby ordered to provide necessary security to accompany the election returns and other election documents mentioned in this resolution from Cagayan de Oro City until they are deposited with the Commission on Elections in Manila."

On June 26, 1984, the case was heard and at the said hearing, counsel for petitioner Pimentel raised the following points, to wit:

- a. that the 53 election returns questioned by private respondent would not be sufficient to change the results of the election and Pimentel would still come out the winner;
- b. that the 176 election returns from Voting Center Nos. 21 to 199 (except 198 & 109) could not be the subject

of an appeal before the Comelec as these returns were not duly protested to in writing during the canvass in Cagayan de Oro City as required by Section 54 of BP 697.

Prolonged oral arguments were then had on the issues raised by the parties herein, after which, the parties were required by respondent Commission (Second Division) to submit their memoranda on the question of whether or not the aforementioned 176 election returns are included in the present pre-proclamation case.

On July 10, 1984, the respondent Commission (Second Division) issued the second questioned resolution (Annex "H", Petition, pp. 52-57, rec.) ruling that the 176 election returns are included in the pre-proclamation case, and ordering the transfer of the 229 election returns as previously ordered in the June 20, 1984 resolution. The dispositive portion of said resolution reads:

"WHEREFORE, the Commission (Second Division) resolved:

"To order the records of the proceedings of the Board of Canvassers including the minutes, the pleadings and all other documents filed before said Board by the parties, and the election returns contested during the canvassing enumerated in the first paragraph of this Resolution be brought to the Commission on Elections, Manila, not later than July 13, 1984.

"To order the petitioner Pedro Roa and respondent Aquilino Pimentel to submit their exhibits, affidavits and other submission on the election returns sought to be excluded/included in the canvass by the City Board of Canvassers within five days from receipt of this order.

"In this connection, the Chairman of the Board of Canvassers of Cagayan de Oro City, Jose Amarga, Jr., is hereby directed to bring the aforementioned records and election returns with prior notice to the Petitioner and respondent Aquilino Pimentel, Jr. and informing these parties as to the date (July 13, 1984) and time the same shall be brought to Manila including the transportation to be taken. The Chairman of the Board of Canvassers is hereby also directed to provide adequate security for the transporting of these election documents and election returns to Manila and to allow the parties to accompany the same in transit to the Commission on Elections office in Manila.

"The Provincial Commander of Misamis Oriental is hereby ordered to provide the necessary security to accompany the election returns and other election documents mentioned in this resolution from Cagayan de Oro City until they are deposited with the Commission on Elections in Manila."

On July 17, 1984, herein petitioner Pimentel filed an Urgent Motion with respondent COMELEC assailing the jurisdiction of the Second Division of respondent Commission on the ground that it does not have the authority to decide controversies involving members of the National Assembly which can only be decided en banc.

On August 4, 1984, respondent COMELEC issued a resolution denying petitioner's motion of July 17, 1984 and reiterating therein the transfer from Cagayan de Oro City to Manila of the 229 election returns including other election documents.

On July 30, 1984, herein petitioner Pimentel filed with this Court the instant petition for certiorari, prohibition and mandamus with restraining order, praying among others that the COMELEC Second Division has no jurisdiction over the subject matter and over his person.

On July 31, 1984, we resolved to require the prohibition respondents to comment on the petition for certiorari, and mandamus with prayer for a writ of preliminary injunction (p. 85, rec.).

On August 8, 1984, herein petitioner Pimentel filed an "Urgent Motion for Leave to Reiterate Prayer for Issuance of Restraining Order" (pp. 86-89, rec.).

On August 9, 1984, this Court en banc issued a resolution (p. 92, rec.) quoted as follows:

G.R. No. 68113 (Aquilino Pimentel, Jr. vs. Commission on Elections, et al.). — Acting on the urgent motion filed by counsel for petitioner for leave to reiterate the prayer in their petition for the issuance of a restraining order, the Court Resolved to ISSUE a TEMPORARY RESTRAINING ORDER limited to enjoining the respondent Commission on Elections or its duly authorized representatives from ordering and/or implementing any order for the transfer of the pleadings, records, documents and contested election returns mentioned and described in the COMELEC resolutions dated June 20, 1984 and July 10, 1984, (and reiterated in the Resolution dated August 4, 1984), from Cagayan de Oro to the COMELEC offices in Manila, effective immediately and continuing until further orders from this Court, it being understood that this restraining order does not enjoin the COMELEC from acting on and resolving (subject to the terms of this restraining order which enjoins the transfer of the said pleadings, records, documents and contested election returns to Manila) the urgent appeal dated May 17, 1984 for annulment of canvass and proclamation and appointment of substitute Board of Canvassers and the supplement to urgent appeal, dated May 18, 1984, praying for the (1) annulment of the canvass and proclamation allegedly irregularly and illegally had; (2) appointment of a new Board of Canvassers to ensure fair and just canvass and proclamation, and (3) constitution of a newly appointed Board of Canvassers to recanvass all returns from the very beginning and to cause the proclamation to whoever be determined as the winner.'

On August 14, 1984, respondent Commission on Elections filed a "Motion to Dissolve Restraining Order" (pp. 95-100, rec.).

On August 16, 1984, this Court resolved to amend the order dated August 9, 1984 and the restraining order issued pursuant thereto, by adding two paragraphs thereto, to wit:

'BOTH PETITIONER AQUILINO Q. PIMENTEL, JR. AND PRIVATE RESPONDENT PEDRO N. ROA ARE HEREBY AUTHORIZED TO DETAIL AN EQUAL NUMBER OF UNARMED WATCHERS TO STAND GUARD OUTSIDE THE BUILDING WHERE THE ELECTION RETURNS, BALLOT BOXES AND OTHER ELECTION PARAPHERNALIA USED IN CONNECTION WITH THE ELECTION FOR ASSEMBLYMAN FOR THE LONE SEAT FOR CAGAYAN DE ORO CITY HELD ON MAY 14, 1984 ARE KEPT.

'THE PC PROVINCIAL COMMANDER OR THE ASSISTANT PROVINCIAL COMMANDER OF MISAMIS ORIENTAL IS DIRECTED TO PERSONALLY LEAD A PC TEAM ALSO TO STAND GUARD OUTSIDE THE THIRTY (30) METER RADIUS FROM THE BUILDING WHERE THE ELECTION RETURNS, BALLOT BOXES AND OTHER ELECTION PARAPHERNALIA ARE KEPT, TO MAINTAIN PEACE AND ORDER IN THE AREA.

'Justice Aquino voted to grant the motion.' (p. 102, rec.)

On September 5, 1984, respondent Commission on Elections filed its comment (pp. 132-168, rec.) in compliance with the resolution dated July 31, 1984 of this Court.

On September 13, 1984, private respondent Pedro N. Roa, thru counsel, filed his comment (pp. 172-202, rec.).

On September 20, 1984, this Court resolved to give due course to the original petition filed by herein petitioner Aquilino Q. Pimentel, Jr. (p. 330, rec.).

Respondent Roa submitted before the respondent COMELEC his evidence consisting of seven (7) affidavits of Pimentel's Vigilantes '84 and affidavits of KBL inspectors, watchers, and registered voters' stating that the election returns were prepared before the voting and/or actual canvass by the citizens Election Committee.

Petitioner Pimentel waived his right to present evidence in his behalf after having been granted an extension, upon his request, up to September 10, 1984 to submit his formal offer of evidence (pp. 429-430, Vol. 2 rec.).

On October 24, 1984, respondent COMELEC promulgated a decision (pp. 390-478, rec.) on Pre-Proclamation Case No. 16-84, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

"a) Declaring null and void Ab Initio the proclamation of respondent Aquilino Q. Pimentel as elected member of the office of the Batasang Pambansa made by the Cagayan de Oro City Board of Canvassers on May 16, 1984;

"b) Declaring null and void the election returns from the following voting centers, namely: 37, 38, 39, 40, 41, 78, 85, 87, 88, 101, 103, 105, 106, 109, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 136, 137-A, 140, 142, 142-A, 143, 144, 145, 146, 148, 149, 150, 151, 151-A, 152, 153, 155, 156, 157, 158, 164, 165, 166, 169, 170, 171, 172, 173, 174, 175, 176, 179, 180, 182, 183, 184, 187, 188, 190, 193, 194, 196, 197, 199, 245, 247-A, 249-A, 255, 255-A, 258, 282, 288, 294, 305, 310, 347, 353, 357, 359, 361;

"c) Declaring that the total number of votes received by Aquilino Q. Pimentel, Jr. and Pedro N. Roa from the above annulled election returns which are 17,651 and 11,439, respectively, be deducted from the total number of votes accredited to them by the Board of Canvassers of Cagayan de Oro which are 63,784 and 59,102 respectively, thus accrediting to Aquilino Q. Pimentel, Jr., the total of 46,133 votes and to Pedro N. Roa the total of 47,663;

"d) Declaring that Pedro N. Roa, in view of the above, has received the highest number of votes in the elections of May 14, 1984 in Cagayan de Oro City;

"e) Proclaiming Pedro N. Roa as the duly elected Member for the Office of the Batasang Pambansa for the Lone Seat of Cagayan de Oro City in the election of May 14, 1984;

"f) To refer to the Law Department of this Commission all the affidavits presented for inquiry and investigation regarding violation of the election laws; and

"g) To direct the Executive Director of this Commission to furnish a copy of this Decision to the Secretary General of the Batasang Pambansa at Quezon City.

"This decision is final and no motion for reconsideration will be entertained."

On October 25, 1984, this Court acting on the urgent motion for the issuance of a writ of preliminary prohibitory injunction and to cite the members of the Second Division of respondent Commission on Elections in contempt of court, filed by petitioner herein, dated October 25, 1984, the Court resolved to require the respondents to comment on the aforesaid urgent motion and set for hearing the prayer for the issuance of a temporary restraining order on October 30, 1984.

On October 29, 1984, herein private respondent filed his comment (pp. 480-490, rec.) alleging, among others, that he took his oath as Mambabatas Pambansa (MP) on October 25, 1984.

On October 29, 1984, respondent Comelec filed its comment (pp. 494-507, rec.).

On October 31, 1984, this Court issued a temporary restraining order which, inter alia, enjoins both petitioner Aquilino Q. Pimentel, Jr. and respondent Pedro N. Roa, from discharging the functions of a member of Batasang Pambansa for Cagayan de Oro City until further orders of the Court.

On November 7, 1984, respondent Pedro N. Roa, thru counsel, filed a motion for reconsideration of the resolution of October 31, 1984.

In a resolution dated November 8, 1984, this Court resolved to require the petitioner to comment on the motion filed by respondent Pedro N. Roa.

On November 9, 1984, petitioner Aquilino Q. Pimentel, Jr. filed a counter-manifestation to the motion for reconsideration filed by respondent Pedro Roa of the resolution dated October 31, 1984.

On November 12, 1984, respondent Pedro N. Roa filed a reply to the counter-manifestation of petitioner Pimentel dated November 9, 1984.

On November 13, 1984, petitioner Aquilino Q. Pimentel, Jr. filed a motion for reconsideration of the resolution dated October 31, 1984 and the temporary restraining order issued on November 2, 1984.

Also on November 13, 1984, private respondent Roa filed a supplement to manifestation dated November 6, 1984.

Likewise, on November 13, 1984, this Court issued a resolution requiring the respondents to comment on the motion filed by counsel of petitioner for the reconsideration of the resolution of October 31, 1984.

On November 15, 1984, petitioner Aquilino Q. Pimentel, Jr. filed a report together with the official report of the Station Commander of the Integrated National Police (INP) Command of Cagayan de Oro City, Lt. Col. Jeronimo M. Bagsican, submitted to the Provincial Commander/Police Superintendent, Misamis Oriental PC, INP Command, Camp Alajar, Cagayan de Oro City, as well as the certification of the City Treasurer of Cagayan de Oro City relative to the condition of the ballot boxes in the storeroom of the Property Division, City Treasurer's Office, Cagayan de Oro City.

On November 19, 1984, respondent Pedro N. Roa filed his comment/opposition to petitioner's motion for reconsideration.

Also on November 19, 1984, public respondent COMELEC (Second Division) filed its comment on petitioner Pimentel's motion for reconsideration of this Court's resolution dated October 31, 1984.

Likewise, on November 19, 1984, respondent COMELEC filed a motion for reconsideration of this Court's resolution of October 31, 1984 insofar as it resolved to:

'(3) Order, as part of the proceedings herein in the exercise of its powers under the constitution, that the ballot boxes containing the 228 questioned election returns and the ballots be brought to the Supreme Court with adequate security accompanied by representatives of respondent Commission on Election as well as of both petitioner Pimentel and respondent Roa for the purpose of counting the votes in the presence of counsel of the above parties and thereafter determining in accordance with the applicable laws who is entitled to the office of assemblyman for Cagayan de Oro City.'

On November 20, 1984, this Court issued a resolution relative to the report filed by petitioner Aquilino Q. Pimentel, Jr. requiring the parties to comment on the aforesaid report.

On November 21, 1984, petitioner Aquilino Q. Pimentel, Jr. filed his consolidated opposition to respondent's separate motions for reconsideration and consolidated reply to respondents' separate comments to petitioner's motion for reconsideration.

On November 29, 1984, this Court issued a resolution requiring the COMELEC to forward to this Court the complete records of PPC No. 610-84, entitled KBL and/or Pedro N. Oloy Roa vs. City Board of Canvassers of Cagayan de Oro City, minutes of the canvass proceedings of the City Board of Canvassers of Cagayan de Oro City canvassing the election returns for assemblyman for the lone seat in Cagayan de Oro City, certificate of canvass and copies of any written objections submitted during the canvassing under Sec. 54 of Batas Pambansa Blg. 697. The same resolution also ordered the canvassing Board Chairman, Atty. Jose B. Amarga, Regional Legal Officer, and Atty. Bernardita F. Cabacungan, City Election Registrar, both in Cagayan de Oro City, to

submit to this Court certified true copies of the items stated above. The Clerk of Court of this Court was likewise directed to send such order to Cagayan de Oro City by telegram.

On December 6, 1984, respondent COMELEC filed a manifestation and motion stating that it was not in a position to make any comment on the report of the station commander of the INP command of Cagayan de Oro City dated November 8, 1984, and the certification of the City Treasurer of Cagayan de Oro City as to the condition of the ballot boxes in the storeroom of the Property Division, City Treasurer's Office, Cagayan de Oro City.

On December 10, 1984, petitioner Aquilino Q. Pimentel, Jr. filed with this Court a manifestation in connection with the resolution dated November 29, 1984, stating inter alia, that Commissioner Sagadraca of the COMELEC was not in the Philippines when the contested resolution was promulgated by respondent COMELEC on October 24, 1984.

On December 17, 1984, respondent Pedro N. Roa, thru counsel, filed his comment on the petitioner's report dated November 15, 1984.

On December 19, 1984, this Court, in a resolution, resolved to issue the implementing order of its October 31, 1984 resolution, thus: —

xxx xxx xxx

"2. To issue subpoenae duces tecum to the chairman of the City Board of Canvassers, Atty. Jose Amarga, Jr., and the City Election Registrar, Atty. Bernardita F. Cabacungan, and/or the City Treasurer of Cagayan de Oro City to produce and deposit with the Supreme Court offices in Manila the aforesaid 228 ballot boxes, keys and election returns of the canvassing and to assist and coordinate closely with Gen. Ramos in safely bringing said ballot boxes, keys and election returns to Manila as hereinabove directed.

"3. To designate Acting Court Administrator Arturo Buena and/or Deputy Court Administrator Leo Medialdea as the Court's official representative(s) to assist and coordinate closely with Gen. Ramos and all the parties concerned in the safe transportation of the aforesaid 228 ballot boxes, keys and election returns from Cagayan de Oro City to Manila and for their safe deposit in the Supreme Court offices in Manila.

"4. Finally, to direct that such transportation and deposit of the aforesaid 228 ballot boxes, keys and election returns from Cagayan de Oro to the Supreme Court offices in Manila be effected not later than Monday, January 14, 1985, after which all parties concerned will be served with notice of the commencement of the proceedings for the examination of the election returns in question and opening of the ballot boxes and counting of the votes if determined by the Court to be in order."

On December 21, 1984, the COMELEC filed with this Court an Urgent Manifestation.

On January 11, 1985, respondent Pedro Roa filed with this Court a Motion to declare petition deemed dismissed.

On January 16, 1985, respondent Roa filed an Omnibus Motion with this Court.

On January 17, 1985, this Court resolved, inter alia, to set the case for hearing on January 22, 1985 and to require both parties to produce their copies of the disputed election returns.

On January 21, 1985, petitioner Pimentel filed his Comment/Opposition re respondent Roa's Omnibus Motion.

On January 22, 1985, respondent Pedro N. Roa filed a Reply to Comment/Opposition (to omnibus motion dated January 15, 1985) and a Citation of Authorities (re Omnibus motion dated January 15, 1985).

On January 24, 1985, this Court issued a resolution denying the respondent's omnibus motion and ordering the respondent to produce his copies of the disputed election returns, pursuant to the Resolution of January 17, 1985.

On February 21, 1985, petitioner Pimentel filed a Motion seeking clarification as to what specific provisions of the Election Code should govern the proceedings to be conducted by this Court, and likewise praying that the temporary restraining order enjoining him from discharging the duties and performing the functions of member of Parliament for Cagayan de Oro City be lifted.

On February 28, 1985, respondent Pedro N. Roa filed a Memorandum on the recanvass of the 225 election returns.

On March 1, 1985, petitioner Pimentel filed a Summation of his observations on the election returns earlier examined by this Court.

On March 6, 1985, private respondent Roa filed his Reply to petitioner's summation.

Also on March 6, 1985, petitioner Pimentel filed a reply summation.

On March 13, 1985, respondent Pedro N. Roa filed his Comment on petitioner's motion dated February 21, 1985.

On March 27, 1985, petitioner Pimentel, thru counsel, filed an Opposition and Manifestation to the motion filed by respondent COMELEC dated March 12, 1985 for extension of time (30 days) within which to file its comment on petitioner's motion that Sections 172, 173, and 174 of the 1978 Election Code should govern the revision proceedings before this Court.

On April 1, 1985, respondent COMELEC filed its Comment on petitioner's motion dated February 21, 1985.

In a resolution dated April 25, 1985, this Court, after examination of the 225 election returns, resolved by a vote of ten to two, to proceed with the opening of 225 ballot boxes and to count the ballots therein by the Justices themselves without need or assistance of any expert. The resolution also created three groups of revisors, each group composed of three members, one representing the Court as Chairman, one representing the petitioner, and the other one representing the respondent. The revisors were directed to finish the counting of the ballots, segregating disputed and undisputed ballots and to submit weekly reports to the Court.

On April 30, 1985, petitioner Pimentel submitted the names of his representatives and/or substitutes to the groups of revisors, pursuant to the resolution of the Court dated April 25, 1985.

On May 2, 1985, private respondent Pedro N. Roa, thru counsel, filed his compliance to the resolution of the Court dated April 25, 1985. In his compliance, private respondent herein submitted the names of three persons (Mr. Eduardo Maniwang, Atty. Desiderio A. Pagui, and PC/LT. Pelagio A. Casilao (Ret.) as "experts on questioned documents as revisors in the appreciation and counting of the ballots." The same compliance also listed the names of three other substitutes.

In a resolution dated May 7, 1985, this Court denied and/or disapproved the designation by counsel for private respondent of the experts on questioned documents as respondent's representatives and substitutes.

On May 9, 1985, private respondent Pedro N. Roa filed a motion for reconsideration of the Court's resolution dated May 7, 1985.

On May 28, 1985, petitioner Pimentel filed a Motion praying that the one-month period within which the revision of the ballots should be terminated be made non-extendible and that the revision should be governed by Section 40 of Batas Pambansa Blg. 697. It was also prayed that the team of revisors be increased from three to ten.

On May 30, 1985, this Court resolved to require the respondent to comment on the motion filed by petitioner on May 28, 1985.

On June 3, 1985, petitioner herein filed a supplemental motion to motion filed on May 28, 1985.

On July 2, 1985, the Court resolved:

x x x '(1) that the appreciation and counting of the ballots inside the questioned 225 ballot boxes shall be governed by all the applicable rules and principles and said 225 ballot boxes shall be opened in numerical order in accordance with the resolution of April 25, 1985; (2) that only the chairman of each group of revisors shall be allowed to handle or touch the ballots; (3) that the disputed ballots shall be marked as exhibits of the party disputing the same; (4) that the marking of the exhibits shall be done only by the chairman of each group of revisors; (5) that the parties and the chairmen of the groups of revisors shall meet again to discuss the forms to be used in the revision, not later than July 5, 1985; (6) that the groups of revisors shall be increased from three to ten should the same be necessary to speed up the revision; (7) that the revision by the teams of revisors shall commence at 9:00 o'clock in the morning on July 8, 1985 and shall continue daily thereafter until such appreciation and counting are completed within one month thereafter, as directed in the April 25, 1985 Resolution; and (8) that the public shall be excluded from the revision room so that the groups of revisors will be free from any form of disturbance, interference or distraction while performing their duties.'

On October 11, 1985, petitioner Aquilino Q. Pimentel, Jr. filed a Motion to Resolve and/or To Lift Temporary Restraining Order in Respect to Petitioner Pimentel.

In a resolution dated October 15, 1985, this Court required respondent Roa to comment on the aforesaid motion.

On October 28, 1985, private respondent Roa filed his Comment to Pimentel's motion dated October 11, 1985 and filed on the same day.

The COMELEC, in its decision dated October 24, 1984, stated that in arriving upon the conclusion that there was a serious common irregularity in the preparation of all the 87 election returns — specifically the fact that the election returns of the 87 voting centers were completed before the counting of the ballots was finished — it was guided or aided by the totality of the evidence and circumstances, namely:

xxx xxx xxx

"b) The un rebutted joint affidavit of seven (7) members of Pimentel's Vigilantes '84' that they picked up three (3) bundles of election returns corresponding to Voting Centers Nos. 21 to 199 except Voting Center No. 108 and 198, from a restaurant and brought the same to the house of Pimentel, all on Pimentel's order in the evening of May 14, 1984;

"c) The unexplained appearance of these three (3) bundles of election returns on the table of Atty. Jose Amarga, Chairman of the Board when the Board resumed in the morning of May 15, 1984;

"d) The un rebutted testimonies of 87 witnesses, each categorically stating among others that the 87 election returns (one witness for each return) were accomplished without finishing the counting of the ballots."

xxx xxx xxx

Respondent Roa objected in writing to the inclusion in the canvass of three bundles of election returns coming from Voting Centers Nos. 21-199, inclusive, except those coming from voting centers Nos. 109 and 198; on the ground that the manner of their delivery and transmittal was not in accordance with Sec. 46 of B.P. 697, thereby causing serious doubts as to its integrity and authenticity. In support of said allegation, respondent Roa submitted the joint affidavit of seven persons who alleged that they are members of "Vigilantes '84", a supposed political action group of Pimentel's PDP-Laban of Cagayan de Oro City. These seven persons stated that they obtained three bundles of election returns from a restaurant in downtown Cagayan de Oro City which they brought to the house of Pimentel. These three bundles of election returns allegedly found their way in the morning of May 15, 1985 to the office of Atty. Jose Amarga, the Chairman of the Board of Canvassers of Cagayan de Oro City.

Aside from the joint affidavit of the seven members of the "Vigilantes '84", respondent Roa likewise submitted a total of 105 affidavits, all concerning the manner of the elections, the counting of the ballots and the preparation of the election returns in the following voting centers: 26, 37, 38, 39, 40, 41, 42, 60, 61, 62, 78, 82, 83, 85, 87, 88, 94, 98, 101, 103, 104, 105, 106, 109, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 136, 140, 137-A, 138, 139, 142, 142-A, 143, 144, 145, 146, 148, 149, 150, 151, 151-A, 152, 153, 155, 156, 157, 158, 164, 165, 166, 168, 169, 170, 171, 172, 173, 174, 175, 176, 179, 180, 181, 182, 183, 184, 187, 188, 189, 190, 193, 194, 195, 196, 197, and 199 which voting centers correspond to some of the election returns which arrived in three bundles.

In its decision dated October 24, 1984, respondent Comelec opined that:

xxx xxx xxx

"We are not prepared to annul or overcome the presumption of validity of the election returns on the mere fact that their delivery to the Board was not in accordance with the law, particularly Section 46 of B.P. 697. For this reason, the election returns enumerated and protested in Exhibit A as well as those protested which comprise the three (3) big bundles and which do not have corroborative or direct evidence to show any anomaly in the preparation of said returns are valid and good returns and should be included in the canvass."

It should be emphasized that in arriving at the conclusion that there was a serious common irregularity in the preparation of 87 election returns, respondent Comelec relied mainly on the joint affidavit of seven (7) members of Pimentel's co-called "Vigilantes '84" and on the affidavits of some KBL inspectors/watchers and registered voters. Respondent Comelec, based solely on the aforesaid affidavits presented before it, made the sweeping conclusion that the 87 election returns have lost their authenticity and genuineness and must be considered as falsified returns which would necessitate their exclusion from the canvass. This conclusion reached by the respondent Comelec runs counter to the settled doctrine that the Comelec must exercise "extreme caution" in rejecting or excluding election returns and may do so only upon conclusive proof that the returns are obviously manufactured (*Anni vs. Isquierdo, et al.*, L-35918, June 28, 1974, reaffirmed and reiterated in *Aratuc vs. Comelec*, 88 SCRA 251, 282-283). The respondent Comelec should have compared its own copies of the election returns with the copies of the election returns of both parties pertaining to the 225 voting centers, which copies were furnished them separately from the copies submitted to the Board of Canvassers (Sec. 42, *Batas Pambansa No. 697*).

From the examination by the lawyers of both parties presided by Justices Teehankee, Makasiar, Herrera, Relova and Cuevas of the 225 ballot boxes in open court, and the copies of the election returns contained therein, as well as the comparison of said copies of the election returns inside the ballot boxes with the copies of petitioner Pimentel and the copies of respondent Roa, no tampering appeared on the physical condition of the ballot boxes, although there were minor discrepancies in some copies of the election returns.

The findings of the respondent Comelec that there was a "serious common irregularity" in the preparation of the 87 election returns, is completely belied by the findings of the Group of Revisors created by this Court purposely to aid this Court in the appreciation of the ballots and the election returns of the 225 voting centers disputed by the parties herein.

I

As heretofore stated, the canvass by the Board of Canvassers of all the votes from all the Voting Centers in Cagayan de Oro City shows that petitioner Pimentel garnered 63,784 votes, while respondent Roa obtained 59,102, giving Pimentel a majority of 4,682 votes.

II

In order to aid the Court in the appreciation of the ballots of the 225 voting centers, the Court created six (6)

teams of Revisors.

Each team of revisor was composed of Acting Court Administrator Arturo B. Buena, Deputy Court Administrator Romeo D. Mendoza, Deputy Court Administrator Leo D. Medialdea, Deputy Clerk of Court Vicente Bengzon, Deputy Clerk of Court Daniel Martinez, Deputy Clerk of Court Damasita M. Aquino, as Chairmen of their substitutes, namely Atty. Narciso Peña, Jr., Atty. Roberto Makalintal, Atty. Orlando Cariño, Atty. Reynold Yaneza, Atty. Rogelio de Lacuesta and Atty. Virginia A. Soriano, all Supreme Court employees, and one representative each from Pimentel and Roa.

In the course of the revision of the ballots, the six teams of revisors likewise found out that the ballot boxes were generally in good condition, properly sealed by padlocks and secured by Comelec metal seals.

There was no indication that the padlocks and the Comelec metal seals were tampered with, although some metal seals were not locked.

The revision teams observed that the ballots cast for the different candidates, which were meticulously and carefully appreciated and counted during the revision, tallied with the votes credited to said candidates and duly recorded in the election returns found inside the ballot boxes. Although there were discrepancies noted by the revision teams, however, the same were very minor, presumably due to human error in the preparation of, and entering minor data in the election returns.

The revision teams concluded that there was no indicium of irregularity in the preparation of the election returns pertaining to the 225 voting centers, including the 87 voting centers whose election returns were annulled by the respondent Comelec.

The omission to lock some metal seals attached to a few ballot boxes and the minor lapses in the preparation of and in the entries of some data in several copies of said election returns could be ascribed to the fact that the preparation of the election returns was done close to midnight subsequent to the conclusion of the canvass in the voting centers when the members of the Citizen Election Committee were already tired and hungry, aggravated by lack of adequate lighting.

It should be recalled that as late as 10:15 P.M. of May 14, 1984, only 20 election returns were received by the Board of Canvassers, which was constrained to postpone the canvass the following morning of May 15, 1984.

The six teams of Revisors categorized the objections of the contending parties into SERIOUS, DOUBTFUL and FRIVOLOUS.

Likewise included in the classification of disputed ballots are the ballots claimed by either party, which ballots were not counted by the Citizen Election Committee in favor of either candidate, although they were contained inside the ballot boxes.

After the revision of the ballots coming from the questioned 225 voting centers, the Chairmen of the 6 teams of revisors submitted their summary and evaluation which included the figures appearing in the copies of the election returns in the possession of the election registrar (The City Treasurer) which copies were also presented or submitted to the Court during the examination of the physical condition of the ballot boxes and the comparison of the entries in the copies of the election returns contained in the ballot boxes and the copies of the said election returns of the parties before the aforementioned members of the Court.

III

The revision by the teams of revisors of the ballots coming from the challenged 225 voting centers shows that respondent Roa objected to 26,846 votes which were counted in favor of petitioner Pimentel; while petitioner Pimentel objected to 30,158 votes which were counted in favor of respondent Roa.

Deducting the 26,846 votes for Pimentel but objected to by respondent Roa from the overall total of 63,784 votes in favor of Pimentel, leaves a balance of 36,938 votes for Pimentel.

Deducting the 30,158 votes of Roa but objected to by Pimentel from Roa's overall total of 59,102 votes, leaves a balance of 28,944 votes for Roa. The balance of 36,938 votes for Pimentel still gives Pimentel a majority of 7,994 votes over the balance of 28,944 votes in favor of respondent Roa.

The copies of the election returns of the election registrar pertaining to the aforesaid 225 voting centers show that Pimentel obtained 37,619 votes, as against Roa's 31,962, which still gives Pimentel a majority of 5,667 votes.

The copies of the election returns of the Board of Canvassers covering the 225 voting centers, show that Pimentel obtained 37,529 votes as against Roa's 31,841 votes, giving Pimentel a majority of 5,688 votes.

Respondent Roa, however, objected to the 26,846 votes for Pimentel. Deducting the said 26,846 votes from Pimentel's 37,529 and 37,619, leaves a balance respectively of 10,683 votes and 10,773 votes for Pimentel.

Pimentel objected to the 30,158 votes for Roa. Deducting the said 30,158 votes from 31,841 votes and 31,962 votes, leaves a balance of 1,683 votes and 1,804 votes respectively for Roa.

Deducting the 1,683 votes and 1,804 votes respectively for Roa from the 10,683 votes and 10,773 votes for Pimentel, leaves a balance of 9,000 and 8,969 votes, respectively, for Pimentel.

From the foregoing mathematical computation, it is therefore clear that petitioner Aquilino Q. Pimentel, Jr. has obtained the highest number of votes during the election of May 14, 1984 for members of the Batasang Pambansa in Cagayan de Oro City.

The City of Cagayan de Oro — a highly urbanized city — has been without representation in the Batasang Pambansa since October 31, 1984, when this Court issued the temporary restraining order enjoining both petitioner Aquilino Q. Pimentel, Jr. and respondent Pedro N. Roa from discharging the functions and performing the duties of a member of the Batasang Pambansa. It would be unfair to the people of Cagayan de Oro City to be left indefinitely without representation in the Batasang Pambansa.

This case is merely a pre-proclamation dispute. Respondent Roa can still file a regular election protest, during the hearing of which the disputed ballots will be examined and appreciated.

WHEREFORE, THE DECISION OF THE RESPONDENT COMELEC (SECOND DIVISION) OF OCTOBER 24, 1984 IS HEREBY ANNULLED AND SET ASIDE. THE TEMPORARY RE-STRAINING ORDER HERETOFORE ISSUED IS HEREBY LIFTED INsofar AS IT CONCERNS PETITIONER AQUILINO Q. PIMENTEL, JR., THIS IS WITHOUT PREJUDICE TO THE RIGHT OF RESPONDENT ROA TO FILE A REGULAR ELECTION PROTEST WITHIN TEN (10) DAYS FROM THE DATE THIS DECISION BECOMES FINAL. THIS DECISION IS IMMEDIATELY EXECUTORY.

NO COSTS.

SO ORDERED.

Abad Santos, Plana, Escolin, Gutierrez, Jr., De La Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

Teehankee, J., see separate concurrence.

Aquino, J., no part.

Concepcion, Jr., Melencio-Herrera, and Relova, JJ., on leave.

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