

SAIDAMEN B. PANGARUNGAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND MAHID MUTILAN, RESPONDENTS.*G.R. Nos. 107435-36. December 11, 1992*

Ponente: DAVIDE, JR., J.

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In this special civil action for certiorari under Rule 65 of the Rules of Court, in relation to Section 7, Article IX-A of the 1987 Constitution, petitioner would have this Court set aside and annul, for having been issued with grave abuse of discretion or lack of jurisdiction, (a) the 18 September 1992[1] joint Resolution of the First Division of respondent Commission on Elections (COMELEC) in SPC No. 92-349, SPC No. 92-378-379, SPC No. 92-387, and SPC No. 92-391, and (b) the 23 October 1992[2] en banc Resolution of the COMELEC affirming, in SPC No. 92-349[3] and SPC No. 92-387,[4] the abovementioned 18 September 1992 Resolution of the First Division.

In the Resolution of 29 October 1992, this Court required the respondents to Comment on the Petition within a non-extendible period of ten (10) days, and issued a temporary restraining order directing the respondent COMELEC to cease and desist from enforcing the questioned resolutions, more particularly the portion thereof which directs the Provincial Board of Canvassers to reconvene and prepare a new set of certificate of canvass on the basis of the results taken from the COMELEC's copies of the Election Returns for the uncontested[5] Provincial Elective Positions.

On 6 November 1992, private respondent filed an Urgent Motion To Lift the Temporary Restraining Order to which, upon order of this Court, the petitioner filed a Comment.

On 9 November 1992, respondent COMELEC, through the Office of the Solicitor General, filed its Comment to the petition.

Although this Court granted the petitioner's motion to file a Reply to the public respondent's Comment on or before 22 November 1992, none has been filed as of the writing of this Decision.

Considering the allegations and issues raised and the arguments adduced by the parties in the petition and the subsequent pleadings indicated above, this Court hereby resolves to consider the private respondent's Urgent Motion To Lift the Temporary Restraining Order as his Comment and Answer, and the Comment of respondent COMELEC as its Answer thereto; and to decide this case on its merits.

These facts are not disputed.

Petitioner and the private respondent were candidates for the Office of the Provincial Governor of Lanao del Sur in the synchronized elections of 11 May 1992.

During the canvassing of the certificates of canvass for provincial offices by the Provincial Board of Canvassers (PBC) of Lanao del Sur,[6] private respondent objected to the inclusion of Certificate of Canvass (COC) No. 667635 of the Municipality of Madamba, Lanao del Sur; petitioner opposed this move. Consequently, both parties

submitted their evidence to the PBC. Private respondent relied on the Investigation Report of Atty. Clarita Callar, the joint affidavit of Attys. Abdul Aguam, Marohombsar and Datu Dacula and other affidavits. Petitioner then formally offered documentary exhibits consisting of the Minutes of the PBC proceedings of 6 June 1992, the urgent manifestation dated 6 June 1992 and the joint affidavit, also dated 6 June 1992, of Alexander Dimaporo and Pendatun Panguinaguina -- members of the Municipal Board of Canvassers (MBC) of Madamba -- to support his opposition to the objection.[7]

On 20 June 1992, the PBC handed down a unanimous ruling[8] the dispositive portion of which reads:

"The Provincial Board of Canvassers of Lanao del Sur, unanimously decided not to include in the count/canvass the Certificate of Canvass of Madamba said having (sic) been substituted and spurious (sic)."

This ruling is based primarily on the Investigation Report of Atty. Clarita Callar who was directed by the Chairman of the PBC to investigate the Madamba incident.

So far as is relevant to this case, two (2) appeals assailing the said ruling were interposed before the COMELEC. The first is an appeal of the herein petitioner, which was docketed as SPC No. 92-387, while the second is the appeal of Pala Dipatuan, which was docketed as SPC No. 92-391. Petitioner does not deny the allegation of the private respondent that he (petitioner) enclosed, in his appeal, all his documentary evidence and affidavits of his witnesses and that all the records and evidence submitted to the PBC were elevated to the COMELEC.[9]

Instead of assigning SPC No. 92-387 and the related cases to a Division pursuant to pertinent provisions of its Rules,[10] the COMELEC en banc took cognizance thereof and set the case for hearing on 6 August 1992. At the said hearing, the parties, through their respective counsels, upon suggestion of the COMELEC en banc, agreed to submit their respective Position Papers.[11] On 8 August 1992, petitioner's counsel submitted a Consolidated Position Paper in SPC No. 92-349 and SPC No. 92387 raising the following issues:

"A. WHETHER OR NOT THE PROCEEDINGS OF THE MBC LEADING TO THE PREPARATION AND SUBMISSION OF COC NO. 667635 AND THE SUPPORTING SOV ARE VALID AND BINDING?

B. WHETHER THE PROCEEDINGS OF THE MBC COULD BE LEGALLY SET ASIDE OR ANNULLED AFTER IT BECAME FUNCTUS OFFICIO?

C. WHETHER PBC IS CLOTHE (sic) WITH AUTHORITY TO EXCLUDE MOTU PROPIO COC NO. 667635 AND THE SUPPORTING SOV?

D. WHETHER THE PERSONAL PERCEPTION OR BELIEF OF THE MEMBERS OF THE PBC COULD BE A VALID BASIS FOR THE EXCLUSION MOTU PROPIO OF COC NO. 667635 BY THE PBC?

E. WHETHER THE PBC ABUSED ITS DISCRETION IN EXCLUDING COC NO. 667635 AND THE SUPPORTING SOV?

F. WHETHER THE COMMISSION EN BANC CAN EXERCISE ORIGINAL JURISDICTION OVER THE APPEALS, BY PASSING (sic) THE COMELEC DIVISIONS IN VIOLATION OF ART. IX (C) SECTION 3 OF THE CONSTITUTION

G. WHETHER THE COMMISSION ACTED PROPERLY IN OPENING AND EXAMINING THE ELECTION RETURNS OF MADAMBA WITHOUT THE PRESENCE OF THE CONCERNED PARTIES"[12]

and praying for the following reliefs:

"WHEREFORE, it is most respectfully prayed of the Honorable Commission En Banc that:

1. the REPORT/RULING ON THE MADAMBA CASE dated June 20, 1992 excluding COC No. 667635 of Madamba from the canvass be set aside, revoked or annulled;
2. The PBC be ordered to reconvene and to include in the canvass COC No. 667635 of Madamba;
3. SPC No. 92-349 filed by petitioners Dimaporo and Mutilan be dismissed for clear lack of merit and legal basis;
4. The (sic) above case be assigned to a DIVISION in conformity with the constitution and the duly promulgated (sic) Rules of Procedure (sic) of the Commission;
5. that if true that election returns are being inspected privately, absent the parties, that the same be discontinued immediately"[13]

Taking heed of Our Resolution of 6 August 1992 in *Sarmiento vs. Commission on Elections, et al.* (G.R. No. 105628) and companion cases, the COMELEC raffled off SPC No. 92-387; as a result thereof, the First Division got the case. It consolidated this case with SPC No. 92-349, SPC Nos. 92-378/379 and SPC No. 92-391.

On 18 September 1992, the First Division promulgated a joint Resolution in these consolidated cases affirming the PBC's ruling which excluded COC No. 667635 of Madamba from the canvass and ordering the PBC to prepare a new set of certificate of canvass based on the COMELEC copies of the Election Returns for the uncontested (later changed to contested) Provincial Elective Positions. With respect to the latter, it made the following observations and conclusions:

"The above attendant circumstances, tend to establish the fact that the COC and SOV have not been regularly prepared, as such the same could not be made as a sound basis in determining the true and genuine results of the votes casts (sic) for the municipal and provincial candidates in Madamba.

In view of the foregoing, the physical examination of the Comelec's copy of the election returns becomes necessary to determine its genuineness and authenticity. That such an examination would not be in disregard of the summary nature of a pre-proclamation proceeding nor (sic) the provisions of Sec. 15 of RA 7166 with respect to the Congressional race as the COMELEC has been given ample power 'to decide all questions affecting election returns including the verification of the number of votes received by opposing candidates in the election returns as compared to the statement of votes in order that the true will of the people is known.' If there is clear evidence of discrepancy between the number of votes for a precinct as compared to the number of votes the candidates actually received during the counting at the precinct, it is the duty of the COMELEC to see to it that the matter should be verified from the election returns as a pre-proclamation controversy. It cannot wash its hands by asking the candidates to bring the matter to the electoral tribunal as an election protest. (*Villamoyo vs. Comelec*, G. R. No. 79646-67, November 13, 1987).

Since the Commission has the power to direct that only genuine election returns and certificates of canvass be considered (*Ong vs. Comelec*, 22 SCRA 241), in the exercise of its constitutional power, the Commission may look, into the election returns of the Municipality of Madamba, Lanao del Sur. This is the most speedy and inexpensive remedy to settle this controversy."[14]

The decretal portion of the Resolution reads:

"WHEREFORE, premises considered, this Division hereby RESOLVES the following:

1. AFFIRMS the Proclamation of the winning Mayoralty candidate in the Municipality of Madamba, Lanao del Sur;
2. DIRECTS the Provincial Board of Canvassers to reconvene and prepare a new set of certificate of canvass on the basis of the results taken from the COMELEC's copy of the Election Returns for the uncontested Provincial

Elective Positions;

3. DIRECTS the Provincial Board to consolidate the COC of Madamba with all other uncontested COC's and thereafter Proclaim the Winning Candidates as the records warrant.

SO ORDERED."[15]

The Callar report, as quoted in the Resolution, reads as follows:

"At about 10:30 p.m. June 5, 1992, Alexander Dimaporo Municipal Treasurer and Pendatun Punginagina, DECS Supervisor, both of Madamba, Lanao del Sur, in the company of 5 military personnels (sic) whom the affiants were able to identify as elements of the 39th IB because of the presence of M/Sgt. Purisima and Sgt. Amatorio whom they personally know to belong to the said IB, entered the gymnasium looking for Sgt. Francisco of the 5th IB on the pretext that their Commanding Officer has an order for him and since, the 5th IB is under the operational control of the 39th IB, the group was able to enter the said gymnasium and once inside, the Municipal Treasurer, Alexander Dimaporo went directly to where the ballot boxes are (sic) piled and forcibly opened one of them destroying the lid in the process which later turned out to be the ballot box with Serial No. CE 9223696 containing the Statement of Votes and Certificate of Canvass of the municipality of Madamba, and then and there in the presence of said military personnels (sic) of the 39th IB said Municipal Treasurer took out the Statement of Votes from the forcibly opened ballot box and handed it to one of his soldier companion (sic) and when some of the watchers present tried to stop him, the soldiers with him got mad and one of them (sic) even hit one of the watchers while the others pointed their guns at the other watchers and party representatives to include (sic) the elements of the 5th IB which action almost ended in a shootout except for the intervention to (sic) the Commanding Officer of the 5th IB as well as of the Platoon leader 2nd Lt. Fernando Canes, who feared a (sic) shootout may result in the hitting of innocent civilians who were inside the gymnasium at that time. But when the group however sensed that the elements of the 5th IB were ready to fight them by deploying themselves the group left hurriedly but only after bringing with them all the contents of the forcibly opened ballot box.

The following day, May (June) 6, 1992 at about 9:30 a.m. per affidavit executed by Ibrahim MaxDigadong, Nacionalist representative, the above-named Municipal Treasurer and DECS Supervisor returned to the MSU gymnasium bring (sic) with them another ballot box with Serial No. 8903946 whom (sic) they attempted to mix with the other ballot boxes but which the military security placed apart to identify it from those previously received.

Looking at the ballot box with Serial No. CE 9223696 previously submitted on June 5, 1992, it is very evident that it was really forcibly opened as shown by the destroyed cover and ballot (sic) box with Serial No. CE 8903946 was brought to the MSU gymnasium only in the morning of June 6, 1992 which the Receiving Committee refused to receive under proper receipt since ballot (sic) box with Serial No. 9223696 was already submitted for the municipality of Madamba."[16]

This decision was not unanimous. In his dissent thereto, Commissioner Magdara Dimaampao pointed out that there was a violation of due process when the First Division, contrary to Section 2, Rule 27 of the COMELEC Rules of Procedure which requires summary hearing after due notice, accepted the Report of Atty. Callar without conducting any hearing to afford the petitioner the right or opportunity to confront the latter; Dimaampao further stressed that the election returns should be resorted to only if it is established through a hearing that the COC in question is indeed spurious.

On 23 September 1992, petitioner filed under the caption of SPC No. 92-349 and SPC No. 91-387 only, a Motion For Reconsideration Ex Abundante Cautela[17] alleging therein:

"1. THAT THE FIRST DIVISION COMMITTED A VERY GRAVE ERROR WHEN IT RELIED SOLELY AND COMPLETELY ON THE 'REPORT' OF A CERTAIN ATTY. CALLAR, AND THE SUBSEQUENT

'RULING' OF THE PROVINCIAL BOARD OF CANVASSERS OF LANAO DEL SUR, WITHOUT EVEN VERIFYING FOR ITSELF THE WHO, THE HOW, THE WHY AND THE WHEN OF THE NUMEROUS INCIDENTS CONCERNING THE CONTROVERSY OF MADAMBA INVOLVING THE PREPARATION OF THE MUNICIPAL CERTIFICATE OF CANVASS OF MADAMBA, WHICH IT RULED TO BE DISREGARDED DESPITE ITS HAVING NO DEFECT WHATSOEVER;

2. THAT THE FIRST DIVISION WAS LIKEWISE IN GRAVE ERROR WHEN IT CASUALLY RESORTED TO THE ALLEGED RESULTS OF THE 'COMELEC COPY' OF THE ELECTION RETURNS OF ALL PRECINCTS OF MADAMBA, BY EXAMINING AND INSPECTING ONLY ONE 'SELECTED' COPY OF ITS CHOICE AND WITHOUT EVEN NOTIFYING AND ALLOWING THE PARTIES TO PARTICIPATE IN THE OPENING AND EXAMINATION THEREOF, ALL IN CLEAR CONTRAVENTION OF EXISTING JURISPRUDENCE AND IN VIOLATION OF THE EXPRESS PROVISIONS OF LAW; and

3. THAT THE FIRST DIVISION GRIEVOUSLY ERRED WHEN IT DIRECTED THE PROCLAMATION OF WINNING CANDIDATES, WITHOUT AWAITING THE RESULTS OF OTHER MUNICIPALITIES WHICH ARE STILL PENDING BEFORE THE OTHER COMELEC DIVISION." [18]

Pursuant to the Constitution and the COMELEC Rules of Procedure, the motion for reconsideration had to be resolved by the COMELEC en banc. [19] Before the latter could resolve the same, however, the petitioner filed on 21 October 1992 a Motion for the disqualification of Commissioner Haydee B. Yorac on the ground that for the past several weeks, she has been projected to the public as the Chairperson of the National Unification Committee (NUC); she has also presented herself to the public as such, indicating her acceptance of the position. Petitioner believes that this public position or office is constitutionally incompatible with her present position as a Commissioner of the COMELEC. Hence, pursuant to Section 2, Article IX-A of the present Constitution which provides, inter alia, that "No member of a Constitutional Commission shall, during his tenure, hold any other office or employment," she is deemed resigned from her present position.

On 23 October 1992, the COMELEC en banc promulgated the challenged Resolution [20] affirming the 18 September 1992 Resolution of the First Division and finding the errors imputed to the latter to be without merit. As to the report of Atty. Callar, the Acting Provincial Election Supervisor of North Cotabato, the COMELEC held that the same was prepared in the performance of official duty, per instruction of COMELEC Regional Director Teresita Llaban, and is therefore presumed to have been performed with regularity. The COMELEC further stated that it "would be so absurd for this Commission to have its field personnel perform their task and at the same time question their actuations." Citing *Cauton vs. Comelec*, [21] it asserted that if the Commission is convinced that the election returns in the hands of the board of canvassers do not constitute the proper basis in ascertaining the true result of the elections, it is duty bound to take the necessary steps in order that the proper basis for the canvass is made available; it would be absurd to say that the Commission has a legal duty to perform and at the same time it is denied the necessary means to perform that duty. Thus, when the First Division issued the challenged Resolution, it merely performed its mandated duty under the Constitution to enforce and administer laws and regulations relative to the conduct of elections.

As to the First Divisions's ruling on the matter of the COMELEC copies of the election returns being made the basis for the preparation of a new COC, the COMELEC en banc stated:

"When the First Division resorted to the Comelec's copy of the Election Returns of Madamba as contained in the ballot box No. CE?92 375697, its object was to determine the result of the elections based on the official election returns. 'An order to this effect does not affect the right to vote or the validity of any vote cast, so that it is perfectly within the power of the COMMISSION to issue such an order in the exercise of its exclusive power to administer and enforce the laws relative to the conduct of elections.' (*Cauton vs. Comelec* 19 SCRA

911) To sustain the petitioner-appellant in the present Motion for Reconsideration is to deny this Commission the power to retrieve the Comelec copies of the election returns in order that the true number of votes cast for a candidate may be known and thus permit a canvass on the basis of Certificate of Canvass that are reportedly falsified.

Petitioner-Appellant contends that the basic election document provided for by law and the Comelec's own promulgated resolutions in proclaiming the winning candidates for provincial offices is none other than the Municipal Certificate of Canvass, accompanied by the supporting Statement of Votes. He stresses that in the case of Madamba, both the COC and the SOV are clean and untampered in (sic) their faces, thus should not have been excluded.

This Commission is well aware of the foregoing rule. Had there been no reported incident of ballot box switching, this Commission would have completely relied on the alleged clean and untampered COC as allegedly reported by the Municipal Board of Madamba. But the mere fact that the same appears to be clean and (sic) untampered is not also proof enough that they are genuine, bearing in mind the report of Atty. Callar which herein petitioner-appellant also failed to prove that it is fabricated and or baseless. Technicalities, which are not conducive to free, orderly and honest elections, but in (sic) the contrary may defeat the will of the sovereign people as expressed in their votes, should not be allowed to hamper the Commission on Elections in the performance of its duties (Cauton vs. Comelec, 19 SCRA 911). 'The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with. (Sumulong vs. Comelec, 73 Phil. 288).

Perusal of the resolution of the First Division as to the proclamation of the winning candidates show (sic) that it is not absolute as shown by the phrase 'as the records warrant.' So much so that if there are still pending cases before the other division (sic) regarding the election of provincial elective positions in Lanao del Sur, then it follows that it cannot proclaim any winning candidate yet for definitely, the records do not warrant the same." [22]

Petitioner then filed the instant petition raising therein the following issues: (1) the total lack or absence of due process in the proceedings before the COMELEC's First Division when it, inter alia, resolved the appeal from the ruling of the PBC of Lanao del Sur without any semblance of a hearing to assess the factual findings of said PBC and merely on the basis of the report of Atty. Callar who was never interviewed, questioned or interrogated by the COMELEC; rejected and disregarded the clean, clear, authentic, duly signed and executed Municipal Certificate of Canvass for Madamba; and ruled to use and avail of selected copies of the election returns without any notice to and without the presence and participation of the parties; (2) the total disregard by the COMELEC en banc of its own Rules when it resolved the motion for reconsideration without any hearing as mandated by Section 6, Rule 19 of the COMELEC Rules of Procedure; and (3) the participation and vote of Commissioner Yorac who, as petitioner claims, is no longer a member of the Commission.

We find no merit in the petition.

No violation of due process, amounting to grave abuse of discretion or lack of jurisdiction, was committed by the COMELEC's First Division when it promulgated the Resolution of 18 September 1992 without any hearing, and by the COMELEC en banc when it likewise resolved petitioner's motion for reconsideration without a hearing.

Before the subject cases were raffled off to the First Division, the parties, upon the suggestion of the COMELEC en banc, agreed to submit the appeals on the basis of their position papers. Petitioner extensively discussed in his position paper the issues raised and the evidence to support the latter's thesis that the COC in question is clean, clear, authentic and duly signed and executed. Thus, the factual issue raised at that point was whether the questioned COC is spurious or not -- a question which must be resolved on the basis of the evidence adduced by the parties before the PBC pursuant to paragraph (e), Section 9, Rule 27 of the COMELEC Rules of Procedure,

which provides:

"(e) At the hearing, no new evidence shall be received, unless for good reasons shown, it is clearly and convincingly established that the applicant was deprived of due process by the board of canvassers."

and paragraph (h), Section 20 of R.A. No. 7166,[23] which provides:

"(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party."

The records do not disclose that the petitioner had moved before either the COMELEC en banc or its First Division that he be allowed to present new evidence on the ground that he was deprived of due process by the PBC. In any case, he could not have done that because the PBC had in fact allowed him to present his evidence. That he was not allowed to cross-examine Atty. Callar did not in any way whittle down the validity of the proceedings of the PBC for paragraph (e), Section 8, Rule 27 of the COMELEC Rules of Procedure provides that:

"(e) Where evidence is to be offered, reception thereof shall be done summarily. Oral testimonies shall be dispensed with and the parties shall be required to present their affidavits or counter-affidavits within twenty-four (24) hours from the presentation of the written objection. The evidence adduced shall form part of the proceedings of the Board."

The PBC faithfully complied with the mandate of this provision; moreover, the parties voluntarily and unconditionally observed the same by submitting their evidence which included the affidavits of their respective witnesses.

It is precisely for this reason, and his awareness of the legal consequences thereof, that the petitioner carefully avoided characterizing the Callar report as "hearsay". Nowhere in his pleadings are we to find any objections to the Callar report on that ground. Petitioner purposely omitted such argument because he knew only too well that the Callar report is an official act of an officer of the COMELEC made after an investigation conducted in the performance of a lawful official duty. It thus enjoys the presumption of regularity.[24] Besides, by the parties' compliance with the aforesaid paragraph (e), Section 8, Rule 27 of the COMELEC Rules of Procedure, petitioner was estopped from objecting to the admission in evidence of the Callar report, in effect leaving to the PBC -- and then the First Division of the COMELEC on appeal -- the determination of the factual issue concerning the validity of the COC in question. More importantly, the Callar report falls under Section 44, Rule 130 of the Rules of Court which provides for an exception to the hearsay rule.[25] The Rules of Court applies suppletorily to proceedings before the COMELEC.[26] By agreeing to submit his position paper for the resolution of the appeal, petitioner effectively agreed to dispense with the formality of a hearing, the purpose or objective of which was better subserved by the submission of the position papers where the parties could incorporate all that they wanted to place on record; a formal hearing may not adequately achieve such purpose because of the time constraints, the unpreparedness of counsel, the emotions of the moment and the distracting atmosphere. Petitioner, however, tries to mock the solemnity and depreciate the value of this agreement by stating that the proceedings before the COMELEC en banc at the first instance were void because of Section 3, Article IX-C of the Constitution and Our ruling in *Sarmiento vs. COMELEC* and companion cases.[27] Such reasoning does not impress Us. The binding force of the agreement was not tainted by the fact that it was made before the COMELEC en banc before such body acquired jurisdiction over the cases. In the first place, petitioner voluntarily submitted his Position Paper in

accordance with the agreement he freely entered into. Secondly, he did not question the validity of the agreement in the issues he raised and in the reliefs he prayed for therein. More pertinently, he only asks that the cases "be assigned to a DIVISION in conformity with the constitution and the duly promulgated (sic) Rules of Procedure (sic) of the Commission." [28] This is a clear message of the irreversibility of his adherence to the agreement to submit the appeal for resolution on the basis of the evidence and records elevated by the PBC and the position papers submitted by the parties. In the third place, nowhere in his petition did the petitioner allege that his position paper was deemed withdrawn or at least rendered ineffective by the subsequent assignment of the appeal to the Division. He knew all along that the agreement would be binding until the resolution of the appeal, even if it would, following his view, be thereafter assigned to a Division. Accordingly, it was no longer necessary for the First Division to set the appeal for hearing. It could have already properly and validly resolved it, as in fact it did, on the basis of the evidence and the records elevated to it by the PBC, [29] and the position papers of the parties.

The First Division affirmed the PBC's ruling that the questioned COC is spurious, and found for itself that the attendant circumstances in this case "tend to establish the fact that the COC and the SOV have not been regularly prepared, as such the same could not be made as a sound basis in determining the true and genuine results of the votes casts (sic) for the municipal and provincial candidates in Madamba." [30] These are findings on a factual issue which this Court accords the highest respect. We have said, through then Chief Justice Concepcion in *Lucman vs. Dimaporo*, [31] that this Court cannot review rulings or findings of fact of the Commission on Elections as there is no reason to believe that the framers of the Constitution intended to place the Commission, created and explicitly made independent by the Constitution itself, on a lower level than ordinary administrative organs, the findings of which are not even disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence to support the same. These exceptions, just as any other in respect to the rule on conclusiveness of findings of fact of the Court of Appeals, [32] which may equally apply to the findings of fact of the COMELEC, are not present in this case.

Having thus made such findings, it was well within the power of the Commission, through the First Division, to determine what must be done to ascertain the elusive "true and genuine results of the votes casts (sic) for provincial and municipal candidates in Madamba." The documents which could logically be the basis therefor are any of the other available copies of the COC with the supporting Statement of Votes (SOV), and any other available copy of the election returns from all precincts in Madamba. The COC for President, Vice-President, Senators, Members of the House of Representatives and elective provincial officials are prepared in seven (7) copies to be distributed in the manner provided for in Section 27 of R.A. No. 7166. In the election of local officials, the election returns are prepared in six (6) copies to be distributed in the manner provided for in Section 27(a) of the said law. In every case, the COMELEC is provided with a copy.

The COMELEC's judgment on this matter cannot be overturned by this Court unless it is clearly tainted with grave abuse of discretion. The COMELEC's First Division opted to resort directly to its copies of the election returns and ordered the PBC to prepare a new COC based thereon. This ruling is not whimsical, capricious or arbitrary. It is reasonable and impressed with wisdom. Between another copy of the COC and the election returns, the latter could provide a more accurate basis for the determination of the true and genuine results of the votes cast. This is obvious because the former constitutes a mere summary of the latter and errors, deliberate or otherwise, may be committed in entering therein the figures obtained from the election returns. Besides, among the copies of the election returns readily available to the Commission, those intended specifically for it are the least likely to be tampered with after leaving the hands of the board of election inspectors. Thus, the wisdom of using such copies is beyond question. Petitioner, however, insists that the First Division should have complied with Section 235 of the Omnibus Election Code which provides for the use of "the other copies of said election returns and, if necessary, the copy inside the ballot box." In short, he wants that all other copies of the election

returns should be considered. This betrays an incorrect interpretation of the section. This quoted portion of the section he stresses clearly shows that even one of the copies -- that inside the ballot box -- is sufficient. Indeed, said section does not require that all the other copies of the election returns be taken into account and compared with one another before one of them, determined to be authentic, may be used or included in the canvass. If this is the interpretation to be followed, then the law would have required a condition which could be easily rendered impossible to comply with; in effect, the law would be practically meaningless or useless. As stated earlier, the election returns are to be prepared in six (6) copies. The first copy is the municipal, city or district board of canvassers' copy. If, for one reason or another, any of the remaining five (5) copies could not be obtained by the board, following the interpretation and logic of petitioner, the procedure laid down in Section 235 may no longer be availed of.

Resort to the COMELEC copies of the election returns of all the precincts of Madamba did not, however, foreclose the right of the petitioner to object, at the appropriate time, to the inclusion in the canvass of the PBC of any of said returns pursuant to the pertinent paragraphs of Section 243 of the Omnibus Election Code.

Neither did the COMELEC en banc commit any abuse of discretion, much less grave abuse thereof amounting to lack or excess of jurisdiction, when it promulgated its Resolution of 23 October 1992 affirming the Resolution of 18 September 1992 of the First Division. As earlier adverted to, the agreement to submit position papers dispensed with the formal hearing of the motion for reconsideration.

As to the disqualification of Commissioner Yorac, the records do not show that the COMELEC, to which the motion for disqualification is addressed, has resolved it. Moreover, the motion itself reveals that neither a copy thereof nor a notice of its hearing was furnished Commissioner Yorac, the party sought to be disqualified. For this alone, the motion is nothing more than a mere scrap of paper. Under the COMELEC Rules of Procedure, notices of a motion shall be served by the movant to all parties concerned at least three (3) days before the hearing thereof, together with a copy of a motion. The notice shall be directed to the parties concerned and shall state the time and place of the hearing of the motion. No motion shall be acted upon by the Commission or a Division without proof of service of notice except when it is satisfied that the rights of the adverse party are not affected.^[33] Finally, petitioner did not implead Commissioner Yorac as a respondent in this case. As the respondent in the motion for disqualification, she is an indispensable party whose personality in that respect is distinct and separate from that of the COMELEC of which she is a Member. Hence, the issue against her cannot be resolved in this case without infringing due process -- the Constitutional guaranty which petitioner himself insists upon, for his own benefit, from the beginning to the end of his petition.

WHEREFORE, for lack of merit, the instant Petition is DISMISSED with costs against petitioner.

The Temporary Restraining Order issued on 29 October 1992 is hereby lifted.

This Decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

[1] Annex "A" of Petition; Rollo, 31-41.

[2] Annex "B", Id.; Id., 46-52.

[3] Entitled Sultan Mohamad Ali Dimaporo and Dr. Mahid Mutilan vs. The Board of Canvassers of Madamba.

- [4] Entitled Saidamen B. Pangarungan vs. Provincial Board of Canvassers of Lanao del Sur.
- [5] It appears in the Resolution of 23 October 1992 that the word uncontested was corrected and substituted with the word contested per order of the First Division of 24 September 1992.
- [6] Then composed of Atty. Teresita Llaban (Regional Director of COMELEC) as Chairman, Atty. Usmin Diamel as Vice-Chairman and Atty. Tingaraan Bangkero as Member.
- [7] Annex "E" of private respondent's urgent motion to lift the temporary restraining order; Rollo, 208.
- [8] Annex "F", Id.; Id., 209-210.
- [9] Urgent motion to lift the temporary restraining order, 20; Id., 105.
- [10] Section 9, Rule 27, in relation to Section 4, Rule 7, COMELEC Rules of Procedure.
- [11] Rollo, 106.
- [12] Id., 205.
- [13] Rollo, 209-210.
- [14] Rollo, 38.
- [15] Rollo, 40-41.
- [16] Rollo, 34-35.
- [17] Annex "C" of petition; Rollo, 54-77.
- [18] Rollo, 59.
- [19] Section 3, Article IX-C, 1987 Constitution; Rule 19, COMELEC Rules of Procedure.
- [20] Annex "B" of Petition; Rollo, op. cit., 46-52.

[21] 19 SCRA 911 [1967].

- [22] Rollo, 50-51.
- [23] An Act Providing For Synchronized National And Local Elections And For Electoral Reforms, Authorizing Appropriations Therefor, And For Other Purposes.
- [24] Section 3(m), Rule 131, Rules of Court.
- [25] Said section reads:
- "SEC. 44. Entries in official records. -- Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty especially enjoined by law, are prima facie evidence of the facts therein stated."
- [26] Section 1, Rule 43, COMELEC Rules of Procedure.
- [27] Supra.
- [28] Rollo, 300.
- [29] Paragraph (h), Section 20, R.A. No. 7166 in relation to paragraph (e), Section 9, Rule 27, COMELEC Rules

of Procedure.

[30] Rollo, 38.

[31] 33 SCRA 387, 401 [1970]; see also *Padilla vs. Commission on Elections*, 137 SCRA 424 [1985].

[32] *Tolentino vs. De Jesus*, 56 SCRA 167 [1974]; *Remalante vs. Tibe*, 158 SCRA 138 [1988]; *Medina vs. Asistio, Jr.*, 191 SCRA 218 [1990].

[33] Section 4 and 5, Rule 11.

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