

**GOV. TUPAY T. LOONG, BARIK SAMPANG, KARTINI MALDISA,
YASSER HASSAN, AND HADJA SAPINA RADJAIE, PETITIONERS, VS.
THE COMMISSION ON ELECTIONS; PROVINCIAL BOARD OF
CANVASSERS OF SUL...**

G.R. Nos. 107814-15. May 16, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Under our resolution, dated January 16, 1996, we directed the consolidation of the following four cases:

- (1) G.R Nos. 107814-107815, entitled, "Gov. Tupay T. Loong, Barik Sampang, Kartini Maldisa, Yasser Hassan, and Hadja Sapina Radjaie vs. The Commission on Elections; Provincial Board of Canvassers of Sulu; Municipal Board of Canvassers of Talipao and Abdusakur Tan";
- (2) G.R No. 120826, entitled, "Gov. Tupay T. Loong and Kimar Tulawie vs. The Commission on Elections; The Provincial Board of Canvassers of Sulu; Abdusakur Tan and Munib Estino";
- (3) G.R No. 122137, entitled, "Gov. Tupay T. Loong and Kimar Tulawie vs. The Commission on Elections, Abdusakur Tan and Munib Estino"; and
- (4) G.R. No. 122396, entitled, "Gov. Tupay T. Loong and Kimar Tulawie vs. Hon. Commissioner Manolo Gorospe of the Commission on Elections."

As we render judgment upon these consolidated petitions, the appropriate backgrounder on each of them is in order.

G.R. NO. 107814-107815

The petition was one for Certiorari seeking to nullify two resolutions[1] of the Commission on Elections (COMELEC) promulgated in pre-proclamation cases[2] filed by petitioner Tupay T. Loong who prayed that the proceedings of the Municipal Board of Canvassers of Talipao, Sulu, be set aside on the ground that the certificates of canvass were manufactured, fictitious and falsified. The COMELEC dismissed the petitions, hence, Loong's recourse to this Court in a petition for certiorari. In our resolution, dated January 26, 1993, we affirmed the dismissal because we found no grave abuse of discretion committed on the part of the public respondent in rendering the questioned resolutions. Entry of judgment as regards that resolution was effected on March 19, 1993.[3]

G.R. NO. 120826

This is a petition for Certiorari assailing an Order[4] by the COMELEC, dated June 16, 1995, suspending the proclamation of petitioners as winners in the May 8, 1995 elections for Governor and Vice-Governor of the province of Sulu, for Prohibition praying that COMELEC be prohibited from conducting a technical comparison

of signatures and thumbmarks affixed in COMELEC CE Forms 1 and 2, and for Mandamus seeking to compel respondent to reconvene and proclaim petitioners Tupay T. Loong and Kimar Tulawie as the duly elected Governor and Vice-Governor, respectively, of Sulu.

Culled from the pleadings in this case are the following pertinent facts:

In the May 8, 1995 elections held in the Province of Sulu, petitioner Tupay T. Loong and private respondent Abdusakur Tan ran for the position of Governor, while petitioner Kimar Tulawie and private respondent Munib Estino were candidates for the position of Vice-Governor. After the canvass of the election returns of sixteen (16) of the eighteen (18) municipalities of Sulu, respondent Provincial Board of Canvassers (PBC) recommended to the COMELEC a re-canvass of the election returns of Parang and Talipao. COMELEC, accordingly, relieved all the regular members of the Municipal Board of Canvassers (MBC) and ordered such recanvass by senior lawyers from the COMELEC office in Manila. During the re-canvass, private respondents objected to the inclusion in the canvass of the election returns of Parang. The reconstituted MBC, however, merely noted said objections and forwarded the same to respondent PBC for resolution.

Subsequently, the MBC submitted its certificate of canvass to respondent PBC for canvass on the provincial level. Respondent PBC, however, denied aforesaid objections of private respondents, on the ground that only the certificate of canvass was forwarded to it and that private respondents allegedly failed to object to the canvass of said certificate. The canvass of respondent PBC showed petitioners to have overwhelmingly won in the municipality of Parang.

On June 23, 1995, private respondents appealed to the COMELEC, and such appeal was docketed as SPC No. 95-310[5] which essentially questioned the aforesaid action by respondent PBC. However, SPC 95-310, in which private respondents formally submitted their appeal from the omnibus ruling of respondent PBC denying their objections to the election returns and/or certificate of canvass, was dismissed by the COMELEC in an Order promulgated on October 20, 1995.[6] Significantly, much earlier, that is, on June 9, 1995, private respondents had already filed a petition docketed as SPA No. 95-284[7] which prayed that the elections in Parang, Sulu, be set aside and annulled on the ground that there was failure of election in said municipality due to massive fraud. Hearing on SPA No. 95-284 was held on June 28, 1995.[8]

After said hearing, the Commission issued an Order, dated July 4, 1995, directing the Provincial Election Supervisor of Sulu to bring to the COMELEC central office the CE Form 2 which pertains to the list of voters with voting records used in the May 8, 1995 elections and the books of voters for all precincts. Anticipating that the COMELEC would use the said documents to conduct a technical examination of the signatures and thumbmarks affixed in the list of voters with voting records (CE Form 2) and in the registration forms (CE Form 1), petitioners Loong and Tulawie prayed that the COMELEC inform them as to whether or not it would conduct a technical examination of CE Forms 1 and 2, which examination, petitioners argued in their motion, has been Proscribed in pre-proclamation controversies, by this Court in the landmark case of Dianalan vs. COMELEC,[9] and that, in the alternative, the same examination be conducted as regards CE Forms 1 and 2 of the municipalities of Siasi, Panglima Estino, Tapul, Pata and Kalinggalang Caluang, where private respondents allegedly committed rampant fraud during the elections.

In an Order,[10] dated July 18, 1995, the COMELEC directed its Voters Identification Division to verify and examine the list of voters with the voting records used in the May 8, 1995 elections together with the books of voters of all precincts for the municipality of Parang, Sulu, and to submit a report thereon within fifteen (15) days.

On July 21, 1995, petitioners countered by filing with the COMELEC a Petition to Declare a Failure of Election in the Municipalities of Tapul, Panglima Estino, Pata, Siasi and Kalinggalang Caluang, on the similar ground of

massive fraud resulting in a statistical improbability in the election results. Said petition was docketed as SPA No. 95-289, which, however, was dismissed by the COMELEC in its En Banc Resolution dated December 13, 1995.

G.R. No. 122137

This is a petition for Certiorari assailing two COMELEC En Banc Resolutions,[11] both dated October 9, 1995, issued in the aforecited election cases of SPA No. 95-284 and SPA No. 95-289 which were ordered consolidated for purposes of disposition, the petitions being that they involve the same parties and are so closely connected that resolution of one would necessarily and materially affect the outcome of the other. The parties in both petitions contend that no election was ever conducted and no voting took place in the aforecited municipalities covered by their respective petitions. The COMELEC disposed of pending incidents in the consolidated cases SPA No. 95-284 and SPA No. 95-289 in this wise:

"WHEREFORE, we summarize the Commission's rulings, considered adopted by unanimous or majority vote, as follows:

In SPA No. 95-284,

- (1) To annul the results of the elections in the municipality of Parang, Sulu, as to the positions of Governor and Vice-Governor;
- (2) In the meantime, to reserve its ruling on whether or not to hold special elections in the said municipality;
- (3) To hold in abeyance the proclamation of the winning candidates for Governor and Vice-Governor, until further orders from the Commission;
- (4) To relieve the present Chairman and members of the Provincial Board of Canvassers of Sulu, and to appoint to their respective positions: Atty. Nimia B. Suero, Chairman; Atty. Alexander A. Villanueva, Vice-Chairman, and Atty. Teresita C. Suarez, Member-Secretary, who are directed to immediately re-convene in Manila and proclaim the winning candidates for Sangguniang Panlalawigan of the First District of Sulu, on the basis of the canvass duly conducted.

In SPA No. 95-289,

- (1) To set the petition for hearing and resolve the questions therein raised on (a) the timeliness of the petition, and, (b) whether or not to order a technical examination of CE Forms 1 and 2 used in the 1995 elections for Governor and Vice-Governor in the Municipalities of Panglima Estino, Tapul, Pata, Siasi and Kalinggalang Caluang, Sulu.

SO ORDERED."[12]

In essence, petitioners claim that the assailed resolutions of the COMELEC were issued with grave abuse of discretion and without jurisdiction insofar as the COMELEC order, on the basis of the results of the technical examination of the thumbmarks of the voters affixed in CE Forms 1 and 2, the annulment of the elections in Parang, Sulu, respecting the positions of Governor and Vice-Governor because, petitioners asseverate, such technical examination has been held by this Court to be prohibited in pre-proclamation controversies. Moreover, petitioners charged the COMELEC to have violated their fundamental right to due process when it annulled the elections of Parang, Sulu, on the basis of the results of said technical examination without giving petitioners prior opportunity to be confronted with and to refute, the said results.

On December 14, 1995, petitioners filed an Urgent Motion for the Issuance of a Temporary Restraining Order and Supplemental Petition for Certiorari.[13] Said pleading further assailed another En Banc Resolution[14] issued by the COMELEC on December 13, 1995, in consolidated cases SPA No. 95-284 and SPA No. 95-289. In that

resolution, the COMELEC ruled:

"At this late date and using hindsight, one is inclined to ask, were herein petitioners so complacent in a pre-determined lead in Parang, that, given their awareness of the irregularities in the five (5) municipalities, the alleged lopsided results therein would not upset their victory? Faced with the possible undoing of the Parang election results, would petitioners move to maintain their lead with a parallel undoing of what they perceive as pro-Tan-and-Estino results in other municipalities? In SPA 95-284, respondents Loong and Tulawie propose to submit for examination the CE Forms 1 and 2 in these five municipalities 'in the event' and only then, a similar examination is conducted on the Parang documents!

It is urged that parties come to this Commission with a shared purpose to uphold the sacredness of an election. Looking to the Constitution for guidance, we are constrained to withhold from petitioners in SPA 95-289 the means which would otherwise be theirs had they been motivated with the principles of fairness and integrity in a political rivalry such as the 1995 provincial elections in Sulu. As with the Courts, one must come to the Commission for adjudication of his rights with clean hands.

We rule for the annulment of the elections in Parang, Sulu. We also rule to dismiss the petition for a declaration of failure of elections in the municipalities of Panglima Estino, Kalingalang Caluang, Pata, Tapul and Siasi.

One final word on the matter of determining the provincial winners following the annulment of a municipal election:

The approach to this issue was varied in the October 9, 1995 resolution. We have re-assessed our position and abandoned the option of a special election. We take cognizance of the fact that the lists of voters used in the May 8, 1995 elections have been annulled by Republic Act No. 8046. A registration was conducted in Sulu, including Parang, last August 19 and 20. If the new list of voters is to be used, there will be the legal oddity of using a list which was not in existence at the time the original election (May 8, 1995) was held. A special election, to be sure, is a mere continuation of the election first held. On the other hand, if the voters list in the May 8, 1995 elections is used, there is the anomaly of using a nullified list of voters.

Upon these considerations we have abandoned the alternative of calling a special election in Parang.

There is really no compulsion for the calling of a special election. The voters of Parang constitute only about less than 15% of the entire Sulu electorate. And there are results from seventeen out of eighteen municipalities of Sulu. Excluding the Parang election results, a valid proclamation can still be had.

x x x x x

We rule then for the outright proclamation of provincial winners, excluding from the final canvass the results from Parang.

WHEREFORE, We hereby render judgment as follows:

1. The Provincial Board of Canvassers for Sulu as reconstituted in the October 9, 1995 Resolution of this Commission is hereby directed to reconvene, complete the canvass, excluding for the purpose the Certificate of Canvass/election returns of Parang and proclaim the winning candidates for Governor, Vice-Governor and members of the Sangguniang Panlalawigan; and
2. Dismiss the petitions of Petitioners Tupay Loong and Kimar Tulawie in SPA 95-289.

SO ORDERED."[15]

We found the supplemental petition for certiorari to be sufficient in form and substance. We also found therein compelling reasons to grant the motion for issuance of temporary restraining order. Thus, on December 18, 1995,

a temporary restraining order[16] was issued effective immediately ordering the COMELEC and the Provincial Board of Canvassers of Sulu to cease and desist from implementing and executing, the COMELEC En Banc Resolutions, dated October 9, 1995 and December 13, 1995, in consolidated cases SPA No. 95-284 and SPA No. 95-289 and/or from proclaiming private respondents herein as winners in the May 8, 1995 elections for Governor and Vice-Governor of Sulu.

On December 28, 1995, private respondents filed an Urgent Petition/Motion to Lift/Dissolve Temporary Restraining Order.[17] Said petition/motion was noted by the Court in its En Banc Resolution[18] dated January 23, 1996.

G.R No. 122396.

The petition is one for Prohibition praying to prohibit the Honorable Commissioner Manolo Gorospe of the COMELEC from participating in the deliberations and resolution of the remaining issues in consolidated cases SPA No. 95-284 and SPA No. 95-289. In an En Banc Resolution,[19] dated November 21, 1995, we resolved to dismiss the petition for failure of the petitioners to sufficiently show that public respondent acted with grave abuse of discretion. On December 18, 1995, petitioners filed a Motion for Reconsideration and for Consolidation of G.R. Nos. 122137 and 120826.[20] Said motion was denied with finality in our En Banc Resolution[21] dated January 23, 1996.

Considering that (1) on March 19, 1993, entry of judgment has already been made in G.R. No. 107814-15; (2) petitioners' motion for reconsideration of our decision in G.R. No. 122396 has already been denied with finality in our resolution dated January 23, 1996; and (3) G.R. No. 120826 has been rendered moot and academic, the technical examination sought to be restrained therein having already been undertaken and results thereof having been made basis by the COMELEC in promulgating its resolutions, dated October 9, 1995 and December 13, 1995, sought to be, on grounds of grave abuse of discretion, annulled and set aside in G.R. No. 122137, we deem it necessary, for the final and complete disposition of these consolidated petitions, to adjudicate upon this remaining sole issue: whether or not the COMELEC committed grave abuse of discretion correctable in certiorari proceedings when on the one hand, it assumed jurisdiction over and granted, private respondents' petition for annulment of the election results in Parang, Sulu, on the ground of statistical improbability and massive fraud and other election irregularities in the unraveling of which COMELEC conducted a technical examination of the thumbmarks and signatures affixed in the list of voters with voting records (CE Form 2) and in the registration forms (CE Form 1), while on the other hand, it dismissed petitioners' own petition for annulment of election results in the municipalities of Tapul, Panglima Estino, Pata, Siasi, and Kalinggalang Caluang, even after making a finding that "the same badges of fraud evident from the results of the election based on the certificate of canvass of the Provincial Board of Canvassers of Parang, Sulu, are also evident in the election results of the Municipalities of Panglima Estino, Tapul, Pata, Siasi and Kalinggalang Caluang." [22]

While we find that the COMELEC has jurisdiction over the petitions for annulment of election results filed by both petitioner and private respondents, the grant of the latter's petition without calling for special elections and the dismissal of the former's petition upon no valid ground, are actions tainted with grave abuse of discretion that necessitate correction in the instant certiorari proceedings.

An analysis of the evolution of our election laws undeniably shows a paramount concern for conceptualizing and devising the most effective means of expediting the proclamation of winners and the resolution of all kinds of post-voting complaints, controversies and disputes. The reason for this is almost self-evident; election results are the expression of the will of the people whose welfare and interests must immediately be served by those upon whom the people have placed their trust. Peripherally but not trivially, elections need be consummated with

dispatch because the losers or even those just lagging behind in the counting, more often than not, file all kinds of protests and complaints and objections that delay the election process and threaten to deny the people their representation in government.

Since the Legislature could not plug all loopholes nor yet foresee all problems that may arise in the electoral process, our Constitution has always vested in the COMELEC the broad power to enforce and administer all the laws and regulations relative to the conduct of elections[23] as well as the plenary authority to decide all questions affecting elections except the question as to the right to vote.[24] While, however, the scope of these prerogatives may seem boundless and encompassing, we have, as early as 1949, in the case of *Nacionalista Party vs. Commission on Elections*, explained that --

"x x x such power is preventive only and not curative also; that is to say, it is intended to prevent any and all forms of election fraud or violation of the Election Law, but if it fails to accomplish that purpose, it is not the Commission on Elections that is charged with the duty to cure or remedy the resulting evil but some other agencies of the Government. We note from the text that the power to decide questions involving the right to vote is expressly withheld from the Commission x x x parallel to the withholding of such power from the Commission is the vesting in other agencies of the more inclusive power to decide all contests relating to the election, returns, and qualifications of the members of Congress, namely, the Electoral Tribunal of the Senate in the case of the senators and the Electoral Tribunal of the House of Representatives in the case of the members of the latter x x x." [25]

In view of that disquisition, we held in the case of *Abes vs. Commission on Elections* that "nothing in the foregoing constitutional precept will imply authority for Comelec to annul an election x x x. The boundaries of the forbidden area into which Comelec may not tread are also marked by jurisprudence x x x. Comelec is not the proper forum to seek annulment of an election based on terrorism, frauds and other illegal practices x x x." [26]

It must be understood, however, that the aforecited constitutional provision only disallows a derivation or inference from it of the power to annul elections on the part of the COMELEC; but said provision, significantly, does not withhold the vesting in the COMELEC of that same power if such be deemed by the Legislature to be necessary in order that the COMELEC be most effective in the performance of its sacred duty of insuring the conduct of honest and free elections. The COMELEC, therefore, can attribute to the aforecited constitutional provision the grant upon it of the power to annul elections, if there be a valid statutory enactment granting the same.

Under the present state of our election laws, the COMELEC has been granted precisely the power to annul elections. Section 4 of Republic Act No. 7166, otherwise known as, "The Synchronized Elections Law of 1991," provides that the COMELEC sitting En Banc by a majority vote of its members may decide, among others, the declaration of failure of election and the calling of special elections as provided in Section 6 of the Omnibus Election Code. Said Section 6, in turn, provides as follows:

"SEC. 6. Failure of election.-- If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect."

The COMELEC may exercise such power *motu proprio*[27] or upon a verified petition.[28] The hearing of the case shall be summary in nature,[29] and the COMELEC may delegate to its lawyers the power to hear the case and to receive evidence.[30] In the case of *Mitmug vs. Commission on Elections*, we held that before COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precincts concerned on the date fixed by law or, even if there were voting, the election nevertheless resulted in a failure to elect; and second, the votes not cast would affect the result of the election.[31] We must add, however, that the cause of such failure of election should have been any of the following: force majeure, violence, terrorism, fraud or other analogous causes. This is an important consideration for, where the propriety of a pre-proclamation controversy ends, there may begin the realm of a special action for declaration of failure of elections.

Very few aspects of our law today can match the dynamism that has characterized the formulation of our jurisprudential rule on pre-proclamation controversies. The debate has, however, constantly revolved around whether or not the COMELEC may go beyond the face of the election returns in determining their authenticity and genuineness. The rule first established in illustrative cases like *Nacionalista Party vs. Comelec*[32] and *Dizon vs. Provincial Board*[33] is that the COMELEC cannot go beyond the election returns in canvassing the same. This rule, however, was eroded in subsequent cases since 1966, when in the case of *Lagumbay vs. Comelec*,[34] we empowered the COMELEC to nullify certain contested returns on the ground of statistical improbability "where the fraud is so palpable from the return itself (*res ipsa loquitur* - the thing speaks for itself), there is no reason to accept it and give it *prima facie* value." [35] And then in the 1971 case of *Diaz, Sr. vs. Commission on Elections*,[36] in the light of the allegations of petitioners therein to the effect that the elections in question were tainted with fraud, terrorism and other irregularities, we sanctioned the COMELEC's procedure of causing the examination by fingerprint and handwriting experts and analysis of the signatures and fingerprints of the precinct books of voters and the CE 39's and voting records, in order to determine whether the reported elections were a sham amounting to no election at all and accordingly deny *prima facie* value to the election returns and reject them as manufactured or false returns. We reiterated this ruling in *Estaniel vs. Commission on Elections*[37] and amplified the same in *Usman vs. Commission on Elections*. [38] And in the case of *Olfato vs. Commission on Elections*, [39] we went as far as to hold that the statutory enumeration of the grounds proper for filing a pre-proclamation controversy is not exclusive.

"To give a strict interpretation of Section 175 x x x of the 1978 Election Code would be to limit the grounds in pre-proclamation controversies to matters purely affecting election returns. WE believe that to revert to the old doctrine prohibiting the Comelec from looking behind the election returns as to the existence of election irregularities is not consistent with the very purpose of the law. Clearly, Sections 172, 173 and 174 only speak of irregularities committed in the preparation of election returns themselves. WE cannot see any difference however if the Comelec be allowed to suspend a canvass or suspend or annul a proclamation of a candidate-elect on the ground that irregularities or mistakes in the preparation of returns such as tampering, altering, falsifying of returns, material defects or discrepancies of election returns exist and deny said authority to the Comelec if based on grounds not apparent on the face of the election returns but indirectly affecting their integrity. Certainly, it would be ridiculous to deny the Comelec the authority to suspend a canvass or suspend or annul a proclamation if based on grounds of election irregularities committed during the election which would necessarily also vitiate or affect the integrity of the election returns such as fake voters x x x although not apparent upon the face. Seemingly genuine returns based on fake votes are equally spurious as tampered election returns. To sustain the validity of election returns despite a *prima facie* showing of the commission prior to the voting of election irregularities independent of the subsequent act of preparing the election returns is to stamp our approval on making said election returns as an impenetrable shield in the perpetration of election anomalies." [40]

In all these aforecited cases, albeit in pre-proclamation cases, we upheld the propriety of conducting technical examinations of fingerprints and signatures in voting paraphernalia to determine the integrity of certain election returns which, on their face, are regular and seemingly authentic but the circumstances of whose production are inextricably linked with fraudulent schemes and other grave electoral irregularities.

The year 1987 marked the return to the previous rule that in pre-proclamation controversies, allegations that clean, regular election returns are in fact sham returns because no free and honest elections had at all been held due to fraud, terrorism and other illegal electoral practices, are to be rejected and held to be inappropriate matters to be raised in pre-proclamation cases, the same being properly the office of election contests over which electoral tribunals have sole, exclusive jurisdiction. So we held in the landmark case of *Dianalan vs. Commission on Elections*:^[41]

"x x x *Diaz v. Commission on Elections*, 24 SCRA 426; *Estaniel v. Commission on Elections*, 42 SCRA 436; and *Usman vs. Commission on Elections*, 42 SCRA 667, were decided in 1971, and *Lagumbay v. Climaco and Comelec*, 16 SCRA 176, even earlier, in 1966 x x x All these cases ruled that the Commission on Elections could investigate charges of irregularities in the conduct of elections as an incident of its power to canvass the votes and proclaim the winners; and this was possible because its jurisdiction over pre-proclamation questions was not limited then and subject to Comelec abuse. Now, it is expressly limited to, under Section 243 of the Omnibus Election Code passed on November 28, 1985 x x x. A reading of this section will readily show that it applies only to the specific deficiencies therein enumerated and that questions relating to alleged irregularities in the voting such as fraud, substitution or vote-buying and terrorism are proper matters for election protests under the sole jurisdiction of the Electoral Tribunals.

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x x x In fact, *Olfato* is a tombstone of the absurd consequences of the past regime Comelec's notorious flip-flopping resolutions. There, the Comelec inconsistently took opposite positions by setting aside its previous denial or dismissal of the petition for suspension or annulment of proclamation since the grounds alleged were proper grounds for election protest and declared the proclamation as merely 'temporary,' subject to the final outcome of the petition for annulment of proclamation, notwithstanding that the duly proclaimed winner (*Olfato*) had already assumed office x x x. The Court sustained the Comelec's volte face therein x x x. But it is the best proof of how such cavalier treatment of settled doctrine and rulings designed to assure the prompt proclamation of the election results and leave the investigation of alleged irregularities to a proper election protest could derail the election process x x x."^[42]

The landmark case of *Dianalan*, promulgated in November, 1987, was definitely a departure from the ruling in *Olfato* and its predecessor cases. But as early as August, 1987, in the case of *Sanchez vs. Commission on Elections*,^[43] we had held that the scope of pre-proclamation controversy is limited to the issues enumerated under Section 243 of the Omnibus Election Code:

"x x x The enumeration therein of the issues that may be raised in pre-proclamation controversy, is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (Sec. 234), appear to have been tampered with, falsified or prepared under duress (Sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents x x x. The complete election returns whose authenticity is not in question, must be prima facie considered valid for the purpose of canvassing the same and proclamation of the winning candidates.

x x x To expand the issues beyond those enumerated under Sec. 243 and allow a recount/reappreciation of votes in every instance where a claim of misdeclaration of stray votes is made would open the floodgates to

such claims and paralyze canvass and proclamation proceedings, given the propensity of the loser to demand a recount. The law and public policy mandate that all pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing and just as summarily decided x x x."[44]

The policy consideration underlying the delimitation both of substantive ground and procedure is the policy to determine as quickly as possible the result of the election on the basis of canvass. Thus, in the case of *Dipatuan vs. Commission on Elections*,[45] we categorically ruled that in a pre-proclamation controversy, COMELEC is not to look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues resolution of which would compel or necessitate COMELEC to pierce the veil of election returns which are prima facie regular on their face, has his proper remedy in a regular election protest. By their nature, and given the obvious public interest in the speedy determination of the results of elections, pre-proclamation controversies are to be resolved in summary proceedings without the need to present evidence aliunde and certainly without having to go through voluminous documents and subjecting them to meticulous technical examinations which take up considerable time.

With the abandonment of the teachings of *Olfato* and its predecessor cases, it was not a surprise when petitioners in the case of *Dimaporo vs. Commission on Elections*,[46] promulgated in June, 1990, asked the Court to re-examine its decision in *Dianalan* so as to permit petitioners to subject to handwriting and fingerprint examination the voter's affidavits and voting lists and other voting records in the contested precincts. We responded in this wise:

"We are not persuaded by petitioners' arguments on this point. It is important to bear in mind that the nature, scope and ambit of a pre-proclamation controversy as set out in *Dianalan* and *Dipatuan* and the other cases there cited are determined by statutory provisions: Sections 243 x x x 245 x x x and 246 x x x of the Omnibus Election Code. As pointed out above in *Dipatuan*, these statutory provisions reflect a very definite view of what public policy requires on the matter. It may well be true that public policy may occasionally permit the occurrence of 'grab the proclamation and prolong the protest' situations; that public policy, however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public at large. For those who disagree with that public policy, the appropriate recourse is not to ask this Court to abandon case law which merely interprets, faithfully existing statutory norms, to engage in judicial legislation and in effect to rewrite portions of the Omnibus Election Code. The appropriate recourse is, of course, to the Legislative Department of the Government and to ask that Department to strike a new and different equilibrium in the balancing of the public interests at stake."[47]

We have recently reiterated the *Dianalan* and *Dimaporo* rulings in the case of *Alfonso vs. Commission on Elections*,[48] promulgated in June, 1994. The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence aliunde and examination of voluminous documents which take up much time and cause delay in defeat of the public policy underlying the summary nature of pre-proclamation controversies.

While, however, the COMELEC is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the COMELEC is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. Thus, the COMELEC, in the case of actions for annulment of election results or

declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. Needless to say, a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections .[49]

In the instant case, private respondents as well as petitioners filed, not pre-proclamation cases, but actions for annulment of election results or declaration of failure of elections over which the COMELEC has statutory jurisdiction. In this regard, we fully subscribe to the following opinion of Commissioner Teresita Dy-Liacco Flores:

"The Commission correctly found that the petitions, although denominated differently where one is a petition to annul and the other is a petition to declare a failure of election, are actually of the same nature. Judging from the grounds relied upon, both are basically petitions to declare a failure of election under Section 6 of the Omnibus Election Code x x x.

A failure of election under the law does not arise from findings of fraud, terrorism, or force majeure but from the fact that there was a denigration of the expression of the will of the people. The two petitions are of this mold. Both theorize that the election results in the six municipalities in question are not expressive of the will of the people primarily because the results are statistically improbable. Beneath those neutral assertions, however, are intimations of a wide scale and massive fraud committed during the preparation, transmission, custody or canvass of the election returns.

Thus, in admitting SPA 95-284 as a justiciable election issue, the Commission anchored its jurisdiction on Sec. 4 of Republic Act No. 7166 which empowers the Commission, en banc, to hear and decide by a majority vote the postponement, declaration of a failure of election and the calling of special election. Such specific grant of power to annul an election is firmly cushioned by the plenary powers of the Commission granted by the Constitution pursuant to the same Commission's duty of ensuring clean, honest, orderly and peaceful elections.

I am in absolute agreement with the majority when it ruled and ordered in SPA 95-284 for the technical examination of the fingerprints of voters in Parang, given the incredible election results therein. The election results, standing alone, points undoubtedly to a failure of election in said municipality. The conclusion is clear and the deduction glaringly obvious. Fraud of such a massive degree attended the elections held in Parang that what could have been a democratic process of ascertaining the will of the electorate was totally vitiated. Such fraud was the cause which gave rise to a failure to elect, a ground for the declaration of a failure of election."[50]

The results of the technical examination, upon which the COMELEC, by a unanimous vote, based its decision to annul the election results of Parang, Sulu, are chronicled as follows:

"The election documents which the Commission directed to be submitted for examination by the Election Records & Statistics Department x x x were CE Form 1 and CE Form 2. CE Form 1 is the Voter's Affidavit (now called Voters Registration Record), among the contents of which is the individual voter's signature, and left and right thumbprints x x x. CE Form 2 is the computerized 'List of Voters with Voting Records' for each precinct, which contains x x x signature, thumbmark x x x.

There were two examinations conducted. One examination was a comparison of the thumbmarks to determine whether the voter's thumbmark in CE Form 2 is identical with either the right or left thumbmark appearing on CE Form 1. There was also an examination of all the thumbmarks of the voters in each precinct to determine which thumbmarks identical to each other belong to the same person. The other examination was a comparison of the voter's signature appearing in CE Form No. 2 with that appearing in CE Form No. 1.

x x x x x x x x

Even before the technical examination was conducted, the Commission already noted certain badges of fraud just by looking at the election results of Parang, Sulu.

Based on the Certificate of Canvass of the Provincial Board of Canvassers, Tupay Loong garnered a total of 24,741 votes while Abdusakur Tan was credited with 788 votes. Kimar Tulawie, the running-mate of Loong, was not far behind with 24,212 votes while his opponent for the position of Vice-Governor - Hadji Munib Estino - was credited with 763 votes.

A physical count of the Voters' Affidavit/Registration Record (CE Form 1) shows that there were 25,358 registered voters in 104 precincts of Parang, Sulu. But if the votes of Loong and Tan are totalled (24,741+788) it would be 25,529 votes, 171 votes in excess of the registered voters. Also, 822 voters who had no Voters' Affidavit/Registration Record (CE Form 1) were allowed to vote.

x x x The thumbprints found on CE Form No. 2 (Computerized List of Voters with Voting Records) of each of the fourteen thousand, four hundred eighty-three (14,483) persons who voted do not tally with the corresponding thumbprints in CE Form No. 1 (Voter's Affidavit/Registration Record). The inescapable conclusion is that the persons who voted were not the registered voters themselves. They were impostors.

x x x A comparison of thumbprints of all the voters in each of the 102 precincts, revealed that the thumbprints of groups of voters in each precinct came from the same person. Counting the number of voters with similar thumbprints in all groupings in all of the 102 precincts examined, the number reach 10,780. The thumbprints in CE Form No. 1 or CE Form No. 2, numbering 9,458 voters, were, however, smudged, blurred, or faint, making these thumbprints unreadable and impossible to analyze for lack of sufficient basis for comparison x x x.

These incontrovertible findings in the 14,483 unidentical thumbmarks are the result of dactyloscopic examination based on the science of fingerprints. In precincts where Tan and Estino had zero (0) votes, undoubtedly, all the votes illegally cast were in favor of Loong and Tulawie x x x."[51]

While, however, the COMELEC acted within its jurisdiction in taking cognizance of the private respondents' petition to annul the election results of or to declare failure of elections in Parang, Sulu, it committed grave abuse of discretion when confronted with essentially the same situation in petitioners' own petition to annul the elections of or to declare failure of elections in the municipalities of Tapul, Panglima Estino, Pata, Siasi and Kalinggalang Caluang. The COMELEC arbitrarily and without valid ground dismissed the said petition respecting the aforementioned five municipalities. The untimeliness of the petition is an untenable argument for such dismissal, because as Commissioner Regalado Maambong pointed out in his own dissenting opinion, no law provides for a reglementary period within which to file annulment of elections when there is as yet no proclamation.

x x x After proclamation, however, there is a reglementary period to file an election protest or annul proclamation, and beyond the time limit, it is barred. Thus, if the time has passed, a petitioner loses his case even before it is filed.

Not in this case.

Since there is no reglementary period to file a petition for annulment of elections before proclamation, there is no legal impediment against the examination of CE Forms 1 and 2 in the five specified municipalities. The requested technical examination is not the petition proper. The petition is for annulment of elections. The technical examination is but the means to discover or obtain evidence which may or may not sustain the petition. Thus, the technical examination is-not time-barred either.

Administration of justice is a difficult process, but it would be in keeping with the requirements of due process and equal protection of the law, if litigants are treated in an equal manner by giving them the same rights under similar circumstances."[52]

In the majority opinion penned by Commissioner Gorospe, the COMELEC justified its dismissal of petitioners' action to annul the election results in the aforementioned five municipalities upon the untimeliness thereof as well as its having filed allegedly only upon petitioners' realization that their lead in Parang was in danger of being eradicated by the annulment of the election results thereof. On this point, we fully agree with Commissioner Flores that --

"x x x x x x x x

The majority decision is made more beyond comprehension when it turned a blind eye to the fundamental precepts of fair play. To bar the petition of Tulawie and Loong, the Commission applied the maxim that 'he who comes to court must come with clean hands.' However, it committed a grave affront to the minimum requirements of equal protection when, without compunction, it discriminatorily applied such principle against Tulawie and Loong when it should have first applied it against candidate Abdusakur Tan in SPA 95-284. That both parties are similarly situated is amply supported by a perusal of the petitions. Hence, both must be accorded equal favor before the law and if the contrary so warrants, to suffer equally the brunt of said law. It is doubly hard, therefore, for the Commission to extricate itself from the quagmire in which it has buried itself when it applied the law with a marked bias in favor of one of the parties. For if it had in mind to punish candidates evidently at fault yet seek the aid of the Commission for the rectification of irregularities allegedly committed against them, the Commission should have not hesitated to wave before petitioner Tan the evidence which preponderates to his guilt and to dismiss his petition outrightly. Such would have been the prudent decision because the parties are apparently in *pari delicto*.

Thus, it remains inexplicable how the Commission could have acted in defiance of the Constitution when it granted Tan's petition to annul the election in Parang but denied without any justifiable reason Loong and Tulawie's when both petitions allege similar grounds and are circumscribed by almost bisymmetrical factual circumstances. Tan, upon whom similar convincing allegations of fraud were imputed and against whom convincing electoral statistics pointing to the fraud has been alleged was unduly favored because the hands that tipped the scales failed to heed basic doctrines of fairness."^[53]

The COMELEC, in its resolution, dated October 9, 1995, already noted that the same badges of fraud were evident in the election results of the aforementioned five municipalities disputed by petitioners and even declared that "the law must be enforced in a fair manner. Justice, fairness and equity, therefore, require that the Commission should conduct a similar technical examination of CE Form No. 1 x x x and CE Form No. 2 x x x to determine if voting irregularities in the Municipality of Parang were similarly perpetrated in these five municipalities x x x. SPA No. 95-284 and SPA No. 95-289 are so closely connected that a resolution of one would necessarily and materially affect the outcome of the other. All those who disregard the law must be made to equally feel the wrath of its enforcement."^[54] It was, therefore, grave abuse of discretion on the part of the COMELEC to have arbitrarily and whimsically dismissed SPA No. 95-289.

It was also grave abuse of discretion on the part of the COMELEC to have, after assuming jurisdiction over SPA No. 95-284 upon the strength of its statutory grant of power under Section 4 of R.A. No. 7166 in relation to Section 6 of the Omnibus Election Code of the Philippines, disregarded the mandate of said provisions and did away with the holding of special elections in Parang, Sulu. While the majority acknowledged that a decision annulling an election no less requires a special election in its aftermath, citing the aforementioned legal provisions, the majority considered such provisions anyway negotiable from which they can deviate by using "reasonable, practicable and equitable" solutions "to end the instant election controversy" because "exceptional and supervening events so preponderate." The dissent of Commissioner Maambong echoes our own position on the matter:

"With the annulment of the results of the election in the Municipality of Parang, no proclamation of the winners for the contested positions of Governor and Vice-Governor can be made unless a special election is

held.

Any proclamation made will be null and void because it would be based on an incomplete canvass. The only exception is if the election returns from the elections of Parang will not affect the results of the provincial election. Based on the number of registered voters, however, the exclusion of Parang will affect the results of the provincial election x x x.

While it is true that an election can be held with the participation of less than the majority of registered voters, it can only be valid if the canvass is complete.

The law is clear on this point, and failure to comply with it is an election offense x x x.

The Supreme Court has uniformly applied the legal requirement of a complete canvass for a proclamation to be valid.

x x x x x x x x

If the absence of election returns of one precinct can result in incomplete canvass, how much more for one municipality like Parang, Sulu. The number of registered voters of Parang are definitely much more than the existing lead of Abdusakur Tan after the annulment of the results in that municipality x x x even with the broad powers of the Commission under the Constitution, I do not believe the Commission should violate the mandate of the law for whatever reason."[55]

Finally, a peripheral issue that also needs to be addressed is petitioners' claim that they have been denied their right to due process when they were not given the opportunity to rebut the results of the technical examination which was undertaken after the hearing in SPA 95-284 and after said case was duly submitted for decision. In support of their claim, petitioners cite *Usman vs. Commission on Elections*[56] where we found that the COMELEC failed to fully recognize and respect Usman's right to due process when Usman was not allowed by the COMELEC, without sufficient reasons, to present any evidence to rebut the findings of its experts regarding the thumbprints and signatures in the CE Form 1 and their corresponding CE Form 39. Accordingly, we ordered the COMELEC in that case to re-open the proceedings and set the case for hearing to afford Usman his rights.

We find, however, that the circumstances attendant to petitioners' case are distinct from those characterizing the aforecited case of *Usman*. For in the instant case, petitioners admitted in their pleadings that they were fully aware of the issuance by COMELEC of an order directing the Provincial Election Supervisor of Sulu to bring to the COMELEC office in Manila the election documents to be used in the technical examination. In fact, petitioners anticipated such technical examination and filed a pleading before the COMELEC in which they prayed that they be informed of any subsequent proceedings in the same case. In fine, it is undeniable that petitioners had the opportunity to participate in the proceedings respecting the technical examination, aware as they were of the intent of the COMELEC to conduct the same. Militating against them is the fact that they did not do so when they had the opportunity to, especially as public interest in the speedy disposition of this case will only be further derailed by the reopening of the case for the benefit of petitioners who, if they could after all be this assertive of their due process rights now, should have asserted the same as early as when the issues were ripe for debate.

WHEREFORE, in view of all the foregoing, the PETITION FOR CERTIORARI in G.R. No. 122137 is HEREBY GRANTED.

(1) The COMELEC EN BANC RESOLUTIONS, dated OCTOBER 9, 1995 and DECEMBER 13, 1995, are HEREBY ANNULLED AND SET ASIDE.

(2) The COMELEC is HEREBY ORDERED TO CONDUCT SPECIAL ELECTIONS IN THE MUNICIPALITY OF PARANG, SULU, and is DIRECTED TO SUPERVISE THE COUNTING OF THE VOTES AND THE

CANVASSING OF THE RESULTS TO THE END THAT THE WINNING CANDIDATES FOR GOVERNOR AND VICE-GOVERNOR FOR THE PROVINCE OF SULU BE PROCLAIMED AS SOON AS POSSIBLE.

(3) The COMELEC is HEREBY ORDERED TO REINSTATE SPA 95-289 AND TO CONDUCT THE NECESSARY TECHNICAL EXAMINATION, IF ANY, OF PERTINENT ELECTION DOCUMENTS THEREIN AND TO HOLD SPECIAL ELECTIONS IN THE MUNICIPALITIES DISPUTED IN SPA 95-289 IN THE EVENT the COMELEC ANNULS THE ELECTION RESULTS THEREIN OR DECLARES THEREAT FAILURE OF ELECTIONS.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Puno, Vitug, Mendoza, Panganiban, and Torres, Jr., JJ., concur.

Melo, Kapunan, and Francisco, JJ., on leave.

[1] Resolution promulgated September 29, 1992 dismissing for lack of merit the Petition to set aside the proceedings of the Municipal Board of Canvassers and the Appeal from the ruling of the Provincial Board of Canvassers of Sulu and the Resolution promulgated on November 19, 1992 denying the Motion for Reconsideration of the September 29, 1992 resolution; Rollo, pp. 23-26; 34-35.

[2] SPC No. 92-228 and SPC No. 92-229.

[3] Judgment Form No. 1 (Entry of Judgment) stapled to the back cover of the Rollo.

[4] Rendered in SPC No. 95-824, entitled, "In Re: Petition for the Annulment of the Elections in the Municipality of Parang, Sulu; Abdusakur Tan, Hadji Munib Estino and Hussin Loong. Petitioners vs. Tupay Loong, Kimar Tulawie and Bensaudi Tulawie, Respondents"; Rollo, p. 75.

[5] Petition/Appeal dated and received by the COMELEC on June 23, 1995; Rollo, pp. 213-230.

[6] En Banc Resolution of the COMELEC, dated December 13, 1995 penned by Commissioner Gorospe, p. 12; Rollo, p. 233.

[7] Petition dated and received by the COMELEC on June 9, 1995; Rollo, pp. 43-74.

[8] En Banc Resolution of the COMELEC dated October 9, 1995, p. 5; Rollo, p. 45.

[9] G.R. No. 79712, promulgated on November 12, 1987.

[10] Rollo, pp. 153 - 154.

[11] En Banc Resolution dated October 9, 1995; Rollo, pp. 41-55: Resume of Votes Cast and the Commission's Resolution dated October 9, 1995, Rollo, pp. 56-59.

[12] Resume of Votes Cast and the Commission's Resolution, *supra*, p.4; Rollo, p. 59.

[13] Rollo, pp. 199-220.

[14] Rollo, pp. 222-238.

[15] En Banc Resolution of the COMELEC dated December 13, 1995, pp. 13-16; Rollo, pp. 234-237.

[16] Rollo, pp. 265-266.

[17] Rollo, pp. 291-304.

[18] Resolution stapled to the Rollo of G.R. No. 122396.

[19] Rollo, p. 36.

[20] Rollo, pp. 37-47.

[21] Resolution stapled to the Rollo.

[22] En Banc Resolution of the COMELEC dated October 9, 1995, p.13; Rollo, p. 53.

[23] Article IX-C, Section 2(1), 1987 Constitution.

[24] Article IX-C, Section 2(3), 1987 Constitution.

[25] 25 85 Phil. 156.25

[26] 21 SCRA 1252,1257.

[27] Part V (B), Rule 26, Section 3, COMELEC Rules of Procedure.

[28] Ibid., Section 4.

[29] Ibid., Section 6.

[30] Ibid., Section 7.

[31] 230 SCRA 60.

[32] 85 Phil. 149.

[33] 52 Phil. 47.

[34] 16 SCRA 175.

[35] Ibid., p. 179.

[36] 42 SCRA 426.

[37] 42 SCRA 436.

[38] 42 SCRA 667.

[39] 103 SCRA 746.

[40] Ibid., pp. 780-781.

[41] En Banc Resolution dated November 12, 1987 in G.R. No. 79712.

[42] Ibid., pp. 3 & 6.

[43] 153 SCRA 68.

[44] Ibid., p. 75.

[45] En Banc Resolution dated May 8, 1990 in G.R. No. 86117.

[46] 186 SCRA 769.

[47] Ibid., pp. 786-787.

[48] 232 SCRA 777.

[49] Ong, Jr. vs. Commission on Elections, 221 SCRA 474; Mitmug vs. Commission on Elections, 230 SCRA 54.

[50] Concurring and Dissenting Opinion of Commissioner Flores, dated December 13, 1995, pp. 5-6; Rollo, pp. 261-262.

[51] Resolution En Banc of the COMELEC, dated October 9, 1995, pp. 10- 13; Rollo, pp. 50-53.

[52] Dissenting Opinion of Commissioner Maambong, dated December 13, 1995, pp. 3-4; Rollo, pp. 253-254.

[53] Concurring and Dissenting Opinion of Commissioner Flores, dated December 13, 1995, pp. 7-8; Rollo, pp. 263-264.

[54] Resolution En Banc of the COMELEC, dated October 9, 1995, pp. 13-14; Rollo, pp. 53-54.

[55] Dissenting Opinion of Commissioner Maambong dated December 13, 1995, pp. 4-5; Rollo, pp. 254-255.

[56] 42 SCRA 667.

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