

ABDUSAKUR M. TAN AND BASARON BURAHAN, PETITIONERS, VS. COMMISSION ON ELECTIONS, THE PROVINCIAL BOARD OF CANVASSERS OF SULU, THE MUNICIPAL BOARDS OF CANVASSERS OF MAIMBUNG, LUUK,...

G.R. NOS. 166143-47. November 20, 2006

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

We have found it necessary to regulate liberty;so we find it necessary to regulate competition.[1]

—former U.S. Supreme Court Justice Louis Dembitz Brandeis

Election cases, indeed, "involve not only the adjudication of the private interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate x x x." [2] The public nature of election cases is ensconced in the people's suffrage—which encompasses public choices and interests. In their capacity as having sovereign authority, the Filipino people are accorded the constitutional right of suffrage to select the representatives to public office. To ensure that Filipinos fully and freely enjoy this right and that their choices are recognized, the right of suffrage must be safeguarded. Courts should thus be vigilant in protecting this constitutional right so that the people's voice would not be stifled.

The Case

Before us are two petitions under Rule 65 of the Rules of Court. The first is the Petition for Certiorari and Prohibition with Prayer for the Issuance of a Writ of Preliminary Injunction and/or a Temporary Restraining Order [3] under G.R. Nos. 166143-47 which seeks to set aside the October 18, 2004 Joint Resolution [4] of the COMELEC en banc which rejected the prayer for declaration of failure of elections by petitioners Tan and Burahan in SPA Nos. 04-336, 04-337, 04-339, and 04-340, and by Yusop Jikiri in SPA No. 04-334 which is not under consideration in this petition. The other is a Petition for Certiorari with Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction [5] under G.R. No. 166891 which seeks to annul and set aside the December 14, 2004 [6] and February 7, 2005 [7] Orders of the COMELEC First Division, which denied petitioner Loong's motion to dismiss in EPC Case No. 2004-66.

Through the Supreme Court en banc September 12, 2006 Resolution, these cases were consolidated because they arose substantially out of the same facts set forth below:

The Facts

Petitioners Abdusakur M. Tan and Basaron Burahan were the gubernatorial and vice-gubernatorial candidates, respectively, of Sulu Province in the May 10, 2004 national and local elections. On May 17, 2004, petitioners, together with other local candidates for congressman, mayor, and vice-mayor, filed with the COMELEC four (4) Petitions for Declaration of Failure of Elections in the towns of Maimbung, Luuk, Tongkil, and Panamao, all of

Sulu Province, docketed as SPA Nos. 04-336,[8] 04-337,[9] 04-339,[10] and 04-340,[11] respectively. For the municipality of Luuk, Sulu, another Petition for Declaration of Failure of Elections was filed by another gubernatorial candidate, Yusop Jikiri, and it was docketed as SPA No. 04-334.[12]

Petitioners Tan and Burahan alleged systematic fraud, terrorism, illegal schemes, and machinations allegedly perpetrated by private respondents and their supporters resulting in massive disenfranchisement of voters. Petitioners submitted various affidavits and photographs to substantiate their allegations:[13]

In SPA No. 04-336 (Maimbung, Sulu), petitioners submitted the affidavits of poll watchers Ramil P. Singson, Otal Ibba, Sahak P. Ibrahim, Randy J. Jurri, Hayudini S. Jamuri, and municipal councilor candidate Jumdani Jumlail.[14]

In SPA No. 04-337 (Luuk, Sulu), petitioners submitted the affidavits of poll watchers Nijam Daud, Arsidan Abdurahman, Bensali Kamlian, Gamar Basala, Najir Ahamad, Apal A. Emamil, Say Abdurasi, Faizal Husbani, Sikal Lastam, Muktar Ailadja, Rujer Abdulkadil, Jurmin Suraid, Bakkar Jamil, Musid Madong, Nasib Nurin, Jul-Islam Benhar, Basiri Hamsah, and registered voters Sahaya Muksan, Juratol Asibon, Nuluddin Malihul, Tantung Tarani, Jul Ambri Abbil, and Harahun Arola.[15]

In SPA No. 04-339 (Tongkil, Sulu), petitioners submitted the affidavits of poll watchers Talib Usama, Lingbird Sabtal, Yusop Mirih, Kasim Akol, Ammad Madon, Dayting Imamil, Nonoy T. Kiddang, Nilson Bakil, Boy Sabtal, Reagan Bensali, Alguiser Abdulla, Gaming Talib, Munir Ukkang, Abdurahim Sairil, Alcafon Talib, Rosefier Talib, Julbasil Sabtal, Darwin Lalik, Merinisa T. Abdurasid, Lim Tingkahan, and Mujina G. Talib,[16] over-all coordinators of Tongkil mayoralty candidate Olum Sirail.

Affiant poll watcher Merinisa T. Abdurasid attested to taking seven (7) photographs[17] allegedly showing electoral irregularities.

In SPA No. 04-340 (Panamao, Sulu), petitioners submitted the affidavits of poll watchers Amina D. Undug, Dinwaza Undug, Sitti Aiza Undug, Amina Undug, Indah Taas Undug, Fadzrama Aukasa, Moreno Adjani, Nurhaida S. Undug, Nurjaina S. Abubakar, and Altimir A. Julhani.[18]

Affiant poll watcher Altimir A. Julhani attested to taking five (5) photographs[19] allegedly showing electoral irregularities.

Petitioners submitted additional affidavits and photographs, particularly the affidavits of Maimbung, Sulu poll watchers Aminkadra Abubakar, Abdulla Abubakar, Mhar Sappari, Nasirin Al-Najib, Marvin Saraji, Naufal Abubakar, Rhino Gumbahali, Basik Abton, Abzara H. Mudahi, Ayatulla Jakaria, Uttal Iba, Sin-sin Buklasan, Mardison I. Bakili, Abdurasmin Abdurahman, Binnar Pitong, Mahrif Sumlahani, Albinar S. Asaad, including that of photojournalist Alfred Jacinto-Corral[20] who attested taking nine (9) photographs[21] showing election irregularities.

Likewise, a report was submitted by Philippine Army 1Lt. Arthur V. Gelotin, Commanding Officer of Alpha Company, 563rd Infantry (Matapat) BN 11D, Tanduh Patong, Maimbung, Sulu, which allegedly showed massive failure of voters to cast their ballots.[22]

Meanwhile, the COMELEC Second Division, acting on the Petitions for Declaration of Failure of Elections, issued its May 17, 2004 Order suspending the proclamation of the winning gubernatorial candidate of Sulu,[23] but lifted the suspension three (3) days later. In the May 20, 2004 lifting Order, the COMELEC Second Division directed the Sulu PBOC to complete the canvass of votes and "to bring all canvass documents to Manila, and to proclaim the winning candidates for Governor in Manila." [24]

Even before the filing of the four (4) aforesaid petitions, Abdusakur M. Tan had filed four (4) other petitions, one before the Municipal Board of Canvassers of Parang, Sulu for the exclusion of election returns from several precincts docketed as SPA No. 04-138, and the other three before the Provincial Board of Canvassers of Sulu to exclude certificates of canvass from Luuk, Panamao, and Parang docketed as SPA Nos. 04-163, 04-164 and 04-165, respectively. All these petitions were dismissed by the Boards concerned, prompting petitioner Tan to file an appeal with the COMELEC First Division which issued an Order[25] on May 24, 2004 directing the concerned boards of canvassers to suspend their proceedings and to refrain from proclaiming any winning candidate.

However, on the same day that the COMELEC First Division issued the said Order, private respondent Benjamin Loong was proclaimed the winning governor of Sulu and he assumed office. This prompted petitioner Tan to file a Petition for Annulment of the Proclamation with the COMELEC First Division, docketed as SPA No. 04-205.

On June 21, 2004, the COMELEC First Division issued an Order[26] which granted the petition and annulled the proclamation of respondent Loong as governor of Sulu Province.

In the meantime, on July 19, 2004, respondent Yusop H. Jikiri filed before the COMELEC a Petition of Protest Ad Cautelam,[27] docketed as EPC No. 2004-66 praying, inter alia, for the recount or revision of the ballots cast and the examination of election returns in four (4) municipalities of Sulu, namely, Luuk, Tongkil, Maimbung, and Parang.

The COMELEC en banc, through its October 18, 2004 Joint Resolution, dismissed all five (5) petitions filed on May 17, 2004 to declare a failure of elections. This prompted respondent Jikiri to immediately convert his petition ad cautelam into a regular election protest which was granted by the COMELEC First Division in an Order[28] dated October 28, 2004.

Ruling of the Commission on Elections En Banc in SPA Nos. 04-334, 04-336, 04-337, 04-339, and 04-340

On October 18, 2004, the COMELEC en banc, through a Joint Resolution,[29] dismissed the five (5) Petitions to Declare Failure of Elections in the towns of Maimbung, Luuk, Tongkil, and Panamao, for lack of merit.

The COMELEC en banc ruled that there was no failure of election in the subject municipalities of Sulu. It reasoned that it could only exercise the extraordinary remedy of declaring a failure of election in the three instances mentioned in *Carlos v. Angeles*,[30] in relation to Section 6 of the Omnibus Election Code[31] and Section 4 of RA 7166, which in gist are: (1) the election is not held, (2) the election is suspended, or (3) the election results in a failure to elect.

In dismissing the petitions, the COMELEC held that none of the grounds relied upon by petitioners fall under any of the three instances justifying a declaration of failure of election. First, the COMELEC found that based upon the evidence presented by the parties, a valid election was held as scheduled. Second, there was no suspension of the election as voting continued normally. Third, private respondent Loong was elected by a plurality of votes as proclaimed by the Provincial Board of Canvassers (PBC).

While the authenticity and integrity of the election returns from the municipalities of Luuk and Panamao were questioned by petitioner Tan, those of Maimbung and Tongkil were left undisturbed throughout the preparation, transmission, custody, and canvass of the returns. Petitioners alleged that fraud and terrorism took place in Luuk and Panamao because voters were forced to affix their signatures and thumbprints; and the ballots in Luuk and Panamao were filled out by respondents' poll watchers and supporters.

Citing *Grand Alliance for Democracy v. COMELEC*,[32] the COMELEC en banc ruled that the grounds raised by petitioners were best ventilated in an election protest.

The COMELEC did not give credence to petitioners' evidence in support of their allegations of fraud and terrorism since their evidence consisted mainly of affidavits executed by their own poll watchers. The Commission considered the affidavits self-serving and insufficient to annul the results of the election. Besides, it pointed out that petitioners presented only a single affidavit of an alleged disenfranchised voter. Thus, on October 18, 2004, the COMELEC, through a Joint Resolution, dismissed the petitions for lack of merit. Petitioners' counsel received a copy of the Joint Resolution on October 21, 2004.

However, the Joint Resolution was not concurred in by COMELEC Commissioner Mehol K. Sadain who signed it with a note: "DISSENTING. DISSENTING OPINION TO FOLLOW." Subsequently, Commissioner Sadain submitted his Dissenting Opinion[33] on November 23, 2004 or 36 days after the joint resolution was issued. The Commissioner opined that there was failure of elections as the voters were allegedly not sufficiently informed about the change and transfer of polling places (clustering of precincts) approved[34] by the COMELEC en banc on May 9, 2004 or on the eve of the May 10, 2004 elections. Commissioner Sadain cited *Hassan v. COMELEC*[35] and *Basher v. COMELEC*[36] which held that insufficient notice of the change of date and venue deprived voters of the opportunity to participate in the elections.

This basis of Commissioner Sadain's Dissenting Opinion, however, was not raised by the petitioners in their May 17, 2004 petitions (for declaration of failure of elections) before the COMELEC.

The Sadain Dissenting Opinion was released on November 23, 2004, and a copy of the opinion was served on petitioners' counsel on November 24, 2004. Petitioners filed the instant petition in G.R. Nos. 166143-47 on December 13, 2004, 19 days after they received a copy of the Sadain Dissenting Opinion, and 53 days after they received a copy of the October 18, 2004 Joint Resolution.

Denial by the COMELEC First Division of Petitioner Loong's motion to dismiss in EPC No. 2004-66

After the dismissal of the petitions to declare failure of elections on October 18, 2004 and the conversion of respondent Jikiri's protest ad cautelam to a regular election protest on October 28, 2004, petitioner Benjamin T. Loong filed on November 8, 2004 his Answer with Motion to Dismiss and/or with Counter Protest.[37] Petitioner Loong anchored his motion to dismiss on the ground that the COMELEC had no jurisdiction to take cognizance of an election protest filed out of time.

On December 14, 2004, the COMELEC First Division issued the first assailed Order[38] denying petitioner Loong's motion to dismiss, ruling that the protest was not filed out of time as there were still pending pre-proclamation cases before it, the result of which could affect Loong's motion. It further held that it did not matter that these pre-proclamation cases were not filed by respondent Jikiri but by another candidate, Abdusakur M. Tan, as Section 248 of the Omnibus Election Code does not require that the petition to annul or suspend the proclamation be filed by the protestant. Thus, the COMELEC First Division concluded that these pending pre-proclamation cases would not prevent respondent Jikiri from converting his protest ad cautelam into a regular one, and which fact would not preclude the Commission from deciding the election protest case. After all, the COMELEC First Division noted that pre-proclamation controversies and election protest cases have different causes of action, and thus, could proceed independently. Finally, the COMELEC First Division directed the concerned parties to take the appropriate steps to address the financial and personnel requirements for the protest and counter-protest proceedings.

Subsequently, petitioner Loong's Motion for Reconsideration[39] was denied through the second assailed February 7, 2005 Order[40] which directed COMELEC field personnel to comply with the directives of the December 14, 2004 Order. However, in a subsequent order, the COMELEC First Division stayed the implementation of these directives pending resolution of the instant petition in G.R. No. 166891.

Meanwhile, on March 18, 2005, the COMELEC First Division's dismissal of the appeal filed by petitioner Abdusakur M. Tan in SPA Nos. 04-163, 04-164, and 04-165 for the exclusion of certificates of canvass,[41] rendered moot and academic the issue on the annulment of the proclamation of Benjamin Loong as governor of Sulu.

The Issues

In G.R. Nos. 166143-47, petitioners Tan and Burahan raise the following issues for our consideration:

Whether [or not] the respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction, in dismissing the consolidated petitions despite the evident massive disenfranchisement of the voters. Whether [or not] the proclamation of the respondents, albeit patently null and void, bars the filing of the instant petitions for declaration of failure of elections.[42]

In G.R. No. 166891, petitioner Loong simultaneously raises the following issues before us:

Whether [or not] the COMELEC has jurisdiction to entertain electoral protests filed beyond ten (10) days after the proclamation of the results of an election for a given provincial office. Whether [or not] the COMELEC has jurisdiction to entertain simultaneously pre-proclamation controversies and electoral protests.

The Court's Ruling

The petitions are bereft of merit.

G.R. Nos. 166143-47

Preliminary Issue: Timeliness of the Petition

Petitioners Tan and Burahan maintain that the 30-day reglementary period to file the petition for certiorari only started to run on November 24, 2004, the day they received a copy of the November 23, 2004 Dissenting Opinion, which completed the Joint Resolution. Moreover, they contend that the assailed October 18, 2004 Joint Resolution received by petitioners on October 21, 2004 was incomplete since the sole Dissenting Opinion was withheld and they could not intelligently and reasonably file the instant petition without it.

On the other hand, both the Office of the Solicitor General (OSG) and private respondent Loong strongly assert that the instant petition was filed out of time as the start of the reglementary period to file the appeal must be counted from the receipt of the October 18, 2004 Joint Resolution—since it is the judgment and not the Sadain Dissenting Opinion being assailed. They also point out that the withheld Dissenting Opinion is only Commissioner Sadain's view and, thus, neither is it essential to nor does it affect the ruling of the COMELEC en banc.

Constitution and Rules silent on when a Decision is Complete

To resolve the preliminary procedural matter on whether the appeal was filed on time, the Court must first determine whether a separate dissenting opinion in an election case before the COMELEC is a part or component of a resolution or decision.

Section 13, Article VIII of the 1987 Constitution provides:

The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution, must state the reason therefor. The same requirement shall be observed by all lower collegiate courts. (Emphasis supplied)

This constitutional directive was adopted in Section 1, Rule 18 on Decisions of the COMELEC Rules of Procedure which states:

Section 1. Procedure in Making Decisions.—The conclusions of the Commission in any case submitted to it for decision en banc or in Division shall be reached in consultation before the case is assigned by raffle to a Member for the writing of the opinion of the Commission or the Division and a certification to this effect signed by the Chairman or the Presiding Commissioner, as the case may be, shall be incorporated in the decision. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor.

Every decision shall express therein clearly and distinctly the facts and the law on which it is based.

The above-quoted Sections from the Constitution and the COMELEC Rules of Procedure are silent as to what constitutes a decision—whether it is solely the majority opinion or whether the separate concurring or dissenting opinions are considered integral parts of it.

Decision complete with the required majority opinion

The Court rules that a resolution or decision of the COMELEC is considered complete and validly rendered or issued when there is concurrence by the required majority of the Commissioners. Section 7 of Article IX-A, 1987 Constitution pertinently provides that:

SEC. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

There is nothing from the above constitutional proviso nor in the COMELEC Rules of Procedure that requires the submission of a dissenting opinion before a decision or resolution concurred by the required majority is validly rendered, i.e. complete. Put otherwise, with the required majority vote, the majority opinion embodied in a decision or resolution duly promulgated is validly rendered and issued despite dissent or inhibition of the minority, and even if the reason for the dissent or inhibition is submitted much later than its promulgation.

Moreover, the dissenting opinion, which is only Commissioner Sadain's view, is not essential to nor does it affect the ruling of the COMELEC en banc. Separate opinions not approved by the required majority of the court members, whether they be concurring or dissenting opinions, must be distinguished from the opinion of the court.[43] Verily, the joint resolution is the ruling being assailed and not the dissenting opinion. It is clear that, not being essential to the assailed joint resolution, the dissenting opinion merely serves to comply with the constitutional proviso that any member who dissented from a decision or resolution must state the reason therefor.[44]

In sum, the 30-day reglementary period must be reckoned from the receipt of the decision, order or resolution and not from the receipt of a dissenting opinion issued later. In the instant case, the dissenting opinion was submitted and promulgated 36 days after the assailed joint resolution.

Sections 3 and 4, Rule 18 of COMELEC Rules of Procedure: Unconstitutional

Under the COMELEC Rules of Procedure there is an instance when the 30-day reglementary period to appeal is reckoned other than the date of receipt of the resolution or decision. This is when an extended opinion is reserved. The 30-day reglementary period starts to run only upon the receipt by the parties of the reserved extended opinion released within 15 days from the promulgation of the resolution or decision. Sections 3 and 4 of Rule 18,

COMELEC Rules of Procedure provides thus—

Section 3. When Extended Opinion Reserved.—When in a given resolution or decision the writing of an extended opinion is reserved, the extended opinion shall be released within fifteen (15) days after the promulgation of the resolution.

Section 4. Period to Appeal or File Motion for Reconsideration When Extended Opinion is Reserved.—If an extended opinion is reserved in a decision or resolution, the period to file a petition for certiorari with the Supreme Court or to file a motion for reconsideration shall begin to run only from the date the aggrieved party received a copy of the extended opinion. (Emphasis supplied.)

From the above-quoted rules, it may be considered that the dissenting opinion duly noted "to follow" in the joint resolution is an extended reserved opinion. But such won't serve to help petitioners' position. While we are sympathetic to the predicament of petitioners, we however declare that Sections 3 and 4 of Rule 18, COMELEC Rules of Procedure are unconstitutional and must perforce be struck down. The 1987 Constitution, under Article IX-A, Section 6[45] and Article IX-C, Section 3,[46] grants and authorizes the COMELEC to promulgate its own rules of procedures as long as such rules concerning pleadings and practice do not diminish, increase or modify substantive rights; on the other hand, this Court has a rule-making power provided in Article VIII, Section 5, paragraph (5)[47]"the constitutional prerogative and authority to strike down and disapprove rules of procedure of special courts and quasi-judicial bodies.

Thus, we exercise this power and authority in voiding Sections 3 and 4 of Rule 18, COMELEC Rules of Procedure for contravening Article IX, Section 7 of the 1987 Constitution which pertinently provides:

Sec. 7. x x x Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty [30] days from receipt of a copy thereof (emphasis supplied).

The above quoted constitutional proviso clearly posits the unequivocal scenario that a decision, order, or ruling is issued complete with separate opinions duly incorporated upon its promulgation. It does not envision what Sections 3 and 4 of Rule 18 provide—an unwarranted extension of the period to file an appeal on certiorari.

Besides, striking down Sections 3 and 4 of Rule 18 will obviate future confusion as to when the 30-day reglementary period is reckoned and forestall unnecessary delays in the processing and adjudication of election cases and proceedings. It will reinforce the correct judicial practice—which public respondent COMELEC practices—of promulgating all separate opinions together with the majority opinion. Thus, in line with this ruling, we leave it to respondent COMELEC to promulgate a more orderly rule pursuant to its rule making power under the Constitution to ensure that the majority and separate opinions are collated and appended together to constitute a complete decision, order, or ruling before it is promulgated by the clerk of court and to devise a procedure that makes certain of the prompt submission of the reserved extended or separate opinion within a fixed period.

Petition filed out of time

Foregoing considered, the instant petition was clearly filed out of time. Having received the joint resolution on October 21, 2004 petitioners had until November 20, 2004, the last day of the 30-day reglementary period, within which to file the petition for certiorari. For filing the instant petition only on December 13, 2004 or 23 days beyond the 30-day reglementary period, the instant petition must be dismissed for being filed out of time.

Separate opinions submitted before promulgation

Nonetheless, it has to be made clear that decisions, resolutions or orders of collegiate courts must have separate concurring or dissenting opinions appended to the majority opinion before these are promulgated. And it is the

responsibility of the clerk of court to ensure that these separate opinions are submitted within the required period so that the decision, resolution or order is timely promulgated.

There are two (2) salient reasons why this principle must be followed, to wit:

First, both parties deserve to know all the views of the collegiate court who voted for the majority and minority opinions and the reasons why they voted in such manner, especially the losing party deciding to appeal to a higher court.

Second, if the separate opinions are not appended to the main opinion, the parties will have difficulty understanding the dissertation in the ponencia of the majority that addressed the points raised and reasons presented in the separate opinions, more particularly in the dissenting opinion.

Even if we concede that Tan and Burahan's petition was filed on time, we find that the petition failed to establish that the COMELEC en banc committed grave abuse of discretion.

First Issue: No Disenfranchisement of Voters

Ground not raised below cannot be raised on appeal

The records of the case from the COMELEC show that petitioners did not raise the alleged abrupt change of polling place as an issue.

Petitioners now modify their theory on appeal. Quoting extensively Commissioner Sadain's Dissenting Opinion which applied Hassan[48] and Basher,[49] petitioners now allege that the sudden change in the polling places deprived the candidates and voters of sufficient notice which afforded private respondents undue advantage and enabled them to engage the alleged election irregularities to ensure their victory.

The aforementioned issue is now raised only for the first time on appeal before this Court. Settled is the rule that issues not raised in the proceedings below (COMELEC en banc) cannot be raised for the first time on appeal. Fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.[50]

Thus, in *Matugas v. Commission on Elections*,[51] we reiterated this rule, saying:

The rule in appellate procedure is that a factual question may not be raised for the first time on appeal,[52] and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action.[53] This is true whether the decision elevated for review originated from a regular court[54] or an administrative agency or quasi-judicial body,[55] and whether it was rendered in a civil case,[56] a special proceeding,[57] or a criminal case.[58] Piecemeal presentation of evidence is simply not in accord with orderly justice.

Moreover, in *Vda. De Gualberto v. Go*,[59] we also held:

In *Labor Congress of the Philippines v. NLRC*,[60] we have made it clear that "to allow fresh issues on appeal is violative of the rudiments of fair play, justice and due process." [61] Likewise, in *Orosa v. Court of Appeals*,[62] the Court disallowed it because "it would be offensive to the basic rule of fair play, justice and due process if it considered [the] issue[s] raised for the first time on appeal." We cannot take an opposite stance in the present case.

Information on clustering of polling places duly disseminated to the electorate

Even granting arguendo that the issue of the alleged change and transfer of polling places was raised before the COMELEC, it would still not justify a declaration of failure of election in the subject municipalities.

The records sufficiently shed light on this issue and dispel any doubt as to the failure of election as alleged. It is apparent that the May 9, 2004 approval of the change and transfer of polling places—which was duly disseminated to the parties, candidates, and voters—was a mere formality to confirm what was already set way before the May 10, 2004 elections.

The April 13, 2004 COMELEC Resolution No. 6695[63] granted authority to the Commissioners-in-Charge of regions to decide on all administrative matters not covered by specific resolutions or policies. The clustering of precincts in Sulu Province was an administrative matter that COMELEC Commissioner Manuel A. Barcelona, Commissioner-in-Charge of Region IX, approved and caused to be disseminated through COMELEC Regional Director of Region IX, Helen G. Aguila-Flores, in conjunction with the AFP and Election Officers. Consequently, the concerned political parties, candidates, and registered voters of Sulu Province had sufficient time to be informed about the location of the polling places and the clustering of precincts before the May 10, 2004 elections.

Pursuant to COMELEC Resolution No. 6695 of April 13, 2004, Commissioner Barcelona submitted for confirmation to the COMELEC en banc his memorandum[64] on the approval of clustering of precincts in Sulu Province. Consequently, COMELEC Resolution No. 6932[65] was issued on May 9, 2004 confirming Commissioner Barcelona's prior approval of the clustering of precincts. Contrary to Commissioner Sadain's Dissenting Opinion and what petitioners want us to believe, there was no lack of ample notice to petitioners, their poll watchers and supporters, and the voters of the subject municipalities in Sulu Province about the clustering of precincts and the transfer of polling centers before the May 10, 2004 elections. As a matter of fact, petitioners had their poll watchers in place, particularly those who executed affidavits on the alleged irregularities. This explains why petitioners avoided raising this issue in their Petitions for Declaration of Failure of Election before the COMELEC en banc. Thus, petitioners cannot rely on this argument for support. Significantly, Commissioner Sadain approved and signed COMELEC Resolution Nos. 6695 and 6932.[66]

No failure of election

Petitioners argue that there was failure of elections in the four (4) subject municipalities as there was really no election held because all the ballots in these municipalities were filled out by private respondents' relatives and supporters. They assert that there was merely a sham election followed by a similar sham canvassing, and the voters were consequently disenfranchised. They strongly maintain that this instant case falls within the first instance under Section 6 of the Omnibus Election Code[67] where a failure of election may be declared by COMELEC.

We are not persuaded.

The COMELEC correctly dismissed the Petitions for Declaration of Failure of Election since the electoral anomalies alleged in the petitions should have been raised in an election protest, not in a petition to declare a failure of election.

Under Republic Act No. 7166, otherwise known as "The Synchronized Elections Law of 1991,"[68] the COMELEC en banc is empowered to declare a failure of election under Section 6 of the Omnibus Election Code. Section 6 of the Code prescribes the conditions for the exercise of this power, thus:

Section 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 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.

From the above-cited proviso, three (3) instances justify the declaration of failure of election, to wit:

- (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud, or other analogous causes;
- (b) the election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud, or other analogous causes; or
- (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud, or other analogous causes.[69]

In these three (3) instances, there must be a resulting failure to elect. As stated in *Banaga, Jr. v. Commission on Elections*, "this is obvious in the first two scenarios, where the election was not held and where the election was suspended." [70] As to the third scenario, where the preparation and the transmission of the election returns give rise to the consequence of failure to elect must, as mentioned earlier, be interpreted to mean that nobody emerged as a winner.[71]

In *Banaga*, we held that:

Before the COMELEC can act on a verified petition seeking to declare a failure of election two conditions must concur, namely (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election.[72] Note that the cause of such failure of election could only be any of the following: force majeure, violence, terrorism, fraud or other analogous causes.[73]

A scrutiny of the petitions filed before the COMELEC shows that petitioners never alleged that no voting was held nor was voting suspended in the subject municipalities. Neither did petitioners allege that no one was elected. Petitioners only allege that there was a sham election and similar sham canvassing. As noted earlier, to warrant a declaration of failure of election, the alleged irregularities must be proven to have prevented or suspended the holding of an election, or marred fatally the preparation and transmission, custody, and canvass of the election returns. These essential facts should have been clearly alleged by petitioners before the COMELEC en banc, but they were not.

No evidence of massive disenfranchisement

Petitioners want us to examine the evidence and the findings of facts by the COMELEC en banc asserting that there was evident massive disenfranchisement of voters. While this Court is not a trier of facts, and under the Constitution, this Court resolves "cases in which only an error or question of law is involved." [74] Nevertheless, after a thorough examination of the documentary evidence presented by petitioners in the proceedings below, we find no cogent reason to alter the findings and conclusions of respondent COMELEC en banc.

Factual findings of the COMELEC which has the expertise in the enforcement and administration of all election laws and regulations are binding on the Court [75] and must be respected. Besides, based on the COMELEC en banc's scrutiny of the facts, the allegations do not constitute sufficient grounds to nullify the election. We agree with the finding of the COMELEC en banc that the evidence relied upon by petitioners to support their charges of

fraud and irregularities in the conduct of elections in the questioned municipalities consisted of affidavits prepared and executed by their own representatives; and that the other pieces of evidence submitted by petitioners were not credible and inadequate to substantiate petitioners' charges of fraud and irregularities in the conduct of elections.[76] Mere affidavits are insufficient,[77] more so, when they were executed by petitioners' poll watchers. The conclusion of respondent COMELEC is correct that although petitioners specifically alleged violence, terrorism, fraud, and other irregularities in the conduct of elections, they failed to substantiate or prove said allegations. Had there been massive disenfranchisement, petitioners should have presented the affidavits of these disenfranchised voters, instead of only a single affidavit of one allegedly disenfranchised voter.[78]

We go along with the COMELEC en banc in giving more weight to the affidavits and certifications executed by the members of the Board of Election Inspectors and the PNP and military authorities that the elections held were peaceful and orderly, under the presumption that their official duties had been regularly performed.[79]

Verily, the above-mentioned sole affidavit of Miriam H. Binang, an alleged disenfranchised voter from the Municipality of Luuk, Sulu presented by gubernatorial candidate respondent Yusop Jikiri in SPA No. 04-334, is not enough to annul the election. Considering petitioners' allegation of massive disenfranchisement of voters wherein legitimate voters were simply ordered to affix their signatures and thumbprints, we agree with public respondent that petitioners should have presented the affidavits of the alleged disenfranchised voters from the subject four (4) municipalities, but they did not.

Grounds raised proper for election contest

Hassan[80] and Basher[81] do not apply to the instant case. Unlike in these cases, there was sufficient notice to the political parties, candidates, and voters regarding the clustering of precincts and transfer of polling places. Moreover, the election proceeded as scheduled, and none of the extreme irregularities that marred the elections in Hassan and Basher were present. In Banaga,[82] we reiterated the rule that there is failure of election only if the will of the electorate is muted and cannot be ascertained.[83] If the will of the people is determinable, the same must be respected as much as possible.[84] In the instant case, the will of the people was evident as the PBC duly proclaimed the winning candidates. As aptly ruled by respondent COMELEC, petitioners should have filed an election protest to substantiate their allegations of election anomalies, not a petition to declare a failure of election.

Therefore, we find no abuse of discretion, much less grave abuse, committed by the COMELEC en banc in dismissing the Petitions for Declaration of Failure of Election for lack of merit.

Anent the second issue raised on "whether or not the proclamation of the respondents, albeit patently null and void, bars the filing of the instant petitions for declaration of failure of election," we find that this matter is already moot as a non-issue, as due course was given to the instant petitions even if the annulment of the proclamation of respondent Loong through the June 21, 2004 COMELEC First Division Order was set aside and superseded by March 18, 2005 Order dismissing the appeal of petitioner Tan in SPA Nos. 04-163, 04-164, and 04-165.

G.R. No. 166891

First Issue: Timeliness of election protest

Distinction between electoral protests filed under Sections 248 and 258 of the Omnibus Election Code

Moving to the issues raised in the second petition (G.R. No. 166891), we note that while petitioner Loong doubtlessly concedes the original jurisdiction of COMELEC over election protests involving provincial officials,

among others, he excepts, at the first instance, to its assumption of jurisdiction over such contest which, to him, was filed after the reglementary period.

Section 250 of the Omnibus Election Code[85] under which the petitioner anchors his case provides as follows:

Section 250. Election contests for Batasang Pambansa, regional, provincial and city offices. — A sworn petition contesting the election of... any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election. (Underscoring added)

The complementing Section 1, Rule 20 of the COMELEC Rules of Procedure practically says the same thing.

The petitioner's formulation of his basic submission and the premises holding it together run as follows: The PBOC of Sulu proclaimed the results of the gubernatorial election, or, in fine, declared him as the duly elected governor of Sulu, on May 24, 2004. Accordingly, a protest contesting his election ought to have been filed on or before June 3, 2004 or ten (10) days from May 24, 2004. A belated protest, as what private respondent Jikiri filed on July 19, 2004 or a little over fifty (50) days after the proclamation, effectively deprived the COMELEC of jurisdiction to entertain the said protest. According to petitioner, the COMELEC First Division acted without jurisdiction or with grave abuse of discretion when it nonetheless entertained respondent Jikiri's election protest filed beyond the reglementary 10-day period.

Petitioner's basic posture may be accorded plausibility, except that it glossed over a statutory provision which, in the light of certain proceedings as thus narrated, militates against his stance. Under Section 248 of the Election Code, the filing of certain petitions works to stop the running of the reglementary period to file an election protest, thus:

Section 248. Effect of filing petition to annul or to suspend the proclamation. — The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

As may be noted, the aforequoted Section 248 contemplates two (2) points of reference, that is, pre- and post-proclamation, under which either of the petitions referred to therein is filed. Before the proclamation, what ought to be filed is a petition to "suspend" or stop an impending proclamation. After the proclamation, an adverse party should file a petition to "annul" or undo a proclamation made. Pre-proclamation controversies partake of the nature of petitions to suspend. The purpose for allowing pre-proclamation controversies, the filing of which is covered by the aforequoted Section 248 of the Omnibus Election Code, is to nip in the bud the occurrence of what, in election practice, is referred to as "grab the proclamation and prolong the protest" situation.[86]

Correlating the petitions mentioned in Section 248 with the 10-day period set forth in the succeeding Section 250, a petition to suspend tolls the 10-day period for filing an election protest from running, while a petition to annul interrupts the running of the period. In other words, in a Section 248 petition to suspend where the 10-day period did not start to run at all, the filing of a Section 250 election contest after the tenth (10th) day from proclamation is not late. On the other hand, in a Section 248 petition to annul, the party seeking annulment must file the petition before the expiration of the 10-day period.

Election protest case filed on time

In the case at bench, the petitioner's arguments on the belated filing of the respondent's election protest may merit consideration had the petitions against him been only for the annulment of his May 24, 2004 proclamation. However, the numerous election-related petitions, which were filed against petitioner Loong by the other Sulu gubernatorial candidates, sought to suspend his then impending proclamation which, as turned out, was eventually

made on May 24, 2004. And as events unfolded, some of the petitions adverted to resulted in the issuance on May 17, 2004 of an Order suspending the proclamation of the governor-elect of Sulu.[87] Petitioner Loong himself admitted as much: "x x x on May 17, 2004, the COMELEC Second Division issued an Order suspending the proclamation of the winning candidate for Governor of the province of Sulu." [88]

Not to be overlooked, because a corresponding position could have preceded it, is the June 21, 2004 Order of the COMELEC First Division annulling petitioner Loong's proclamation as governor-elect. The fallo of said annulling order reads:

In view of the foregoing but without prejudice to any resolution which would issue in disposition of the pending appeals and petitions involved in SPC 04-138, SPA No. 04-163, SPA No. 04-164 and SPA No. 04-165, [SPC instead of SPA should have been used] the Commission (FIRST DIVISION) hereby ANNULS the precipitate and premature proclamation of BENJAMIN LOONG as the winning candidate of governor of Sulu.[89]

Upon the foregoing considerations, the filing of the election protest ad cautelam on July 19, 2004 or fifty-six (56) days after the May 24, 2004 proclamation was contextually on time. This is because the 10-day reglementary period to file such protest—which ordinarily would have expired on June 3, 2004—did not start to run at all. It cannot be over-emphasized that the pre-proclamation controversies Abdusakur Tan initiated right after the May 10, 2004 elections, that is, SPC Nos. 04-163, 04-164, and 04-165, were only resolved on March 18, 2005. We reproduce with approval what the public respondent said, respecting the denial of the motion to dismiss filed by petitioner Loong against the election protest of respondent Jikiri:

Records show that there are still pre-proclamation cases pending before the Commission, the result of which could affect the protestee [petitioner Loong], to wit: SPC 04-163 (Abdusakur Tan vs. The Provincial Board of Canvassers of Sulu), SPC 04-164 (Abdusakur Tan vs. Provincial Board of Canvassers of Sulu) and SPC 04-165 (Abdusakur Tan vs. Provincial Board of Canvassers of Sulu). This situation distinguishes the instant case from that of Dagloc vs. COMELEC (321 SCRA 273) to which the protestee is anchoring his defense.

It is likewise of no moment that the pre-proclamation cases were filed not by the protestant but by another candidate. Section 248 of the Omnibus Election Code does not require that the petition to annul or to suspend the proclamation be filed by the protestant. This liberal interpretation likewise sits well with our policy to forego with technicalities if they stand in the way of determining the true will of the people.

That the cases are still pending with the Commission will not prevent the protestant from converting his election protest ad cautela into a regular one. Such conversion is an option which the protestant enjoys. Said fact likewise does not preclude us from deciding the election protest case. Pre-proclamation controversies and election protest cases have different causes of action. They can proceed independently.[90]

Thus, the imputation of grave abuse of discretion, on the part of respondent COMELEC's First Division, in refusing to dismiss respondent Jikiri's Petition of Protest Ad Cautelam (EPC No. 2004-66) on the stated ground that he filed the same after the lapse of the period for filing an election protest is untenable.

Rules prescribed to promote substantive justice

It may be well to point out at this juncture that the rules on reglementary periods, perhaps, like any rule issued by judicial and quasi-judicial bodies, are prescribed to ensure stability in the administration of justice, as well as to promote substantive justice. Indeed, they should be disregarded when they pose obstruction to the attainment of such lofty ends, which, in election-related cases, as here, is the determination of the popular will. While the facts in *Bince, Jr. v. COMELEC*[91] are not on all fours similar, what we said therein is most apt:

Assuming for the sake of argument that the petition was filed out of time, this incident alone will not thwart the

proper determination and resolution of the instant case on substantial grounds. Adherence to a technicality that would put a stamp of validity on a palpably void proclamation, with the inevitable result of frustrating the people's will cannot be countenanced.[92]

Second Issue: Simultaneous prosecution of pre-proclamation controversies and election protests

On the last issue of the propriety of prosecuting simultaneously pre-proclamation controversies and an electoral protest, petitioner Loong holds the negative view, submitting, in gist, that an election contest should be put on hold until pre-proclamation controversies are concluded. He thus faults and goes on to ascribe grave abuse of discretion on the COMELEC First Division for holding otherwise, stating as follows:

Clearly, the [ruling of the COMELEC First Division] is illogical and absurd. What will happen if the pre-proclamation appeals of ... Tan are sustained and the defeated candidate ... Tan is found to be the winner in his pre-proclamation appeals? Obviously, the ruling of the COMELEC does not promote orderly procedure in the resolution of election cases. It promotes useless, unnecessary, and vexatious litigations.[93]

As earlier stated, it is not legally possible for the COMELEC First Division to declare Jikiri the elected governor in the electoral protest filed against petitioner [Loong] and at the same time issue a decision in the pre-proclamation appeals of Abdusakur Tan that the latter is the elected governor. The grave abuse of discretion amounting to lack of jurisdiction is very obvious.[94]

Petitioner Loong's arguments, for all their easily-perceptible merit, are not anchored on any legal provision. They are common sensical to be sure. Nonetheless, laying grave abuse of discretion on the doorsteps of the respondent COMELEC First Division for giving due course to respondent Jikiri's electoral protest without waiting for the final result of the pre-proclamation appeals is a different matter altogether.

No rule or law prohibits simultaneous prosecution

For one, there is no law or rule prohibiting the simultaneous prosecution or adjudication of pre-proclamation controversies and elections protests. Allowing the simultaneous prosecution scenario may be explained by the fact that pre-proclamation controversies and election protests differ in terms of the issues involved and the evidence admissible in each case[95] and the objective each seeks to achieve. Moreover, the Court, under certain circumstances, even encourages the reinforcement of a pre-proclamation suit with an election protest. As we held in *Matalam v. Commission on Elections*:[96]

The Court agonized over its inability to fully look into the election irregularities alleged by petitioner, due to the very limited scope of pre-proclamation controversy. Thus, the Court reminds lawyers handling election cases to make a careful choice of remedies. Where it becomes apparent that a pre-proclamation suit is inadequate, they should immediately choose another timely remedy, like a petition to annul the election results or to declare a failure of elections or even an election protest, so that election irregularities may be fully ventilated and properly adjudicated by the competent tribunal.[97]

Speedy disposition paramount

For another, simultaneous adjudications offer more practical features than piecemeal adjudications in expediting the resolution of cases. We must stress the importance of speedy disposition of election cases because a late decision, such as one that comes out when the term of office in dispute is about to expire, is a veritable useless scrap of paper. We reiterate what we said in *Espidol v. COMELEC*:

It bears reiterating x x x that the COMELEC is with authority to annul any canvass and proclamation illegally made. The fact that a candidate illegally proclaimed has assumed office is not a bar to the exercise of such power. It is also true that as a general rule, the proper remedy after the proclamation of the winning candidate for the position contested would be to file a regular election protest or quo warranto. This rule, however,

admits of exceptions and one of those is where the proclamation was null and void. In such a case, i.e., where the proclamation is null and void, the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such proclamation a nullity.

The rationale therefor is aptly elucidated thus:

We draw from past experience. A pattern of conduct observed in past elections has been the "pernicious grab-the-proclamation-prolong- the-protest-slogan of some candidates or parties." Really, where a victim of a proclamation to be precluded from challenging the validity thereof after that proclamation and the assumption of office thereunder, baneful effects may easily supervene. It may not be out of place to state that in the long history of election contests in this country, x x x successful contestant in an election protest often wins but "a mere pyrrhic victory, i.e., a vindication when the term of office is about to expire or has expired." Protests, counter-protests, revisions of ballots, appeals, dilatory tactics, may well frustrate the will of the electorate. And what if the protestant may not have the resources and an unwavering determination with which to sustain a long drawn-out election contest? In this context therefore all efforts should be strained — as far as is humanly possible — to take election returns out of the reach of the unscrupulous; and to prevent illegal or fraudulent proclamation from ripening into illegal assumption of office.[98]

WHEREFORE, the instant petitions are DISMISSED for lack of merit. The assailed October 18, 2004 Joint Resolution of the Commission of Elections En Banc in SPA Nos. 04-334, 04-336, 04-337, 04-339, and 04-340 in G.R. Nos. 166143-47, as well as the assailed Orders of the Commission of Elections First Division in EPC No. 2004-66 dated December 14, 2004 and February 7, 2005 in G.R. No. 166891, are hereby AFFIRMED IN TOTO. Sections 3 and 4, Rule 18 of the COMELEC Rules of Procedure are hereby voided and declared unconstitutional for contravening Article IX-A, Section 7 of the 1987 Constitution. Costs against petitioners.

SO ORDERED.

Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Panganiban, C.J., in the result.

[1] Alfred Lief, Ed., THE BRANDEIS GUIDE TO THE MODERN WORLD (1941), 55.

[2] *Bandala v. Commission on Elections*, G.R. No. 159369, March 3, 2004 (En Banc), 424 SCRA 267, 269, citing *Sanchez v. Commission on Elections*, G.R. No. L-78461, August 12, 1987, 153 SCRA 67, 76.

[3] Dated December 13, 2004, rollo (G.R. Nos. 166143-47), pp. 3-51.

[4] Concurred in by Commissioners Benjamin S. Abalos, Sr. (Chairman), Rufino S.B. Javier, Resurreccion Z. Borra, Florentino A. Tuason, Jr., Virgilio O. Garcillano, and Manuel A. Barcelona, Jr., with Commissioner Mehol K. Sadain dissenting, rollo (G.R. Nos. 166143-47), pp. 52-64.

[5] Dated February 15, 2005, rollo (G.R. No. 166891), pp. 4-27.

[6] By Commissioners Rufino S. Javier (Presiding Commissioner), Resurreccion Z. Borra (Member), and Virgilio O. Garcillano (Member), rollo (G.R. No. 166891), pp. 28-33.

[7] Rollo (G.R. No. 166891), pp. 48-51.

[8] Dated May 14, 2004 (for the Municipality of Maimbung, Sulu), rollo (G.R. Nos. 166143-47), pp. 73-80.

[9] Dated May 14, 2004 (for the Municipality of Luuk, Sulu), rollo (G.R. Nos. 166143-47), pp. 88-95.

- [10] Dated May 13, 2004 (for the Municipality of Tongkil, Sulu), rollo (G.R. Nos. 166143-47), pp. 106-113.
- [11] Dated May 13, 2004 (for the Municipality of Panamao, Sulu), rollo (G.R. Nos. 166143-47), pp. 130-137.
- [12] The respondent COMELEC consolidated this petition with the other four petitions because they are closely related. See rollo (G.R. Nos. 166143-47), no. 3.4, p. 16.
- [13] See rollo (G.R. Nos. 166143-47), pp. 81-87, 96-105, 114-129, 138-153, and 166-194.
- [14] Id. at 81-82, 83, 85, 86, 87, 84, respectively.
- [15] Id. at 96 (Joint-Affidavit), id., 97-98 (Joint-Affidavit), id., id., id., 99-100, id., 102 (Joint-Affidavit), id., 103, 104 (Joint-Affidavit), id., id., id., id., id., 101 (Joint-Affidavit), id., id., id., 105, id., respectively.
- [16] Id. at 114-116 (Joint-Affidavit), id., id., id., id., id., id., id., id., id., id., id., id., id., id., id., id., 117-118, 128 (Joint-Affidavit), 126-127, respectively.
- [17] Id. at 119-125.
- [18] Id. at 138-139, id., id., id., id., id., id., 142-143, 144, 145-146, respectively.
- [19] Id. at 147-151.
- [20] Id. at 169-170, id., id., id., id., id., id., 172-173, 174-175, id., 176-177, 178-179, 180-181, id., 182-183, 184-185, id., 166-168, respectively.
- [21] Id. at 186-194.
- [22] Id. at 171.
- [23] Petitioner's Memorandum, rollo (G.R. No. 166891), p. 197, par. 7.
- [24] Id. at 197-198, par. 9.
- [25] Issued by Commissioners Rufino S.B. Javier, Resurreccion Z. Borra, and Virgilio O. Garcillano, rollo (G.R. Nos. 166143-47), pp. 153-157.
- [26] Rollo (G.R. Nos. 166143-47), pp. 158-161, by Commissioners Rufino S.B. Javier and Resurreccion Z. Borra.
- [27] Rollo (G.R. No. 166891), pp. 52-65.
- [28] Rollo (G.R. No. 166891), pp. 52-65.
- [29] Rollo (G.R. Nos. 166143-47), pp. 52-64.
- [30] G.R. No. 142907, November 29, 2000, 346 SCRA 571, 588.
- [31] Batas Pambansa Blg. 881.
- [32] G.R. No. 78302, May 26, 1987, 150 SCRA 665, 669.
- [33] Rollo (G.R. Nos. 166143-47), pp. 65-72.
- [34] See Comelec Resolution No. 6932, dated May 9, 2004, Annex 1 of Governor Loong's Comment to the Petition, rollo (G.R. Nos. 166143-47), pp. 251-252.
- [35] G.R. No. 124089, November 13, 1996, 264 SCRA 125.
- [36] G.R. No. 139028, April 12, 2000, 330 SCRA 736.

[37] Rollo (G.R. No. 166891), pp. 71-80.

[38] Supra note 6.

[39] Rollo (G.R. No. 166891), pp. 34-44.

[40] Supra note 7.

[41] Joint Resolution, dated March 18, 2005, per Commissioners Rufino S.B. Javier, Resurreccion Z. Borra, and Virgilio O. Garcillano, rollo (G.R. Nos. 166143-47), pp. 255-259.

[42] Supra note 3, at 19-20.

[43] 20 Am Jur 2d, Courts § 71, p.435 (citations omitted).

[44] CONSTITUTION, Art. VIII, Sec. 13.

[45] Sec. 6. Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices (emphasis supplied). Such rules however shall not diminish, increase, or modify substantive rights.

[46] Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies (emphasis supplied). All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

[47] Sec. 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court (emphasis supplied).

[48] Supra note 35.

[49] Supra note 36.

[50] Coca-Cola Bottlers Phils., Inc., et al. v. Daniel, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 505, citing *Lim v. Queensland Tokyo Commodities, Inc.*, G.R. No. 136031, January 4, 2002, 373 SCRA 31, 41. Lim held that:

[T]his Court cannot now, for the first time on appeal, pass upon this issue. For an issue cannot be raised for the first time on appeal. It must be raised seasonably in the proceedings before the lower court. Questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal.

[51] G.R. No. 151944, January 20, 2004, 420 SCRA 365, 377.

[52] Citing *Telephone Engineering & Service Co., Inc. v. WCC*, G.R. No. L-28694, May 13, 1984, 104 SCRA 354, 360.

[53] Citing *De Castro v. Court of Appeals*, G.R. No. 49158, January 31, 1946, 75 Phil. 824, 834.

[54] *Id.*

[55] Citing *supra* note 51.

[56] Citing *supra* note 52; *Dayrit v. Gonzales*, G.R. No. 2787, December 11, 1906, 7 Phil. 182, 182-183.

[57] Citing *Gonzales-Precilla v. Rosario*, G.R. No. L-29306, May 29, 1970, 33 SCRA 228, 232.

[58] Citing *People v. Ocampo*, G.R. Nos. 90247-49, February 13, 1992, 206 SCRA 223, 229; *People v. Go*, G.R. No. 11601, March 14, 2001, 354 SCRA 338.

[59] G.R. No. 139843, July 21, 2005, 463 SCRA 671, 678.

[60] G.R. No. 116839, July 13, 1998, 292 SCRA 469.

[61] Citing *Association of Marine Officers and Seamen of Reyes and Lim Co. v. Laguesma*, G.R. No. 107761, December 27, 1994, 239 SCRA 468.

[62] G.R. No. 111080, April 5, 2000, 329 SCRA 652.

[63] *Rollo* (G.R. Nos. 166143-47), pp. 253-254.

[64] See *Comelec Resolution No. 6932*, *supra* note 34, at 251. The Resolution embodied Commissioner Barcelona's Memorandum, which reads:

For purposes of the national and local elections on May 10, 2004, the undersigned Commissioner-in-Charge, Region IX, by virtue of his authority under *Comelec Resolution No. 6695* promulgated on April 13, 2004, hereby approves and adopts the clustering of voting centers as recommended in the memorandum with the attached modified clustering proposal for the province of Sulu submitted by Director Helen G. Aguila-Flores, Regional Election Director, Region IX, in consultation with Col. Joel P. Ibañez, Operations Officer of the Southern Command, BGen Gabriel A. Habacon, Commanding General of the Joint Task Force Comet, Mr. Reynaldo S. Pescadera, OIC-PES, Sulu, and all Election Officers, [in] said Province.

[65] *Id.*

[66] See Commissioner Sadain's signatures in *Comelec Resolution No. 6932*, dated May 9, 2004, Annex 1 of Governor Loong's Comment to the Petition, *rollo* (G.R. Nos. 166143-47), p. 252, and *Comelec Resolution No. 6695*, Annex 2 of Governor Loong's Comment to the Petition, *rollo* (G.R. Nos. 166143-47), p. 254.

[67] *Supra* note 31.

[68] The pertinent section reads:

Sec. 4. Postponement, Failure of Election and Special Elections.—The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes or the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.

[69] *Carlos v. Angeles*, *supra* note 30, at 588-589.

[70] G.R. No. 134696, July 31, 2000, 336 SCRA 701, 711.

[71] *Id.*, citing *Typoco v. COMELEC*, G.R. No.136191, November 29, 1999, 319 SCRA 498, 506.

[72] Citing *Mitmug v. COMELEC*, G.R. Nos. 106270-73, February 10, 1994, 230 SCRA 54, 60.

[73] *Banaga, Jr. v. COMELEC*, *supra*.

[74] CONSTITUTION, Art. VIII, Sec. 5 (2) (e).

[75] See *Bataga, Sr. v. COMELEC and Tan* [Resolution], G.R. Nos. 150965-66, January 15, 2002, citing *Mohammad v. Commission on Elections*, G.R. No. 136384, December 8, 1999, 320 SCRA 258; *Malonzo v. COMELEC*, G.R. No. 127066, March 11, 1997, 269 SCRA 380.

[76] *Supra* note 29, at 60.

[77] *Cordero v. COMELEC*, G.R. No. 134826, July 4, 1999, 310 SCRA 118, 126, citing *Casimiro v. COMELEC*, G.R. Nos. 84462-63 & 84678-79, March 29, 1989, 171 SCRA 468.

[78] *Supra* note 29, at 61.

[79] *Id.* at 61-62.

[80] *Supra* note 35.

[81] *Supra* note 36.

[82] *Supra* note 70.

[83] *Id.* at 713.

[84] *Id.*

[85] *Supra* note 31.

[86] *Dagloc v. COMELEC*, G.R. No. 138969, December 17, 1999, 321 SCRA 273; *Dimaporo v. COMELEC*, G.R. Nos. 93201-04 & 93205, June 26, 1990, 186 SCRA 769, and other cases.

[87] *Supra* note 23.

[88] *Id.*

[89] *Rollo* (G.R. No. 166891), p. 103.

[90] *Rollo* (G.R. No. 166891), pp. 29-30.

[91] G.R. Nos. 111624-25, March 9, 1995, 242 SCRA 273.

[92] *Id.* at 286, citing other cases.

[93] Petitioner's Memorandum, *rollo* (G.R. No. 166891), p. 207.

[94] *Rollo* (G.R. No. 166891), p. 22.

[95] *Bandala v. Comelec*, *supra* note 2.

[96] G.R. No. 123230, April 18, 1997, 271 SCRA 733.

[97] *Id.* at 756.

[98] G.R. No. 164922, October 11, 2005, 472 SCRA 380, 409-410, citing *Aguam v. COMELEC*, G.R. No. L-28955, May 28, 1968, 23 SCRA 883.

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