

MAHADI M. PIMPING, PETITIONER, VS. COMELEC AND SALAM N. PANGADAPUN, RESPONDENTS.*G.R. Nos. 69765-67. November 19, 1985*

Ponente: ALAMPAY, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-69765-67/>**ALAMPAY, J.:**

On February 4, 1985, a petition for certiorari was filed with this Court by MAHADI M. PIMPING, the official candidate of the Kilusang Bagong Lipunan (KBL) who ran for and was voted for the office of Vice-Mayor in the City of Marawi, Lanao del Sur, in the local elections held on January 30, 1980. Said petition was docketed as SC-G.R. Nos. 69765-67. Named as respondents are the Commission on Elections (Comelec) and Salam N. Pangadapun, the official candidate of the Nacionalista Party, who was the rival candidate of the Petitioner for the same said office of Vice-Mayor of Marawi City during the election held on January 30, 1980.

On February 5, 1985, there was also filed in this Court a similar but separate petition for certiorari by Habib Ali, Ombra Tomawis, Uttoh Banisil, Salem Nor and Ibrahim Didaagun, all of whom were the official candidates of the KBL for the Office of the Sangguniang Panglungsod of Marawi City in the same January 30, 1980 local elections, with the COMELEC as public respondent and naming as private respondents Omar Macabalang, Asis Alablangan, Ombawa Madum, Nasser Batara and Magadapa Adiong who were the official candidates of the Nacionalista Party (NP) who ran for the same office aspired for by Petitioners.

On February 12, 1985, Rashid D. Sampaco, the protestant in EPC No. 80-35-1, one of the three election protests cases resolved under the Comelec Resolution of January 7, 1985, filed his own separate petition for certiorari against said Resolution, assailing the decision therein rendered by the Comelec against him. The protestee therein, Omar M. Dianalan, of the KBL party who was proclaimed winning candidate for the office of Mayor of Marawi City, no longer occupies said position having been elected as Member of the Batasang Pambansa in the subsequent election held on May 14, 1984. It is now the contention of Petitioner Rashid D. Sampaco, that respondent Comelec, under its challenged Resolution of January 7, 1985 and its Order of January 29, 1985, erred or committed grave abuse of discretion in not annulling and excluding from the final canvass the election returns of 23 other additionally protested voting centers which could have changed in his favor the result of the stated election for mayorship in dispute and in declaring his opponent Omar Dianalan as the duly elected mayor of Marawi City. Said petition of Rashid D. Sampaco, docketed as G.R. No. 69846, claims as erroneous the Resolution of the Comelec of January 7, 1985, ordering the turn over of the position of City Mayor of Marawi City to Salam N. Pangadapun, who was declared and proclaimed by the Comelec as the Vice Mayor-elect of said City.

In our Resolution of February 7, 1985, this Court, after considering the pleadings, resolved to require respondents to submit the corresponding comment to the respective petitions.

By the resolution of this Court dated March 21, 1985, G.R. Nos. 69773-75 (Habib Ali, et al.) was consolidated with G.R. Nos. 69765-67 (Mahadi M. Pimping vs. Comelec, et al.). In another resolution of the Court dated April

11, 1985, G.R. No. 69846 (Rashid D. Sampaco vs. Commission on Elections, et al.) was also consolidated with the two related cases, which were already consolidated under the stated earlier resolution of March 21, 1985.

The petitions filed in the three said cases relate to the joint resolution dated January 7, 1985 of Respondent Comelec in EPC No. 80-35-2, resolving the election protest of Salam N. Pangadapun against Mahadi M. Pimping; to EPC No. 80-35-3, resolving the election protest of the private respondents, Omar Macabalang, et al. in G.R. Nos. 69773-75, against the Petitioners Habib Ali, et al.; and to EPC No. 80-35-1, which is the election protest of Rashid D. Sampaco against Omar M. Dianalan.

In all these petitions, it is prayed that a temporary restraining order be issued by the Court enjoining the private respondents in said G.R. Nos. 69765-67 and G.R. Nos. 69773-75 from "assuming and discharging the duties and exercising the powers" of the corresponding positions in the city government of Marawi City, which private respondents in said cases were declared to be entitled by the Comelec in its Resolution of January 7, 1985.

Petitioners bewail the action taken on the respective motions for reconsideration of said Resolution of January 7, 1985, which the Comelec denied for lack of merit and for being pro forma under its Order of January 29, 1985. Therein, the COMELEC further stated the following:

"As prayed for, the DECISIONS dated January 7, 1985 is hereby declared to be final and executory. No further Motions for Reconsideration will be entertained."

When public and private Respondents were required to comment on the matter of Petitioners' plea for the issuance of a temporary restraining order enjoining implementation of the challenged Resolution of the Comelec dated January 7, 1985, they, in compliance with the directives of the Court, manifested that the execution of Comelec's challenged Resolution dated January 7, 1985 is already a *fait accompli* and thus a restraining order is unavailing to petitioners (Rollo, G.R. Nos. 69765-67, pp. 101-108). Similarly, the Comelec, in the comment submitted for it by the Solicitor General's Office, confirmed that "the acts in question are accomplished facts" which, "having been consummated" may no longer be restrained. In the same vein did the private Respondents in G.R. Nos. 69773-75 comment on Petitioners' motion for the issuance of a temporary restraining order.

Private Respondent Salam N. Pangadapun went further to add in her comment that: —

"5. The respondent Commission on Elections, being the sole judge of all contests relating to the election of elective city officials, has sole authority to adjudge the winning candidate in the subject elections protests and to order the assumption to office of these winning candidates. An order from the Minister of Local Government and Community Development is not at all necessary to implement the decision of the Comelec." (Rollo, G.R. Nos. 69765-67, p. 110)

Without any other action being taken by the Court on the matter of the temporary restraining order prayed for by petitioners, the corresponding comment of the respondents on the respective petitions filed in these cases were subsequently received by the Court.

On March 18, 1985, there was filed by private Respondent Salam N. Pangadapun in G.R. Nos. 69765-67 an urgent ex-parte motion for the issuance of a restraining order enjoining Petitioner Mahadi M. Pimping, from assuming the Office of Mayor of Marawi City and/or from otherwise interfering in any manner with the exercise by private Respondent of the functions of that office, until and unless otherwise ordered by the Court. The Court saw no compelling need to act on said motion of private Respondent Salam N. Pangadapun, considering that these cases could be already resolved on the merits thereof, as the pleadings and annexes thereto submitted by the parties furnish the pertinent facts.

The facts in these cases, as correctly summarized in the subject resolution of the Commission on Elections,

promulgated on January 7, 1985, are no different from and are substantially the same as the facts made by Petitioners in their respective pleadings. The undisputed facts are the following:

"These are election protests involving the offices of City Mayor, Vice-Mayor and Sangguniang Panglungsod in Marawi City in the local elections of January 30, 1980. The protestants are the official candidates of the Nacionalista Party while the Protestees are the official candidates of the Kilusang Bagong Lipunan.

"EPC No. 80-35-1 with Rashid D. Sampaco as Protestant and Omar M. Dianalan as Protestee involve the Office of City Mayor.

"EPC No. 80-53-2 with Salam N. Pangadapun as Protestant and Mahadi M. Pimping as Protestee involve the Office of the Vice-Mayor.

"EPC No. 80-35-3 with Ombawa Madum, Omar Macabalang, Nasser Batara, Magadapa Adiong, and Hadji Azis Alablangan as Protestants, and Ombra Tomawis, Habib Ali, Ibrahim Dacasum, Uttoh Banisil and Salim Nor as Protestee involve the Offices of Sangguniang Panglungsod.

"These cases were jointly heard by the Commission en banc under Section 189 of the 1978 Election Code which provides that a sworn petition contesting the election of any city officials shall be filed with the commission by any candidate for the same office within ten days after the proclamation of the results of the election.

"The protestees were proclaimed elected in their respective offices on February 7, 1980.

"The certificate of canvass shows the following total number of votes obtained by the candidates:

"CITY MAYOR

NO. OF VOTES

SULTAN OMAR DIANALAN

13,761

SULTAN RASHID SAMPACO

8,723

"VICE-MAYOR

ATTY. MAHADI PIMPING

11,983

SALAM PANGADAPUN

9,966

"SANGGUNIANG PANGLUNGSOD

HABIB ALI

11,279

OMBRA TOMAWIS

11,261

IBRAHIM DIDA-AGUM

10,432

UTTOH BANISIL

10,548

SALIC SALEM

9,977

OMAR MACABALANG

9,851

MAGADAPA ADIONG

9,049

OMBAWA MADUM

9,122

HASSER BATARA

9,975

AZIS ALABLANGAN

8,907

"The election protests allege that the protestees and their henchmen and cohorts, with the active support of the military, used, employed and resorted to large scale terrorism including threats, coercion, and intimidation; massive frauds, such as substitution of voters, illegal use of ID cards, tampering and/or manufacture of official ballots and election returns; widespread bribery and vote-buying, and other serious irregularities, to obtain votes at all costs, in the specified voting centers of Marawi City.

"xxxx xxxx xxxx

"The Protestees filed their respective Answers and Counter-Protests.

"The counter-protests are based upon grounds of substitution of voters, intimidation, frauds and other serious election irregularities likewise generally and specifically denied by the Protestees.

"On February 28, 1980, the Commission dismissed Pre-Proclamation No. 175 involving the same parties for lack of merit, the proper remedy under the facts and grounds alleged being an election protest, not a pre-proclamation proceedings.

"Hence, on March 10, 1980, the Protestants filed these election protests before this Commission.

"On July 18, 1980, the Commission issued an Order allowing the Protestants' handwriting and fingerprint experts to examine the book of voters, voting records, list of voters and registration forms used in the voting centers subject of the protests.

"On December 10, 1980, this Commission further authorized the "examination of ballot boxes, election paraphernalia and list of official ballots and their contents" by the protestants.

"On January 12, 1981, this Commission likewise allowed the protestees' handwriting and fingerprint expert the same right to examine the pertinent election documents and other election paraphernalia used in Voting Center Nos. 1, 5, 10, 16, 28, 36, 36-A, 43, 48, 53, 54, 69, 80, 38, 81-A, 98, 99, 109, 116, 117, 118, 119, 128, 129, 131 and 137.

"From August 1980 up to November 1982, the protestants' expert, Martin S. Ramos, conducted his examination during which examination the protestees were represented at all times by Adap Pimping and Alex Maruhum.

"Eduardo Maniwang was submitted as the official representative expert of the Protestees.

"The examination of Martin Ramos was interrupted when certain Books of Voters have to be sent to Marawi City for use in the April 7, 1981 Plebiscite and Barangay Elections on May 17, 1982.

"Mr. Martin Ramos terminated his examination and submitted his written report to the Commission on March 7, 1983 (Exhibits A, A-1 and A-2, Pangadapun), copies of which were furnished the Protestees' counsel.

"Surprisingly, the Protestees never conducted the examination of the election paraphernalia as authorized by the Order of January 12, 1981. Instead, the Protestees filed on February 7, 1983, a Motion for the examination of the same election paraphernalia.

"The hearing scheduled on August 17-18, 1983 was cancelled in view of the Order granting the Protestees a period of five (5) months from August 17, 1983 within which to make re-examination of the election records.

"The Protestees started the examination of the election records on September 8, 1983.

"On December 28, 1983, the Protestees filed a Motion praying, among others, for an extension of four (4) months counted from February 8, 1984 within which to continue examining the election records. The Commission granted the Protestees until February 29, 1984 to finish the examination.

"On February 27, 1984, the Protestees filed an Omnibus Motion praying, among others, for an Order to require the Parties to immediately submit the names of the revisors. Considering this move of the Protestees as dilatory, this Omnibus Motion was denied by the Commission and the case was set for hearing on a date after the May 14, 1984 Batasang Pambansa election.

"These cases were heard from June 13, 1984, until September 24, 1984 when these cases were deemed submitted for resolution after the submission of the respective Memoranda of the parties not later than October 9, 1984 and Reply-Memorandum, if any within five (5) days from receipt of Memoranda." (COMELEC Resolution of January 7, 1985, Rollo, G.R. Nos. 69765-67, pp. 34-36; pp. 38-41)

To the facts above recited should be included the averment of Petitioners in their petition that on February 4, 1980, private respondent filed a pre-proclamation case with the COMELEC entitled "NP represented by Rashid D. Sampaco, et al., Petitioners, versus Omar Dianalan, et al., Respondents" and docketed as Case No. 175 which was dismissed by the Comelec for lack of merit and that this dismissal of Comelec Case No. 175 was affirmed by the Supreme Court in Case No. G.R. 53454.

Private respondent Salam N. Pangadapun, however, in her comment to the petition (G.R. Nos. 69765-67) explained and stressed that:

"1. The dismissal of the pre-proclamation case entitled "NP represented by Rasid D. Sampaco, et al., petitioners vs. Omar Dianalan, et al., respondents" was indeed affirmed by the Supreme Court in G.R. 53454 but with the express reservation that the dismissal is without prejudice to the filing of petitioners therein of the election protest because the grounds relied upon are proper in an election contest." (Resolution dated 25 March 1980).

For this reason, her election protest, EPC No. 80-35-2 was, therefore, filed by said private respondent with the COMELEC.

While private respondent accepts as correct the submission of facts made by Petitioner Mahadi M. Pimping in G.R. Nos. 69765-67, she takes exception to the allegation in paragraph 9 of his petition that both parties asked Respondent Commission to order the revisions of the ballots. Respondent Salam N. Pangadapun insists that what was simply asked by the parties was for examination merely of the book of voters, voting records, ballots, and other election paraphernalia (Comment of Respondent Pangadapun, p. 2, par. 3, Rollo, G.R. Nos. 69765-67, p.

138).

The issue in said election protest cases, as well-stated by the COMELEC, is whether the frauds and election irregularities alleged in mentioned protests and counter-protests were so flagrant and massive as to warrant the nullification of the election in and the election returns of the voting centers where these are alleged to have occurred.

In this regard the Commission on Election stated the following:

"The issue in these cases is simple and clear and this is" Were the frauds and election irregularities alleged in the protest and counter-protest so flagrant and massive to warrant the nullification of the election in and the election returns of the voting centers where they were alleged to have occurred?

"From the evidence submitted by the Protestants and Protestees, We cannot avoid the inescapable conclusion that sufficient, convincing and direct evidences exist to support the allegations of serious irregularities in forty-three (43) voting centers, namely:

"Voting Centers Nos. 3, 4, 18, 31, 35, 35-A, 37, 39, 46, 49, 50, 53, 55, 59, 60, 62, 65, 68, 72, 76, 82, 83, 90, 91, 92, 100-A, 100-B, 100-C, 104, 107, 108, 110, 111, 114, 120, 121, 122, 123, 126, 130, 134, 135, 144."

"In these forty-three (43) voting centers we find the evidences of the Protestants overwhelming, convincing and direct to substantiate the allegations of widespread fraud, intimidation, coercion, violence, threats, and other irregularities so serious, flagrant, massive and of such compelling character that led us to conclude that there was a mockery of the election in these voting centers which justifies a declaration that these election returns are devoid of value as to be completely unworthy of inclusion in the canvass of the election result.

"It goes without saying, therefore, that the protests or counter-protests with respect to the voting centers other than these 43 voting centers, we find and so hold that the evidences submitted are insufficient and cannot warrant the annulment of the election therein or the election returns thereof.

"Protestants' first and principal witness, Mr. Martin S. Ramos, is the handwriting and fingerprint expert whose testimony and examination report clearly show the irregularities which when added to the totality of the testimonies of fifty-one other witnesses who narrated actual occurrences of violence, intimidation and frauds during the registration of voters and during the actual voting convincingly compel us to find and hold a declaration of nullity of the election and election returns in these 43 voting centers.

"Protestants' principal witness, Martin S. Ramos testified on direct testimony and identified three (3) volumes of his Examination Report, Exhibits A, A-1 and A-2 - Pangadapun. His main examination report, Exhibit A-Pangadapun contain the following findings:

"Registration of Voters

"The result of my examination of the C.E. Form No. 1 of the 51 protested voting centers, the presence of not identical as well as unidentifiable thumbmarks which are either smudged, too light or fragmentary, consists of more than 55 to 70% of the registered voters xxx.

"In the process of comparison between the thumbmarks in C.E. Form No. 1 with the corresponding thumbmarks in C.E. Form No. 5, when one or the other, is smudged, too light, or fragmentary, a 'NO BASIS' conclusion. These were noted in many voting centers.

"xxx xxx xxx

"xxx the presence of some clear and identifiable prints in the C.E. Form No. 1 compilation of the voting centers show that the voting committee could have taken or required clear prints if they wanted to. The presence of a

majority of unidentifiable smudged, too light or fragmentary impressions could not have escaped the notice of the voting committee if the registration of the voters was proper and orderly unless they did not choose to supervise properly the registration of voters, thereby making it faulty if not fraudulent. MULTIPLE registration were noted in several voting centers as recorded in the COMPARATIVE REPORT of the signatures and fingerprint analysis in accompanying this report.

"A comparison of the signatures and thumbmarks of the registered voters in C.E. Form No. 5 of 40 contested voting centers show the presence of many illegal voters as well as doubtful voters under the 'NO BASIS' category consisting of more than 55 to 70% of the registered voters. These are all recorded in detail in the MASTER EXAMINATION sheets per voting center accompanying this report.

"In many instances, the Voting Records show the names of the voters in ALPHABETICAL order as their names appear in the compiled registration forms. This is highly improbable in an orderly and clean election considering that voters go to the polls at random. These alphabetical order of voting were noted in Voting Centers Nos. 3, 4, 46, 50, 53, 76 and 114.

"In 2 voting centers, the stubs and/or coupons of the ballots were not detached from the ballot thereby violating the secrecy of the ballots. These were noted in voting centers Nos. 46 and 126.

"In all contested voting centers, illiterate voters were allowed to vote without recording the names of the person who represented them or who voted for them as provided in C.E. Form No. 11. In Voting Center No. 3 there are 126 registered illiterate voters; all of them cast their votes without the required notation by the voting committee in C.E. Form No. 11.

"In many cases, voters without C.E. Form No. 1 were allowed to vote again, without the proper notation on C.E. Form No. 11 as found rampantly in Voting Centers 100 and 100- A. This was also noted in the other protested voting centers.

"In many instances, C.E. Form No. 5 was not properly signed by the voting committee as noted in Voting Centers Nos. 31, 39, 46, 50, 74, 83, 92, 108, 110, 114, 121 and 123. Voting Centers 108 and 134 were not signed at all.

"In Voting Center No. 18, voters themselves entered their names in the Voting Record indicating that there was no poll clerk to fill in the voting record (C.E. Form No. 5).

"The presence of BIG KBL WRITINGS were noted in voting centers Nos. 39, 59, 62, 72, 74, 82, 108, 110, 111, 126, 130, 134, 135, and 144. Some were obviously prepared by the same hand.

"Similar handwritings on the ballots were grouped accordingly and itemized on a separate page attached to the report on Comparative Analysis.

"These findings were all un-rebutted by protestees. The only possible explanation for protestee's failure to rebut this clear and convincing evidence is because it is TRUE. Not only was Ramos able to testify about the truth; he was able to show it convincingly and clearly by photographic illustrations of his findings. (Exhibits B-16 to 45; C-15 to 24; D-18 to 43; E-7 to 26; F-17 to 50; G-16 to 35; H-15 to 48; I-19 to 134; J-10 to 33; L-13 to 50; M-10 to 28; O-19 to 71; P-14 to 35; Q-14 to 32; R-13 to 26; S-10 to 17; T-14 to 40; U-9 to 34; V-2 to 7; W-25 to 72; X-12 to 51; Z-9 to 29; AA-9 to 33; BB-24 to 62; EE-21 to 31; FF-16 to 38; GG-26 to 87; II-22 to 52; JJ-15 to 37; KK-12 to 39; LL-11 to 31; MM-13 to 32; NN-11 to 62; OO-10 to 29; PP-7 to 28; PP-16 to 60; RR-14 to 52; SS-8 to 37; TT-13 to 41; and VV-8 to 10).

"A convincing illustration is Exhibit "BB-44-Pangadapun" and "BB-45-Pangadapun", showing that the voter OMAR UMPAR who actually voted evidenced by the signature and thumbprint in C.E. Form 5 is different from

the person OMAR UMPAR who registered as evidenced by the signature and thumbprint in C.E. Form 1.

"Ramos' findings of the flagrant and widespread frauds and irregularities were all supported by the oral evidence (51 witnesses) presented by the protestant.

"Protestant's testimonial evidences proved the use of identification card engraved "I am for New Society (Exh. YY-2) and another identification card (Exh. AAA-1), signed by Omar Dianalan, Monil Maruhom, and facsimile of Col. Cesar Templo used by KBL flying voters to facilitate voting in different voting centers stand un rebutted and uncontradicted. Also, the use of AMT vehicles (Exh. YY-1) bearing red circle on the front windshield in transporting KBL flying voters in different voting centers on election day on January 30, 1980, remains un rebutted by protestees. The explanation offered by one Solaiman Ibrahim, alleged AMT Inspector, confirmed instead the use of said AMT vehicles on election day for delivery of voters to different barangays and even transporting them from Cagayan de Oro and Iligan City to Marawi City.

"The credibility of protestant's evidence of widespread frauds, violence and irregularities is supported by the timely complaints/reports made by them to the Provincial Commander Col. Abelardo Quicoit (Exh. "GGG-4-4-Pangadapun". telegram sent to the Comelec — Exh. GGG-5-Pangadapun to GGG-7-Pangadapun) on election day and the following day.

"The 55 to 70% findings of Mr. Ramos clearly show that these election frauds and irregularities were so massive, diffusive and flagrant which compel us to declare the nullification of the entire election results of the 43 contested voting centers.

"On the part of the protestees, they presented a total of 41 witnesses. Their first set of witnesses focused on their denial of the confirmed frauds and election irregularities committed on Election Day in the 51 contested voting centers.

"These denials are lamed as they all appear orchestrated. Those witnesses executed affidavits which were similar in form and substance. There are two sets of these affidavits:

"a. One set those which alleged the following: the election was conducted peacefully, honestly and cleanly and without fraud, and irregularities nor violence, threats or intimidation.

"b. The second set of affidavits alleged the following: the election was held from 7 a.m. to 6 p.m. and it was done honestly, cleanly and peacefully. That only qualified and duly registered voters were allowed to vote contrary to the allegations that there were flying voters, non-registered voters and minors who were able to cast their votes. That after the casting of votes, the result was counted and entered in the election return in the pre-sence of official watchers of the KBL and NP candidates."

"The testimony of protestee Pimping, who incidentally did not execute any affidavit, should be included in this category as he merely denied all the allegations of the protest.

"The same is true with the testimony of Omar Dianalan, who did not execute affidavit. But on cross, he admitted that the voting in thirteen (13) voting centers (Nos. 15, 30, 41, 52, 58-A, 63, 77, 84, 89, 94, 103, 105 and 129) was orderly and peaceful. Thus, disproving the allegations of protestee Pimping that frauds were committed in said counter-protested voting centers.

"xxxx xxxx xxxx

"The other set of witnesses (6 witnesses) tried to establish the alleged fraud and irregularities in the counter-protested voting centers. These witnesses were found to be lying. Sadly, protestees totally failed to establish their allegations in their counter-protests:

"xxxx (Resolution of the Comelec, promulgated on January 7, 1985, pp. 41-47, Rollo, G.R. Nos. 69765-67)

The Commission, therefore, was led to declare:

"xxx We now, therefore, declare a finding of nullity of the election in and the election returns of the forty-three (43) voting centers herein earlier enumerated where we find and so hold that sufficient, convincing and direct evidences compel us to make such declaration. Accordingly, these voting centers should be excluded from the canvass and tabulation of the election results." (Rollo, p. 53, Ibid.)

On the authority of the pronouncements made by the Supreme Court in *Usman vs. Comelec*, 22 SCRA 978, cited in its Resolution, the Comelec, in all these election protest cases, ruled:

"Several circumstances, defying exact description and dependent mainly on the factual milieu of the particular controversy, have the effect of destroying the integrity and authenticity of disputed election returns and of avoiding their prima facie value and character. If satisfactorily proven, although in a summary proceeding, such circumstances as alleged by the affected or interested parties, stamp the election returns with the indelible mark of falsity and irregularity, and, consequently, of unreliability, and justify their exclusion from the canvass." (Rollo, pp. 53-54, Ibid.)

"xxx xxx xxx

"All the foregoing premises considered this Commission finally RESOLVES to declared and proclaim the following winners in the January 30, 1980 election in Marawi City:

"CITY MAYOR

—

OMAR M. DIANALAN

VICE-MAYOR

—

SALAM N. PANGADAPUN

"MEMBERS SANGGUNIANG PANGLUNSOD

1. OMAR SULTAN ALIMACA BANANG
2. HADJI ASIS ALABLANGAN
3. OMBAWA B. MADUM
4. BATARA NASSER
5. ADIONG MAGADAPA

"The proclamation made by the board of can-vassers on February 7, 1980 is hereby set aside and annulled; and to direct accordingly thereby as follows:

"1. Mayor Mahadi Pimping to vacate and turn over to SALAM N. PANGADAPUN the position of City Mayor

considering that the former assumed the office of Mayor by virtue of his proclamation as Vice-Mayor which is hereby annulled;

"2. Vice-Mayor Mahib Ali to vacate and turn over to OMAR SULTAN ALIMACA BANANG the position of Vice-Mayor by virtue of his proclamation as No. 1 Member, Sangguniang Panglungsod which is hereby annulled:

"3. Ombra Tomawis, Ibrahim Dacasum, Uttoh Banisil and Salim Nor to vacate and turn over the position of Member, Sangguniang Panglungsod to OMBAWA B. MADUM, HADJI ASIS ALABLANGAN, BATARA NASSER and ADIONG MAGADAPA.

"SO ORDERED."

In said Resolution, Commissioner Ramon H. Felipe, Jr., however, stated: —

"I abstained in view of lack of necessary revision of ballots in the protested and counter-protested precincts in spite of the long pendency of this case for the past 4 years, which revision would have furnished us an impartial basis for a fair decision." (Rollo, p. 61, G.R. Nos. 69765-67; also on p. 55, Rollo, G.R. Nos. 69773-75).

Significantly, however, Commissioner Felipe, Jr. later concurred with the Chairman of the Election Commission and the five other members of the Commission when they unanimously denied on January 29, 1985 the protestees' (petitioners herein) motion for reconsideration on the subject Resolution of January 7, 1985. Commissioner Felipe, Jr. apparently reconsidered the view and earlier expressed by him, for in the Resolution of the Comelec dated January 29, 1985, denying the petitioners' motion for reconsideration, Commissioner Ramon Felipe, Jr. indicated the reason for this subsequent action taken him. He stated: —

"I concur, it appearing that protestees filed their motion for revision of ballots in the protested and counter-protested voting centers on February 7, 1984, and it was only October 8, 1984 that they filed another motion for revision of ballots in the counter-protested voting centers only which was quite too late, considering that barely over a year remained of the term of office and any revision of ballots at that stage would make this case moot and academic." (Rollo, p. 57, G.R. Nos. 69773-75).

In Our consideration of these three related cases what is readily evident is that the common and principal argument of petitioner Mahadi M. Pimping (in G.R. Nos. 69765-67) and petitioners Habib Ali, et al. (in G.R. Nos. 69773-75) — that the Comelec acted capriciously and with grave abuse of discretion in annulling the election and election returns in 43 voting centers specified in its Resolution of January 7, 1985.

On the other hand, and to the contrary, Rashid D. Sampaco, the petitioner in G.R. No. 69846, expressly and absolutely agrees with the reasons and the ruling of the Comelec in the same subject Resolution annulling the election result in the mentioned 43 voting centers involved in the election protest cases. (Motion for Reconsideration, p. 4, dated January 23, 1985, filed by Protestant Rashid D. Sampaco in EPC No. 80-35-1; Annex "F" of Petition in G.R. No. 69846, page 167 of said Rollo). Petitioner Sampaco, however, submits that the Comelec erred or committed grave abuse of discretion in not annulling also the election returns in twenty-three (23) other voting centers, namely Voting Centers Nos. 58, 75, 100, 143, 145, 8, 13, 17, 21, 25, 27, 61, 94, 97, 112, 138, 140, 142, 89, 35-A, 11 and 6, upon its declaration that the evidence submitted are insufficient to warrant such annulment. Petitioner Sampaco contends that the same evidence which the Comelec considered and which served as basis for its ruling to set aside and annul the election returns of the 43 election centers should compel a similar action with respect to the above-referred twenty-three (23) election centers. From this premise, it is then argued by petitioner Sampaco that he should have been, therefore, the one proclaimed by the Comelec as the Mayor-elect of Marawi City and, therefore, entitled to said office, instead of Salam N. Pangadapun who merely aspired to be

the Vice-Mayor.

Petitioners Mahadi Pimping and Habib Ali, et al., to bolster their petitions impute to public respondent Comelec alleged errors such as, firstly, in considering the submitted affidavits of the witnesses of the private respondents as evidence in the election protest cases; and secondly, in not ordering a revision of the ballots involved in the election contest.

Further to this, said petitioners contend that the Comelec grievously erred in proclaiming the private respondents as the winning candidates in their election protest without first giving petitioners prior notice pursuant to the Comelec Rules for Election, Resolution No. 1458, which pro-vides that the promulgation of the Comelec decision shall be on a date previously fixed of which notice in advance shall be served in advance upon the parties and/or their counsel. Petitioners aver that such requisite notice was not furnished them and/or their counsel. To this extent, petitioners contend that respondent Comelec deviated from its rules to hasten the finality of its decision and, therefore, they were denied due process.

Petitioners also take exception to the Order of the Comelec dated January 29, 1985 denying the petitioners' motion for reconsideration of its Decision dated January 7, 1985 for lack of merit and for being pro forma and declaring its aforesaid decision as final and executory. Petitioner Pimping argues that as respondent Pangadapun was contesting in her election protest the Office of the Vice-Mayor of Marawi City, then if at all, said respondent should be made Vice-Mayor and not installed as Mayor.

The later petition of Rashid D. Sampaco in G.R. Nos. 69846 obviously cannot obtain any possible expectation of success if petitioners Mahadi Pimping and Habib Ali, et al. prevail in the instant cases presented by them respectively before this Court. Petitioner Sampaco's case hinge on the challenged Resolution of January 7, 1985 annulling the election and election returns in the 43 voting centers therein specified being maintained by this Court and on his expectation and hope that he can also obtain from this Court a similar declaration of nullity of the election in the 23 voting centers mentioned by him.

Accordingly, it would be appropriate to take up first and resolved the first two petitions which were filed by Mahadi M. Pimping and Habib Ali, et al.

We find no error on the part of the Commission on Elections in accepting as admissible evidence in the case at bar the respective affidavit of the witnesses of the parties, which said Commission cause to be submitted, subject to the rights of the litigants to ask additional direct questions and the opposing parties to cross examine said witnesses. The order issued by the Commission in this regard, dated August 30, 1984 (Annex "C" of the Petition in G.R. Nos. 69765-67), reflects the clear position mani-fested by the Comelec which was explained in open session and which reads in full as follows:

"When this case was filed, Atty. Omar Umbar manifested that he has only one witness with his affidavit. As early as August 14, this Commission already ordered that the respondent shall present their evidence in affidavits which will constitute as their direct testimonies and counsel for protestant will determine whether to cross examine them or not.

"In view of the fact that only one (1) witness, with one affidavit is available for today and in order to give counsel and the parties sufficient time to present their evidence in the form of affidavit to constitute the direct testimonies of witnesses; and in view also of the manifestations of counsel for protestants that if the affidavits will be presented, they might choose to waive the examination of the rest, this case is Ordered set for the last time to September 12 and 13, this year.

"It is understood that if the protestees will not be able to present their affidavits and their witnesses on said date, the Commission will be constrained to order the case submitted on the evidence already presented.

"Let these cases be called again on September 12 and 13 at 10:00 o' clock in the morning.

"Parties and their respective lawyers are notified in open session.

"Let the Clerk of Court furnish parties, through their respective lawyers, copy of this order.

"SO ORDERED.

"Given in open session this 30th day of August, 1984 at Manila, Philippines." (Rollo, pp. 32-33, G.R. Nos. 69765-67).

Significantly, petitioner Pimping himself states on page 6 of his petition that on October 9, 1980, Respondent Comelec declared that "the case and other protest cases for the mayoralty and members of the Sangguniang Panglungsod were deemed submitted for resolution on the basis of the report of the experts and affidavits submitted by the parties." From this acknowledgment of the petitioner, it can be noted that the Comelec would consider the case submitted for decision not merely on the basis of the affidavits of witnesses which the parties may submit but also on its appreciation of the evidence already presented by the parties litigants.

That the parties were required to submit affidavits of the witnesses which would then constitute and be considered as the direct testimonies of said persons, is not improper. It is a fair, valid and acceptable procedure. It is consistent with the summary character of election protest proceedings.

Thus, in the case of *Lucman vs. Dimaporo*, 33 SCRA 104 (1970) this Court upheld the admissibility of the affidavits of the witnesses despite the claim of the petitioner therein that such affidavits are hearsay evidence. There, as in the case at bar, the Commission had indicated its intention to determine the case on the basis of the affidavits and the documentary evidence introduced by the parties and it was with on such understanding that the parties filed affidavits in their favor and did not object to those submitted by the other.

After the issuance of the aforementioned Orders of the Commission dated August 30, 1984 and the mentioned order of October 9, 1984, calling for the submission of the affidavits of the witnesses of the parties, petitioners Pimping raise a proper challenge to said Order. As a matter of fact, as pointed out by public Respondent Commission in its consolidated comment, "petitioners themselves presented and marked in evidence the affidavits of their own witnesses, although they opted later not to formally offer them." (Rollo, pp. 232, G.R. Nos. 69765-67). In this connection, it should also be said that Respondent Commission did not rely solely on the challenged affidavits but upon the totality of the evidence in the cases at bar which includes the testimonies of the handwriting and fingerprint experts presented by the contending parties and their respective reports which indubitably establish the fact that the private respondents actually won in the questioned election.

It can be plainly seen that petitioners' assigned error in this regard is without any merit. As stated in the above-mentioned case of *Lucman vs. Dimaporo*, 33 SCRA 388 (1970): —

"Where upon agreement of parties the Commission on Elections decided the case on the basis of affidavits and documentary evidence submitted by the parties, one of the parties could not object thereto later on the ground that the admission of the affidavits would violate the rule on hearsay. The Commission on Elections is not a regular court of justice." (Rollo, p. 143, G.R. Nos. 69765-67).

It is also pertinent to add that it is an undesirable practice for a party submitting his case for decision and upon encountering an adverse judgment, complains and questions the procedure of the proceedings where he had submitted his own evidence and claimed affirmative belief.

Petitioners Mahadi Pimping and Habib Ali, et al., also claim as reversible error the alleged grave abuse of discretion on the part of the Comelec in not allowing a revision of the ballots in question. Their contention in his

regard is manifestly untenable.

Firstly, there is no actual basis supporting petitioner Pimping's allegation in his petition (par. 9, Petition, G.R. Nos. 69765-67, p. 5) that "the parties both asked respondent Comelec to order the revision of the ballot." Respondent Pangadapun rejects as misleading, incorrect and untrue said petitioner's averment. She maintains that what the parties actually prayed for in EPC Case 80-35-2 was for an examination only of the book of voters, returns, and other election paraphernalia for the purpose of appreciation and comparison of the signatures and thumbprints thereon, which the Comelec did allow. Thus, these were examined by the handwriting experts of the parties who rendered their respective reports.

In the transcript of the proceedings before the Comelec on June 2, 1980, as quoted by said respondent in her comment to the Petition, (Rollo, pp. 146-47, G.R. Nos. 69765-67) We find the following:

"xxx xxx xxx

"That respondent did not ask for any revision was confirmed during the hearing held on 26 June 1980:

"ATTY. SORIANO:

"As collaborating counsel for the protestant, we are not inclined to agree with the suggestion of counsel for protestee because in the first place, the protestants are not praying for the revision of ballots and in the second place, there are so many precincts involved in the entire province of Lanao and will be passed upon in case the protest will be taken up jointly with these cases and they will not entail so much delay as far as the determination of the three cases is concerned." (t.s., 26 June 1980, pp. 18-19)

"ASSEMBLYMAN FERNANDEZ:

"May we be clarified with the statement that the protestant is not asking for revision of the ballot box.

"CHAIRMAN SANTIAGO:

"Yes, please clarify that.

"ATTY. SORIANO;

"We mentioned the fact that we are not interested in the revision of the ballots. Even, in our protest, we did not mention that, if Your Honor please. But filed with the Commission is an urgent motion for the impounding of election paraphernalia, all materials, election forms, etc. that have been used in Marawi City. We want these materials and election forms to be impounded here in the Comelec because this will provide the main bulk of our evidence in the revision of the ballots themselves.

"CHAIRMAN SANTIAGO:

"Alright, after the impounding, what?

"ATTY. SORIANO:

"There will be here an examination of the thumbprints, the signatures of the voters in registration forms, as well as the forms provided after cer-tain voter has voted and expert's testimony will be presented to the Honor-able Commission. We will be filing, after it was impounded, a motion to allow our expert to examine these documents." (Ibid., pp.)

"COMMISSION OPINION:

"Will you refer to page 7 of this protest filed which to me are practically your prayer in number 3 says that the examination of the ballots, both registration forms and books of voters involved the order, When you say the examination of the ballots, do you mean or does it mean that you are going to ask for a revision of the ballots?

"ATTY. SORIANO:

"Not necessarily, Your Honor. Revision will entail the physi-cal counting of the different ballots case by the voters but the examination of the ballots may refer only to signatures of voters. (Ibid., pp. 20-22)

"ATTY. SORIANO:

"On this point, Your Honor, we have conferred gleanedly with the other counsel for the protetants and we have decided that we will forego the revision of the ballots.

"COMMISSIONER OPINION:

"Thank you. So, that is clear that you are going to forego the examination or the revision of the ballots themselves. We want you to make that of record counsel. Can you make your answer for the record?" (Ibid., pp. 25-26; emphasis supplied)

No controversion has been made by petitioners regarding the aforestated matter. It is, therefore, far from the truth to say that both parties asked the Comelec for a revision of the ballots.

On the part of respondent Comelec, it confirmed the fact: —

"xxx xxx xxx

"Firstly, neither the petitioners in their counter-protests nor the private respondents in their protest had alleged that a revision of ballots is necessary. Specifically, the petitioners merely prayed in their aforesaid

counter-protest that the examination of the ballots, voting registration forms, book of voters, list of voters, election returns in-volved be ordered for purposes of recounting, appreciation and comparison of the signatures and thumbprints thereon. This prayer of the petitioners was granted by respondent Commission." (Consolidated Comment, p. 13, Rollo, G.R. Nos. 69765-67, p. 233)

The Comelec further stated:

"xxx xxx xxx

"xxx Verily, on the basis of said report and the report submitted by the handwriting and fingerprint expert of private respondent Pangadapun, as well as the testimonies of the witnesses of said contending parties, respondent Commission found that there are more than sufficient convincing and direct evidence whereupon a fair decision could be rendered by them in the cases at bar as to the alleged massive and widespread election irregularities complained of by the private respondents. Surely, on the strength of the evidence of the private respondents, Respondent Commission could not be faulted in deciding the cases at bar without ordering a revision. x x x x x. (Ibid., p. 234)

In the very case of *De la Merced vs. Revilla*, 40 Phil. 190, cited by petitioner Pimping, this Court has indicated a situation where a revision or recount of the ballots would be unwarranted and dispensable in an election protest case. In the aforecited case, this Court stated: —

"xxx of course, there may be election protests which may be disposed of without a recount of the ballots cast. There may be cases where, by reason of the fraudulent manner on which the entire election was conducted, the Court would be justified in annulling and setting the election aside without an examination of the ballots. There may be cases also where all the ballots used at the election need not be examined." (Underlining supplied).

We are in complete accord with the Comelec's rulings that a recount of the ballots involved in the protest cases is not mandatory. The Comelec did not abuse its discretion in refusing to order the same to be done. It is well worthwhile to consider the basic and primary finding of the Comelec that: —

"In these forty-three (43) voting centers we find the evidences of the Protestants overwhelming, convincing and direct to substantiate the allegations of widespread fraud, intimidation, coercion, violence, threats, and other irregularities so serious, flagrant, massive and of such compelling character that led us to conclude that there was a mockery of the election in these voting centers which justified a declaration that these election returns are devoid of value as to be completely unworthy of inclusion in the canvass of the election result." (Comelec's Resolution, dated January 7, 1985, p. 60, Rollo, G.R. Nos. 69765-67)

Where due to the stated serious irregularities, there has been, as in this instance, a consequent declaration of nullity of the election itself and the election returns in the voting centers mentioned, no fault whatsoever may be attributed to the action of the Comelec in declining to order a revision of the ballots cast in those election centers. A recount or revision of the ballots in those election centers can no longer possess any significance due to the nullity of the election itself in said places.

Aside from the lack of any justification for the revision of the ballots, the Comelec also frowned upon petitioners belated attempt to obtain a recount as an irrelevant exercise intended to serve petitioners' objective of delaying the resolution of the election contests as such would redound to their own advantage. Indeed, more delay could possibly even render the election protests moot and academic.

The Court agrees with and shares the views expressed by the Respondent Commission in its Resolution of January 5, 1985 when it stated: —

"From our viewpoint, the move at this late stage of the proceedings for the creation of a committee of revisors and for a revision of the ballots appears to be nothing but a dilatory design calculated to hand down to the

winners the so-called "pyrrhic victory", after their proclamation having been already grabbed from them, considering that the term of office of local officials is about to expire." (Rollo, G.R. Nos. 69765-67, p. 60, 4th paragraph).

On this realization and apparently discerning the unfair tactic being then resorted to by the Petitioners Pimping and Habib Ali, et al., even Commissioner Ramon H. Felipe, Jr., who first considered as proper the revision of the ballots, was constrained to reconsider his initial impression on the propriety of such revision and joined all the members of the Commission in denying the petitioners' motion for reconsideration of the Comelec's Resolution of January 7, 1985. In the Order of the Comelec dated January 29, 1985, Commissioner Felipe, Jr. explained his reason which led him to depart from the position he had earlier taken on the said matter which this Court considers to be correct. Therein he stated:

"I concur, it appearing that protestees filed their motion for revision of ballots in the protested and counter-protested voting centers on February 7, 1984, and it was only on October 8, 1984 that they filed another motion for revision of ballots in the counter-protested voting centers only which was quite too late, considering that barely over a year remained at the term of office and any revision of ballots at that stage would render this case moot and academic." (Ibid., p. 86)

It is also proper to consider that the right is given to the Electoral Commission to prescribe the rules to govern the procedure and other matters relating to election contests (Section 192, P.D. 296 of the Election Code of 1972). Said commission, in its Resolution No. 1450, on the matter of the revision of ballots, prescribed the following:

"Revision of Ballots. — Where allegations on a contest or a counter-contest so warrant, or whenever in the opinion of the Commission, the interest so demands, it shall immediately order the list of voters, book of voters, voting record, ballot boxes and their keys, ballots and other documents used in the election to be brought before the Commission and shall order the revision of the ballots. For the purpose of revision of ballots, the Commission may appoint a committee on revision of ballots, composed of a chairman, and two members, one member and his substitute to be proposed by the protestant, and the other member and his substitute by the protestee. xxx (Ibid., p. 150)

It is, therefore, quite apparent that a revision of ballots is not always mandatory in election protest cases because such revision should be granted by the Commission only when, in the opinion of the Commission, the interest of justice so demands or that the allegations of the parties in the protest cases so warrant the same.

In this connection, there is no reason to deviate and disregard the pronouncement made by this Court, speaking thru Chief Justice Enrique M. Fernando, in the case of Sidro vs. Comelec, 123 SCRA 759, 762, wherein we laid down very clearly the principle that "in the absence of jurisdictional infirmity or error of Law of gravity, the conclusion reached by Respondent Commission on a matter that falls within its competence is entitled to utmost respect. So it has been reiterated time and time again.

No jurisdictional infirmity whatsoever attends these election protest cases. Petitioners Pimping and Habib Ali, et al. submitted to the jurisdiction of the Commission and even sought affirmative relief therefrom. No error of law can be traced as the rulings of the Comelec in this regard do not reflect any violation of any statutory provision. Petitioners can only claim that there was wrong judgment on the part of the Comelec. However, We see as well supported by logic and reason the rulings of the Commission which petitioners have challenged in these cases before Us.

Lastly, but simply incidental to the main and principal issues raised by petitioners before this Court and which have already been above discussed and resolved, petitioners also argue that the Comelec denied them due process when they were not duly notified in advance by the Commission when the joint resolution of January 7, 1985 which decided the electoral contests shall be on a date previously fixed, of which notice shall be served in

advance upon the parties or their attorneys. Petitioners aver that they learned of the decision only in the newspapers.

The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. Petitioners anchor their argument on an alleged denial to them due process to the deviation by the Comelec from its own made rules. However, the essence of due process is that, the parties in the case were afforded an opportunity to be heard. (*Macabingkil vs. Yatco*, 211, SCRA 150; *Batangas-Laguna-Tayabas Bus Co. vs. Cadioa*, 27 SCRA 987). This imperative requirement has been enjoyed by the petitioners.

On January 11, 1985, petitioner Pimping's counsel went to the office of respondent Comelec in Manila to obtain a copy of the Resolution dated January 7, 1985 (par. 12, Petition, G.R. Nos. 69765-67). In the motion for reconsideration filed on January 16, 1985 in the Comelec, by Atty. Omar B. Umpar, the common counsel for all the protestees in the election cases, be averred that respondent Comelec erred in the appreciation of the evidence and in resolving the protest and counter-protest without ordering a revision of the ballots (Par 13, *Ibid.*).

Opposition to the protestees joint motion for reconsideration were registered by the protestants Salam N. Pangadapun and Ombawa Madum, et al., now the private respondents in the cases at bar. The Comelec denied the said protestees' motion for reconsideration on January 29, 1985 for lack of merit.

It is, therefore, evident that the issue of lack of due process raised by the petitioners before this Court is untenable. Where a party was given a chance to be heard with respect to his motion for reconsideration, there is sufficient compliance with the requirement of due process. (*Aguilar vs. Tan*, L-23600, January 30, 1970, 31 SCRA 205). More so, in the case of *Dormitorio vs. Fernandez*, 72 SCRA 388, 394-395, it was held: —

"xxx there is no merit likewise to the point raised by petitioners that they were not informed by respondent Judge of the petition by private respondent to set aside the writ of execution. The order granting such petition was the subject of a motion for reconsideration. The motion for reconsideration was thereafter denied. Under the circumstances, the failure to give notice to petitioners had been cured. This is a well-settled doctrine. Their complaint was that they were not heard. They were given the opportunity to file a motion for reconsideration. So they did. That was to free the order from the alleged infirmity. Petitioners then cannot be heard to claim that they were denied procedural due process." (*Ibid.*, p. 236)

Accordingly, the principle as above enunciated in Our jurisprudence, should be accepted and applied in the instant cases.

Petitioners claim that Section 28 of Resolution No. 1450 promulgated by the Commission on Elections is unconstitutional because it is therein provided that the Comelec decision is final and executory after its promulgation which petitioners aver is contrary to Section 11, Article XII (c) of the Constitution. This provision of the Constitution states that any decision or order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from his receipt of a copy thereof.

The supposed conflict, a view entertained by the petitioners, does not actually exist.

It should also be considered that our Election Code, P.D. 1296, in Section 193 thereof, explicitly provides that decisions of the Commission on election cases are final, executory and inappealable.

This statutory provision serves as the legal basis of Section 23 of Resolution No. 1450 declaring the Comelec's decision final and executory ten (10) days after its promulgation. By this, it means that the Comelec's decision may no longer be subject of an ordinary appeal by the aggrieved party. Moreover, the mere filing of a petition or

application for certiorari will not, simply, by such fact alone, be a legal impediment that would necessarily restrain the Comelec from executing its decision. Indeed, We find the pronouncements made by Court in *Palomares, et al. vs. Jimenez, et al.* 90 Phil. 773, here pertinent and relevant: —

"The application for certiorari was an independent action, not a part of continuation of the trial which resulted in the rendition of the judgment complained of. An independent action, needless to say, does not interrupt the course of a cause unless there be a writ of injunction stopping it." (*Ibid.*, p. 156).

It stands to reason that if, under the law or the Election Code, it is stated that the decision of the Comelec is considered final, then, it can be executed within the period fixed by the Comelec under its authority to prescribe the rules to govern the procedures and other matters relating to election contests or which would provide for the expeditious disposition of election contests. (Section 192, P.D. 1292, Election Code).

It is the considered view of the Court that the character of the finality of the decisions of the Comelec and, therefore, its authority to direct the execution of judgments, can only be curtailed should the Supreme Court, in the exercise of the general certiorari jurisdiction reposed on it, expressly command and restrain the execution of the resolutions, or decisions and orders of the Comelec. That in the present instance, the Court has declined to issue any restraining order is no less due to its awareness of the lack of sufficient basis considering that rulings of the Respondent Commission on Elections anchored on factual findings which petitioners herein assail should not be rashly discounted.

The well considered views this Court expressed in the case of *Aratuc vs. Commission on Elections*, 88 SCRA 270-271, need only to be now reiterated: —

"Withal, as already stated, the legislative construction of the modified pertinent constitutional provision is to the effect that the actuations of the Commission are final, executory and even inappealable. While such construction does not exclude the general certiorari jurisdiction of the Supreme Court which inheres in it as the final guardian of the Constitution, particularly, of its imperious due process mandate, it correspondingly narrows down the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review. We are of the considered opinion that the statutory modifications are consistent with the apparent new constitutional intent. Indeed, it is obvious that to say that actuations of the the Commission may be brought to the Supreme Court on certiorari technically connotes something less than saying that the same "shall be subject to review by the Supreme Court", when it comes to the measure of the Court's reviewing authority or prerogative in the premises.

"A review includes digging into the merits and unearthing errors of judgment, while certiorari deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous. Certiorari implies an indifferent disregard of the law, arbitrariness and caprice, an omission to weigh pertinent considerations, a decision arrived at without rational deliberation. While the effects of an error of judgment may not differ from that of an indiscretion, as a matter of policy, there are matters that by their nature ought to be left for final determination to the sound discretion of certain officers or entities, reserving it to the Supreme Court to insure the faithful observance of due process only in cases of patent arbitrariness."

And indeed, upon Our consideration of the petitions and the public and private respondents' comment thereto, as well as the Annexes to the pleadings of the parties and the issues raised therein, We find no grave abuse of discretion, non-observance of due process, or an indifferent regard for the law, attacking to the resolutions and orders of the Comelec which are the subject of the petitioners' challenge. Furthermore, the findings and conclusion of the Comelec which petitioners dispute are apparently sustained by sufficient and credible evidence which would, therefore, preclude this Court from intruding itself into the adjudicatory functions of the Commission which is ordained, under our Constitution, to "be the sole judge of all contests."

In G.R. No. 69846 (Rashid D. Sampaco vs. the Commission on Elections and Omar Dianalan) it is shown that the private respondent, Omar Dianalan of the KBL and the petitioner herein, Rashid D. Sampaco, of the (NP-ROY) faction, were the rival candidates for the position of the mayor of Marawi City during the elections of January 30, 1980. It was respondent Dianalan who was proclaimed on February 7, 1980 by the City Board of Canvassers as having won the mayorship, having obtained 13,761 votes in his favor as against the 8,723 votes counted in favor of Rashid D. Sampaco. The winning margin of Omar Dianalan of 5,038 was the subject of the subsequent election protest filed by Rashid D. Sampaco in EPC No. 80-35-1.

Petitioner Sampaco protested the results in 111 voting centers in Marawi City on the grounds that there were massive frauds, irregularities, substitution of votes, illegal use of I.D. Cards, tampering and/or manufacture of official ballots and election returns, widespread bribery, and vote buying, large scale terrorism, including threats, coercion and intimidation and other serious violations of the Election Code.

Rashid D. Sampaco's election protest was filed jointly with the similar election protests of Salam N. Pangadapun who was, in the said election, the vice-mayor candidate also of the NP-ROY faction against Mahadi M. Pimping, of the KBL (EPC No. 80-35-2); and those of Ombawa Madum, Omar Macabalang, Nasser Batara, Magadapa Adiong, and Hadji Azis Alablangan against Ombra Tomawis, Habib Ali, Ibrahim Didaagun, Uttoh Banisil and Salem Nor as protestees, involving the offices of Sangguniang Panglungsod (EPC No. 80-35-3). These three election cases were jointly heard by the Comelec and decided by said Commission in its resolution of January 7, 1985.

In resolving the aforesaid election protests, the Comelec, under its resolution of January 7, 1985, nullified the election and the election returns in only 43 of the 111 voting centers protested by Rashid Sampaco and his other co-protestants. Thus, the election returns in the 43 voting centers, enumerated in the aforesaid Comelec's Resolution, were excluded in the canvass of election results. After deducting the total votes of the candidates in the 43 annulled voting centers from the total votes of the respective candidates per certificate of canvass, the election results obtained indicated that respondent Sultan Omar M. Dianalan won, with 8,304 votes credited in his favor as against 7,129 votes counted for Rashid D. Sampaco. In effect, the proclamation of Omar Dianalan as the winning candidate for the office of Mayor of Marawi City made on February 7, 1980 by the City Board of Canvassers was maintained by the Comelec and unimpaired the protest of Rashid D. Sampaco.

The cornerstone of petitioner Sampaco's petition for certiorari assailing the decision of the Comelec in his election protest, rests on his contention that the Commission on Elections erred or committed grave abuse of discretion in not annulling the election returns in twenty-three (23) of the specified voting centers (Voting Centers No. 58, 75, 100, 143, 145, 8, 13, 17, 21, 22, 25, 27, 61, 94, 97, 112, 38, 140, 142, 89, 35-A, 11 and 6) notwithstanding the fact that the Comelec, in its same Resolution of January 7, 1985, nullified the election and election returns in 43 voting centers involved in petitioners' protest, on the same grounds, reasons and testimonial evidence submitted in the election protest cases by the parties. Petitioner Sampaco avers that the Comelec arbitrarily disregarded and discredited the testimonial and documentary evidence presented for the annulment of said protested voting centers. It is in the submission of Sampaco that as the evidence presented by him and his other co-protestants in EPC No. 80-35-2 and 80-35-1, regarding the attendance of massive frauds, terrorism, and irregularities were given credit by the Comelec when it annulled the result in 43 protested voting centers then the same consideration should have been applied with equal force to the other mentioned 23 voting centers similarly situated, warranting the annulment also of the results thereof.

Commenting on the petition, private respondent Omar M. Dianalan applauds the correctness of the Comelec's decision in proclaiming him as Mayor-elect but he expresses the view that the evidence used in considering the annulment of the 43 precincts, which petitioner Sampaco insists should be applied to the 23 other precincts, are in

fact biased, unreliable, and hearsay in nature and, therefore, should not have been even entertained at all, and if at all appreciated, should have been assessed with great caution as such kind of evidence could have led to the disenfranchisement of a multitude of voters.

Private respondent Dianalan on his part submits that in his counter-protested voting centers, fraud and irregularities characterized the elections therein. He deplores the ruling of the Comelec that the evidence he submitted are insufficient and cannot warrant the annulment of the election or the election returns in the voting centers he had counter protested.

Refuting the claims of petitioner Sampaco, as well as that of private respondent Dianalan, public Respondent Comelec in its consolidated comment regarding said matters (Rollo, p. 208, G.R. No. 69846) upheld the admissibility of the evidence it had considered. It justified its exercise of its prerogatives and discretion in declining to order a revision of the ballots, as had already been earlier discussed.

In rejecting petitioner Sampaco's assertion that the evidence considered by the Comelec relative to the 43 nullified voting centers should imperatively be applicable also to the other 23 enumerated voting centers similarly protested, the public Respondent Commission pointed out: —

"To be exact, the 23 voting centers in question comprise of voting centers Nos. 58, 75, 100, 143, 145, 8, 13, 17, 21, 22, 25, 27, 61, 94, 97, 112, 138, 140, 142, 89, 35-A 11 and 6. Of these voting centers, voting centers Nos. 58, 75, 100, 143, 145 and 6 are included in the first examination report (Exhibit A) of handwriting and fingerprint expert Martin S. Ramos. In said report however, the findings of said expert in said six voting centers could not be conclusive in view of his 'NO BASIS' conclusion, with respect to his comparison of the fingerprint and handwriting of the voters in question. Similarly, said expert's supplementary examination report (Exhibit SR-Sampaco) with respect to voting centers Nos. 8, 13, 17, 21, 22, 25, 27, 58, 61, 94, 97, 112, 138, 140, and 142 is unreliable because of his "no basis" conclusion on the examination made by him on fingerprint and signatures of the voters therein.

"Indeed, said reports of Ramos are insufficient evidence to warrant the cancelation of the election returns in the 23 voting centers in question. The weight and credibility accorded to the reports by Comelec is a matter that appropriately deserves the respect of this Court." (Rollo, 226-227).

Obviously, the evidence submitted by the protestant, relative to the 23 of the 111 voting centers, were fully considered by the COMELEC. However, by simply admitting and evaluating the evidence submitted by the protestants in connection with the 111 voting centers protested by them, it does not necessarily follow that in its consideration of the respective weight and value of the evidence submitted and pertinent to particular voting centers, only a single uniform conclusion should be arrived at. In ruling whether the election or election return for each and every precinct should be nullified, the Comelec has the duty of judiciously assessing the nature and degree of the evidence and, therefore, determine if the facts and circumstances warrant the nullification of the election in that particular voting center.

We find that the Comelec differentiated the nature and degree of the adduced evidence with respect to the 43 voting centers where the election and election returns were nullified and those pertaining to other voting centers referred to in the election protests and counter-protests.

The Comelec's analysis and findings on said matters are the following:

"With respect to the voting centers not nullified, there is no compelling reason to resort to the ballots themselves for the purpose of determining the true result since the Comelec copies (original copies) of the election returns in these voting centers which are the official copies for the Commission on Elections appear to be genuine and authentic. There is no cause or reason to disregard, set aside or exclude these election returns

from the canvass to determine the true result of election in these voting centers." (Rollo, G.R. No. 69846, p. 64)

We find, therefore, far-fetched and incorrect petitioner Sampaco's claim that the same evidence which were considered by the Comelec in annulling the results of the election in the 43 protested voting centers must necessarily bring about a nullification of 23 other election centers mentioned in his protest. The widespread fraud, intimidation, coercion, violence, threats and other massive irregularities, stated by the Comelec to be attendant in the election conducted in the 43 voting centers have been found by the Comelec to be established by evidence "overwhelming, convincing, and direct" and such compelling character that would lead to a conclusion "that there was a mockery at the election" in said voting centers. (Resolution of January 7, 1985, p. 15, Rollo, G.R. No. 69846, p 45).

However, in the other centers which the protestants and the protestees referred to in their protest and counter-protests, the evidence submitted with report thereto stand in sharp contrast and were found to be insufficient to warrant the annulment of the election therein or the election returns thereof.

It may well be that in the 23 election centers protested to by petitioner Sampaco, there are, from the referred evidence of his witnesses indications of some irregularities. However, an import-factor that should still be considered, is not only whether the alleged irregularities in the conduct of the election in some voting centers have been clearly established, but more than this, if said irregularities are of such a magnitude to warrant and compel nullification of the election in said places. The determination of said matters should be left to the Comelec.

It is now worthwhile repeating what this Court had explicitly stated in the case of Sidro vs. Comelec, 123 SCRA 759, 762, that the conclusion reached by the Commission on a matter that falls within its competence is entitled to utmost respect, as it has so reiterated time and time again. In the case of Aratuc vs. Comelec, We want as far as to state:

"Certiorari implies an indifferent disregard of the law, arbitrariness and caprice, and omission to weight pertinent considerations, a decision arrived at without rational deliberation. While the effects of an error of judgment may not differ from that of an indiscretion, as a matter of policy there are matters that by their nature ought to be left for final determination to the sound discretion of certain officers or entities, reserving it to the Supreme Court to insure the faithful observance of due process only in case of patent arbitrariness." (88 SCRA 271, underlining supplied.)

In the case of Sabeniano, et al., vs. Comelec, 101 SCRA 289, 311, this doctrine was restated when this Court stated:

"This Court had ruled that its certiorari jurisdiction over orders, rulings and decisions of the Commission on Elections is no longer as broad as it was under the 1935 Constitution and should therefore be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process (Aratuc vs. Commission on Elections, 88 SCRA 251, 252, 269-272 [1979]).

Furthermore, under Article III, C, Section 2, sub-paragraph 2, it is the respondent Commission, which is charged with duty of being the "sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city officials."

The Court is not unmindful of the challenge made by respondent Dianalan to that portion of the Comelec's installing Salam Pangadapun as Mayor of Marawi City, vice Omar M. Dianala, who during the pendency of the election protests cases ran for and was elected in May, 1984, as member of the Batasang Pambansa. It is Dianalan's claim that because Salam Pangadapun merely contested the Office of Vice-Mayor in her election protest, the Comelec is devoid of authority to install her to the position of Mayor of Marawi City.

This action taken by the Comelec is correct and should be sustained. It is in accordance with Sec. 48 (1) of Batas Pambansa Blg. 337 otherwise known as the Local Government Code which reads as follows:

"Sec. 48. Permanent Vacancy in the Office of the Governor, City or Municipal Mayor. — (1) In case a permanent vacancy arises when a governor, city or municipal mayor refuses to assume office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office, the vice-governor, city or municipal vice-mayor, as the case may be, shall assume the office for the unexpired term of of the former." (Underscoring ours).

Consequently, it was but proper for respondent Commission to order, after the proclamation of private respondent Pangadapun as the duly elected Vice-Mayor of Marawi City, that the latter be then installed as the City Mayor to fill up the permanent vacancy created by the election of Omar Dianalan to the Batasang Pambansa and his assumption to office as Member of the Batasan.

The other issues and arguments raised by petitioner Sampaco and which had similarly invoked by other petitioners, Mahadi M. Pimping and Habib Ali et al. in the two other related cases have already been discussed and resolved.

WHEREFORE, the petitions in these three consolidated cases (G.R. Nos. 69765-67, 69773-75 and 69846) are hereby DISMISSED for lack of merit, with costs against the respective petitioner or petitioners, as the case may be.

SO ORDERED.

Makasiar, C.J., Concepcion, Jr., Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Teehankee, J., dissents in a separate opinion.

Aquino, J., in the result

Abad Santos, J., no part.

Melencio-Herrera, J., on leave. .

Plana, J., I concur but join J. Patajo in his partial dissent.

Patajo, J., with concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

PATAJO, J.:

Since the pre-proclamation cases involving petitioners and private respondents have been already dismissed by Comelec on February 28, 1980, and the cases pending with Comelec resolved by it in its Resolutions dated January 7, 1985 and January 29, 1985 are the election protests filed after the dismissal of said pre-proclamation cases, the question of the integrity and authenticity of the election returns as basis for determining their inclusion or exclusion in the canvass is no longer relevant.

The finding of Comelec in its Resolution dated January 7, 1985 is that:

"From the evidence submitted by the Protestants and Protestees, We cannot avoid the inescapable conclusion that sufficient, convincing and direct evidences exist to support the allegations of serious irregularities in forty-three (43) voting centers, namely:

"Voting Centers Nos. 3,4, 18, 31, 35, 35-A, 37, 39, 46, 49, 50, 53, 55, 59, 60, 62, 65, 68, 72, 76, 82, 83, 90, 91, 92, 100-A, 100-B, 100-C, 104, 107, 108, 110, 111, 114, 120, 121, 122, 123, 126, 130, 134, 135, 144."

"In these forty-three (43) voting centers we find the evidences of the Protestants overwhelming, convincing and direct to substantiate the allegations of widespread fraud, intimidation, coercion, violence, threats, and other irregularities so serious, flagrant, massive and of such compelling character that led us to conclude that there was a mockery of the election in these voting centers which justifies a declaration that these election returns are devoid of value as to be completely unworthy of inclusion in the canvass of the election result.

"It goes without saying, therefore, that the protests or counter-protests with respect to the voting centers other than these 43 voting centers, we find and so hold that the evidences submitted are insufficient and cannot warrant the annulment of the election therein or the election returns thereof."

When Comelec said that in said forty-three voting centers there was a "mockery of elections" and that the election returns from said voting centers "are devoid of value as to be completely unworthy of inclusion in the canvass of the election result", it actually meant that there was a failure of elections in said voting centers. In short, there was no election in said voting centers and, therefore, there can be no valid election returns therefrom.

Since there was a failure of election or no election in said forty-three voting centers, there can be no valid ballots to be counted in said voting centers. It follows there would be no legal justification for the revision of the ballots even if petitioners had asked for it.

However, with respect to the twenty-three voting centers questioned by Sampaco wherein Comelec found insufficient evidence to warrant annulment of the elections therein or set aside the election returns thereof, there was a valid election and the ballots cast therein should be properly counted in order to determine the true will of the voters therein. Comelec should have ordered the revision of the ballots to determine the true outcome of the election in said voting centers, unless the results of the elections would not be altered by the result of the voting in said voting centers. Comelec erred, therefore, holding that there was no need to resort to the ballots/in said voting centers because the Comelec copies of the election returns for said voting centers appear to be genuine and authentic. This is a non sequitor. In election protests the genuineness of the election returns is no longer relevant. These are not pre-proclamation cases where Our principal concern is whether a proper canvass of the results of the election is based on a genuine or authentic election returns and the winner as a result of said canvass proclaimed, without prejudice to any protest that may be filed by the losing candidates.

DISSENTING OPINION

TEEHANKEE, J.:

I regret to say that respondent Comelec's joint decision in the election protests at bar involving the results of the January 30, 1980 elections for the mayoralty, vice-mayoralty and members of the Sangguniang Panglungsod of Marawi City represents another of those unpredictable and improvised Comelec decisions wherein it arbitrarily disregards the settled rules and the parties' basic rights to due process.

Instead of appointing commissioners or revisors to conduct the recount and appreciation of the votes in the contested voting centers or precincts, which constitute the primary evidence to determine the grounds of protest of widespread election frauds and irregularities, vote-buying and bribery, etc., the Comelec merely authorized the parties to have their experts examine the ballots and then copied and adopted verbatim the secondary and second-hand evidence, if not hearsay evidence, consisting of the memorandum of the protestants' (respondents)

principal witness handwriting and fingerprint expert, Martin S. Ramos,[1] and arbitrarily applied in its questioned Resolution of January 7, 1985 its often-used device in pre-proclamation contests (without any recount of the primary evidence of the ballots) of annulling forty-three (43) election returns. The majority decision does not give us the figures involved. In fact, such annulment of said 43 returns nullified large chunks of votes and wiped out the winning margin of the proclaimed respondents' KBL ticket (except its head, mayor now MP Omar Dianalan) and left the erstwhile losers, the Nacionalista Party slate (Roy wing) with the plurality of the remaining (uncounted) votes cast. The devastating results against Dianalan's KBL ticket are set forth in the questioned Resolution, as follows:

"Therefore, deducting the total votes of each candidate in these 43 annulled voting centers from the total votes of the candidates per certificate of canvass, the following election result is obtained:

CANDIDATE
TOTAL VOTES
PER CANVASS

TOTAL VOTES
ANNULLED

ELECTION
RESULT

CITY MAYOR:

SULTAN OMAR DIANALAN 13,761

—

5,457

=

8,304

SULTAN RASHID SAMPACO 8,723

—

1,594

=

7,129

VICE MAYOR:

MAHADI PIMPING

11,983

—

5,195

=

6,788

SALAM PANGADAPUN 9,966

—

1,607

=

8,359

SANGUNIANG PANGLUNSOD:

HABIB ALI - 11,279

—

4,814

=

6,465

OMBRA TOMAWIS 11,261

—

4,796

=

6,465

IBRAHIM PACASUM MASACOL 10,432

—

4,553

=

5,879

UTTOH BANISIL 10,548

—

4,465

=

6,083

SALIC SALEM NOOR -

9,977

—

4,502

=

5,475

OMAR SULTAN ALIMACA BANANG - 9,851

—

1,557

=

8,294

MAGADAPA ADIONG - 6 9,049

—

1,933

=

7,11

OMBAWA MADUM - 9,122

1,417

=

7,705

HASSER BATARA - 8,975

1,673

=

7,302

AZIZ ALA BLANGAN - 8,907

1,145

=

7,762"[2]

[NOTE: The top names first mentioned and first five names mentioned under Sangguniang Panglungsod comprise the KBL ticket. The lower names comprise the NP ticket.]

Let us consider the merits of the petitions at bar:

1. The outright cancellation of 43 returns, practically erased the winning margin of Mayor Omar Dianalan (who vacated the position after having been elected in May, 1984 and assumed last year the office of MP for Marawi City) of 5,038 votes and left him with a slim margin of 175 votes over his opponent Rashid D. Sampaco. Petitioner Sampaco has questioned the results in 23 other voting centers. Mr. Justice Patajo, a former ranking Comelec member before the imposition of Martial Law, in his concurring and dissenting opinion correctly points out that the least that the Comelec could do was "order the revision of the ballots to determine the true outcome of the election in said [23] voting centers." Needless to say, the results in one or two voting centers may suffice to wipe out the remaining 175 vote differential against Sampaco. In such case, Sampaco and none of the two vice-mayorality protagonists (neither Mayor Pimping who succeeded Dianalan nor Pangadapun, favored by the Comelec's questioned Resolution) would be entitled to be proclaimed and occupy the vacated position of Mayor.

2. The ratiocination of the Comelec in not recounting the ballots in the 23 other voting centers whose returns were not annulled by it is a classic case of begging the question, thus: "With respect to the voting centers not nullified, there is no compelling reason to resort to the ballots themselves for the purpose of determining the true result since the Comelec copies (original copies) of the election returns in these voting centers which are the official copies for the Commission on Elections appear to be genuine and authentic. There is no cause or reason to disregard, set aside or exclude these election returns from the canvass to determine the true result of election in these voting centers." Mr. Justice Patajo graphically called this "a non-sequitur. In election protests, the genuineness of the election returns is no longer relevant." The very purpose of an election protest is to resort to the ballots themselves and recount and appreciate them to determine the true results, regardless of whether or not the genuineness and authenticity of the election returns has been questioned. The decisive criterion of the law

and controlling doctrine of the Court's jurisprudence is that "where it has been duly determined after investigation and examination of the voting and registration records that actual voting and election by the registered voters had taken place in the questioned voting centers, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters, but must be accorded prima facie status as bona fide reports of the results of the voting for canvassing and proclamation purposes. Where the grievances relied upon is the commission of irregularities and violation of the Election Law, the proper remedy is election protest." [3]

3. The main issue at bar is: May the Comelec decide an election protest based on widespread election frauds and irregularities — which essentially requires the revision, recount and appreciation of the ballots cast — without conducting such revision, recount and appreciation? Of course, not!

(a) Commissioner Ramon H. Felipe, Jr. in abstaining from the questioned Resolution aptly stated that "I abstained in view of the lack of necessary revision of ballots in the protested and counter-protested precincts in spite of the long pendency of this case for the past 4 years, which revision would have furnished us an impartial basis for a fair decision." [4]

(b) The Comelec's very own rules mandatorily require (not directorily, as presumed without basis or citation by the majority decision) such revision and recount of the ballots, in line with the long-established usage since elections were held in the country. Its Resolution No. 1450 reads:

"Revision of Ballots. — Where allegations on a contest or a counter-contest so warrant, or whenever in the opinion of the Commission, the interest so demands, it shall immediately order the list of voters, book of voters, voting record, ballot boxes and their keys, ballots and other documents used in the election to be brought before the Commission and shall order the revision of the ballots. For the purpose of revision of ballots, the Commission may appoint a committee on revision of ballots, composed of a chairman, and two members, one member and his substitute to be proposed by the protestant, and the other member and his substitute by the protestee. x x x" [5]

(c) Both protagonists for the vice-mayorality prayed in their pleadings for such revision, recount and appreciation of the ballots cast in the questioned voting centers. Thus, the protestant (respondent Pangadapun) prayed in her protest [6] that "the examination of the ballots be ordered for purposes of appreciation", while the protestee (petitioner Pimping) in his answer with counter-protest [7] prayed for the examination of the ballots in the counter-protest for purposes of accounting and appreciation.

(d) The Comelec was remiss in not discharging its ministerial duty under its own above-cited rules to appoint the committees on revision of the ballots and to order the protagonists to submit their respective members and substitutes. [8] The seeming unfamiliarity of the parties' counsels in election proceedings in not having pressed upon the Comelec the appointment of such revisors' committees does not excuse the Comelec from its principal responsibility therefor. The Comelec allowed four years to be spent by the experts in examining the ballots. When it realized that there was only one year more left of the office terms, it could not, without violating due process, short-circuit the proceedings brought about by its own inaction, skip the revision and recount as "dilatatory" when such recount is the very heart of election protests, and rush to half-baked judgment. [9] It is elementary in election cases, that the private interest of the candidates is merely incidental, what matters is the public interest in the institution of free and honest suffrage and the determination of the true results and true verdict of the electorate.

4. Respondent Comelec disregarded its own Rules and denied due process to petitioners in the promulgation of the questioned Resolution. Under its own Resolution No. 1450, the promulgation shall be on a date previously fixed with advance notice served on the parties or their counsels. No such notice was given to petitioners-protestees. But applying a double standard, respondents-protestants were served copy of the Resolution and Order denying reconsideration and declaring the Resolution "final and executory" in their favor, on the very same day that they were dated, January 7, 1985 and January 29, 1985, respectively. Petitioners learned

of the Comelec adverse action only in the newspapers. Such discriminatory treatment allowed respondents to unlawfully assume the contested offices with the military's intervention without giving petitioners an opportunity to seek timely injunctive relief from this Court and notwithstanding the Minister of Local Government's opinion that the Comelec decision was not final and was subject to this Court's final review and decision. Needless to say, the Comelec Rule (section 23 of Res. No. 1450) making its decision "final and executory" ten (10) days after their promulgation is manifestly void and unconstitutional when Article XII-C, section 11 of the Constitution provides a thirty-day for appeal of any Comelec decision or ruling to the Supreme Court, thus: "Any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof."

5. Contrary to the majority decision's cavalier assertion that "no jurisdictional infirmity" nor "error of law" . . . "attends these election protest cases" and that "petitioners can only claim that there was wrong judgment on the part of the Comelec,"[10] the foregoing shows grave transgressions by the Comelec of the Constitution, the election law and settled jurisprudence and rules, which warrant the exercise of this Court's power of review and correction.

ACCORDINGLY, I vote to grant the petitions at bar and to set aside the questioned Resolution dated January 7, 1985 and Order dated January 29, 1985. The injunction prayed for should issue restoring the status ante quo and the cases should be remanded to the Comelec for review, recount and appreciation of the questioned ballots.

[1] See pages 10-21 of majority decision.

[2] Record in G.R. No. 69765-67, p. 59.

[3] *Anni vs. Isquierdo*, 57 SCRA 692 (1974), per Teehankee, J. reaffirmed in the oft-cited case of *Aratuc vs. Comelec*, 88 SCRA 251 (1979), per Barredo, J.

[4] *Idem.* at page 61; emphasis supplied.

[5] *Idem.* at page 150.

[6] Annex A, petition

[7] Annex B, petition.

[8] *Manalo vs. Sevilla*, 24 Phil. 296; *Cuevas vs. Lesaca*, 56 Phil. 25; *de la Merced vs. Sevilla*, 40 Phil. 190.

[9] *Olano vs. Tibayan*, 53 Phil. 168.

[10] Majority decision, at page 29.

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