

FRANCISCO P. FELIX, ET AL., PETITIONERS, VS. THE COMMISSION ON ELECTIONS, AND THE MUNICIPAL BOARD OF CANVASSERS OF CAINTA, RIZAL, RESPONDENTS.

G.R. No. L-28378. June 29, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is a petition for a writ of certiorari, with preliminary injunction, to annul an order of the Commission on Elections dated November 28, 1967 and to prohibit and restrain the enforcement of said order, pending decision in the present case. Upon the filing of said petition, or, on December 11, 1967, we required the original respondents, Commission on Elections - hereinafter referred to as COMELEC - and the Municipal Board of Canvassers of Cainta, Rizal - herein-after referred to as the Board of Canvassers - to file their answer, and ordered the petitioners to include Gregorio Cruz and Julian Francisco as parties respondent in the case at bar. We, likewise, directed that a temporary restraining order be issued restraining said respondents from effectuating or enforcing the order complained of and that the petition for a writ of preliminary injunction be set for hearing on December 15, 1967. On that date, both parties appeared before the Court and were granted leave to submit their respective memoranda on said petition, which they filed. Subsequently, both parties filed their respective memoranda on the merits of the case, and the same was deemed submitted for decision.

Petitioners Francisco P. Felix and Felix de la Paz were candidates for Mayor and Vice-Mayor, respectively, of the Municipality of Cainta, Province of Rizal, at the general elections held on November 14, 1967. Their co-petitioners - namely, Servando de Guzman, Jose S. Tolentino, Apolinar Corrales, Nazario N. Fernandez, Marcial B. Vicencio, Angel Alcoriza, Restituto de Guzman and Jose P. Javier - were then candidates for councilors of the same municipality. The main opponent of Felix de la Paz for vice-mayor was Gregorio Cruz, and one of the candidates for councilor in the latter's ticket was Julian Francisco. After canvassing the votes for all the precincts in the Municipality of Cainta, on November 16, 1967, the Board of Canvassers thereof proclaimed Francisco P. Felix and Felix de la Paz as the elected candidates for Mayor and Vice-Mayor, respectively, of said municipality, and the other petitioners herein as the elected councilors thereof.

Eleven (11) days later, or on November 27, 1967, Gregorio Cruz and Julian Francisco, Paulino Javier, Catalino Cruz, Faustino Estanislao, Francisco Sta. Ana, Jose Garcia, Romulo Gonzales and Mateo Fernandez, filed, with the Court of First Instance of Rizal, election case No. 10406 thereof, against the petitioners herein, except Francisco P. Felix, protesting the proclamation of de la Paz as Vice-mayor-elect and of the other protestees therein as councilors-elect of Cainta, upon the ground that the canvass and proclamation made by the board of canvassers "do not reflect the actual results of the elections held at Cainta, Rizal x x x since the statement of election returns on the basis of which the said canvass and proclamation were made do not show the actual and accurate number of votes received by the protestants and the protestees" in ten (10) precincts specified in the protest.

That same day, at 7:40 p.m., Gregorio Cruz and Julian Francisco had filed with the Comelec a petition, against the board of canvassers, as well as against Felix de la Paz, Jose Javier and the municipal treasurer of Cainta, Rizal, for the annulment of the canvass and the proclamation made by said board of canvassers, on November 16, 1967, upon the ground that said canvass and proclamation were based: 1) "on admittedly mistaken election entry"; and 2) on "falsified and/or altered election returns."

The next day, "after hearing Senator Jovito Salonga, who appeared" for Gregorio Cruz and Julian Francisco - according to the minutes of the session of the Comelec held on November 28, 1967 - the Comelec issued the order complained of, setting aside said canvass and proclamation by the board of canvassers and ordering the same to "reconvene immediately and make a new canvass" of the votes cast in Cainta "in the November 14, 1967 elections using as basis of said recanvass the authentic copies of the election returns".

Alleging that they had not been served copy of the petition filed with the Comelec or notified of the hearing before the same, until they received copy of said minutes of the Comelec, on December 7, 1967, petitioners herein commenced the present action on December 8, 1967, to annul said order of November 28, 1967, upon the ground that the Comelec "had acted without or in excess of its jurisdiction" in issuing said order, because: 1) the petitioners in the Comelec had already filed in court a protest contesting the election of petitioners herein, except Francisco P. Felix; 2) petitioners herein had been denied due process; and 3) the allegations in the petition filed with the Comelec did not warrant the action taken by said body. In their answer, filed with this Court, respondents herein alleged that the order complained of had been issued in accordance with law and that the aforementioned election protest been filed ex abundante cautela.

The writ herein prayed for should be granted. To begin with, respondents' allegation to the effect that said election protest had been filed ex-abundante cautela is not borne out by the record. The protest does not allege, either directly or indirect that it was provisional or precautionary in nature. On the contrary, its allegations suggest that it is intended to be pushed through earnestly. Indeed, apart from averring that the contested canvass and proclamation do not reflect the actual results of the elections held in Cainta, particularly in the protested precincts, the protestants therein alleged that "there is a pressing need for this Honorable Court now to immediately order the boxes" pertaining to said precincts "to be produced before it x x x to prevent their being lost, destroyed or tampered with" and that "the protestants are willing and able to file a bond" in such amount as the court "may fix to answer for the payment of all expenses and Costs incidental to the protest".

We have already held that where a candidate files an election protest assailing the proclamation of his opponent and prays that he (the former) be declared elected, the question whether the election returns reflect the true result of the elections should be elucidated and decided in said election protest, not in another proceeding, either administrative or judicial in character.[1]

It is urged, however, that the canvass and proclamation made by the board of canvassers on November 16, 1967 were null and void for the reasons stated in the petition filed with the Comelec and that, accordingly, the protest was without force or effect whatsoever. Said reasons were that the canvass and proclamation had been based "on admittedly mistaken election entry" and on "falsified and/or altered election returns."

The first ground was predicated upon the fact that the chair-man, a member of the board of inspectors and the poll clerk in precinct No. 5 of Cainta had signed a statement to the effect that they had "erroneously, unintentionally and due to tiredness and physical or mental fatigue," committed a grave error in good faith, by crediting to Felix de la Paz 149 votes which belonged to Gregorio F. Cruz, and crediting to the latter 115 votes that had been obtained by de la Paz. It should be noted, however, that one of the election inspectors for precinct No. 5 had not signed said statement, so that a petition for correction of the corresponding election return would not necessarily

prosper, it being settled that such correction cannot be authorized, under section 154 of the Revised Election Code, if one of the members of the board of inspectors objects or does not agree thereto, the proceedings under said section being non-contentious in character.[2] In other words, on the face of the petition in the Comelec it was not possible for the same, therefore, to determine, without notice to petitioners herein, whether said correction could be effected or not. What is more, the failure of one inspector to sign said statement suggested that he, probably, was averse to the aforementioned correction.

Respondents herein, likewise, lay emphasis on a photostatic copy of a "certificate of votes," signed by all the members of the board of inspectors of said precinct No. 5, showing that Cruz had garnered 149 votes and de la Paz, 115 votes. The issue before the Comelec hinged, however, not on the number of votes actually obtained by Cruz and de la Paz, but whether a court of justice could order the correction of the return for Precinct No. 5, pursuant to said section 154. Indeed, if said return were not corrected, it would be useless to order a new canvass.

Upon the other hand, the very answer herein of the Comelec shows that the same requires boards of canvassers to suspend the canvass only if it should clearly appear: 1) that "another copy or other authentic copies of the statement of the election return from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election;"[3] or 2) that "there is a difference between the votes of the same candidate written in words and those written in figures in the same election return;"[4] or 3) "that the entry of votes in the election return is on its face clearly falsified;"[5] or 4) "that it is not legible." The case of precinct No. 5 does not come under any of these situations.

Then again, it has not been satisfactorily shown that the attention of the board of canvassers had been called to the alleged mis-take in the election return for precinct No. 5 or to the aforementioned statement of some of the members of its board of inspectors. Indeed, petitioners herein doubt, not without foundation, that said statement was made on November 16, 1967, the date appearing thereon, because the corresponding petition for correction was not filed with the Court of First Instance until December 1, 1967, and no explanation has been offered for the delay.

In the petition filed with the Comelec it is, further, alleged that the canvass and proclamation made by the Board of Canvassers had been based on "falsified and/or altered election returns," but this averment is predicated merely upon "a tabulation of the election result as per election returns submitted x x x to the Liberal Party President." Certainly this allegation is insufficient to characterize the returns, on which the canvass and proclamation were based, as falsified or altered, much less to authorize the ex parte annulment of said canvass and proclamation.

Significantly, the election protest filed in court by the petitioners in the Comelec did not question the authenticity of said returns or allege that the same had been "falsified" or "altered." It merely alleged that, if the ballot boxes for the protested pre-cincts were "opened, the ballots examined and the votes cast x x x recounted, "it would appear that the protestants, not the protestees had had the requisite plurality of votes. This goes to show, although indirectly, that the election returns upon which the canvass and proclamation had been based were authentic, even if the same do not allegedly reflect the true result of the elections.

It should also, be noted that the alleged irregularities seen forth both in the petition filed with the Comelec and in the aforementioned election protest do not affect the office of Mayor of Cainta, and yet the canvass and proclamation for this office was annulled.

In view of the foregoing, and considering that the petitioner herein have, on the date set by law therefor, taken their respecting oaths of office and assumed the functions thereof, and that the petitioners in the Comelec had filed the election protest above referred to, we find that the questioned order of the Comelec, dated November 8, 1967, should be, as it is hereby, annulled. The restraining order issued by this Court is, accordingly, made

permanent, with costs against respondents Gregorio Cruz and Julian Francisco.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Gumbal vs. Court of First Instance, L-16409 & L-16416, Nov. 29, 1960; The Municipal Board of Canvassers vs. Benitez, L-16319, June 30, 1960.

[2] Benitez vs. Paredes & Dizon, 52 Phil., 1; Board of Inspectors vs. Sison, 55 Phil., 914; Gumbal vs. Court of First Instance, L-16409, Nov. 29, 1960.

[3] Parlade vs. Quicho, L-16259, December 29, 1959; Samson vs. Estenzo, L-16286, January 30, 1960; Borongan vs. Benitez, L-16319, June 30, 1960.

[4] M.A. Santos vs. Judge A. Santos, L-16375, December 18, 1959.

[5] Salcedo vs. Commission on Elections, L-17672, November 1, 1960, December 11, 1961.

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