

PATERNO JAVIER, PETITIONER, VS. COMMISSION ON ELECTIONS AND FELIX LOMUGDANG, RESPONDENTS. DECISION

G.R. No. L-22248. January 30, 1965

Ponente: BARRERA, J.

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BARRERA, J.:

In the elections of November 12, 1963, petitioner Paterno Javier and respondent Felix Lomugdang ran and were voted for the position of municipal mayor of Culasi, Antique.

During the canvassing of the election returns conducted by the Municipal Board of Canvassers, it was found that in the election return for Precinct No. 4, respondent Lomugdang was credited with 23 votes only, whereas in the tally board of the same precinct, he appeared to have obtained 83 votes. Apprised of the discrepancy, the members of the Board of Inspectors of said Precinct No. 4, recognizing their error committed in the process of transferring and copying the number of votes obtained by respondent Lomugdang from the tally board to the election return, unanimously and immediately filed a verified petition with the Municipal Board of Canvassers, requesting permission to correct the election return of said precinct to make it conform with the true and correct votes actually obtained by said candidate as appearing in the tally board, inasmuch as the discrepancy in the votes will materially affect the result of the election for the position of mayor. Informed of this situation, the representative of the Commission on Elections, Atty. Tomas del Castillo, assigned in the municipality of Culasi, thereupon instructed the Board of Canvassers to suspend the canvassing of the election return of said precinct No. 4 with respect to the office of municipal mayor. As the Board of Canvassers did not heed the unanimous petition of the Board of Inspectors and the advise of Atty. Del Castillo, the latter transmitted a telegraphic report thereof to the Commission on Elections which in turn, ordered the Board of Canvassers by telegram, on November 15, 1963, to suspend the canvass of election return in Precinct No. 4 as well as the proclamation of the winner to the office of municipal mayor. On the same day, November 15, respondent Lomugdang filed a petition in the Court of First Instance of Antique, a petition for judicial recounting of the votes in Precinct No. 4 of Culasi and said case was docketed as Election Case No. 1-G3. Acting thereon, the Court of First Instance of Antique set the case for hearing on November 22, 1963.

In the meantime, however, as already stated, the Board of Canvassers, in spite of the unanimous petition of the Board of Inspectors including the representative of both the parties, as well as the order of the representative, of the Commission on Elections, proceeded with the canvassing of the returns and proclaimed herein petitioner Paterno Javier as elected mayor of Culasi, Antique. In view of this proclamation, the case for recounting filed in the Court of First Instance, was dismissed.

On November 26, 1963, the Commission on Elections promulgated a resolution holding that as the canvass of the votes cast for the office of mayor in the election return of Precinct No. 4 was made in disregard of a lawful order of the duly authorized representative of the Commission, the proclamation of petitioner Paterno Javier as mayor-elect on the basis of said canvass, was null and void. Accordingly, petitioner's proclamation as mayors elect by the Board of Canvassers was annulled. The members of the Board of Canvassers were suspended, and

Atty. Del Castillo was authorized to appoint any qualified persons in the municipality to act in place of the suspended members of said board, and to hold another canvass of the votes cast for the office of mayor for all the precincts, after the true count of votes in Precinct No. 4 had been determined. The candidates concerned were also directed to file the necessary petition in court to determine the true result of the votes cast in said precinct.

It is against this action of the Commission on Elections that petitioner Paterno Javier filed the instant petition in this Court, claiming that the Commission on Elections gravely abused its discretion in issuing the above-mentioned resolution of November 26, 1963, for the reason that, upon his proclamation as elected mayor of Culasi, Antique, the Commission had lost jurisdiction to annul such proclamation or the results of the election; that after it had canvassed the election returns and the winners were proclaimed, municipal board of canvassers became *functus officio* can no longer be suspended; and that the Commission cannot authorize its representative, Atty. Tomas del Castillo, to appoint new members of the board of canvassers, its composition being specifically designated by law and may be substituted only for causes and in the manner provided in the law.

There is no controversy as to the fact that the proclamation of herein petitioner as elected mayor was made by the municipal board of canvassers notwithstanding the instruction of the representative of the Commission on Elections to suspend such proclamation, and which directive was sustained by the Commission itself on November 15, 1963. Likewise, it is not here contested that Atty. Del Castillo, as duly appointed attorney of the Commission on Elections, has authority to take immediate action of any matter relative to the administration and enforcement of election laws and the rules and rulings of the Commission. Petitioner, however, claims that the board of canvassers is not expected to heed such "instruction" because the alleged basis thereof was discrepancy between the election returns and the tally board which is not a statement of election returns as provided in the law.

While it is true that the discrepancy here appears in the figures in the election return and the tally board, nevertheless, in the face of the verified unanimous petition of the board of inspectors informing the board of canvassers that a clerical mistake was committed in the process of transferring the figures from the official count in the tally board to the election return, and praying for the correction thereof,—a ground sufficient to justify the correction or amendment of such return under Section 154 of the Election Code, [1] the suspension of the proclamation of the winner of the affected position becomes imperative to enable the interested party to secure proper judicial relief. Even in the Resolution of the Commission on Elections promulgated on July 24, 1963, containing specific instructions for the guidance of all boards of canvassers, among others, the provincial, city or municipal board of canvassers is enjoined to suspend the canvass of votes cast in an affected precinct where the entry of votes in the election return is on its face clearly falsified or not legible.[2] Here, the falsity of the figure on the election return, brought about by error or clerical mistake, was not only clear on its face but attested to as a fact by all the members of the board of election inspectors of the precinct. The directive of the Commission representative directing, under the circumstances, the suspension of the proclamation, being in order, the continuation of the canvass and consequent proclamation of petitioner, in violation of said directive, is null and void. The suspension of the members of the said board of canvassers and the order to appoint substitutes to take their place in a new canvass of the election returns of all the precincts after the error in the election return of Precinct No. 4 has been rectified, must be sustained.[3]

It is also contended that the Commission on Elections can no longer order the suspension of the board of canvassers after it had completed the canvass of the election returns and proclaimed the result thereof, said body having become *functus officio*, citing the case of *Bautista vs. Fugoso*.[[4]] It is true that in the *aforecited* case, this Court said:

" * * * It maybe conceded as a general proposition that when a board of canvassers has fully performed its duty and proclaimed the result of the election according to law and adjourned *sine die*, it may be deemed *functus*

oficio in the sense that the members of the board have no power voluntarily to reassemble and recanvass the returns."

But the foregoing pronouncement finds no application in this case where, as already ruled, the canvass and proclamation were made in violation of the lawful order of the Commission on Elections. Furthermore, where an election return has been amended by court order or the election return from a certain precinct has been wrongfully or erroneously excluded by the board of canvassers, we held that the Commission on Elections has the power to order a new canvass of the returns even after a proclamation had already been made.[5] The underlying theory therefor, it was said, is the ministerial duty of the board of canvassers to base the proclamation on the election returns of all the precincts of the municipality.[6] Where the board of canvassers, as in this instance, with knowledge that the return from one precinct is undoubtedly vitiated by clerical mistake, continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation cannot be said to have been made in faithful discharge of its ministerial duty under the law. Also, the doctrine enunciated in the *Bautista vs. Fugoso* case, evidently was to forestall the re-convening of the board of canvassers *motu proprio* for the purpose of changing the result of the canvass after a proclamation has already been made, and not the meeting of said board pursuant to a lawful order of the authorities.

As regard the appointment of substitutes to replace the suspended erring members of the board of canvassers, it may be stated that under Section 167 of the Revised Election Code,[7] running for a public office is not the only instance when a member is disqualified from acting in the board of canvassers. The provision does not exclude absence or incapacity for any lawful cause as grounds for their substitution by registered voters belonging to the party of the replaced member. Needless to state in this connection, that the defiance by the original members of the board of canvassers of the lawful order and instruction of the Commission on Elections is a valid cause for their removal and substitution by qualified persona.

Petitioner likewise set up the defense of *res judicata*, in view of the dismissal by the Court of First Instance of Antique of respondent Lomugdang's petition for recount of votes in Precinct No. 4, against the questioned resolution of the Commission on Elections. It may be pointed out that the order of dismissal of said petition was based on the fact that a winner to the petition of mayor had already been proclaimed. This order, of course, was based on the legal presumption that such proclamation by petitioner was regular. Considering the conclusion we have reached in this case—that the proclamation was null and void—the aforesaid dismissal of the petition for recount cannot bar any remedy that may be available to respondent Lomugdang under the circumstances.

WHEREFORE, the petition filed herein is dismissed, with costs against the petitioner.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal and Bengzon, J. P., JJ., concur.

[1] *Rabe vs. Commission on Elections*, 108 Phil., 260.

[2] *Salcedo vs. Commission on Elections*, G.R. No. L-17672, Nov. 16, 1960; *Chiongbian vs. Commission on Elections*, G.R. No. L-19202, Dec. 11, 1961.

[3] *Municipal Board of Canvassers vs. Commission on Elections*, G.R. No. L-18469, Aug. 31, 1962.

[4] 60 Phil. 383.

[5] *Abendante vs. Relato*, 94 Phil. 8.

[6] Olano vs. Ronquillo, G.R. No. L-17912, May 31, 1963.

[[7]] Sec. 167, Revised Election Code:

"Municipal board of canvassers.- (a) The municipal council shall constitute the municipal board of canvassers, excluding the members who are candidates and who shall be replaced by the Commission on Elections with registered voters of the same party."

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