

**JOSE B. LINGAD, PETITIONER, VS. HON. ANDRES C. AGUILAR, AS
PRESIDING JUDGE OF THE SECOND BRANCH OF THE COURT OF
FIRST INSTANCE OF PAMPANGA; AND JUANITA L. NEPOMUCENO,
RESPONDENTS.**

G.R. No. L-31478. January 23, 1970

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PER CURIAM:

Petition for certiorari and prohibition praying that this Court declare as illegal and null and void all proceedings so far held by respondent judge in the case denominated as Civil Case No. 3639 of the Court of First Instance of Pampanga and entitled Juanita L. Nepomuceno versus The Provincial Board of Canvassers of Pampanga et al. for "Judicial Recount" for being beyond the jurisdiction of said court and that We prohibit said respondent judge from further taking any action therein except to dismiss the same.

Herein petitioner Jose B. Lingad and respondent Juanita L. Nepomuceno were among the candidates for the office of representative of the first district of Pampanga in the last national elections. In the course of the canvass of the votes for said office by the provincial board of canvassers, petitioner objected to the use of the election returns for the provincial treasurer for a total of one hundred eleven (111) precincts in the towns of Floridablanca, Lubao and Sexmoan on the ground that there were palpable and patent erasures, alterations or tamperings on the faces thereof affecting the number of votes for the office of representative sufficient to vary the result of the election and prayed that the board avail itself of other copies of the said returns which were clean, but said objection and prayer were overruled by the board which proceeded to include all the questioned copies of the returns in the canvass. No proclamation was made, 'however, because under the procedure agreed upon by the parties and approved by the Comelec, petitioner appealed to said body. At the hearing held before the Comelec on December 19, 1969 where all the parties, including respondent Nepomuceno, were properly represented, the Comelec actually examined each and everyone of the one hundred eleven questioned copies of the returns and, at the same time, ordered the production of the corresponding copies for the Comelec of the same returns, for purposes of comparison. Thereafter and upon satisfying itself that the questioned copies were indeed "altered, erased and/or superimposed and the entry of votes for the other candidates are clean, while the corresponding Comelec copies thereof are clean and untampered with," the Comelec directed the board to disregard said entry of votes for representative in the questioned copies and "in lieu thereof, to use in its canvass, the entry of votes in the corresponding Comelec copies of said election returns for candidates Jose B. Lingad and/or Juanita L. Nepomuceno, etc." (Annex E, Petition) In the same order, the Comelec also directed the board to reconvene on December 26, 1969 for the purpose of recanvassing the votes and proclaiming the winning candidate for representative unless a restraining order of this Court were received by said board before 5:00 o'clock in the afternoon of said date. On December 22, 1969, respondent Nepomuceno came to this Court challenging the said order of the Comelec in a petition for certiorari and mandamus which We denied on December 23, 1969 on the ground that there was no sufficient showing of grave abuse of discretion on the part of the Comelec. (G. R. No. L-31383)

In the meantime, on the same day, December 23, 1969, respondent Nepomuceno initiated in the respondent Court of First Instance of Pampanga the herein subject proceeding for judicial recount, with a prayer for preliminary injunction. (Civil Case No. 3639) The petition for preliminary injunction was set for hearing on December 24, 1969, and on the latter date, after a summary hearing, respondent judge issued a writ of preliminary injunction enjoining and restraining the board of canvassers from proclaiming anyone of the two candidates (petitioner and respondent Nepomuceno) for the position of Congressman of the First District of Pampanga, until further orders of the Court". (Annex I-1, Petition) Confronted thus by the two conflicting orders of the Comelec and the respondent court, on December 26, 1969, the board resolved to hold in abeyance action on the Comelec directive "until such time as the order of the Court of First Instance of Pampanga is reconsidered, revoked or reversed by the Supreme Court (or the latter) orders the Board of Canvassers to proclaim the winning candidate(s)" (Annex J, Petition). Upon learning of this resolution and of the writ of preliminary injunction issued by respondent judge, petitioner filed with the Comelec on the same day, December 26, 1969, an urgent motion to direct the board of canvassers to make a proclamation, insisting that as no writ of injunction or restraining order had been received from this Court, which is the only authority that could restrain or overrule the Comelec, it was the duty of the board to make said proclamation. (Evidently, notwithstanding that this Court had already dismissed the petition of respondent Nepomuceno in G. R. No. L-31383, on December 23, 1969, the parties had not yet been notified of this Court's resolution.) Acting on said motion, on even date, the Comelec rendered the following resolution:

"This refers to the Urgent Motion filed by candidate Jose B. Lingad today, December 26, 1969, informing the Commission that the Court of First Instance of Pampanga issued an order on December 24, 1969, in Civil Case No. 3639, enjoining the provincial board of canvassers of Pampanga from proclaiming anyone of the two candidates (Jose B. Lingad or Juanita L. Nepomuceno) as Congressman-elect of the First District of Pampanga, which was issued pursuant to the petition for judicial recount filed therewith by Candidate Nepomuceno.

"Considering that during the hearing of the petitions for review filed by said Candidate Lingad and Nepomuceno on December 19, 1969, the parties were duly advised and subsequently relayed to the Provincial Board of Canvassers of Pampanga to suspend the proclamation of the winning candidate for Congressman of the first district of Pampanga until 5:00 P.M. of December 26, 1969 (Friday), in the absence of any restraining order from the court, referring to the Supreme Court, which is the only body that can review the orders or decisions of the Commission on elections (Sec. 2, Art. X, Constitution) and that the aforesaid December 24, 1969 Order of the Pampanga court amounts to a review or reversal of the Commission resolution of December 19, 1969 (Maoud v. Comelec, L-28562, April 25, 1968) which said court cannot lawfully do, the Commission RESOLVED to order the Provincial Board of Canvassers to proclaim the duly elected candidate for Congressman of the First District of Pampanga after 5:00 o'clock P.M. today, in the absence of any restraining order from the Supreme Court and to warn that any member of the Provincial Board of Canvassers who shall violate the orders of the Commission will be suspended and substituted by Comelec lawyers." (Annex L, Petition)

In compliance with this resolution, late on December 26, 1969, the board met and proclaimed petitioner as the duly elected representative of the first district of Pampanga, (Annex A, Petition; and on the strength of said proclamation, petitioner took his oath of office on December 31, 1969, (Annex B, Petition) has already been included in the roster of Members of the House of Representatives, per certificate of the Secretary of said House, Dr. I. B. Pareja, (Annex C, Petition) has been regularly holding office as such since January 2, 1970 and has already been paid the salary for the period from December 30, 1969 to January 15, 1970. (Annex C-1, Petition)

Nonetheless, petitioner is now before Us with his petition for certiorari and prohibition because on the same day that the aforementioned writ of preliminary injunction was issued, in a separate order, respondent judge also ordered that petitioner and respondent Nepomuceno "submit the name of their respective nominee(s) for appointment as Commissioner(s) who shall do the recounting on January 19, 1970 at 2:00 o'clock P.M.", (Annex

M, Petition) and notwithstanding the omnibus motion of petitioner filed with him on January 9, 1970 inviting his attention again to the "circumstances originally presented to him and of the events which have intervened following the filing of the Petition, most significant of which were: (1) the dismissal of respondent Nepomuceno's petition for certiorari, etc. filed with this Honorable Supreme Court; (2) the subsequent proclamation of Petitioner herein as the duly elected Representative for the First District of Pampanga, pursuant to a valid resolution of the COMELEC and subsequently sustained by the Supreme Court; (3) the fact of Petitioner having already taken his oath of office and his having been duly enrolled as a Member of the House of Representatives; and (4) the fact that Petitioner, since December 31, 1969 had already entered upon the duties and lawfully' assumed the powers appurtenant to the office of Representative of the First District of Pampanga, as in fact he has already been assigned a room in the House of Representatives by the Secretary of the said House, where he (Petitioner herein) has been regularly holding office since January 2, 1970 (Please see Xerox copy of Petitioner's pay check for the period from December 30, 1969 to January 15, 1970 which is attached hereto and made a part hereof as Annex "C-1") -" as well as the precedents laid down by this Court, principally, in *Ong vs. Comelec*, L-28415, January 29, 1968, 22 SCRA 241 and *Pacis vs. Comelec*, L-29026, Sept. 28, 1968, 25 SCRA 377 to the effect that "where election returns have been tampered with, the remedy is before the Comelec ... and not with the Court of First Instance", and what is more, the resolution of this Court of December 23, 1969 dismissing the petition filed by respondent Nepomuceno, on January 14, 1970, (Annex N, Petition) the respondent judge issued an order the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court is constrained to invalidate and set aside, as it hereby invalidates and sets aside, the proclamation of the respondent Jose B. Lingad, by the Provincial Board of Canvassers of Pampanga on December 26, 1969, as the duly elected member of the House of Representatives for the first district of Pampanga.

"The writ of preliminary injunction issued by this Court remains in full force and effect. Let a copy of this order be furnished the Speaker of the House of Representatives, another copy to the Secretary of the same house, for their information.

"SO ORDERED." (Annex P, Petition)

Upon these circumstances, the only legal course open to Us is obvious and ineludible. The writs prayed for must be granted. It is beyond doubt that respondent judge is without jurisdiction in the premises. Worse, his actions and attitude reflected in his order of January 12, 1970 border on a disregard, almost an outright defiance of the constitutional authority of the Comelec and the rulings clearly laid down by this Court precisely to resolve controversies as those herein involved. Such posture of a trial court cannot receive the sanction of this Court. On the contrary, it deserves, at the very least, a reiteration of the admonition this Court has already given to lower courts that "if each and every Court of First Instance could enjoy the privilege of overruling decisions of the Supreme Court, there would be no end to litigation and judicial chaos would result. A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation."^[1] Indeed, in the present case, respondent judge went further than to merely misconstrue, misapply and disregard the rulings of this Court in the cases of *Ong*, *Pacis*, *Tagoranao* and *Villalon*,^[2] he paid no heed at all to the resolution of this Court of December 23, 1969 in G. R. No. 31383, aforementioned, upholding, in effect, the order of the Comelec directing the provincial board of canvassers to use the Comelec copies of the returns in question which was brought to his attention in petitioner's motion of January 9, 1970, Annex N of the Petition. In fact, had respondent judge done what was incumbent upon him to do in the judicious exercise of his functions, that is, to inquire as to the status of said G. R. No. L-31383, he would have easily known that, acting on respondent Nepomuceno's motion for reconsideration and amended petition in said case, this Court promulgated the following resolution, which if respondent judge had only taken into account, the

now questioned proceedings would have been earlier properly terminated in accordance with law:

"In G. R. No. L-31383, *Juanita L. Nepomuceno vs. The Commission on Elections, et al.*, the Court resolved to DISMISS the amended petition and to DENY petitioner's motion for reconsideration of the resolution of this Court dismissing the original petition, it appearing that when petitioner filed the petition for recount with the Court of First Instance of Pampanga on December 23, 1969, the respondent Commission had already ruled on the election returns in question, that 'the entry of votes for candidate Jose B. Lingad and/or candidate Juanita Nepomuceno etc. are altered, erased and/or superimposed while the corresponding Comelec copies thereof are clean and untampered with', (resolution of December 19, 1969, Annex L of Amended Petition) which ruling was within its jurisdiction and not subject to review by the Court of First Instance even in a petition for recount under Section 163 of the Revised Election Code, (*Ong v. Comelec, et al.*, L-28415, January 29, 1968, 22 SCRA 241). There is the added circumstance in this case that by agreement of the parties, a procedure was adopted by the respondent Commission under which said Commission was supposed to rule on authenticity of the returns in question on appeal from any ruling thereon by the Board of Canvassers, subject, to review only by this court, and there being substantial basis for the ruling of the Commission herein questioned, this Court will not set the same aside; furthermore, the Court of First Instance of Pampanga has no jurisdiction to entertain a petition for recount on the basis of returns already found by the Comelec as not authentic. (*Ong v. Comelec, supra*)."

Perhaps, it bears repeating and emphasizing here that the apparent conflict or concurrence of powers between the Comelec and the courts of first instance which could arise in the application or implementation of Section 163 of the Revised Election Code regarding judicial recount of votes has already been definitely delineated and clarified in the *Ong* and subsequent decisions aforementioned. Having in view the purpose of the recount of votes contemplated in the said provision and precisely to minimize, if not altogether eliminate, the possibility of proclamation grabs thru the use of altered and falsified copies of returns, more or less ingeniously made to avoid detection, coupled with the corresponding tampering of the ballot boxes and the ballots contained therein, We have declared in the above mentioned cases, the law (Sec. 163 of the Revised Election Code) to be that whenever any conflicting, inconsistent, contradictory or discrepant copies of election returns for the same precincts are extant and are presented or available to the board of canvassers, it is the board of canvassers, in the first instance, and the Comelec, on appeal, that have the exclusive authority, subject only to any appropriate remedy before this Court, to determine whether or not all such copies are authentic and, in the negative case, the board of canvassers should disregard the non-authentic ones and must base its canvass only on the authentic ones, and it is only in the affirmative case, that is, when the board or the Comelec or this Court holds that the discrepant returns are all authentic that the jurisdiction of the courts of first instance to conduct judicial recount begins. Barely a week ago, this Court has even held that this power of the board and the Comelec cannot be renounced nor delegated to the courts of first instance. (*Abrigo v. Valley*, L-31374, January 21, 1970.)

To be sure, this view cannot be considered an attempt to emasculate Section 163, for it is evident from its own provisions that the basis of the judicial recount should be authentic returns. The provision reads thus:

"Sec. 163. When statements of a precinct are contradictory.- In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement 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, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected. (C. A. 357-358)"

There is nothing in the context or intent of this provision which excludes the propriety of placing beyond the jurisdiction of the courts of first instance the power to rule on the authenticity or genuineness of the different

copies of the returns presented to it. Considering that the element of time is of the essence in the prompt proclamation of the results of an election, it is desirable as it is necessary to allocate possible conflict of authority which may arise from the application of the interrelated provisions of the election laws laying down the procedure leading to such proclamation, to the end that the electoral process may operate as an integrated whole with the least loss of time. As a rule, it is not promotive of public policy that several officers or entities should exercise powers concurrently, thereby creating doubts as to the veracity and correctness of their respective actuations should these differ in nature or degree, and, of course, also confusion as to which one should control. As between the Comelec and its agencies and deputies constitutionally ordained to administer and execute the election laws, on the one hand, and the courts of first instance, which under Section 163 are, at best, supposed to act in conjunction with the board of canvassers only in a semi-administrative capacity, hardly judicial, on the other, it is Our considered view that the law contemplates that the authority to inquire into the genuineness of all questioned copies of election returns should be lodged in the board of canvassers and the Comelec instead of in the courts of first instance. This conclusion is also consistent with the view that what the courts are called upon to perform in the so-called judicial recount is the purely mathematical process of counting the votes and that the assignment of such function to the court is only to lend needed dignity to the proceedings but not to call for the plenary exercise of judicial authority. (*Villalon v. Arrieta*, supra.)

The circumstances of this case give Us occasion to make the observation that it is the imperative duty of lawyers and judges, as well, handling election cases, particularly, to keep themselves abreast of the recent development of the jurisprudence on the matter, since as a matter of policy, this Court has in every appropriate case tried to spell out as clearly and unmistakably, as wisdom and language can make it, that the electoral process is sacred, being the cornerstone of democracy itself, and that it will not brook any discoverable attempt to frustrate the popular will, whether this be done thru the use of ingenious legal maneuvers resulting from the taking advantage by the unscrupulous and the smart of technicalities in the law or the evidence, and to achieve these high purposes, this Court has laid down the necessary guidelines by which the people's mandate may be effectively discovered and pursued with the least possible delay, consistently with reason and due process. It is no less the responsibility of the bar as of any other element of our people to adhere to these guidelines and to help the courts and the administrative authorities honestly and sincerely in observing them. Truth to tell, the posture of counsel for respondent Nepomuceno in not informing the respondent judge of the proceedings in G. R. No. L-31383 before this Court before and during the hearing on the injunction in question is far from being commendable, since any avoidable obstruction to the smooth carrying out of the electoral processes is a disservice to the country, in general, and to the rule of law, in particular.

To give a semblance of plausibility to his position, counsel for respondent Nepomuceno argues that while he accepts the soundness of the Ong doctrine, the same is not applicable to this case because, according to him, the Comelec did not care to receive any evidence aliunde regarding the possible genuineness of the copies in question of the returns for the provincial treasurer in the one hundred eleven (111) precincts herein involved and confined itself solely to an ocular comparison of the said copies with those of the Comelec which appeared to be clean. The thrust of counsel's contention is that the mere existence of erasures, alterations and superimpositions is not proof of falsification or illegal tampering. Counsel's pose is untenable. Its flaw lies in that such erasures, alterations and superimpositions, uninitialed by those who made them, as they are not in the copies in dispute, are in the natural course of things *prima facie* unauthorized, since they do not coincide with the originals of which they are supposed to be exact carbon copies, and to impose upon the Comelec the duty to make further inquiry and to receive evidence aliunde, it is the better rule that the party claiming legitimacy thereof should present proof of circumstances which can reasonably lead to such conclusion and not merely make bare allegations to such effect, as is the case here. At the oral argument, counsel for respondent Nepomuceno could do no less than admit that up

to this late hour, neither he nor said respondent has creditable evidence of such fact. In other words, in cases of this character, it is not enough that the party concerned alleges that the alterations, erasures and superimpositions are bona fide and legitimate, it is necessary that sufficient specific reasonable proof of such legitimacy must, at least, be alleged to exist to warrant further inquiry by the Comelec beyond the ocular comparison of the different copies of the election returns concerned.

For the rest, it only remains for Us to state that it is indeed regrettable to witness the spectacle of the Comelec deliberately ignoring a writ of preliminary injunction issued by a court, such as the respondent court in this case, but, on the other hand, it is patent here that the respondent court has gone far beyond the scope of its legitimate jurisdiction. Who can blame the Comelec for jealously asserting its constitutional powers in the premises as against an unauthorized interference by some other body or officer? After all, Comelec must have had in mind that any order of a court, amounting to a nullity for want of jurisdiction is "a dead limb on the judicial tree, which should be lopped off or wholly disregarded as the circumstances require", (*Anuran vs. Aquino*, 38 Phil. 29, 36; *Abbain vs. Chua*, L-24241, February 26, 1968, 22 SCRA, 748). As already stated, had the parties and counsel and respondent judge only taken pains to know the exact status of the proceedings before Us and the law on the matter, such an undesirable occurrence could have been easily avoided.

PREMISES CONSIDERED, the writs prayed for are granted. All proceedings held by respondent judge in Civil Case No. 3639 of the Court of First Instance of Pampanga, above-mentioned, are hereby declared to have been held beyond its jurisdiction and are, therefore, null and void. Respondent judge is further prohibited from taking any action in said case except to dismiss the same. The restraining order heretofore issued in this case is made permanent. Costs against private respondent Nepomuceno.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Teehankee, and Barredo, JJ., concur.

Fernando, J., took no part.

[1] *Peo. et al. v. Vera etc., et al.*, 65 Phil. 56, 82.

[2] *Ong v. Comelec*, *supra.*, *Pacis v. Comelec*, *supra.*, *Tagoranao v. Comelec*, L-28598, March 12, 1968, 22 SCRA 978 and *Villalon v. Arrieta*, L-29177, Sept. 30, 1969, 29 SCRA 671.

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