

CONSUELO V. CALO, JOSE T. GONZALEZ, PASTOR D. AGO, GENARO B. ASIS AND VICENTE C. ROSALES, PETITIONERS, VS. HON. MANUEL L. ENAGE, AS DISTRICT JUDGE OF THE COURT OF FIRST IN-STANCE...*G.R. No. L-28349. December 28, 1967*

Ponente: RUIZ CASTRO, J.

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This is a petition for certiorari, prohibition and mandamus to annul the order dated December 1, 1967 of the respondent Judge Manuel L. Enage of the Court of First Instance of Agusan, which order directs a judicial recount of the votes cast in certain municipalities in Agusan at the last elections held on November 14, 1967 and restrains the provincial board of canvassers from canvassing the election returns for the offices of Governor, Vice Governor and board members of Agusan province.

The respondent judge issued the order on petition of the respondents Rafael C. Aquino, candidate for Governor Basilisa K. Atega, candidate for Vice Governor, and Sulpicio R. Lagnada, Eduardo D. Mercado and Noli G. Cortel, candidates for board members, all belonging to the Nacionalista Party, in the last elections. In their petition, the respondent candidates claimed that "the copies of the election returns . . . pertaining to all the precincts involved in this petition which are marked 'COPY FOR THE NACIONALISTA PARTY' give to the herein petitioners [the respondents here] a different and larger number of votes than the number of votes given to them in the corresponding copies of the same statements of election returns transmitted to the Provincial Treasurer of Agusan . . . and the difference arising out of the abovementioned discrepancies materially and substantially affects the results of the election . . . to such an extent that instead of being declared losers petitioners [the respondents here] deserve to be proclaimed the duly elected provincial officials of Agusan."

The present petitioners were the other candidates for the same offices: Consuelo V. Calo for Governor, Jose T. Gonzalez for Vice Governor, and Pastor D. Ago, Genaro B. Asis and Vicente C. Rosales for board members. All were NP unofficial candidates. They contend that the respondent judge acted in excess of his jurisdiction and with grave abuse of discretion in ordering a recount of the votes even before the provincial board of canvassers had started canvassing the returns, and that in any event the supposed discrepancy between the NP copy and the provincial treasurer's copy of the same returns from each of the precincts in question as to the number of votes cast for the respondents is not a ground for a judicial recount under section 163 of the Revised Election Code.

In view of the extreme urgency of the petition, we issued on December 4, 1967 a temporary restraining order, enjoining enforcement of the lower court's writ of preliminary injunction and the recounting of ballots, even as we allowed the canvassing to proceed. We are now informed that the canvassing was finished on December 13, 1967 although no proclamation has been held pending decision of this case.

The central issue here posed is whether a judicial recount may be ordered in case there is a variance between a copy of the election returns in the hands of the provincial treasurer and another copy of the same returns given to one of the major political parties. Section 163 of the Revised Election Code states:

"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 gives 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."

The issue here is not new. In *Acuña v. Golez*,^[1] this Court, resolving a similar question, unequivocally held:

"Section 150 of the Revised Election Code provides that 'immediately after the count, the Board of Inspectors shall make, complete and sign a writ-ten statement thereof in quadruplicate' (under-scoring ours.) The four (4) copies of this state-ment, otherwise referred to in Section 151 as 'election returns,' must, pursuant to Section 152 of said Code, be distributed as follows: one copy shall be placed in the box for valid ballots, another copy shall be delivered to the municipal treasurer, the third copy shall be sent by regis-tered mail to the provincial treasurer, and the fourth shall be forwarded, likewise, by regis-tered mail, to the Commission on Elections. Pur-suant, however, to a resolution of the Commission on Elections in Case No. 488 thereof, the two (2) major political parties are provided with one (1) copy each of the election return for each precinct .[2]. . .

"[I]n using the aforementioned phrase, the framers of the Revised Election Code evidently had in mind the four (4) copies mentioned in Section 150 there-of In other words, the lawmakers could not have referred to any other copies, for no such co-pies were prescribed in the Code."

Indeed, it is now settled doctrine that the discrepancy which justifies a judicial recount is such only as appears in the different copies of the election returns required to be accomplished by section 150.^[3] Section 163 should be construed restrictively because of the special nature of the authority conferred therein, and because otherwise that au-thority could be utilized to delay the proclamation of the winning candidate to beyond the date set for the beginning of the term of office of the position involved. The neces-sity of avoiding this contingency becomes apparent when we consider that the effect of the delay is, in the case of national offices for which there is no hold over, to leave the office without any incumbent, and, in the case of local of-fices, whose incumbents may hold over, to permit the losing candidate to extend his tenure, at the expense and to the prejudice of the elected candidate.^[4] Any other discrepancy is not, therefore, a sufficient warrant for a judicial recount.^[5]

It may be added here that were the copy furnished to a political party considered a basis for an action under section 163, untold opportunities would be afforded a candidate to tam-per with the contents of his party's copy and, on the basis of the artificial discrepancy created between his copy and that of the provincial treasurer, demand a recount of the votes and thus delay or even prevent the proclamation of his opponent. This is not to inveigh against either the validity of the extra copies of the election returns or the wisdom of the resolution of the COMELEC requiring their preparation. As this Court said in *Acuña* the said resolution does not contravene any statute. On the contrary, additional copies in the hands of the major political parties may have the general salutary effect of dis-couraging attempts to tamper with the copies required by the Code owing to the greater probability of detection of irregu-larities. The point is simply that the extra copies cannot serve as a legal basis for comparison with any of those pres-cribed by the Code for the purpose of a judicial recount.

The respondent judge's order flies in the face of settled interpretation of section 163 and should be stricken down.

ACCORDINGLY, the order of December 1, 1967 of the respond-ent judge is set aside, and the respondent provincial board of canvassers is directed to proceed with the proclamation of the winning candidates, at respondents' cost.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles and, Fernando, JJ.,

concur.

[1] L-25399, Jan. 27, 1966.

[2] In addition to the four copies prescribed in section 150, the Commission on Elections now requires the preparation of three additional copies of election returns, one for each of the Nacionalista and Liberal parties and an advance copy for the municipal or city treasurer. See, e.g., Instruction for Boards of Inspectors for November 12, 1963, pp. 88-89.

[3] See, e.g., Villacarlos v. Jimenez, L-16437, Dec. 29, 1962; accord, Diaz v. Reyes, L-25502, Feb. 28, 1965.

[4] Acuña v. Golez, supra, note 1.

[5] Lewin v. Escalona, L-22540, July 31, 1964 (discrepancy between copy of the returns and tally sheet); Villacarlos v. Jimenez, supra, note 3 (discrepancy between copy of the returns and certificate of canvass); Parlade v. Quitcho, L-16259, Dec. 29, 1959 (discrepancy between copy of the returns and certificate of canvass); cf. Javier v. Commission on Elections, L-22248, Jan. 30, 1965 (discrepancy between copy of the returns and tally board).

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