

ISIDRO DE LEON, PETITIONER, VS. HONORABLE DOMINGO IMPERIAL, ET AL., RESPONDENTS.*G.R. No. L-5758. March 30, 1954*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1a209e9701b4/>**BAUTISTA ANGELO, J.:**

Petitioner was one of the candidates for councilor of the municipality of Makati, Province of Rizal, in the elections held on November 13, 1951. There were eight councilors to be elected and as a result of the canvass made by the board of canvassers on November 18, 1951, petitioner occupied the eighth place and was proclaimed elected, having obtained 3,160 votes. On April 12, 1952, or four months and twenty-four days after petitioner's proclamation, Fortunato Gutierrez, hereafter designated as respondent, filed a petition in the Commission on Elections alleging that due to a mistake in addition the municipal board of canvassers credited petitioner with 3,160 votes when in fact he obtained only 3,060 votes, whereas respondent obtained 3,098 votes, or a majority of 38 votes over petitioner. Respondent prayed that the municipal board of canvassers be ordered to make a new canvass and a new proclamation declaring him the eighth councilor-elect in lieu of petitioner.

On May 26, 1952, petitioner filed a motion to dismiss alleging among other things that the Commission on Elections has no power to order the correction asked for on the ground that the period within which it could be made has already prescribed. This motion was denied and the Commission directed the municipal board of canvassers to reconvene and recanvass the election returns as prayed for, and, having found that respondent had polled more votes than petitioner, proclaimed the former eighth councilor-elect of Makati.

The present petition, as amended, seeks the annulment of this proclamation as illegal and the reinstatement of petitioner to the office of eighth councilor of Makati. And, incidentally, it may be stated, that petitioner has, in addition, filed in the Court of First Instance of Rizal an election protest dated June 2, 1952, contesting the election of respondent.

The only question posed in this petition is whether the Commission on Elections has the power to order the municipal board of canvassers of Makati to correct a mistake committed in addition in the canvass it has made after the candidate erroneously proclaimed had assumed office and the period to contest his election had expired.

The powers of the Commission on Elections are defined in the Constitution. It provides that it "shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials." (Art. X, Section 2.) The Revised Election Code supplements what other powers may be exercised by said Commission. It is clear that powers not expressly or impliedly granted to it are deemed withheld.

In a municipal election, the board of inspectors counts the votes, makes a statement of the count, proclaims the result of the election, and issues a certificate of the number of votes polled by each candidate. After the

announcement of the result, the board of inspectors "shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court" (Section 154, Revised Election Code).

The municipal board of canvassers shall meet immediately after the election, shall count the votes cast for each candidate and proclaim as elected those who have polled the largest number of votes. The board shall not recount the ballots nor examine any of them but shall proceed upon the statements presented to it. In case of contradictions or discrepancies between the copies of the same statements, the same may be corrected by the Court of First Instance of the province, upon motion of the board or of any candidate affected. (Section 168, in connection with Section 163, Revised Election Code.)

The above constitute the only pertinent provisions regarding the canvass and proclamation of municipal officials. They clearly postulate that any alteration or amendment in any of the statements of election, or any contradiction or discrepancy appearing therein, whether due to clerical error or otherwise, cannot be made without the intervention of a competent court, once the announcement of the result of the election, or the proclamation of the winners, had been made. These provisions are all-inclusive in the sense that the power to authorize the correction can only be made by a competent court. They reject the idea, as now entertained by respondent, that such error can be ordered corrected by the Commission on Elections by virtue of its constitutional power to administer the laws relative to the conduct of elections.

That the above is the correct interpretation of the law seems to be implied from the cases decided by this Court (Galvez vs. Miranda, et al., 36 Phil., 316, 320; Cordero vs. Judge, 40 Phil., 246). Thus, it was held that "when it appears that the board of canvassers has failed or refused to perform a purely ministerial duty, then mandamus is the proper remedy. If the board of canvassers should, for example in its return, show that A had received a majority of the votes cast and, in the face of that fact, declare that B had been elected, certainly it should be required to make its certificate conform with the facts stated in its return. Under such circumstances, and in the face of such facts, A cannot be considered the person elected to the office in question. Mandamus is the most effective and expeditious remedy for such error." (Municipal Council of Las Piñas vs. Judge of the Court of First Instance of Rizal, 40 Phil., 279, 282-284.)

But in order that the remedy of mandamus may be available, it is necessary that it be asserted within the two-week period within which an election may be contested. After that period has elapsed, the right of the candidate proclaimed to the office is deemed vested. The reason is obvious. This period is jurisdictional, as it has the effect of divesting a losing candidate of his remedy to contest the election. This is what this Court in effect said when in a recent case it made the following pronouncement:

"Before the proclamation of election, any candidate may petition the Court of First Instance to recount the votes cast in any precinct in case of discrepancies between copies of statements of election (Sections 163 and 168, Revised Election Code). After the proclamation, any candidate may file an election protest within two weeks (Section 174, *idem.*). These specific legal provisions logically compel any candidate, within short time limits, to seek in the Court of First Instance the corresponding relief against the regularity of a canvass of election, and to the same extent relieve the Commission on Elections from the duty of conducting similar investigations." (Ramos vs. Commission on Elections, [*] 45 Off. Gaz., Supp. No. 9, 345, 347.)

The theory entertained by the respondent tends to circumvent this mandatory provision which limits the period within which an election contest should be filed. This is the result which the action of the Commission on Elections has led into in the present case. It appears that Isidro de Leon, petitioner herein, was proclaimed councilor-elect by the municipal board of canvassers on November 18, 1951, but four months and twenty-four days thereafter, or on April 12, 1952, the defeated candidate, Fortunato Gutierrez, petitioned the Commission on

Elections to order said board to make a recanvass of the votes alleging a clerical mistake, and this was done on May 31, 1952, thereby proclaiming Fortunato Gutierrez as the winner. The result was that Isidro de Leon filed an election protest within the legal period counted from the last proclamation disputing the legality of the election of Gutierrez. If we will hold that the Commission on Elections has acted properly, as entertained by the respondent, the inevitable result would be that the election contest was filed within the statutory period. This is a clear circumvention of the law which is destructive of the very essence and spirit which underlies the summary nature of an election proceeding while it sets a precedent which enlarges to a dangerous extreme the, administrative powers conferred upon the Commission on Elections by the Constitution. We cannot subscribe to such unwarranted interpretation.

Wherefore, the petition for certiorari is granted, with costs against respondent. The new proclamation made on May 31, 1952 is hereby set aside and the original proclamation made on November 18, 1951 should stand.

Paras, C, J., Pablo, Bengzon and Labrador, JJ., concur.

[*] 80 Phil., 722.

CONCURRENTE

DIOKNO, M.:

Concurro con la opinion de que se conceda el remedio aqui solicitado.

Los hechos y la cuestion en este asunto se hallan bien expuestos en la ponencia en los siguientes terminos:

"This is a petition for certiorari.

"The facts are not in dispute. Isidro de Leon and Fortunato Gutierrez were among the candidates for municipal councilors of Makati, Rizal, voted for in the election held on November 13, 1951. There were 8 councilors to be elected, and on the basis of the votes shown in the election returns from the different precincts Gutierrez had occupied 8th place with a total of 3,098 votes in his favor as against 3,060 votes in favor of De Leon, his closest contender for that place. But due to a mistake in addition, the municipal board of canvassers, which met on November 18, 1951, to canvass the returns, credited De Leon with 3,160 votes and proclaimed him the elected 8th councilor of the municipality.

"Informed, of the error committed by the municipal board of canvassers, Gutierrez on April 12, 1952, petitioned the Commission on Elections to annul the proclamation of De Leon and order the board to make a new canvass. De Leon opposed the petition. But the Commission, after hearing, granted the petition, annulled the proclamation in favor of De Leon and directed the board to reconvene and recanvass the votes received by these two candidates and proclaim the one that came out winner according to the result.

"Proceeding as directed by the Commission, the municipal board of 'canvassers reconvened on May 31, 1952, to recanvass the election returns and, having found that Gutierrez had polled more votes than De Leon, proclaimed the former elected 8th councilor of Makati.

"The present petition, as amended, seeks the annulment of this proclamation as illegal and the restoration of petitioner to the office of 8th councilor of Makati. But it appears that petitioner has, in addition, filed in the Court of First Instance of Rizal an election protest, dated June 2, 1952, contesting the election of Gutierrez.

"It is admitted that the municipal board of canvassers had made a mistake in adding up the votes reported in the election returns and that due to this mistake in addition De Leon was proclaimed elected. The question

presented is whether a mistake of that kind may be ordered corrected by the Commission on Elections after the candidate erroneously proclaimed has already assumed office." (Decision original, No. L-5758, pp. 1-2)

Las facultades de la Comision de Elecciones se definen en el Articulo X, seccion 2, de la Constitution como sigue:

"SEC. 2. The Commission on Elections shall have exclusive charge of the, enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. * * * The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court."

El administrar y hacer cumplir las leyes relativas a la celebracion de las elecciones y el decidir las cuestiones administrativas que afectan a las elecciones que no envuelvan el derecho de votar suponen existencia de tales leyes y respeto y reverencia a las mismas. No hace de la Comision, solo por haber sido elevada al rango de cuerpo constitucional, superior a dichas leyes.

En materia de escrutinio electoral, la Comision deberia desplegar todo su ingenio y tener una maquinaria tan completa como los fondos a su disposition permitan, para asegurar que las diferentes juntas al efecto cumplan puntual y fielmente con sus deberes, y para prevenir sobre la marcha todo posible error, irregularidad o fraude en las proclamaciones. No es su funcion sentarse como jueces y esperar que los otros interesados acudan a ella en demanda de remedio. Es funcion activa durante la celebration de las elecciones la que la Constitution ha encomendado a la Comision. Por su parte, los partidos y los candidatos deberian ejercer la maxima vigilancia, y llamar oportunamente la atencion de cuantas autoridades intervienen o deben intervenir en la ejecucion de las leyes electorales para evitar que ocurran retrasos, o se cometan o consuman errores, irregularidades o fraudes. En el caso de estos autos, el alegado error de suma de votos se hubiera advertido y evitado inmediatamente si el afectado hubiera sido un poco vigilante, o su partido hubiere designado un interventor despierto en la junta de escrutinio como provee el articulo 168, en relacion con el articulo 159, delCodigo Electoral Revisado. Tambien se hubiera podido evitar si un representante de la Comision en el municipio hubiera atendido el escrutinio municipal.

Despues de hecha la proclamation, nuevos factores entran en juego que no pueden desconocerse. La Junta no puede, motu proprio reunirse y corregir el acta de proclamation del resultado de la election, como no sean meros errores clericales u otros de analogo caracter, sin orden judicial. *Galvez vs. Miranda*, 36 Phil., 316, 320. Como esta Corte dijo en el caso de *Cordero contra Juez de Primera Instancia de Rizal* (1919) 40 Jur. Fil., 261, 266, 267:

"Los recurridos pretenden que la Junta Municipal de Escrutinio carecia de facultades para recontar las papeletas y hacer enmiendas en su primitiva proclamation. El articulo 477 de la Ley No. 2711,[1] dispone que inmediatamente despues, de la election, el Concejo Municipal se reunird en sesion especial, y procedera a actuar como Junta Municipal de Escrutinio; y contara los votos emitidos para cada uno de los cargos municipales en la misma forma que se dispone en el Articulo 469, para la Junta Provincial de Escrutinio. Dicho articulo (477) dispone, ademas, que la Junta Municipal de Escrutinio no tendra la facultad de recontar los votos ni de inspeccionarlos, sino que procedera con vista de las actas, tal como se hayan corregido, si es que ha habido necesidad de correcciones. La resolucio de dicha Junta se ha de constar por escrito en triplicado[2] firmado por los que la componen o por la mayoria de ellos. Cuando se hayan cumplido los deberes de tal suerte impuestos a la Junta Municipal de Escrutinio, y esta extiende su certificado conforme exige la Ley, su tarea, como tal junta, ha terminado, y no se dispone nada sobre su continuation como junta de escrutinio * * *"

"El objeto de la ley es dar fin de modo definitivo, por lo que a la Junta Municipal de Escrutinio afecta, al escrutinio de los votos que se han emitido para cada uno de los cargos municipales. Aunque la Junta Municipal de Escrutinio se compone de los que constituyen el Concejo Municipal, no actuan como concejales, sino como

una entidad distinta y diferente organizada para un fin expreso, y cuando dicho objetivo queda cumplido, desaparece y termina su existencia como tal Junta de Escrutinio. "Por tanto, la Junta Municipal de Escrutinio carecia de facultades para volver a practicar el recuento y hacer nueva proclamacion, sin haber sido autorizada para ello por una orden del Juzgado, de conformidad con lo que dispone el articulo 479 de la Ley No. 2711."

Cuando el error importante se debe a que la Junta de Escrutinio no ha tenido en cuenta actas electorales de otros precintos, o que ha tornado nimeros de votos distintos de los que constan en las actas electorales, se le puede obligar mediante mandamus a que complete el escrutinio o tenga en cuenta las cifras verdaderas y haga nueva proclamacion conforme a lo resuelto de las actas legitimas.

"Que procede la expedicion de un mandamus para obligar a la Junta de Escrutinio que declare en su certificado el resultado del escrutinio, es doctrina perfectamente sentada ahora, sobre todo, cuando resulte, con vista de las actas, que el certificado no se ajusta a los hechos que en ellas constan. Esta apoyada por abundante jurisprudencia la doctrina de que, cuando la Junta de Escrutinio se negare a contar cualquiera de los votos, podra obligarsela, mediante mandamus, a que los cuente. En principio no ouede haber diferencia entre negarse a contar cualquiera de los votos o negarse a contar solo parte del resultado. El mandamus es el recurso adecuado para obligar a una junta municipal de escrutinio para que corrija su certificado, de conformidad con sus propias actas. (15 Cyc, 383; People vs. Nordham, 90 111. 553; State vs. Hardin County Judge, 13 Iowa, 139; Rich vs. Bogard State Canvassers, 100 Mich., 453; People vs. Onondaga County, 129 N. W., 335.)

"Aunque no procedera el mandamus para obligar a que se declara que un individuo tiene derecho a un cargo discutido, o para determinar cuestiones discutidas relativas al derecho al cargo, es el recurso adecuado en casos en que los funcionarios de eleccion dejen de cumplir con sus deberes ministeriales, en relation con la eleccion. Procedera el mandamus para obligar a la Junta de Escrutinio a que redacte y complete actas exactas. (Steward vs. Payton, 77 Ga., 668; McCreary sobre Elecciones, pag. 301; Paine sobre Elecciones, pags. 755, 756.)

Hasta que la Junta de Escrutinio haya cumplido con el preciso deber que la ley le impone, debe considerarsela contumaz, y, en un caso como este, seria una anomalia legal pennitir que la Junta se atuviera al hecho de que habla librado un certificado de eleccion a uno que no habia recibido el mayor numero de votos, en contra de lo que expresamente dispone la ley, como razon bastante para que no se le obligue a cumplir un deber imperativo. (pp. 300-301.)

* * * Cuando resulta que la Junta de Escrutinio ha dejado de cumplir, o se ha negado a cumplir un deber puramente ministerial, cntonces el mandamus es el recurso adecuado. Si, por ejemplo, la Junta de Escrutinio hubiera hecho constar en su acta que A recibio la mayoria de los votos emitidos, y en vista de tal hecho declarara que B habia sido elegido, ciertamente que se le debe exigir que redacte su certificado con arreglo a los hechos expuestos en sus actas. En virtud de tales circunstancias, y con vista de tales hechos, A no podrd considerarse como elegido para el cargo en cuestion. El mandamus es el recurso mas expedito y eficaz para subsanar tal error." Consejo Mun. de Las Piñascontra Juez de 1. Inst de Rizal, 40 Jur. Fil. 296, 300-301, 302.

Un recurso de mandamus no es una protesta electoral, aunque participa en parte de la naturaleza de la misma, y la decision que alli se dicta es inapelable.

"Aunque la solicitud de mandamus, en realidad, era una protesta contra el resultado de la eleccion, de hecho no era una morion de protesta. La solicitud de mandamus no tenia por objeto que se resolviera una eleccion protestada. No puede el mandamus utilizarse para tal fin. Cuando se hace necesario recurrir a las actas y considerar cuestiones que afectan a la legalidad o irregularidades de la eleccion, o al fraude, emision ilegal de votos etc., el mandamus no es el recurso adecuado en tales casos. Dichas cuestiones deben suscitarse, ya por una mocion de protesta, ya mediante quo warranto, en relation con los hechos especiales del caso. (pp. 301-302.) * * * La sentencia del Juzgado inferior en un mandamus, asi como las demas sentencias en asuntos electorales municipales, es firme e inapelable." (pag. 303.)

Concejo Mun. de Las Piñascontra Juez de 1.a Inst. de Rizal, supra.

Si el recurso de mandamus prospera y se hace nueva y distinta proclamacion en su virtud, el candidate afectado adversamente por la modification puede protestar contra la eleccion del nuevamente declarado electo dentro de los respectivos plazos fijados por la ley. Arts. 172, 173 y 174, Cod. Elect. Rev. Pero si pierde el recurso, y en el entretanto han transcurrido los diferentes plazos legales para protestar sin que separadamnte, haya protestado contra la proclamada eleccion de su adversario, ha perdido definitivamente derecho de impugnarla. De la Rosa vs. Yonson, 52 Phil, 446; Ferrer vs. Gutierrez David, 43 Phil., 795; Nisperos vs. Araneta Diaz, 47 Phil., 806; Yumol vs. Palma, 52 Phil., 412; Municipal Council of Masantol vs. Guevara, 44 Phil., 580; Hontiveros vs. Altavas, 24 Phil., 632.

Puede la Comision de Elecciones librar el mandamus, en vez de los tribunales de justicia, o concurrentemente con estos? No se encuentra en la Constitucion, ni en elCodigo Electoral Revisado una disposicion expresa sobre el particular. Los que opinan por la afirmativa o deducen de la facultad ejecutiva de la Comision de administrar y hacer que se cumplan las leyes sobre la celebracion de las elecciones. Sin embargo, en el asunto de Concejo de Las Piñasvs. Juez de Rizal, 40 Jur. Fil., 296, esta Corte dijo:

"Hemos declarado, en casos en que la Ley Electoral era deficiente, que podria recurrirse al procedimiento que dispone la Ley No. 190 (Arnedo contra Llorente y Liongson, 18 Jur. Fil., 267; Campos contra Wislizenus y Aldanese, 35 Jur. Fil., 380, Deogracias cofCtra Abreu y De la Santa, 36 Jur. Fil., 523.)"

Y la competencia para la expedition del remedio de mandamus esta prescrita expresamente para los tribunales de justicia. Judicature Act. Rep. Act No. 296, Sees. 17, 30, 44; Rules of Court, Rule 67, sees. 3, 4. Y ciertamente es una prerrogativa judicial.

En el asunto de Ramos vs. Comision de Elecciones, 45 Off. Gaz. Supp. 9, pag. 345, se trataba de una peticion de mandamus para que se ordene a la Comision a investigar y anular el escrutinio hecho por la Junta Municipal de Escrutinio de Bato, Camarines Sur por el fundamento de que utilizo un acta falsificada del precinto 10 del citado municipio en lugar de la genuina, pues la Comision se abstuvo de hacerlo por estar pendiente una protesta electoral tendente a anular la eleccion del proclamado electo. En esta Corte hubo empate en la votacion del recurso por lo que quedo sobreseido. Regla 56, sec 2, Reglamento de los Tribunales. Tres de los Magistrados opuestos al recurso opinaban por su desestimacion 1.º porque la facultad era discrecional y 2.º porque no puede esperarse que la Comision conozca de quej as similares que surgirian en todo Filipinas, por sus limitadas facilidades y personal (p&gs. 346, 347). Dos de los opuestos al recurso votaron, sin embargo, por otras razones, que el entonces Magistrado Sr. Tuason, expuso como sigue:

"I can not share the opinion that the Commission on Elections has discretionary power to annul a canvass by the board of canvassers. If it had such power I would be inclined to agree that a grave abuse of discretion was committed when the Commission denied or declined to act on the petition of the local representatives of the Nacionalista Party, in the face of its commission's finding that the returns used in the canvass were forged. In my opinion the commission had no other alternative but to refrain, as it did, from taking cognizance of the complaint. A machinery of justice with special, summary jurisdiction and clearly outlined procedure has been set up to hear and decide precisely such irregularities as are charged in the case at bar. The Commission on Elections is an administrative body endowed with administrative functions only. Determination of which of two or more conflicting returns is authentic is a judicial prerogative. It requires the taking of evidence the holding of regular trial, if justice is to be done to both parties. It amounts to a power to declare, in some cases as in this, that one candidate has been elected over another candidate or other candidates. (pag. 348.)

"As I have said, the subject-matter of the present petition is one which falls within the exclusive jurisdiction of the Court of First Instance. If ballot boxes have been destroyed together with their contents, that is no ground for taking the case out of the method of procedure provided by law. The counting of ballots is not the only mode by which a protestant can established his right to be declared elected to an office." (pag. 349.)

Ramos vs. Commission on Election, 45 Off. Gaz. Supp. 9, pp. 848-349.

Pero se dice que la facultad de la Comisidn de Elecciones de anular una proclamacion de una junta de escrutinio y ordenar un nuevo escrutinio ya no puede ponerse en duda, por virtud de la decision de esta Corte en el Asunto de Mintu vs. Enage, G. R. No. L-1834 (Die. 31, 1947). Conforme a la opinion de dos senores magistrados, tal facultad esta limitada a errores cometidos en cosas ministeriales y administrativas "which do not call for the exercise of judgment." Dijeron, en efecto:

"The Commission on Elections has both the power and the duty to correct any error committed by election officials in ministerial and administrative matters which do not call for the exercise of judgment. The case of Mintu et al., vs. Enage et al., G. R. No. L-1834, comes under this category- There, the board of canvassers failed to perform an administrative duty by omitting to count the votes in some of the returns. To count all the returns instead of only some is an administrative function which the commission had the authority and the duty to compel the board of canvassers to act when the latter refuses absolutely to make any canvass."

Ramos vs. Commission on Elections, supra, pags. 348-349.

Pero todavia otra limitation a la facultad ejecutiva debe notarse. La facultad debe y puede ejercerse solamente antes de que alguna parte interesada pueda alegar derecho indisputable al cargo por vencimiento del plazo para protestar. En efecto, vencido que fuese ese plazo, el derecho al cargo queda investido f uera de toda disputa por el acta de proclamation, ya que la tinica manera de privarsele del cargo es mediante la protesta electoral prescrita por la ley.

En el caso de Concejo Municipal de Las Piñas vs. Juez de Primera Instancia, supra, se declaro procedente un mandamus judicial en un caso identico al de Mintu contra Enage, supra, y la sec. 2 del Art. X de la Constitution no ha privado a los tribunales de dicha jurisdiction. La jurisdiction de los tribunales en la materia es cosa que preexistia a la Comision y a esta se ha encargado, no usurpation de dicha jurisdiction judicial sino observancia de dichas leyes, en el desempeno de sus funciones.

De lo expuesto se sigue que, despues de haber quedado firme el acta de proclamation de election, por vencimiento del plazo para protestar, la Comision de Elecciones pierde toda la autoridad que anteriormente podia haber tenido de ordenar su anulacion y alteration de modo que otro candidate resulte elegido en lugar del proclamado. Solo puede hacerse esto por or den judicial en los casos y en la forma prescritos por la ley.

Nos damos cuenta de que, asumiendo que hubo error de suma, el proclamado electo.va a continuar en el cargo, no obstante no haber sido elegido para el mismo. Si esto no tiene ya remedio, el candidate y partido perjudicados no pueden quejarse, porque la culpa es de ellos por no haber desplegado un poco de vigilancia que lo hubiera evitado. Es el tribute que pagan por su descuido. Desde luego, no es el presente el recurso apropiado. Si puede serlo un quo warranto iniciado por el Procurador General por orden del Presidente de Filipinas conforme a la Regla 68, art. 3, de los Reglamentos, o mediante permiso del Juzgado conforme al art. 4 de dicha Regla, y si la prescription de action prescrita en el art. 16 de la citada regla ha quedado ihterrumpida, o si otro remedio mas existe, quaere. Lo qiiie ahora debe enfatizarse es que no de curarse un error con otro error, esto es improvisando una facultad y un procedimiento irregular y arbitrario, por muy bien intencionado que esto fuese. Un regimen bien ordenado requiere que los remedios se otorguen por la autoridad llamada por la ley a ello y conforme al procedimiento regular prescrito.

Voto por que se conceda el remedio solicitado, y consecuentemente que se dejen sin ningun valor ni ef ecto la orden de anulacion de la proclamacion de eleccion del recurrente ordenada por la Gomision de Elecciones, asi como la nueva proclamacion de eleccion a favor de Gutierrez hecha en su virtud por la Junta Municipal de Escrutinio, sin especial pronunciamiento en cuanto a las costas.

[1] Ahora, arts. 168 y 169, C6d. Electoral Revisado Ley No. 180 de la Republics.

[2] Ahora cuadruplicado. Art. 169, Cod. Electoral Rev.

DISSENTING

REYES, J.:

This is a petition for certiorari. As stated in the majority opinion, the only question posed is whether the Commission on Elections may order a municipal board of canvassers to correct a patent error committed by said board in adding up the total votes reported in the returns from the different precincts when the candidates erroneously proclaimed as a result of the wrong addition has already assumed office and the period for contesting his election has already expired. The returns are not here in dispute. The error in addition is admitted. Its correction is a purely clerical and ministerial task not calling for the exercise of judgment. And yet the majority opinion answers the question in the negative and would install in an elective public office one who, admittedly, has not been thereunto elected. To this I can not agree.

The facts are not in dispute. Isidro de Leon and Fortunato Gutierrez were among the candidates for municipal councilors of Makati, Rizal, voted for in the election held on November 13, 1951. There were 8 councilors to be elected, and on the basis of the votes shown in the election returns from the different precincts Gutierrez had occupied 8th place with a total of 3,098 votes in his favor as against 3,060 votes in favor of De Leon, his closest contender for that place. But due to a mistake in addition the municipal board of canvassers, which met on November 18, 1951, to canvass the returns, credited De Leon with 3,160 votes and proclaimed him the elected 8th councilor of the municipality.

Informed of the error committed by the municipal board of canvassers, Gutierrez on April 12, 1952, petitioned the Commission on Elections to annul the proclamation of De Leon and order the board to make a new canvass. De Leon opposed the petition. But the Commission, after hearing, granted the petition, annulled the proclamation in favor of De Leon and directed the board to reconvene and recanvass the votes received by these two candidates and proclaim the one that came out the winner according to the result.

Proceeding as directed by the Commission, the municipal board of canvassers reconvened on May 31, 1952, to recanvass the election returns and, having found that Gutierrez had polled more votes than De Leon, proclaimed the former elected 8th councilor of Makati.

The present petition, as amended, seeks the annulment of this proclamation as illegal and the restoration of petitioner to the office of 8th councilor of Makati. But it appears that petitioner has, in addition, filed in the Court of First Instance of Rizal an election protest, dated June 2, 1952, contesting the election of Gutierrez.

It is admitted that the municipal board of canvassers had made a mistake in adding up the votes reported in the election returns and that due to this mistake in addition De Leon was proclaimed elected. The question presented is whether a mistake of that kind may be ordered corrected by the Commission on Elections after the candidate erroneously proclaimed has already assumed office.

Section 168 of the Revised Election Law provides that the municipal board of canvassers shall meet immediately after the election, count the votes cast for candidates for municipal offices as reported in the returns or statements of election from the different precincts "and proclaim as elected for said offices those who have polled the largest number of votes for the different offices." The next section then provides that immediately after the completion of

the canvass, the board shall make a statement in quadruplicate of the results, which statement shall be signed by the members of the board present, and a copy of the same shall be filed with each of the offices mentioned in said section. The signing of this statement concludes the work of the board and for that reason the board is thereafter usually deemed *functus officio*. But this notwithstanding, it has been held that where the board has made an illegal proclamation, it may thereafter, without any court order, meet again, annul the proclamation and make a new one (*Yap vs. Court of First Instance*, 66 Phil., 112). And the board may also meet again to correct an error in its certificate when "by some proper authority it is ordered so to do". (*Cordero vs. Judge*, 40 Phil., 246-) Thus, in the case of *Municipality of Las Piñas vs. Judge*, 40 Phil., 279, where the board of canvassers had certified that a certain candidate for a municipal office received 139 votes in one precinct when actually he received 143 votes, it was held that the board could be ordered to reconvene to correct its certificate. Citing *Paine on Elections*, this Court said in that case that "until the board of canvassers had performed the exact duties imposed upon it by law it must be considered as in default."

It is argued, however, that after the board has made its certificate of election only a court could order it to reconvene, and this seems to be implied in the decisions above cited. Petitioner also cites section 154 of the Revised Election Law which forbids "the board of inspectors" from altering or amending any of its statements after the announcement of the result of the election unless so ordered by a competent court. But the section cited refers to the election inspectors and not to the municipal board of canvassers, which, as declared in *Galvez vs. Miranda et al.*, 36 Phil., 316, 320, is authorized "to correct clerical errors and other errors of a like character." And as to the decisions requiring judicial authority for making corrections, it should be recalled that those decisions were rendered before the creation of the Commission on Elections, the agency set up by the Constitution for "the enforcement and administration of all laws relative to the conduct of elections" (Art. X, sec. 2, Constitution of the Philippines.)

The authority of the Commission on Elections in a proper case to annul a proclamation made by a municipal board of canvassers and order a new canvass of the election returns can no longer be doubted. That authority has already been upheld by this court in *Mintu vs. Enage*, G. R. No. L-1834 (Dec. 31, 1947). In that case the Commission had annulled a proclamation made by a municipal board of canvassers on the basis of returns from only some of the election precincts, and this court ruled that the Commission in so doing had neither exceeded its jurisdiction nor committed a grave abuse of discretion. If the Commission has to correct an irregularity of this nature there is no reason why it may not also correct a mere clerical error such as that committed by the municipal board of canvassers in the present case. As stated by Mr. Justice Tuason in *Ramos vs. Commission on Elections*, 45 Off. Gaz. (Supp. No. 9) 345, 348, "the Commission on Elections has both the power and the duty to correct any error committed by election officials in the ministerial and administrative matters which do not call for the exercise of judgment."

There is nothing to the suggestion that the petition for correction which Gutierrez addressed to the Commission was but "a disguised election protest" cognizable only by the courts. The petition did not make it "necessary to go behind the returns and to consider questions touching the legality or irregularities of the election, or of fraud, illegal voting, etc." (*Municipality of Las Piñas vs. Judge supra.*) All that was required was the correction of a manifest mistake in addition, which was a purely ministerial or mechanical duty. Not being an election protest, the petition for correction did not have to be filed in the Court of First Instance and within a time prescribed in section 174 of the Revised Election Law. The remedy invoked was purely administrative for which no prescription period has so far been provided.

Neither could the fact that the candidate erroneously proclaimed has already assumed office preclude the exercise of the corrective power of the Commission. If the Commission had that power before the candidate assumed

office, there can be no reason why it should not have that same power thereafter. The doctrine of estoppel or laches cannot properly be invoked in this case for the office of the municipal councilor is a public trust and it is against the law to have it occupied by one who is not the true choice of the electorate.

In view of the foregoing, I vote for the denial of the present petition for certiorari.

Padilla, Jugo, and Concepcion, JJ., concur.

DISSENTING

MONTEMAYOR, J.,:

In the learned dissenting opinion of Mr. Justice Reyes, I fully concur. I just wish to stress the point that in ordering the correction of a clear, undisputed, simple mistake—either a clerical error or a mistake in addition the Commission on Elections did not exercise a judicial power of function and invade the province and jurisdiction of the courts, but it merely performed a purely administrative duty in connection with its being in charge of the enforcement and administration of laws related to the conduct of elections, and its right and obligation to decide, save those involving the right to vote, all administrative questions affecting elections, as set forth in the Constitution.

Respondent Gutierrez may have been a little negligent and lax in his vigilance. But his fault if any was his trust and confidence in the care and ability of the members of the Board of Canvassers to add short and simple numbers of two or three digits. Anyone of us unless extremely wary, and suspicious of fraud or deception, is liable to incur in the same laxity or fault and repose implicit confidence in the ability of the Board of Canvassers, composed of the members of the municipal council to perform a ministerial and mathematical duty—simple addition, known and daily performed by elementary grade pupils.

The ordinary citizen who makes up the bulk of our population, not versed in the law and its intricacies and technicalities, finds it difficult if not impossible to understand why a candidate for councilor receiving 3,060 votes is made to win over another candidate garnering a larger number of votes—3,098, just because thru a clerical error or a mistake in addition the votes for the first candidate were made to appear as 3,160 instead of 3,060. Said ordinary citizen's immediate and only reaction would be to wonder and ask why such a thing can happen in a free country, and why the error should not and cannot forthwith be corrected. He is confused, and added to his confusion, he is baffled by the refusal of the majority of this Tribunal to correct the mistake, and its insistence in continuing and perpetuating a grievous error—that of maintaining in the municipal council a candidate not duly elected thereto except thru a clerical error or mistake in addition, in place of another candidate receiving a larger number of votes and therefore the choice of the electorate:

Petition granted.

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