

BARNEY FRENCH, PETITIONER, VS. COMMISSION ON ELECTIONS AND TOMAS BAYAN, RESPONDENTS.

G.R. No. L-28561. July 08, 1968

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

In the election of November 14, 1967, petitioner Barney French was the official Nacionalista Party candidate for mayor of Polomolok, Southern Cotabato. His opponent was the reelectionist mayor, respondent Tomas Bayan.

The members of the Municipal Board of Canvassers, although previously notified to meet on November 27, 1967 at the PC Barracks at General Santos, Southern Cotabato, as directed by the Commission on Elections (COMELEC), failed to appear, with the exception of the Chairman, Vice-Mayor Conrado Delfin. In view of their absence, they were suspended by the COMELEC representative, Atty. Mauro T. Paredes, who appointed five substitutes for the absent members; and the replacements having qualified, the Board of Canvas proceeded to receive the returns from the Municipal Treasurer, and to canvass the same. After completion, the Board proclaimed as elected by a plurality of votes Barney French as Mayor, Mrs. Lilia Matuliano as Vice-Mayor, and eight councilors. The corresponding certificate was signed on the same day.

On November 30, 1967, however, the original board of canvassers, composed of the Vice-Mayor, three councilors and four substitutes for re-electionist members, made a second canvass without the intervention of the COMELEC representatives and proclaimed Tomas Bayan and Fortunato Busgaves as Mayor and Vice-Mayor elect, with eight councilors (seven of them being those proclaimed in the preceding canvass).

Bayan then petitioned the COMELEC, on December 5, 1967, to annul and set aside the first canvass of November 27, 1967, as illegal and irregular for lack of notice, and to declare the canvass of November 30, 1967 as the proper one. This petition was opposed by Barney French, petitioner in the case before us.

On December 27, the COMELEC resolved: (1) to annul and set aside both proclamations; (2) to direct the official Municipal Board of Canvassers of Polomolok to reconvene and recanvass the election returns of said municipality and thereafter proclaim the winning candidates,

"using the election returns copy for the Municipal Treasurer, with the election returns copy for the Commission on-Elections as reference, and in case of discrepancy the parties may resort to a judicial recount as a remedy;"

and (3) to designate Attys. Guillermo Lucas and Gerardo Bautista as supervisors of the aforesaid recanvass.

The ordered recanvass was begun at the PC Barracks of General Santos on 2 January 1967. The minutes show that when the box of returns was produced, Atty. Lucas, COMELEC supervisor, observed that all the three keys to the ballot box containing the returns were in possession of the Municipal Treasurer Matullano. When, by law, one should be in the possession of the Secretary and another in that of the Chairman of the Board of Canvassers. The treasurer explained that when he assumed office, the former acting treasurer, Amado de Vera, turns all the keys over to him on December 1, 1967. Then the Chairman observed that the pin (at the back of the ballot box cover)

was loose; and upon opening the box, one of the self-locking metal seals (No. E-97) was missing, and was found in the inner compartment of valid ballots. It was thereafter found that the Treasurer's copies of the returns for Precincts Nos. 9, 10 and 11 differed from the COMELEC copies as to the votes obtained by respondent Bayan, as follows:

Municipal Treasurer's

COMELEC Copy

Copy

Precinct No. 9

23

16

Precinct No. 10

120

100

Precinct No. 11

78

70

Upon petition of counsel for French, the canvass was suspended to enable both parties "to resort to legal remedies". Respondent Bayan suggested all be boxes and election returns be deposited in the possession of the COMELEC, Manila. The board granted both requests, but made of record that "Counting of Election Return which was found not tampered, from Precinct No. 21 down to Precinct No. were completed, and partly of Precinct No. 9 was finished" (Minutes, Petition, Annex N).

The two COMELEC supervisors reported the anomalies to the Commission, recommending that the recanvassing be done in Manila, and that the COMELEC's copy of the returns be used "because of the glaring discrepancies between the Treasurer's copy and the Comelec copy" (Petition, Annex H).

On January 11, 1968, in view of the written objections of respondent Bayan the COMELEC resolved that the canvassing be resumed and continued at the Pc Barracks of General Santos, Cotabato, "provided that should there be discrepancies in the election returns, the aggrieved party may go to the proper court for the appropriate judicial relief". Upon motion for reconsideration of petitioner French, the COMELEC, on January 23, reaffirmed its resolution of January 11, with the modification that, after canvass, "the proclamation of any winning candidate be withheld until further orders of the Commission."

Barney French then resorted to this Court for a writ of certiorari with preliminary injunction to set aside the resolutions of the COMELEC dated January 11 and 23, 1968, and that the Municipal Board of Canvassers of Polomolok be directed to recanvass the election returns on the basis of the COMELEC copies instead of those of

the Municipal Treasurer. It is his position that the facts on record show that the copies of the treasurer (at least those of Precincts Nos. 9, 10 and 11) had been tampered with after the first canvass of November 27, 1967.

We gave the petition due course, and issued a restraining, order to stop implementation of the COMELEC resolutions complained of.

Respondents filed answers in due time. They contend that the petition premature in that (a) there is no showing that the discrepancies noted would affect the result of the election and (b) that the Municipal Board of Canvas has not been given an opportunity to pass on the authenticity of the returns. They further claim that there is no sufficient evidence of alteration and tampering, and that the proper remedy is a judicial recount.

Plainly, the capital question in this case is whether the Municipal Treasurer's copies of the returns for at least Precincts Nos. 9, 10 and 11 of Polomolok, South Cotabato, are authentic or falsified. The record before us convincing that we are not here dealing with innocent or bona fide discrepancies, but with a case of tampering made after the first canvass of November 27, 1967 with intent to falsify the true results. This is conclusively shown by the undisputed fact that the tabulation of the results of the first canvass (Petition, Annex M) shows that when the copies of the returns, originally submitted by the Municipal Treasurer, were first examined on November 27, 1967, the number of votes for candidate Bayan appearing in these returns was the same one shown in the copies of the returns in the hands of the Commissions Elections for the same precincts; but when the returns were examined again in the presence of the COMELEC supervisors on January 2, 1968, the number of votes received by the candidate Bayan, according to the same treasurer's returns, no longer coincided with that shown in the COMELEC copies but were increase Thus -

P R E C I N C T S

No. 9

No. 10

No. 11

Canvass of November 27, 1967:

Bayan

16

100

70

COMELEC copies:

Bayan

16

100

70

Recanvass of January 2, 1968:

Bayan

23

120

78

I n c r e a s e

7

20

8

The only rational conclusion derivable from these facts is that the Municipal Treasurer's copies of the returns for Precincts 9, 10 and 11 of Polomolok had been altered or tampered with after the first canvass of November 27, 1967 by increasing the number of votes received by respondent Tomas Bayan. And this conclusion is reinforced by the undisputed circumstances that at the start of recanvass of January 2, 1968 it was found that (a) all three keys to the ballot box where the returns were kept (and which, by law, should be one in the possession of the Municipal Treasurer, another in that of the Secretary, and the third in that of the Chairman of the Board of Canvassers) had all been in the possession of former acting treasurer Amado de Vera on December 1, 1967 and all three had been turned over by him on that day to Municipal Treasure Leoncio Matullano; (b) the three padlocks were properly locked but one self-locking metal seal was missing; and (c) the pin at the back used or intended for the cover of the ballot box was loose (Minutes of the recanvass of January 2, 1968, Annex G, page 2; Report of the COMELEC Supervisors, Annex H).

The foregoing facts were brought to the attention of the respondent COMELEC by its own supervisors, Attys. Lucas and Bautista (see Memo Report, Petition, Annex H), and by petitioner Barney French in his petition of January 1968 (Annex J, Petition) and in his motion for reconsideration of January 13 (Annex J, Do.). Yet the Commission, without challenging the anomalies found by its supervisors, and in plain dereliction of duty, chose to ignore the issue of tampering, and insisted that the recanvass be resumed "provided that should there be discrepancies in the election returns, the aggrieved party may go the proper court for appropriate judicial relief". This ruling of the res-pondent Commission is a plain abuse of discretion amounting to excess of jurisdiction. It ignored and pissed sub silentio the conclusive evidence that the Treasurer's copies of the returns for Precinct 9, 10 and 11 were palpably tampered with for the purpose of increasing the votes to be credit to respondent candidate Tomas Bayan; and its resolutions flies in the teeth of our rulings in *Espino vs. Zaldivar*, L-22325, Dec. 11, 1967,

and Ong vs. Commission on Elections, L-28415, January 29, 1968, that a resort to judicial recount may not be invoked where, as in the present case, the returns have been tampered with after they have left the hands of the election inspectors because a falsified return or spurious return amounts to no return at all.

In the case of Ong vs. Commission on Elections, supra, this Court ex-pressly stated (Phil. Law Dec., 1968 A, pages 256 & 257):

"Where before or during canvassing or before proclamation representations are made that returns are falsified, it becomes the primary duty first of the board of canvassers, and then of the Comelec, to ascertain this fact.

If finally the Comelec summarily finds that there was falsification of the copies to be used for canvassing purposes, then canvassing must be made upon the basis of authentic copies. Because a falsified return or spurious return amounts to no return at all.

If, on the other hand, the discrepancy in the returns was the result of honest mistakes of the board of inspectors, two courses of action are open in the court of first instance: (1) a petition for correction of returns with the consent of all the members of the board of inspectors under Section 154 of the Revised Election Code;¹¹ and (2) a petition by the said board or any candidate affected for summary judicial recount under Sections 163 and 168 of the same code."

The legal basis for the rule is given in Espino vs. Zaldivar, supra. Thereafter quoting Section 163 of the Revised Election Code, we ruled that (21 Supreme Court Annot. 1212) -

"Implicit in the statute just quoted is that differences in the number of votes given a candidate should result from contradiction in the different returns, as prepared and signed by the inspectors. We do not discern in the law a purpose to throw the burden on courts where it is patent -- as is the case here -- that tampering of the returns occurred after they have left the hands of the election inspectors, just to pave the way for the proclamation of a candidate in whose favor falsification was resorted to."

In view of the law and the rulings quoted, it is plain that the contest ruling of the COMELEC can not stand, and must be set aside.

The respondents contend that the determination of the existence of tampering primarily devolves upon the Municipal Board of Canvassers. The action of the Board in this case, in suspending the canvass after the discrepancies in the three precincts were called to its attention, granting the motion of counsel for French to suspend the canvass in order to seek legal remedies, and making of record the minutes of January 2, 1968 that -

"Counting of Election Return which was found to be not tampered from Precinct 21 down to Precinct No. 10 were completed, and partly of Precinct No. 9 was finished" (Annex H; emphasis supplied)

amounts to a declaration by the Board that some of the returns laid before it were tampered, while others were not. At all events, the evidence of tampering of the municipal treasurer's returns for Precincts Nos. 9, 10 and 11 being so plain, the municipal board or canvassers could reach no other conclusion, and to refer the question to it for a more express pronouncement would not only superfluous but further delay the ultimate proclamation of the result, contrary to the avowed purpose of the law to delay proclamation as little as possible without prejudice to the corresponding electoral protest.

Finally, the respondent's claim that the petition states no cause of action because it is not averred that the tampered returns would change the result, the count is without merit. Such condition for a judicial recount, where genuine or authentic copies vary among themselves, does not apply to the present case for the reasons advanced in the Zaldivar and Ong cases (supra.). Tampered returns being fraudulent attempts to thwart the popular will must be struck down whenever met.

While the evidence on record is limited to the tampering of only three precincts, that fact suffices to cast doubt upon the reliability of the treasurer's copies of the returns for the precincts not yet examined by the board of canvassers, and justifies resort to copies of unquestioned authenticity, like those of the COMELEC, for a definitive count.

WHEREFORE, the writ prayed for is granted; the contested resolutions of respondent Commission on Elections dated January 11 and January 23, 1968 are hereby revoked and set aside, and the respondent Commission is ordered to direct a prompt resumption of the canvass of the election return for municipal officers of Polomolok, Southern Cotabato, on the basis of the copies of the Commission on Elections. The restraining order heretofore issued by this Court is made permanent. Costs against respondent Tomas Bayan.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Fernando, J., did not take part.

11 Section 154, Revised Election Code, reads: 'Alterations in the statement. - After the announcement of the result of the election in the polling place, 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. Unanimity of the board of inspectors has long been considered to be a requisition to correction under this provision. Estrada vs. Navarro, L-28340 & L-28374, December 29, 1967, and cases cited therein.'

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