

**ERNESTO NAVARRO, RICARDO Q. ANGELES, JOSE BALTAZAR, JR.,
EXEQUIEL CANOY, JOSE QUICHO, JOSE DEL ROSARIO, AND RAMON
TRONO, AS MEMBERS CONSTITUTING THE MAJORITY OF THE
MUNICIPAL BO...**

G.R. No. L-28524. July 29, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Two petitions for certiorari are before us for resolution: (1) the original petition filed on January 17, 1968 to set aside the decision of respondent Judge Tito V. Tizon (of the Court of First Instance of Bataan) in Election Case No. 77, denying the judicial recount prayed for by petitioners, under Section 163 of the Revised Election Code with respect to the votes cast in the last municipal elections in Orion, Bataan; and (2) the supplemental petition filed on January 18, 1968, directed at certain actuations of respondent Commission on Elections.

The events which constitute the background of the petition for judicial recount are set forth in the decision of respondent Judge as follows:

"In the general elections held on November 14, 1967, the official candidates of the two contending major political parties for the municipal offices of Orion, Bataan were the following: For the Nacionalista Party were the incumbent mayor and re-electionist Ricardo T. Angeles, Ernesto G. Pascual for Vice-mayor and the eight candidates for municipal councilors composed by Alberto Almazan, Primitivo Carlos, Filemon Rodriguez, Ricardo Hernandez, Pedro Javier, Estanislao de Jesus, Guillermo Sanchez and Roberto Menardo.

The Liberal Party candidates consisted of Gabriel Manrique for mayor, Felizardo Bernabe for vice-mayor and the eight candidates for municipal councilors composed by Avelino Sabino, Heremias Apolinario, Pedro Santos, Alfredo Llamzon, Sinforoso Evangelista, Alfred Seeckts, Francisco Mariano and Rafael Reyes.

On November 18, 1967, the Municipal Board of Canvassers headed by Andres Buenaventura as chairman, with Patricio Trajano, Benedicto Corpuz, Isidro Bautista, Ramon Flordeliz, Pedro Venegas, Ernesto Navarro, Pepito Baltazar and Ramon Trono as members, conducted the canvass of the election returns for the said municipality of Orion. By virtue of this canvass, the Municipal Board of Canvassers accomplished the statement of votes by precinct, I.E. Form No. Exhibit X-1- Court and the Certificate of Canvass of the Votes Cast for Municipal offices and Proclamation of the Candidates Elected by the Municipal Board of Canvassers, C.R. Form No. 85, Exhibit X-2-Court, wherein it appears that Gabriel Manrique was proclaimed duly elected municipal mayor having obtained a total of 3,150 votes and Ernesto G. Pascual was proclaimed duly elected vice-mayor having obtained a total of 3,074 votes. The eight municipal councilors, who obtained a majority of votes and proclaimed as elected were Rafael Reyes, Avelino Sabino, Jeremias Apolinario, Pedro Santos, Sinforoso Evangelista, Alfredo Llamzon, Alfred Seeckts and Francisco Mariano.

When the Statement of Canvass by Precincts, Exhibit X-1 Court and Certificate of Canvass of the Votes Cast for Municipal Offices and Proclamation of the Candidates Elected by the Municipal Board of Canvassers, Exhibit X-2-Court, were presented to the Board for approval and signature of its members, the three members

of the Board belonging to the Nacionalista Party, name-ly, Ernesto Navarro, Pepito Baltazar and Ramon Trono, refused to, sign the documents. (See Supplementary Minutes, Exhibit X-10-Court). Member Ernesto Navarro submitted to the Board a written petition, Exhibit X-10-B-Court, signed by re-electionist Mayor Ricardo T. Angeles, objecting to and praying for the suspension of the canvass in order to enable the Nacionalista Party candidates to go to Court for a judicial recount on the ground of alleged discrepancies in the entries in the election returns. Those members of the Board who voted in favor of the duly elected candidates as appear in the proclamation form, C.E. Form No. 85, Exhibit X-2-Court, being majority in number, the Municipal Board of Canvassers proclaimed the above named candidates as duly elected for the corresponding municipal offices.

On November 23, 1967, Pedro Bantog, Municipal Treasurer of Orion, as Deputy of the Commission on Elections, received from the Commission a telegram, informing him that upon petition of Ricardo T. Angeles, the Commission on Elections has declared the Municipal Board of Canvassers of Orion under the chairmanship of Andres Buenaventura as illegally constituted and nullified and voided the proceeding conducted by said Board particularly the canvass and proclamation of elected candidates. The Commission on Elections directed the Municipal Treasurer as its deputy, to reconstitute a new body of Municipal Board of Canvassers pursuant to the requirements of Section 167 of the Revised Election Code, to reconvene and recanvass the election returns, and thereafter to proclaim the winning candidates. Pursuant to this directive of the Commission on Elections, the Municipal Treasurer reconstituted a Municipal Board of Canvassers consisting of Ernesto Navarro as Chairman and with Jose Baltazar, Ramon Trono, Jose del Rosario, Jose Quicho, Exequiel Canoy, Ricardo Q. Angeles, Ramon Flordeliz, Isidro Bautista and Pedro Venegas as members. Thereafter the Municipal treasurer sent notices to the members of the reconstituted Municipal Board of Canvassers, the candidates and their authorized representatives, advising them that the Municipal Board of Canvassers as reconstituted will hold its meeting at 3:00 o'clock in the afternoon of November 25, 1967, at the Municipal Town Hall. When the meeting was convened councilors Isidro Bautista and Pedro Venegas were absent, while Ramon Flordeliz walked out.

After the canvass conducted in the afternoon of November 25, 1967, the chairman of the Board, Ernesto Navarro, observed, alleged discrepancies in the various election returns consisting of superimposition, blurredness of entries and other irregularities affecting the votes received for mayors and councilors. In view of this observation the board agreed to suspend the canvass insofar as candidates for mayor and councilors are concerned and proposed the filing of a petition in court for a judicial recount in the precincts where alleged discrepancies and irregularities are found. The Municipal Board of Canvassers, however, proclaimed Ernesto G. Pascual as duly elected vice-mayor of Orion.

On November 29, 1967, Atty. Arturo Lopez, as representative of the Commission on Elections recommended to the Commission that Ernesto Navarro, Chairman of the Municipal Board of Canvassers of Orion, be suspended and replaced by any qualified voter of Orion for failure to convene the Board of Canvassers despite his instruction in violation of Comelec resolution in Case RR-544 and Comelec telegram dated November 27, 1967. Accordingly, on December 1, 1967, Atty. Arturo Lopez, by authority of the Commission on Elections, relieved Ernesto Navarro as chairman of the Municipal Board of Canvassers of Orion, Bataan, and replaced by Atty. Eufemia Lacson-Parayno, who is a Comelec Registrar of Orion.

Earlier on the same date of December 1, 1967, the instant petition signed by Ernesto Navarro as chairman of the Municipal Board of Canvassers, was filed before this Court for a judicial recount of the votes cast for mayor and councilors in Precincts Nos. 2, 5, 8, 9, 10, 11, 13, 14, 16, 17, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 35 and 36 of the Municipality of Orion.

On December 2, 1967, the reconstituted Municipal Board of Canvassers under the chairmanship of Atty. Eufemia Lacson-Parayno with Ramon Flordeliz, Isidro Bautista, Pedro Venegas, Jose Baltazar, Jr., Jose del Rosario, Jose Quicho, Exequiel Canoy, Ramon Trono and Ricardo Q. Angeles as members, was convened at 4:10 o'clock in the afternoon. The chairman made it understood that the Board will not touch on the results of

the canvass already made by the Board under the chairmanship of Ernesto Navarro, but will canvass only the returns of Precincts Nos. 17, 20, 22 and 23 pursuant to the resolution of the Commission on Elections of November 27, 1967, so that the results of the said canvass may be incorporated with those of the previous canvass as certified and approved for the purpose of establishing a basis for the proclamation of the winning candidates.

Notwithstanding the instruction of the Commission on Elections for the continuation of the canvass, member Jose Baltazar, Jr. interpose objection on the grounds that the Municipal Board of Canvassers formerly headed by Ernesto Navarro had made a report to the Commission recommending for a judicial recount and the Board had in fact filed the instant petition for a judicial recount of the votes cast in the questioned precincts. This objection of member Jose Baltazar, Jr. was overruled by Chairman Eufemia Lacson-Parayno on the ground among others, that there is a definite order from the Commission on Elections for the immediate completion of the canvass and the proclamation of the elected candidates and that the duty of the Municipal Board of Canvassers is only ministerial insofar as the canvassing of votes and proclamation of the winning candidates on the basis of the result of such canvass are concerned. (See Minutes of the Meeting of the Municipal Board of Canvassers held on December 2, 1967, Exhibit Z-1- Court).

As a result of the canvass conducted by the reconstituted Municipal Board of Canvassers on December 2, 1967, under the Chairmanship of Atty. Eufemia Lacson-Parayno, the Board declared Gabriel Manrique to have received, 3,150 votes for the office of Mayor and Ernesto C. Pascual to have received 3,074 votes for the office of Vice-mayor of Orion, as shown in the Certificate of Canvass and Proclamation of Candidates Elected the C.E. Form No. 85, Exhibit Z-2-Court. When C.E. Form No. 85, Exhibit Z-2-Court, however, was passed around for the signature of the members of the Board, recalcitrant members, Jose Baltazar, Jr., Jose Quicho, Jose del Rosario, Ramon Trono, Exequiel and Ricardo Q. Angeles, refused to sign and instead submitted a written manifesto wherein they stated their refusal to sign the proclamation on the ground that they object to the continuance of the canvass by virtue of the filing of the instant petition for a judicial recount. Only the chairman, Eufemia Lacson-Parayno and members Isidro Bautista, Pedro Venegas and Ramon Flordeliz signed the Certificate of Canvass and Proclamation, Exhibit Z-2-Court.

On December 6, 1967, herein respondents candidates of the Nacionalista Party, Ricardo T. Angeles, et al., filed a "Petition for Certiorari with Preliminary Injunction" before the Supreme Court as G. R. No. L-28365 against the Commission on Elections and respondents candidates of the Liberal Party, Gabriel Manrique, et al., directed at the respondents in said case to restrain them from implementing the resolution of the Commission on Elections dated December 4, 1967, ordering the Municipal Board of Orion, Bataan, to continue "after December 6, 1967" its suspended canvass on the basis of questioned election returns, unless restrained in the meantime by a competent court. Accordingly, on December 7, 1967, the Supreme Court required the respondents in that case to file not later than December 16, 1967, their answer to the petition for certiorari, and issued a temporary restraining order "enjoining respondents from canvassing the votes cast in contested precincts and from proclaiming winners therein."

The petition for judicial recount was based on certain alleged irregularities consisting of "erasures, intercalation, superimpositions and other signs of falsification" in the election returns for 25 out of the 35 precincts in the municipality of Orion. The returns referred to are the copies for the municipal treasurer which had been used by the municipal board of canvassers in its task of canvassing the votes.

In its decision respondent court did not consider and rule upon the alleged irregularities in each and all of the returns from the 25 precincts, but only upon those pointed out by petitioners in their memorandum. As stated by said Court, those irregularities and its rulings thereon are reproduced as follows:

"(1) Precinct No. 11.- There are super-imposed entries in the stated votes for all the candidates for the office of councilor.

(2) Precinct No. 13.- There are superimposed entries in the stated votes, in words and figures, for the candidates for mayor, which, observation was in fact concurred in by counsel for the Liberal Party respondents. The entries in the photostatic copy of the COMELEC returns presented by the Liberal Party counsel, on the other hand, appears to be written in a different hand.

(3) Precinct No. 16.- There are patent erasures in the entries of names of seven (7) councilors, which erasures are also observable in the photostatic copy of the COMELEC returns for the precinct.

(4) Precinct No. 17.- Both in the returns of the Board and the COMELEC, the name of candidates for mayor Ricardo T. Angeles appearing in line 2 was erased and superimposed with the entry of the name of candidate Gabriel Manrique. Even the counsel for the Liberal Party candidate admit that "There is evident signs of erasures". Also, the name of candidate for councilor Reyes is entered twice in the list of candidates for councilors: on line the name is Mariano he is credited with 75 votes, and on line 11, he is credited with 100 votes.

(5) Precinct No. 19.- There are superimposed entries in the names of the seven (7) councilors, which discrepancy apparent in the COMELEC copy. On line 9 for the office of councilors, the votes appear in words as "thirty-seven" while the figure appears as "38".

(6) Precinct No. 24.- There are evidence erasures and superimposed entries in the names of candidates for and councilors. Moreover, the entries were directly written on the returns; in other words, they are not, as they should be, carbon copies of the original. The chairman of the board of inspectors for this precinct even testified that she made entries "in my original writing".

(7) Precinct No. 26.- The votes credited to candidate for councilor Alberto Almazan appear in words "fifty-nine" and in figure as "58".

(8) Precinct No. 28.- There are erasures and superimposed entries in the votes cast for candidates for councilor on line 3 and 4.

(9) Precinct No. 29.- The entries in the names of councilors show cancellations; moreover, the entries in the returns, which is supposed to be in duplicate carbon copy, appear written with a ball pen.

(10) Precinct No. 30.- This return shows extensive signs of erasures and superimpositions in the names of the candidates for mayor and councilors, which are also apparent in the COMELEC, photostat copy.

(11) Precinct No. 31.- There are superimposed entries in the names and votes of the candidates for councilors.

(12) Precinct No. 32.- There are cancellations and superimpositions in the names of candidates for councilors.

(13) Precinct No. 33.- There are alterations in the votes credited to five (5) councilors.

(14) Precinct No. 35.- There are alterations in the votes credited to three (3) councilors, which also appear in the COMELEC photostat copy."

"The respondents candidates of the Nacionalista Party also assail the illegibility of the election returns for Precinct Nos 20, 22, 23, 25, 26 and 30.

In the course of the hearing had on December 12, 1957, the Court has noted that counsel for respondents-opponents Gabriel Manrique and his fellow candidates of the liberal Party have in their possession certified photostatic copies of all the election returns for the Municipality of Orion, which were made from the originals of the election returns in the possession of the Commission on Elections. The court directed that the certified photostatic copies of the election returns be put on record for the purpose of comparing the same with the corresponding returns used by the Municipal Board of Canvassers. The Court has taken pains to scrutinize the copies of the election returns used by the Board of Canvassers, in the questioned precincts and

has meticulously compared the same with the certified authentic photostatic copies made from the originals in the possession of the Commission on Elections and has found the following:

(1) Precinct No. 11.- The alleged superimposition of the figures representing the votes obtained by the candidates for councilors from line 1 to 17 appears to be a retracing of the light print in the carbon copy to make the figures more heavier and legible. A comparison with the photostatic copy of the original return in the possession of the Commission on Elections shows that the questioned figures are the same and there is no alteration or other signs of falsification.

(2) Precinct No. 13.- The court finds the same observation as in Precinct No. 11 that the superimposition on the number of votes in words and figures for mayor, appears to have been made to make the figures more heavier and legible. The number of votes, both in words and figures, are not in discrepancy with what appears in the photostatic copy of the original return in the possession of the Commission on Elections.

(3) Precinct No. 16. - The Court has made the same observation that the alleged erasures and rewriting or re-tracing of the names of the candidates for councilors from line 11 to 17 appear to be corrections to make the names of the candidates for councilors in alphabetical order. The Court finds no contradiction or discrepancy between the returns used by the Board of Canvassers and photostatic copy of the original in the possession of the Commission on Election

(4) Precinct No. 17.- The Court has observed that the name of candidate for mayor, Ricardo T. Angeles, appearing on line 2 has been erased and superimposed with the name of candidate Gabriel Manrique. This appears to be a matter of correction in order to place in alphabetical order the name of Angeles ahead on line 1 and the name of Manrique following on line 2. The number of votes, however, for the respective candidate for mayor as found on the copy of the return used by the Municipal Board of Canvassers is not in contradiction, nor in discrepancy with the corresponding number of votes appearing in the certified photostatic copy of the returns made from the original in the possession of the Commission on Elections.

(5) Precinct No. 19.- the Court notes that the retracing of the names of the seven councilors was apparently a correction so as to make the carbon copy, which is very light more heavier and legible. The votes credited to each councilor are the same with those appearing in the photostatic copy made from the original return in the possession of the Commission on Elections.

The variance in the number of votes credited for candidate Francisco Mariano in line 9, whereby the votes obtained by said candidate was indicated in words as "Thirty- seven", whereas, it was written in figure as "38" is not such discrepancy as to affect the result of the election for Francisco Mariano and other candidates for councilors.

(6) Precinct No. 24- The fact that the entries in the names of candidate for mayor and councilors in the copy of the election returns used by the Municipal Board of Canvassers were directly written on the returns and not carbon copy of the original cannot be considered a discrepancy contemplated by the framers of the Election Code. The chairman of the board of inspectors for Precinct No. 24 explained to the satisfaction of the Court that she had to make the returns in seven copies and because the third carbon copy was already light, she had to write on the return now in the possession of the Municipal Board of Canvassers in her "original handwriting" so as to make the entries legible. However, the fact remains that the number of votes obtained by each candidate as indicated opposite their names are not at odds with those appearing in the certified photostatic copy of the original in the possession of the Commission on Elections."

(7) Precinct No. 26.- There is no discrepancy in the fact that the votes credited to candidate for councilor, Alberto Almazan, appear in words as "fifty-nine", whereas it was written in figures as "58", for it appears in C.E. Form No. 87, Statement of Votes by precinct, Exhibit X-9-Court, that Alberto Almazan was credited with 59 votes. The Court cannot surmise why Nacionalista Party candidate, Alberto Almazan had to complain when he was credited with 59 votes instead of 58, so that he was one vote to his advantage and benefit.

(8) Precinct No. 28.- The erasures regarding the entries in the votes for councilors on line 3 and 4 are matters of corrections. There is no discrepancy between the copy of the returns used by the Board of Canvassers and the photostatic copy of the original in the possession of the Commission on Elections.

(9) Precinct No. 29.- What seems to be cancellation of the names of councilors on line 1, 5, 15 and 16 is a matter of Correction. The fact that there are entries in ball pen was explained by the poll clerk who prepared the returns that she had to retrace the entries because the carbon copy was so light that the prints are not so legible. A comparison made with the certified photostatic copy of the original return in the possession of the Commission on Elections does not show any discrepancy in the number of votes credited for each candidate.

(10) Precinct No. 30.- The erasures and superimpositions in the names of candidates for mayor and councilors from line 3 to 14 were explained by the chairman of the board of inspectors to be a matter of correction because she overlooked the instruction that the names of the candidates for councilors should be written in alphabetical order and she had to make the erasures to correct the apparent mistake. At any rate the certified photostatic copy from the original return in the possession of the Commission on Elections is not in conflict with the copy used by the Municipal Board of Canvassers.

(11) Precinct No. 31.- The retracing found in the names and votes of the candidates for councilors was explained by the chairmen of the board of inspectors and poll clerk that after reviewing the returns as accomplished, they found out that some of the entries in the carbon copies were so light that they had to retrace the entries to make them heavier and more legible.

(12) Precinct No. 32.- The cancellations and superimpositions in the entries for the names of the candidates for councilors have been explained by the chairman of the board of inspectors and poll clerk of this precinct as a mere correction because some of the names of the candidates for councilors were written on the wrong space so that corrections were necessary. There is, however, no discrepancy with the certified photostatic copy of the original return in the possession of the Commission on Elections.

(13) Precinct No. 33.- What appears to be alteration in the votes credited to five councilors was explained by the poll clerk who prepared the returns for this precinct to be a retracing of the light carbon copy to make the words and figures heavier and more legible.

(14) Precinct No. 35.- Similarly, what is claimed to be alteration in the votes credited to three councilors has been explained by the poll clerk who prepared the returns for this precinct that she had to necessarily retrace the entries because she found out that the carbon copy intended for the Municipal Treasurer was so light that a retracing had to be done to make the entries legible.

The respondents candidates of the Nacionalista Party also assail the election returns for Precincts Nos. 20, 22, 23, 25, 26 and 30; in that they allegedly could not be read. In the course of the hearing had on December 12, 1967, Atty. Restituto Roman, one of the counsel for the respondents candidates of the Liberal Party took occasion to manifest in answer to this claim of counsel for the respondents candidates of the Nacionalista Party of alleged blurredness and illegibility that he is using eyeglasses but he took off his eyeglasses and tried to read the questioned returns. He demonstrated to the Court that even without the aid of his eyeglasses he could still read the questioned returns. Indeed the Court has taken pains to minutely and meticulously examine the questioned election returns and found that although some of the carbon copies were light, yet the writings thereon were legible. A comparison made with the certified photostatic copies reproduced from the originals of the returns in the possession of the Commission on Elections and the copies of the returns used by the municipal Board of Canvasser's shows that there is no conflict, inconsistency, or discrepancy between the former and the latter.

The Court notes from the foregoing circumstances that, with respect to the 14 precincts mentioned in the memorandum of respondents candidates of the Nacionalista Party, namely, Precincts 11, 13, 16; 17, 19, 24, 26, 28, 29, 30, 31, 32, 33 and 35, it is claimed that the entries in the carbon copies of the returns intended for

the Municipal Treasurer, or that which was used by the Municipal Board of Canvassers in the canvass contain erasures; intercalations, superimpositions and other signs of falsification; and with respect to six other precincts namely, Precincts Nos. 20, 22, 23, 25, 26 and 30, the claim of the said respondents is pre-dicated upon the alleged illegibility of the entries therein. The main issue thus raised in connection with these two sets of election returns boils down to whether a judicial recount may be ordered, under Sec. 158 in relation to Sec. 163 of the Revised Election code, when there are erasures, intercalations, superimpositions and when the entries in the carbon copies of the election returns are blurred, or to use the right case, therefore, calls into question the applicability of Section 168 of the Revised Election Code which reads:

"Sec. 168. Canvass of the election for Municipal offices. The municipal board of canvassers shall meet immediately after the election; The Municipal treasurer shall produce before it the statements of election from the different election precincts filed with him, and the board shall count the votes cast for candidates for municipal offices and proclaim as elected for said offices those who have polled the largest number of votes for the different offices, in the same manner as hereinbefore provided for the provincial board, and to that end it shall have the same powers including that of resorting to the court in the case of contradictory statements. The municipal board of canvassers 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 procedure provided in section one hundred and sixty-three of this Code shall be followed." (Underlining supplied).

Section 163 referred to in the afore-quoted Sec. 168 of the Revised Election Code states:

"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 for recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true 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." (underscoring supplied)

The language of the statute is very plain. As interpreted by the Supreme Court, a judicial recount of votes will only be directed by the courts in cases of contradictions or discrepancies between the copies or "other authentic copies" of the statement or return from an election precinct, or when the entry of votes in return on its face is clearly falsified, such that the difference in the number of votes will affect the result of the election. (*Parlade v. Quicho*, et al., L-16259, Dec. 29, 1959; *Abed Santos, Jr. vs. Santos*, et al., L-16375, Dec. 18, 1959; *Salcedo v. Commission on Elections*, et al., L-17672, Nov. 16, 1960; *Chiongbian v. Commission on Elections*, et al., L-19202, Dec. 11, 1961). The circumstances of the instant case do not properly fit into this legal precept.

The copies or "other authentic copies" of the statement or returns from an election precinct referred to in Sec. 163 of the Revised Election Code, against which copies of the returns used by the Municipal Board of Canvassers may be compared to determine whether there are contradictions or discrepancies in the number of votes obtained by the candidates, evidently refer to any of the four (4) copies mentioned in Sec. 150 of the said code and intended, pursuant to Sec. 152 thereof, one for the ballot box, another for the municipal treasurer, another for the provincial treasurer and the last for the Commission on Elections. (*Acuña v. Golez*, et al., 16 Supreme Court reports Ann. 32).

In the case at bar, the copies of the election returns intended for, and used by, the Municipal Board of Canvassers were compared against the duly certified photostatic copies reproduced from the original returns in the possession of the Commission on Elections. The Court finds that the alleged discrepancies in the copies of the election returns used by the Municipal Board of Canvassers complained of by the respondents candidates of the Nacionalista Party are nothing but corrections and superimpositions made by the poll clerks,

not to alter or falsify the returns, but rather to make the light imprint on the carbon copies more heavier and legible than it would otherwise appear if the names of the candidates and the number of votes they obtained were not retraced or rewritten. Right here, the Court finds a forbidding obstacle- to any other view of the statute. To say otherwise would render nugatory the obvious contents of the abovequoted legal provisions that only "in case of contradictions or discrepancies between the copies of the same statements" or when it "appears that another copy or other authentic copies of the state-ment from an election precinct" will the court "proceed to recount the votes cast in the precinct."

Petitioners assail respondent court's decision on two main grounds: (a) that the existence of erasures, alterations and superimpositions on the face of each of the election returns from fourteen precincts (Nos. 11, 13, 15, 17, 19, 24, 26, 28, 29, 30, 31, 32, 33 and 35) should not have been "lightly brushed aside" with the explanation that the same were made so that the entries would be "heavier and more legible; " and (b) that the comparison made by respondent court of the returns in question with photostatic copies of the original returns in the possession of the Commission on Elections cannot be justified under the law, because photostats do not afford a fair and permissible basis for determining the existence of discrepancies, alterations, contradictions and erasures.

In considering the foregoing points one basic postulate must be kept in mind: the remedy of judicial recount is a special one, which may be resorted to only "in case of contradictions or discrepancies between copies of the same statements" (Sec. 168, Rev. Election Code), or more specifically, "in case it appears that another copy or authentic Copies of the statement from an election precinct give to a candidate a different number of votes and the difference affects the result of the election. (Sec. 163, Id.). The authentic copies referred to, as held by this Court in many decisions, are those' mentioned in Section 150 and intended, pursuant to Section 152, one each for the ballot box, for the municipal treasurer, for the provincial treasurer, and for the Commission on Elec-tions.

The existence of erasures or apparent superimposi-tions or alterations on one of the four copies abovementioned does not by itself alone justify judicial recount: If they are susceptible of reasonable explanation, and do not constitute contradictions or discrepancies with what appear in the other copies, this remedy is not available. If any-thing they may be evidence of fraud, which must be ven-tilated in an election protest, not in the summary proceed-ing envisioned in Section 163 of the Election Code. Peti-tioners presented no other copy of the election returns for purposes of comparison, to determine whether or not discrepancies existed within the meaning of the said provision. And respondent Court, evidently to satisfy itself as to the nature of the erasures, superimpositions and alterations alleged by petitioners, did well to take testi-monial evidence as to how and why they came about,[1] and even to supply an omission on their part by taking the initiative in comparing the questioned returns with photostats (sup-plied by respondents-oppositors) of the copies submitted to the Commission on Elections.

Petitioners question the procedure followed by respondent Court, but they have adduced no evidence to disprove the correctness or validity of its conclusions, namely, that the discrepancies complained of in the returns used by the municipal board of canvassers are nothing but corrections and superimpositions not to alter or falsify the entries but rather to make the light imprints of the carbon papers heavier and more legible than they would otherwise appear if the names of the candidates and the number of votes they obtained had not been retraced or re-written. This explanation, given in each instance by the chairman or by the poll clerk or by both, of the correspond-ing board of inspectors, appeared to the Judge below as entirely satisfactory and plausible, and we see no reason, as far as the record reveals, to entertain a different conclusion.

With respect to the claim that the entries in the returns from six precincts (Nos. 20, 22, 23, 25, 26 and 30) are illegible, this is a question of fact an which respondent Court has ruled to the contrary in categorical terms, having had the opportunity to examine the returns for itself. This ruling can hardly be disputed at the present instance, the said returns not having been submitted to us for similar examination. Besides, mere illegibility of the entries in

one copy of the election return is not necessarily a grand for judicial recount, for another copy may be availed of, such as the one in the hands of the Commission' on Elections.

The supplemental petition of January 15, 1968 questions the validity of the proceedings of the municipal board of canvassers of Orion held on January 17, 1968 and the consequent proclamation of the winning candidates made on the same date. The grounds set forth in support of said supplemental petition will be considered seriatim:

(1) It is alleged that the transfer of the situs of the canvass from the municipality of Orion to the office of respondent Commission in Manila was without justification.

In this connection the events and circumstances which led to the transfer may be recalled. Four canvassings in all were held, the first of which was in the municipality of Orion itself, on November 18, 1967. On the basis of that canvass, respondent Gabriel L. Manrique was proclaimed duly elected Mayor, together with his co-respondents here who ran for the office of councilor. However, that canvass was nullified by the Commission on Elections on the ground that the board had been illegally constituted.

The second canvass was held on November 25, 1967 by a reconstituted board under the chairmanship of Ernesto Navarro, one of petitioners here, and pursuant to the order of the Commission. It was in this canvass that petitioners alleged the existence of discrepancies, contradictions, alterations and other irregularities in the election returns from 25 precincts. The true nature of these alleged discrepancies is discussed at length in the decision of the Court of First Instance of Bataan in the case for judicial recount, reproduced verbatim hereinbefore. Curiously enough, in spite of such alleged discrepancies petitioners allowed the proclamation of the Vice-Mayor-elect in the person of Ernesto Pascual. With respect to the other municipal positions the canvass was suspended after thirty-one (31) out of the thirty-five (35) precincts had been finished. The returns from four (4) precincts - Nos. 17, 20, 22 and 23 - were not taken up because of an objection raised on the ground that the entries therein were blurred and illegible.

On November 27, 1967, the Commission on Elections sent a telegraphic instruction to the municipal treasurer of Orion ordering the board of canvassers to include in the canvass the returns from the four precincts aforesaid "as reflected in returns in possession of Commission, certified true copies of which to be furnished ... and proclaim the officials, elect of said municipality." Because Ernesto Navarro chairman of the board, failed to convene the same so as to carry out the instruction of the Commission, the latter's representative relieved him of his position and designated in his place Attorney Eufemia Lacson-Parayno, the election registrar for Orion.

The reconstituted board met on December 2, 1967 for the third canvass. The chairman explained that only the returns from precincts Nos. 17, 20, 22 and 23 would be taken up and the results thereof incorporated with those of the previous canvass in order to establish a basis for the proclamation of the winning candidates. The entries in the returns were duly read and tallied, using the photostats from the Commission for reference purposes. The consolidated tallies were then prepared, including the results of the previous canvass concerning the 31 other precincts, but when they were passed around for the signatures of the members six of them (they are among the petitioners here) refused to sign the same on the ground that a petition for judicial recount had been filed in court. The proclamation was again held up as a consequence.

The petition for judicial recount was dismissed by the Court of First Instance of Bataan on December 22, 1967. Petitions to suspend the canvass and proclamation filed in the Court of Appeals (CA G. R. No. 40401-R) and in this Court (G. R. No. L-28365) were likewise dismissed on January 13 and 12, respectively. Thereupon the Commission on Elections, having been informed of the tense situation in Orion and upon petition of herein respondent Gabriel Manrique, the winning but still unproclaimed candidate for mayor, ordered the transfer of the situs of the canvass to the office of the Commission in Manila. We find nothing illegal in this order. It was within

the authority of the Commission to issue, and its discretion in this regard, exercised upon consideration of the attendant circumstances, must be upheld. It is the, body vested by the Constitution with the power and function to insure free and orderly elections, and in the absence of a clear abuse of such power no interference with its actuations would be justified.

(2) Petitioners say that with reference to the canvass in the office of the Commission no previous notice was given to the candidates interested or to the heads of the political parties in Orion. Besides pointing out that there is no specific law requiring such notice (the canvass is a function of the board of canvassers alone, Sec. 168, Rev. Election Code respondent Commission cites the fact that most of the candidate were reelectionists who had been duly substituted and therefor were represented in the canvassing board. The point raised by petitioners is no ground to annul the proceedings in connection with the canvass of January 17, 1968.

(3) It is next contended that the said canvass was made notwithstanding the pendency in this Court of a petition for preliminary injunction. The fact, however, is that no such writ was ever issued by this Court, and there was no reason therefore for respondent Commission to further delay the ascertainment of the results of the municipal election in Orion.

(4) Petitioners aver that no canvass was made on January 17 of the votes cast, for mayor, notwithstanding which respondent Gabriel Manrique was proclaimed elected for the position. This averment is denied by respondents, and the records bear them out. The minutes of the canvass held on December 2, 1967 show that only the returns from four (4) precincts (Nos. 17, 20, 22 and 23) were taken up and then considered together with the statement of the results of the previous canvass of November 25 concerning the 31 other precincts. The votes were duly tallied and the proclamation of the winning candidates was prepared. But when the official forms for the purpose were passed around for the signatures of the members of the board six of them (all of them petitioners here) refused to sign on the ground that there was a pending petition for judicial recount it seems, however, that with respect to some candidates for the office of councilor, the canvass of December 2 was not complete. This was, however, corrected in the fourth canvass held in the office of the Commission on Elections on January 17, 1968.

The minutes of this last canvass show the following:

"... The chairwoman reminded the board that, in its meeting held on December 2, 1967, the canvass of votes cast for mayor, vice-mayor and several councilors was completed and the proclamation of said officials on the basis of the completed canvass could have been made a reality as early as December 2, 1967, were it not for the willful refusal of the recalcitrant members to sign the tally sheets and the proclamation papers (C.E. Form Nos. 87 and 88 respectively); that the only remaining unfinished business now before the Board is the completion of the canvass of votes cast for some other councilors in precincts Nos. 2, 16, 19, 25 and 30, and the proclamation of the elected mayor and councilors." (p. 2)

"At this juncture, the Chairwoman requested the Recording Secretary of the Board of Canvassers to produce all documents in his custody which have something to do with the previous canvass. The Recording Secretary presented a copy of the Minutes of the meeting held by the Board in Orion, Bataan, on December 2, 1967, and a copy of the Tally Sheet (C.E. Form No. 87) which was used during the previous canvassing containing the complete number of votes received by all candidates in all precincts with the exception of Precinct Nos. 2, 16, 19, 25 and 30 where no votes were credited to councilor-candidates Messrs. Pedro Santos, Estanislao de Jesus, Francisco Mariano, Fortunato Rodriguez, Guillermo Sanchez, Alfred T. Seeckts, Pedro Javier, Alfredo Llamzon, Roberto Menardo, Rafael Reyes, and Filemon Rodriguez by the Board of Canvassers then headed by Mr. Ernesto Navarro who was later replaced by the present chairwoman as chairman of the Board. The said Tally Sheet (C.E. form No. 87) was certified correct and signed by the Chairwoman and by the Members of the Board with the exception of the recalcitrant Members on December 2, 1967. The Chairwoman then announced that this particular Tally Sheet (C.E. Form No. 87) will be completed and will be made the basis of

the subsequent proclamation of the winning candidates. Nobody objected, so the opening and the reading of the election returns in Precinct Nos. 2, 16, 19, 25 and 30 was started and completed in due time."

(5) The foregoing portion of the minutes belie petitioners next allegation, namely, that the canvass was made even in the absence of the minutes of the previous meetings of the board.

(6) Petitioners bewail the suspension by the supervisor of the Commission on Elections of the majority of the members of the board of canvassers. The records, however, show that they were trying to delay unnecessarily the proclamation of the winning candidates, and consequently their removal from the board was justified. The minutes of the meeting on January 17, 1968, speak for themselves:

"The canvass completed, duly accomplished C.E. Form Nos. 85 and 87 were passed around for signatures of all the Members. The Chairwoman and Members V Messrs. Ramon Flordeliz, Isidro Bautista and Pedro Venegas ratified their signatures affixed on the Tally Sheet on December 2, 1967. Then they all signed the Proclamation Paper (C.E. Form No. 85). When their turn for signatures on C.E. Form Nos. 87 and 85 come, Members Messrs. Ernesto Pascual, Jose Baltazar, Jr. Jose del Rosario, Jose Quicho, Exequiel Canoy and Ramon Trono willfully refused to sign them on the alibi that they were not, since the start of the meeting of the Board of Canvassers, in conformity with the completion of the canvass of votes cast for mayor and municipal councilors and the subsequent proclamation of the winning candidates in the Office of the Commission on Elections in Manila on January 17, 1968' as ordered by the Commission on Elections. Atty. Gorospe of the Comelec supervisory staff re-minded the recalcitrant Members that if they so continue to refuse to sign the Statements of Canvass (C.E. Form No. 87) which they have just finished and completed as well as the Statements of Proclamation (C.E. Form No. 85), their actuations will be construed to mean causing unnecessary delay in the completion of the canvass and subsequent proclamation of the winning candidates in utter defiance of the order of the Commission on Elections, which gross violation of the election law the supervisory staff of the Comelec would not countenance. Willful refusal to sign the election forms indicated above is a clear manifestation of obstructing the proceedings of the Board of Canvassers for which said Board is now in session in the Office of the Commission on Elections here in Manila. If they persist to refuse to sign these election forms without valid reasons, the Comelec supervisor will be constrained not only to order their suspension and replacement by adequate substitutes but more so to recommend their prosecution for violation of the election law. Atty. Gorospe gave them a chance to reconsider their recalcitrant attitudes. After a while, Atty. Gorospe requested the Chairwoman to get from the recalcitrant Members their categorical answers as to whether or not they would sign C.E. Form Nos. 87 and 85 by calling their names one by one. Each and everyone of them answered in belligerent negative."

Faced with such defiance, the supervisor of the Commission on Elections replaced the members concerned with lawyers of the said office, pursuant to its resolution of January 15, 1968, which ordered the completion of the canvass in the office of the Commission and directed "the Law Department to designate an attorney to supervise said canvass and proclamation with the authority to suspend and substitute any absent and/or recalcitrant member of the municipal board of canvassers."

On the whole we find nothing irregular or contrary to law in the procedure adopted by the Commission on Elections and in the actuations of its representatives.

The petition and supplemental petition are dismissed. Costs against petitioners.

Concepcion, C.J., Reyes, JBL, Dizon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Judicial recount may also be sought when the entry of votes in the election return is on its face clearly falsified (Salcedo vs. Commission on Elections L-17672, Nov. 16, 1960; Chiongbian vs. Commission on Elections,

L-19202, December 11, 1961).

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