

VICENTE ACAIN AND JOSE MALIMIT, PETITIONERS, VS. BOARD OF CANVASSERS OF CARMEN, AGUSAN, VILLAMOR DIZON, COMMISSION ON ELECTIONS, FELINO PALARCA AND ESTEBAN DEGAMO, RESPONDENTS.

G.R. No. L-16445. May 23, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

In the general elections held on November 10, 1959, Jose Malimit and Esteban Degamo were candidates for Mayor, whereas Vicente Acain and Felino Pelarca ran for vice-mayor, of the municipality of Carmen, province of Agusan. On November 16, 1959, the municipal board of canvassers met in the house of Malimit, and, by the vote of five (5) to three (3), proclaimed Malimit as mayor-elect with a plurality of forty-five (45) votes over his closest opponent, Degamo. It suspended the canvass and proclamation of the candidate elected for vice-mayor at the behest of Acain, for his name did not appear in the election returns for precincts Nos. 4 and 5, which did not state whether or not he had obtained any vote therein, although he claimed to have received votes in those precincts. Three (3) members of the board of canvassers, including the municipal treasurer, objected to said proclamation of Malimit as mayor-elect, and refused to sign the certificate of canvass, upon the ground that the municipal treasurer's copy of the election return for precinct No. 6 had been tampered with during the canvass, by making it appear that; the votes obtained by Malimit in said precinct were one hundred thirty-nine (139), instead of thirty-nine (39), which was claimed to be the number originally written on said return.

The issue having been brought to the Commission on Elections, the same found, by a Resolution dated November 24, 1959, that the claim of the three (3) members of the board regarding the tampering of said election return was true, and that the other five (5) members of the board who signed the certificate of canvass and proclamation were guilty of falsification thereof, for having stated thereon that the aforementioned three (3) members were absent, apart from violating subparagraph k, paragraph 4, Part IV, of Resolution No. 334 of the Commission, directing boards of canvassers, in the event of conflict between several statements of the election results regarding the number of votes obtained by a given candidate, when the difference may affect the result, to suspend the canvass and proclamation with respect to the office concerned, while the aggrieved party sought a recount before the proper court. Accordingly, the Commission annulled the canvass and proclamation made on November 16, 1959, ordered a recanvass of the votes for mayor and vice-mayor for Carmen, Agusan, suspended the five (5) members of the board of canvassers who made said proclamation, and authorized Atty. Villamor Dizon, the representative of the Commission in Agusan, to appoint substitutes. Acting pursuant to instructions of the Commission, said Atty. Dizon appointed the provincial fiscal, the provincial treasurer, the provincial auditor, the division superintendent of schools, and the district highway engineer as substitute members of the board of canvassers. On December 3, 1959, Malimit filed with the Supreme Court a petition for certiorari and prohibition, with a writ of preliminary injunction to annul the aforementioned resolution of the Commission on Elections and prevents its enforcement in the meantime, but, by minute, resolution dated December 4, 1959, said petition (G. R. No.

L-16310) was "dismissed for lack of merit." So, the board of canvassers with said five (5) substitute members, met on December 7, 1959. It made a recanvass, using insofar as precinct No. 6, the provincial treasurer's copy of the election return, and proclaimed Esteban Degamo and Felino Palarca elected as mayor and vice-mayor by 1,012 and 944 votes, respectively, as against 957 and 483 votes of Jose Malimit and Vicente Acain, respectively, their closest opponents.

On January 4, 1960, Malimit and Acain instituted the present action of prohibition, mandamus and certiorari, with preliminary injunction, to prevent the enforcement of said proclamation and the assumption of office by Degamo and Palarca, and, after due hearing, to set aside said proclamation, upon the ground that the same is null and void, because the substitute members of the board of canvassers that made said proclamation were not electors of Carmen belonging to the party of the suspended and substituted members of said board, and because petitioners had requested a suspension of the recanvass in order to secure from the proper court a recounting of the votes in precincts Nos. 4, 5 and 6, but the request was denied, thereby depriving them of a reasonable opportunity to have the aforementioned recount.

Upon the filing of the requisite indemnity bond, this Court issued on January 7, 1960, the writ of preliminary injunction prayed for. It appears, however, that at the time of the filing of the petition, Degamo and Palarca were not merely "threatening to assume the office of mayor and vice-mayor respectively," as alleged in the petition, but had already assumed said offices, which they held since January 1, 1960, the date fixed by law therefor. What is more, petitioner Malimit had filed with the Court of First Instance of Agusan a petition for a writ of quo warranto and an election protest against Dagamo on December 17 and 28, 1959, respectively. So, on March 11, 1960, Degamo and Palarca moved for the immediate dissolution of said writ of preliminary injunction, alleging that, prior to the issuance thereof, and even before the institution of the present proceedings, or on January 1, 1960, said respondent had already assumed their offices as mayor and vice-mayor, respectively, of Carmen, Agusan.

Upon the foregoing facts, it is our view that petitioners herein are not entitled to the relief prayed for, inasmuch as:

- The question whether respondents Degamo and Palarca should be prevented from assuming the offices of mayor and vice-mayor, respectively, of Carmen, Agusan, has become mooted by reason of their assumption of said offices before the filing of the petition herein.
- An injunction may be availed of only to restrain an act that is about to be done, but which has not materialized as yet, not to undo what has already been consummated (*Municipal Council of Santa Rosa vs. Provincial Board of Laguna*, 3 Phil., 206; *Matilde vs. Cajucom*, 19 Phil., 563; *Reyes, vs. Harty*, 21 Phil., 422). Having assumed office, upon the authority of the proclamation made by the board of canvassers, backed up by the Commission on Elections, Degamo and Palarca have a color of title to the offices respectively held by them, and, accordingly, they enjoy, at least, the rights of a de facto officer, among which is that their title to said offices may not be contested except directly, by writ of quo warranto and/or by election protest, not indirectly by questioning the regularity of their proclamation (*Tayko vs. Capistrano*, 53 Phil., 866, 873; *Government vs. Binañgonan*, 28 Phil., 116; *Mechem, Public Officers*, sec. 344). An injunction is not an appropriate remedy for the removal of an officer or the reinstatement of one removed without cause (*Silen vs. Vera*, 64 Phil., 868).
- Section 167 of the Revised Election Code (R.A. No. 180, as amended), providing for the appointment to municipal boards of canvassers of "registered voters of the same party" as the members of said boards excluded therefrom, applies only when the latter "are candidates" for election, not when temporary substitutes are appointed due to the suspension of members, under section 3 of said Code, on account of irregularities committed in the discharge of their duties relative to the conduct of elections, as in the case at bar.

- Petitioners herein have had ample time, from November 16 to December 7, 1959, or over twenty (20) days, the first canvass by the board of canvassers, within to seek a recount of votes by the Court of First Instance of Agusan. Yet they did not do so within said of time.

- Upon the filing of the aforementioned petition for a of quo warranto and election protest on December 17 and 28, 1959, respectively, the Court of First Instance of Agusan acquired exclusive authority to inquire into and pass upon the title of Degamo and the validity of the proclamation made by the municipal board of canvassers on December 7, 1959. We cannot, upon the authority of the petition herein, filed on January 4, 1960, determine said questions without encroaching upon the jurisdiction of said court of first instance, which it is the duty of this body, as the highest Court of the land, not only to respect, but, also, to uphold.

Wherefore, the petition herein is dismissed, and the aforementioned writ of preliminary injunction dissolved, with costs against petitioners Jose Malimit and Vicente Acain. It is so ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.

Reyes, J.B.L., J., took no part.

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