

VICENTE MALINAO, BENITO ALDE, GREGORIO ARABE, AQUILINO BORDEOS, SALVADOR ADOR AND MANUEL CELEDA, PETITIONERS, VS. MARCOS RAVELES, SUB-PROVINCIAL WARDEN AT BORONGAN, SAMAR, RESPO...

G.R. No. L-16464. July 26, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition for the issuance of a writ of habeas corpus.

On November 22, 1959, the Commission on Elections, by telegram to the municipal treasurer of Borongan, Samar, issued a resolution, which (1) ordered the suspension of the 6 members[1] of the municipal board of canvassers of said municipality; (2) set aside the canvass and proclamation made by said board on November 12, 1959; (3) authorized its special attorney [Atty. Ernesto Tena] to appoint the substitute members of said board; and (4) ordered a new canvass of the votes cast for all municipal officers in all the precincts of said municipality (Annex C).

As authorized by the Commission, Special Attorney Tena, on November 27, 1959, appointed petitioners Vicente Malinao, Benito Aide, Gregorio Arabe, Aquilino Bordeos, Salvador Ador, and Manuel Celada, as members of the municipal board of canvassers of Borongan (Annexes D, D-1, D-2, D-3, D-4, and D-5).

On December 2, 1959, the Court of First Instance of Samar issued a series of orders, directing the board of canvassers to hold the canvass (a) on December 3, 1959 at 8:00 a.m. in the PC compound and under the supervision of the court [Annex E] ; (b) at the session hall of the municipal building instead of the PC compound [Annex E-1] ; (c) at the courtroom [Annex E-2] and (d) at the PC compound [Annex E-3]. In obedience to the orders of both the Commission on Elections and the court, petitioners met and started the canvass. During the course of the canvass, mayoralty candidate Victor Amasa protested and claimed that the election returns for Precincts Nos. 11-A and 20-A did not tally with the certificates issued to the watchers in the same precincts, and that the statements (election returns) had been tampered with. His Protest having been overruled, he rushed to the Court of First Instance, and filed an amended urgent motion[2] asking that, in view of the discrepancy, a recount be made. He prayed for the issuance of a preliminary writ of injunction restraining the municipal board of canvassers from continuing with the canvass (Annex F). Acting on said motion, the court, on the same date (December 3, 1959), issued an order directing the municipal board of canvassers to "absolutely desist and refrain from continuing the canvassing and from making any proclamation."

Armed with this preliminary writ, Amasa, with the sheriff, returned to the place of the canvassing and served the same to the petitioners. But, at this time the canvassing was far ahead, 37 of the 41 precincts having been already canvassed, including Precincts Nos. 11-A and 20-A. Believing that they were not parties to the court proceeding, as the old members of the board were the original respondents, and thinking that they were also acting under the instructions of the Commission on Elections, the present petitioners proceeded to terminate the canvass and

proclaim the winner. Amasa thereupon returned to the court and made complaint, in virtue of which, the court forthwith issued the following order:

"Having been informed by deputy clerk of Court, Conrado Abella, who served the writ of preliminary injunction in this case that the respondent members of the. Board of Canvassers, namely: Vicente Malinao, Benito Alde, Manuel Celada, Aquilino Bordoos, Gregorio Arabe, and Salvador Ador, continued the recanvassing upon instructions of Attorney Pablo Añosa, it is hereby ordered that the above-named respondents (herein petitioners) be arrested and be brought before this Court immediately to explain why they should not be held for contempt of Court."

Brought to the court in virtue of said order of arrest, petitioners were required to explain why they should not be dealt with in contempt, for disregarding the order of injunction. Not satisfied with their explanation, the court, on December 4, 1959, found petitioners guilty of contempt and sentenced each of them to suffer the penalty of 6 months imprisonment and to pay a fine of P1,000.00, with subsidiary imprisonment in case of insolvency.

On December 8, 1959, this Court in G. R. No. L-16319[3] issued a preliminary writ of injunction, restraining the lower court "from enforcing the decision and/or amended decision both dated November 20, 1959, in Special Proceedings No. 1092 and from hearing said case and from taking any other action therein."

On December 15, 1959, petitioners filed with the lower court a notice of appeal (Annex B), and offered to post the necessary bail bond for their release. The court, however refused to act on said notice of appeal, in view of said preliminary writ of injunction against it. On December 21, 1959, petitioners filed a motion to withdraw the appeal.

On January 5, 1960, petitioners filed with this Court the present petition for a writ of habeas corpus alleging, inter alia, that they are being illegally imprisoned and detained by respondent Marcos Raveles, warden of the sub-provincial jail of Borongan, and praying for the issuance of said writ directed to respondent, or to whoever acts in his place and stead, commanding him to produce the bodies of petitioners before us, at a time and place to be specified, that they may be restored to their liberty. In our resolution of January 11, 1960, we required respondent to answer the petition, and authorized petitioners' temporary release, upon their filing a bond of P200.00 each. Having filed the necessary bond, petitioners were temporarily released, on January 15, 1960, after their detention for 1 month and 11 days in the sub-provincial jail at Borongan.

It is not disputed that the preliminary writ of injunction (Annex G) in question was issued by the lower court, as a consequence of a prayer contained in the amended urgent motion for recount (Annex F) filed by mayoralty candidate Victor Amasa, in Case No. 1092 of said court, in view of the alleged discrepancy, between the election returns in precincts Nos. 11-A and 20-A and the certificates issued to the watchers and the tally sheets.

We already held in the case of Municipal Board of Canvassers of Borongan, et al. vs. Hon. Emilio Benitez, et al. (G.R. No. L-16319, prom. June 30, 1960) that the petition for recounting filed by said mayoralty candidate Victor Amasa (in Case No. 1092), based upon the discrepancy between the election return and the certificate given to the watcher "did not, under the doctrine of the Parlade case,[4] give jurisdiction to the court (Court of First Instance of Samar) to order the opening of the ballot boxes for the purpose of recounting under Sections 163 and 168 of the Revised Election Code and, consequently to annul the proclamation made on December 3, 1959" of the municipal officers-elect of Borongan, Samar.

Such being the case, it follows that the lower court had no jurisdiction to issue the preliminary writ of injunction (Annex: G) in question. As a necessary corollary, it neither had jurisdiction to render the judgment of December 4, 1959 finding petitioners guilty of contempt and sentencing them accordingly. As a rule, where the court has no jurisdiction to impose the sentence, the writ of habeas corpus will lie. (2 Moran, Comments on the Rules of Court

[1952 Ed.] 553.) Where the petitioner is held upon a judicial order, the writ will lie where the order is void because the court issuing it had no jurisdiction over the crime charged, or of the person of the accused where the latter had challenged on time, as in the instant case, the jurisdiction of the court over his person. (Banayo vs. President of San Pablo, 2 Phil., 413; Collins vs. Wolfe, 4 Phil., 534; Carrington vs. Peterson, 4 Phil. 134; Davis vs. Director of Prisons, 17 Phil., 168.)

Wherefore, the writ prayed for is hereby granted; the judgment of the lower court of December 4, 1959 is revoked; and the bond filed by petitioners for their temporary liberty is cancelled. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

Concepcion, J., took no part.

[1] Donato Cardona, Pablo Anosa, Dominador Limon, Medardo Barcena, Socrates Alar, and Felipe Dala.

[2] Motion for Recount (Case No. 1092 [Annex F]).

[3] Municipal Board of Canvassers of Borongan, et al., vs. Hon. Emilio Benitez, et al., prom. June 30, 1960.

[4] Parlade, Jr., et al. vs. Quicho, et al., G.R. No. L-16259, prom. December 29, 1959; see also Samson vs. Estenzo, et al., 106 Phil., 1140; Lardizabal vs. De Veyra, et al., G.R. No. L-16267, res. of December 29, 1959.

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