

ESPERANZA SOLIDUM, PETITIONER, VS. THE HONORABLE FELIX V. MACALALAG, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF AKLAN, AND CATALINO SULAM, RESPONDENTS.*G.R. No. L-28666. May 20, 1969*

Ponente: SANCHEZ, J.

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Directly under attack in this original action before this Court for certiorari and prohibition, with prayer for a writ of preliminary injunction, is the jurisdiction of the Court of First Instance of Aklan to hear and determine Election Case 1649 of the said court,[1] wherein petition was filed for the correction of election returns and/or judicial recount of votes, with mandamus and prohibition.

We gave due course to the petition. We did not order issuance of the writ of preliminary injunction prayed for.

Two of the candidates for the eight council seats in the Municipality of Ibajay, Aklan, in the 1967 elections were herein petitioner Esperanza Solidum and Catalino Sulam, private respondent. On November 20, 1967, while the municipal board of canvassers was engaged in its task of canvassing, it was discovered that the return from Precinct 25 did not contain the name of Catalino Sulam and the votes obtained by him. At that meeting, seven canvassers were present (Eulado Masangcay, Gualberto Lalisán, Julian Sijera, Susana Sulam, Saturnino Solidum, Jose Conanan and Emilio Cabales). There-upon, three of the members, said to be Liberal Party men who constituted the minority, sued for suspension of the canvassing. A vote was taken and they were overruled. They walked out of the canvassing hall to ask for the opinion of the Commission on Elections' registrar of Ibajay. In their absence, the four remaining Nacionalista members (Saturnino Solidum, Jose Conanan, Emilio Cabales and Eulado Masangcay) continued with the canvass and proclaimed Esperanza Solidum the eighth councilor-elect. It is of interest to note that the total number of votes - according to the returns - garnered by Esperanza Solidum in all the 37 precincts of Ibajay was 2,486. With no vote for Precinct 25 counted in favor of Sulam in that canvass, his total was only 2,459 votes. Sulam would lose by 27 votes. However, if as contended by Sulam he actually received 34 votes in Precinct 25, he would have been proclaimed eighth councilor-elect with a seven (7) vote margin in his favor. The difference between the two methods of computation affects the result of the election - between the two.

On November 22, 1967, three members of the board of election inspectors (Carlos Daguno, chairman, Josefina Misajon, poll clerk, and Adelita Sudlon, party inspector) executed a joint affidavit before Ibajay Municipal Judge Jose M. Magallanes stating that in Precinct 25 of Ibajay, respondent Catalina Sulam obtained 34 votes, which was reflected in the tally board of said precinct duly signed by the board of inspectors thereof; that through inadvertence, the name of candidate Catalino Sulam and his votes were omitted in the election return; and that said affidavit was being executed for the purpose of correcting the erroneous election return submitted by the board of inspectors.

On the same day, November 22, petitioner Esperanza Solidum took her oath of office.

Also on that day, November 22, the municipal secretary of Ibaday wired the Commission on Elections for instructions as to what to do in view of the patent mistake that attended the canvass and the proclamation. On November 28, the Commission wired back advising the filing of the petition for the correction of the returns and suspension of the proclamation of petitioner.

Thus it is, that on December 1, 1967, respondent Catalino Sulam lodged with the lower court the petition adverted to earlier. It was there prayed that the board of election inspectors of Precinct 25 be directed to correct the election return therefrom, to show that Sulam received 34 votes in said precinct; or, in the alternative, to order a judicial recount of the votes cast in that precinct, to direct the municipal board of canvassers of Ibaday to reassemble and recanvass the return from the precinct aforesaid, and after such correction or after a judicial recount, to add said votes to Sulam and thereafter proclaim him winner by a seven (7) vote plurality over petitioner Esperanza Solidum.

Upon a P500-bond, respondent judge, on December 4, 1967, ordered the issuance ex-parte of a writ of preliminary injunction "enjoining, restraining and prohibiting" Esperanza Solidum "from taking her oath of office as councilor-elect of Ibaday, Aklan, and from assuming the powers and entering upon the exercise of the duties appertaining to said office, until further orders from this Court." [2]

On December 5, 1967, respondent judge directed the municipal treasurer of Ibaday to produce before him the precinct book of voters, the ballot boxes, the election statements, and all other documents used in the election to the office of Municipal Councilor in Precinct 25, and the Provincial Fiscal, the Provincial Commander and the Provincial Treasurer to produce the keys for said ballot boxes.

On December 9, 1967, petitioner herein filed in the court below her answer, a motion to dismiss for lack of jurisdiction, and a motion to dissolve the preliminary injunction. Respondent judge, however, without resolving the motion to dismiss and the motion to dissolve the writ of preliminary injunction, instead, on January 20, 1968, issued an order stating that without prejudice to the resolution of the pending questions in the decision if need there be of treating them, set the hearing of the election case for February 20, 1968 at 8:00 o'clock a.m. for the reception of the evidence of respondents therein, it appearing that petitioner therein (herein respondent Sulam) had already presented his evidence.

Also on December 9, 1967, respondents Carlos Daguno Josefina Misajon, Adelita Sudlon and Virginia Garcia, chairman, poll clerk and inspectors, respectively, of Precinct 25 filed their answer to the petition below. They there averred that after the canvass and having been informed thereof, they discovered that the name of Catalino Sulam together with the number of votes he received as candidate for councilor in Precinct 25 have been omitted; that such omission was due to "an honest mistake, inadvertence due to fatigue, and lack of sleep." This averment in their answer is supported by an affidavit unanimously executed by all the four of them on December 8, 1967 before the Municipal Judge of Ibaday. In that affidavit, they further stated that for purposes of correction they "hereby jointly declare and make it known that in the above-mentioned precinct, Dr. Catalino Sulam obtained thirty-four (34) votes and this fact was duly and properly entered in the Tally Board and Tally Sheet prepared by the board."

At the hearing of December 14, 1967, respondent judge, over the objection of petitioner Esperanza Solidum, ordered the opening of the ballot box for Precinct 25, allowed the removal for marking of the corresponding tally sheet which was later returned inside the ballot box. It was said that respondent judge then found that the name of Catalino Sulam and the 34 votes he obtained in Precinct 25 appeared on the tally sheet deposited and sealed in the ballot box.

To give time for petitioner to come to this Court, the hearing set for February 20, 1968 was transferred to a later

date.

1. It may be well at the outset to stress the importance of a proclamation in our election law-scheme. A pronouncement, not so long ago made but consistently adhered to since then, in *Lagumbay vs. Climaco* (1966), 16 SCRA 175, 179, is that: "The well-known delay in the adjudication of election protests often gave the successful contestant a mere pyrrhic victory, i.e., a vindication when the term of office is about to expire, or has expired. And so the notion has spread among candidates for public office that the 'important thing' is the proclamation; and to win it, they or their partisans have tolerated or abetted the tampering or the 'manufacture' of election returns just to get the proclamation, and then let the victimized candidate to file the protest, and spend his money to work for an empty triumph."

The teaching of past experience is that every effort should be strained, every means should be explored, to ascertain the true returns with the end in view that upon the basis thereof, proclamation untainted by force, fraud, forgery, mistake and the like, may be made. It is true indeed that after proclamation, the losing candidate may yet have the remedy of an election protest. But that may not prove effective. Election protests quite often take a long time to terminate. A number of factors, such as the almost illimitable resources of lawyers and the delays that may be occasioned, may well frustrate the ends of the protest. Victory then may just be in sound, not in substance. In *Ong vs. Commission on Elections*, 22 SCRA 241, 254-255, we observed that: "The overriding consideration, of course, is that, above and beyond the narrow personal stakes of the opposing candidates, the rights of the electorate, not to say the people, are involved. To these rights we pay full respect." And in *De Mesa vs. Mencias*, 18 SCRA 533, 538, Mr. Justice Castro aptly reminded:

"x x x It is axiomatic that an election contest, involving as it does not only the adjudication and settlement of the private interests of the rival candidates but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift, is a proceeding imbued with public interest which raises it onto a plane over and above ordinary civil actions. For this reason, broad perspectives of public policy impose upon courts the imperative duty to ascertain by all means within their command who is the real candidate elected in as expeditious a manner as possible, without being fettered by technicalities and procedural barriers to the end that the will of the people may not be frustrated (*Ibasco vs. Ilao*, et al., G.R. L-17512, December 29, 1960; *Reforma vs. De Luna*, G.R. L-13242, July 31, 1958). So inextricably intertwined are the interests of the contestants and those of the public that there can be no gainsaying the logic of the proposition that even the voluntary cessation in office of the protestee not only does not ipso facto divest him of the character of an adversary in the contest inasmuch as he retains a party interest to keep his political opponent out of the office and maintain therein his successor, but also does not in any manner impair or detract from the jurisdiction of the court to pursue the proceeding to its final conclusion (*De Los Angeles vs. Rodriguez*, 46 Phil. 595, 597; *Salcedo vs. Hernandez*, 62 Phil. 584, 587; *Galvez vs. Maramba*, G.R. L-13206)."

2. It is in the context just expressed that we make our approach to the problem of ascertaining whether or not the proclamation of November 20, 1967 should merit the imprimatur of this Court.

There is seemingly a purpose firm on the part of the four members of the board of canvassers to railroad the proclamation in the hope of creating a status of proclaimed candidate on behalf of herein petitioner. It is easy enough to understand that upon examination of the return from Precinct 25, a mistake must have been committed. To be recalled at this point is Section 150 of the Revised Election Code which provides that the return shall show "the total number of votes polled by each candidate, writing out the said number in words and figures." We are certain that the members of the board of canvassers are well posted with this legal provision. Then, the canvassers must have observed at least from the first 24 precincts that the name of Sulam and the votes he obtained were entered in the respective returns. There are therefore strong grounds that point to the fact that if

the name of candidate Sulam does not appear in the return from Precinct 25, it is, as stated by the chairman, the poll clerk and the two inspectors, because of "an honest mistake, inadvertence due to fatigue, and lack of sleep" and "done without any malice or deliberate intent on the part of the board or the individual members thereof to injure, damage or prejudice any particular person, candidate or political party."

In *Javier vs. Commission on Elections*, L-22248, January 30, 1965, the municipal board of canvassers found that in the election return from Precinct 4 of Culasi, Antique, respondent candidate for Mayor was credited with 23 votes only, whilst the tally board of the same precinct showed that he obtained 83 votes. The board of inspectors of Precinct 4 unanimously filed a verified petition with the board of canvassers requesting permission to correct the election return concerned inasmuch as the discrepancy in the votes would materially affect the result of the election. The Comelec representative instructed the board to suspend the canvass. When the board refused, Comelec by telegram also ordered suspension of the canvass. The board of canvassers however proceeded with the canvass and proclaimed petitioner. This Court, in ruling that the proclamation was null and void, stated that: "Where the board of canvassers, as in this instance, with knowledge that the return from one precinct is undoubtedly vitiated by clerical mistake, continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation cannot be said to have been made in faithful discharge of its ministerial duty under the law."^[3]

The board of canvassers here should have suspended the canvassing. After all, it was only November 20 then and the assumption of office of the newly elected municipal officials was to take place on the following January 1. No appreciable damage could have been suffered by petitioner. It would have been an easy matter to check why there was an omission in the return from Precinct 25. The election records were within easy reach. The members of the board of election inspectors from whom information could be obtained were local people, residents of Ibajay. The certificate of canvass signed by all the members of the canvassing board, by mandate of Section 153 of the Revised Election Code, to be given out to the watchers who may request them, could also be availed of.

The members of the board of canvassers should not be insensible to the difference between right and wrong, between truth and untruth. While we may concede that the composition of the board of canvassers is drawn in accordance with political party lines^[4] they are not expected to act arbitrarily, to throw overboard their sense of fairness, to be but blind partisan followers. They are not there to throttle the will of the people. They are public officers. They have the duty to perform their functions well, truly and faithfully to the end that democratic processes may be maintained. And yet, the four members of the board of canvassers, over the objection of three others, went ahead and made the proclamation. This act, we are constrained to say, is beyond the bounds of accepted candor. The mischief that stems therefrom - the *fait accompli* - should not be permitted to take its toll. Proclamation, indeed, is not the end. It may yet be annulled.

If only for the reasons just stated, the proclamation by the board of canvassers as to *Esperanza Solidum* should be stricken down.

But greater reason exists why that proclamation should not be allowed to stand unchallenged. There is that impressive unanimity on the part of the members of the board of inspectors who, in their affidavit set forth in the answer to the petition below, expressly acknowledged that in truth and in fact candidate Sulam obtained 34 votes in Precinct 25. Not that this unanimous statement stands alone. Affiants made solemn representations under oath in the same affidavit that the fact that Sulam obtained 34 votes in Precinct 25 was "duly and properly entered in the Tally Board and Tally Sheet prepared by the board." More than this, when the ballot box was opened and the corresponding tally sheet taken out, it is not disputed, not seriously at least, that the unanimous statement of the four members of the board of inspectors aforesaid was confirmed in that Sulam received 34 votes in Precinct 25.

We thus find ourselves in no position to pronounce that petitioner should be allowed to sit as councilor solely and exclusively upon the basis of the proclamation heretofore adverted to. We are impelled to say so because upon the record before us, the inclusion or non-inclusion of the votes in favor of Sulam in Precinct 25 spells the difference between prima facie giving effect to the will of the electorate, or defeating it by saying that the right to proclamation may be earned by pure technicality rather than adherence to fact.

3. Petitioner challenges the jurisdiction of the lower court. Her argument is that upon Sections 163 and 168 of the Revised Election Code, there could not be any recount, for the reason that no discrepancy or contradiction exists between copies of the same return. Really, there is neither discrepancy nor contradiction. And petitioner is correct in that Sections 163 and 168 aforesaid are both out of the way. No ground there is for a recount. The jurisdiction of the court on this matter of recount is quite limited.[5]

But the same thing cannot be said about the petition for the correction of the election return. Because, the members of the board of inspectors themselves have unanimously represented to the court below that the omission was but a mistake. The prayer in their answer to Sulam's petition below is that the election return should precisely be corrected and amended to conform to the facts. Unanimity[6] on the part of the said members of the board of inspectors paves the way for the application of Section 154 of the Revised Election Code, which reads:

"SEC. 154. 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."

In other words, the members of the board of inspectors are willing to make the alterations which may be ordered by the court. The rationale behind the grant of power to courts of first instance to order corrections of election returns is that "[m]istakes of all sorts are too common in human experience to justify anyone in denying the possibility of honest error x x x and it was in contemplation of the possibility of such errors that the lawmakers provided for their correction with judicial approval." [7] In *Rabe vs. Commission on Elections*, L-16341 & L-16470, May 25, 1960, we ruled that where the three election inspectors and the poll clerk of a precinct "have signed statements acknowledging their error" in the election return, this "makes out a case for correction or amendment of the election returns (statement) under the provisions of sec. 154 of the Revised Election Code."

4. Needless to state, canvass and proclamation must be made with the returns complete. We have repeatedly held that proclamation made on incomplete returns is null and void.[8]

A case which approximates the present is *Mutuc vs. Commission on Elections*, 22 SCRA 662, 666. In *Mutuc*, the municipal board of canvassers was confronted with an election return (from Precinct 124 of Makati) which, while listing the names of the candidates, contained no entry of votes cast for them. The consequent proclamation we declared illegal. We likewise held that the assumption of office of those proclaimed cannot affect the basic issues of the case.[9]

Since the proclamation herein was made on incomplete returns in the sense that the votes to which Sulam is entitled in Precinct 25 have not been included, we rule that the proclamation is null and void.

5. Even on the assumption that the proclamation is valid, petitioner's cause still fails. For, proclamation is in umbilical dependence upon the returns. But one of such returns - that from Precinct 25 - which does not include the votes of candidate Sulam may yet be corrected. On this point, it has been held to be the better doctrine "that after canvassers have made one canvass, declared the result and adjourned they may be compelled by 'mandamus' to reassemble and make a correct canvass of all the returns where it appears that upon the first canvass they neglected or refused fully to perform their duties." [10] *De Leon vs. Imperial*, 94 Phil. 680, is particularly instructive. We there held that "the power to authorize the correction" of an election return "can

only be made by a competent court." [11] We there likewise ruled that the remedy of mandamus for the purpose may be availed of [12] "within the two-week period within which an election may be contested" and that this period is jurisdictional, for the reason that after the lapse of that period, "the right of the candidate proclaimed to the office is deemed vested." [13]

Adverting to the case before us, the facts are that the proclamation was made on November 20 and the petition for correction below was filed on December 1, 1967. Even granting that the proclamation was valid, still the petition was filed well within the two-week period. And the Court of First Instance of Aklan has jurisdiction to hear and determine the petition for correction.

For the reasons given, the petition for certiorari and prohibition is hereby denied.

No costs allowed.

SO ORDERED.

Reyes, J.B.L., (Acting C.J.), Makalintal, Zaldivar, Fernando, and Capistrano, JJ., concur.

Dizon, Teehankee, and Barredo, JJ., took no part.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

[1] Entitled "Catalino Sulam, Petitioner, versus Carlos Daguno, Jose-fina Misajon, Adelita Sudlon, and Virginia Garcia, in their capacity as Members of the Board of Election Inspectors of Precinct 25 of Ibajay, Aklan, Eulado Masangcay, Gualberto Lalisan, Julian Sijera, Susana Sulam, Saturnino Solidum, Jose Conanan, Emilio Cabales, Bienvenida Sevilla, in their capacity as Members of the Municipal Board of Canvassers of Ibajay, Aklan, and Esperanza Solidum, Respondents."

[2] Rollo, p. 25.

[3] Emphasis supplied.

[4] Section 167, Revised Election Code.

[5] Espino vs. Zaldivar, 21 SCRA 1204, 1212-1215, citing cases; Ong vs. Commission on Elections, supra, at pp. 250-251; Balindong vs. Commission on Elections, L-21610, March 28, 1969.

[6] Estrada vs. Navarro, 21 SCRA 1514, 1516, citing cases; Peña vs. Tengco, 21 SCRA 1398, 1401, citing cases; Felix vs. Commission on Elections, 23 SCRA 1288, 1293, citing cases.

[7] Dizon vs. Provincial Board of Canvassers, 52 Phil. 47, 54.

[8] Abendante vs. Relato, 94 Phil. 8, 14-15; Abes vs. Commission on Elections, 21 SCRA 1252, 1256; Demafiles vs. Commission on Elections, 21 SCRA 1462, 1468, citing cases.

[9] See also: Javier vs. Commission on Elections, supra, the facts of which and ruling thereon have already been set forth earlier in this opinion.

[10] Agado vs. Labrador, 71 Phil. 243, 252, citing Blaquesa vs. Municipal Council of Langangilang, G.R. 16092, December 17, 1920, quoting 15 Cyc., p. 379 et seq.

[11] At p. 683; emphasis supplied.

[12] Citing Municipal Council of Las Piñas vs. Judge of the Court of First Instance of Rizal, 40 Phil. 279, 282-284.

[13] At p. 684; emphasis supplied.

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