

**THE BOARD OF ELECTION INSPECTORS, PRECINCT NO. 8 OF
TOLOSA, LEYTE, COMPOSED OF PABLO LIRIOS, ILUMINADA
MARTINEZ, E. GALLARON AND TERESA CAHAYAG, FRANCISCO
ARGUTA, AS MUNICIPAL T...**

G.R. No. L-1852. October 14, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

On November 15, 1947, Cesareo R. Colasito, candidate for mayor of Tolosa, Leyte, filed with the Court of First Instance of Leyte, a petition, in pursuance of Sections 163 and 168 of the Revised Election Code, for the recounting of the votes cast in Precinct No. 8 of Tolosa, in view of contradictory official statements issued by the Board Election Inspectors as to the votes cast for the candidates for mayor, the conflict affecting the result of the Elections.

Colasito alleged:

That on or about November 12, 1947, and immediately After making a statement of the counting of the result of the elections, the board of election inspectors issued a certificate showing the number of votes polled by the candidates for mayor as follows:

Cesareo R. Colasito

112

Luis C. Trinchera

92

That, counting the above votes with those of the nine other precincts of Tolosa, he would win by majority of 38 votes as follows:

Cesareo R. Colasito

1030

Luis C. Trinchera

992

That, instead of filing the statement made immediately after the counting, the board of election inspectors submitted another; return which would give Luis C. Trinchera the majority, by crediting him 50 votes more than actually cast in his favor and subtracting 50 from those polled by petitioner Colasito as follows:

Cesareo R. Colasito

62 instead of 112

Luis C. Trinchera

142 instead of 92

Accordingly, the lower court issued on November 26 an order for the recounting of the votes cast in precinct No. 8 of Tolosa, the recounting to be made by the board of election inspectors under the supervision of the clerk of court, the board to certify in writing the result of the recounting, and the certification to be submitted by the municipal treasurer to the municipal council as municipal board of canvassers.

The board of election inspectors of precinct No. 8 of Tolosa, joined by Francisco Arguta, municipal treasurer of Tolosa as members of the municipal board of canvassers, and Luis C. Trinchera, filed a petition for a writ of prohibition asking this Court to prohibit respondent judge from enforcing its order for the recounting of the votes cast in precinct No. 8 of Tolosa.

The sole ground of the petition, as amply explained in the objection to the opening of the ballot boxes filed by petitioners with the lower court on November 26, 1947, Appendix B of the petition, is that the certificate issued by the poll inspectors after the counting on November 12, attesting to the fact that Colasito obtained 112 votes and Trinchera 92, is not one of the statements contemplated by Sections 163 and 168 of the Revised Election Code.

Neither in their objection of November 26, 1947, nor in the petition before us, have petitioners attempted to challenge the serious charge of falsification of the election returns filed with the municipal treasurer. They do not dispute the authenticity of the certificate. They do not dispute the contradiction between the authentic certification and the allegedly falsified election returns. They do not dispute the fact that, under the authentic certificate, Cesareo R. Colastico appears to be the mayor elected by the people. They do not dispute that through the election returns challenged in the lower court as false, the choice of the people appears to be supplanted by Luis G. Trinchera, the one repudiated by the people.

To stop the recounting of votes that would reveal and frustrate a supposed election fraud, petitioners would only resort to a legal technicality premised on a clumsy misinterpretation of the meaning of words.

The certificate in question is one of the official statements required by law to be issued by the poll inspectors immediately after counting, and it is so specifically provided by Section 155 of the Revised Election Code. The next section, 154, provides that after the announcement of the result of the elections in the polling place, the board of inspectors is not to make any alteration or amendment "in any of its statements" unless it be so ordered by a competent court. It is significant that the words "in any of its statements" are used in the section immediately following the section providing for the issuance of certificate of the number of votes polled by the candidates.

No amount of logodadaly may conceal the fact that a certificate is a statement issued for some specific purpose may be following a form or issued with some solemnity, but comprehended within the meaning of the word statement.

A certificate is a "certified statement" or "a written declaration legally authenticated." It is a certification which is but a "certified statement." (Webster's New International Dictionary). The word came from the Latin word *certificatus*, past participle of *certificare*, and means "made certain."

"Statement" is act of stating, reciting, or presenting verbally or on paper. *Harrison vs. State* 147 N. E., 650, 654. (40 Words and Phrases, Perm. ed. p. 37.)

Statement. Webster defines the word as the act of stating, reciting, or presenting, verbally or on paper. See *Montague vs. Thomason*, 91 Tenn. 158, 173. (Ballentine, Law Dictionary p. 1229.)

Certificate. A writing by which testimony is given that a fact has or has not taken place.

* * * * *

By statute, the certificate of various officers may be made evidence, in which case the effect cannot be extended by including facts other than those authorized, * * * (1 Bouvier's Law Dictionary, p. 442.)

A certificate is a declaration in writing. *Ticonic Bank vs. Stackpole*, 41 Me. 302, 305.

The term "certificate" imports the statement of some fact in writing signed by the party certifying. *Nowell vs. Mayor and Council of Monroe*, 171 S. E., 136, 141.)

A "certificate" is "a writing giving assurance that a thing has or has not been done; * * * that a fact exists or does not exist." *Cook vs. Ziff Colored Masonic Lodge No. 119*, 96 S. W., 618, 620.

The "written statement" mentioned in Township Organization Act, article 7 sec. 7, *Smith-Hurd Stats*, c. 139 section 66, requiring the Judges of an election to make a written statement or certificate of the number of votes cast, is equivalent in meaning to the word "certificate" as used in the act. The term does not include a written statement not signed by the judges of election. (*People vs. Nordheim*, 99 Ill. 553, 560. 6 Words and Phrases, Perm. ed. p. 427.)"

That the contradictory statements or copies thereof mentioned in Sections 163 and 168 of the Revised Election Code the certificate in question can rightly be seen from the fact that according to section 152, only one copy of the election returns of each precinct is filed with the municipal treasurer. No one should believe that the lawmakers had contemplated difference of votes in other authentic copies "of statements" or "copies of the same statements," when the municipal treasurer cannot submit to the municipal board of canvassers more than one copy of the election returns. Undoubtedly, the other copies referred to are the certificates in question, as they are in fact copies of what the poll inspectors have written in the return prepared and signed immediately after the counting, in the presence of all watchers and the public, before whom the results are announced viva voce, while everybody may check if the announcement tallies or not with the figures written on the blackboard.

Even on the wrong hypothesis that there should be a doubt as to whether the statements mentioned in Sections 163 and 168 of the Revised Election Code may also include the certificates mentioned by Section 153, the doubt should be resolved in favor of the unmistakable intention of the lawmakers that any conflict between the several statements and certificates issued by the same board of election inspectors as to the result of the election regarding municipal and provincial positions should be right away threshed out by the summary procedure of the judicial recounting of the votes, which will take a small fraction of the day. The purpose of the law is to offer a prompt relief to a simple controversy that can immediately be settled through a summary judicial proceeding that may dispense with the long drawn and complicated proceedings of a full-dressed electoral contest and, at the same time, by the use of a simple and effective expedient, to restore public tranquillity by dispelling all doubts as to the true number of votes cast in a given precinct. Legal technicalities should be used to help in arriving at a clear intention of the law and not to defeat said intention.

Upon the facts alleged by Colasito in the lower court, it can be gathered that on November 12, 1947, immediately upon the counting, the board of election inspectors issued a certificate of the number of votes polled by the candidates for mayor, and the numbers appearing in the certificate tallied with the numbers written on the blackboard and with the written statements in quadruplicate required by Section 150 of the Revised Election Code. The presumption is that the certificate issued *res gestae* contained the truth. Being in conflict with the election returns filed with the municipal treasurer, the one filed must be presumed to have been prepared in substitution of the genuine one, originally signed at the polling place immediately after the counting, which must have been withheld, concealed, or destroyed. Under the circumstances, the certificate has taken the place of said original election returns and, like the latter, cannot fail to be described also as a statement. Therefore, from the narrow and mistaken point of view of petitioners, the contradiction between the authentic statement, the *res gestae* certificate and the one filed with the municipal treasurer and challenged by respondent Colasito as falsified, is an undisputable fact for the recounting of votes for determining the true vote polled by each candidate and exhibiting the best evidence as to the truth of facts and as to whether fraud or falsification have been committed or not.

Under Section 157 of the Revised Election Code, the ballot boxes are subject to any official investigation which may be ordered by a competent court or other authority. In the present case there is an indication that a criminal falsification might have been committed to defeat the will of the people and which is ground for starting criminal proceedings. Public interest demands immediate recounting of the votes in question and no delay should be entertained. It is absolutely necessary that, before it is too late, the choice of the people be not supplanted by an impostor and that the ones criminally responsible for the fraudulent falsification be not allowed to get away with their crime. Those tampering with elections are among the worst offenders. They are number one enemies of democracy.

Petition denied.

Feria and Briones, JJ., concur.

CONCURRING

OZAETA, J., concurring in the result:

I concur in the result for the reason that the order of the respondent judge of November 26, 1947, the enforcement of which is sought to be enjoined by the petitioners, has already been carried out, with the result that this case has become moot.

I reserve my opinion on the interpretation of section 163 of the Revised Election Code until a proper case comes before this court invoking the application of said section.

CONCURRING

PARAS, J.:

I concur in the foregoing opinion of Mr. Justice Perfecto. It may be added that sections 163 and 138 are new provisions of the Election Code which were inserted after the promulgation by this Court of the decision in the case of Benitez vs. Paredes and Dizon, 52 Phil., 18, wherein Chief Justice Avanceña stated: "The purpose of the law in requiring that this certificate be issued to the watchers is precisely to give the latter a means of seeing to it that the returns are not tampered with. Considering that the certificates of votes issued, are presumed to be no

longer in possession of the board of inspector, it follows that the law cannot refer to them, but rather to the statement which after all, is also certificate of the result of the canvass." This explains the insertion in sections 163 and 168 of the Election Code of the provisions quoted by Mr. Justice Tuason in his dissenting opinion.

DISSENTING

TUASON, J.::

Section 163 of the Revised Election Code reads:

"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 to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result 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."

With reference to the canvass for municipal offices Section 168 provides that "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."

The foregoing provisions make discrepancies among the four copies of the statement the sole ground for a recounting of the votes cast in a precinct. All such copies in the present case tally with one another. The discrepancy is between these copies on the one hand and "a certificate of the number of the votes received by a candidate" for mayor on the other.

The decision says "No amount of logodaedaly may conceal the fact that a certificate is a statement issued for some specific purpose may be following a form or issued with some solemnity, but comprehended within the meaning of the word statement." Those who hold the opposite view plead not guilty to indulging in logodaedaly. They rest their case on an indubitable precept of the law. It does not take much acumen to see that, whatever literal similarity there may be between the words "statement" and "certificate", the Election Code has employed them in different senses and for different purposes. A superficial analysis of sections 150-169 can not fail to confirm this conclusion. Nowhere is there reasonable indication they are intended to convey the same meaning.

Statement is synonymous with return. (Galang vs. Miranda and De Leon, 36 Phil. 316.) In the sense in which it is used in the Election Code, a statement is a report which "shows the date of the election, the name of the municipality and the number of the election precinct in which it was held, the total number of yellow and white ballots found in the box for valid ballots, the total number of yellow and white ballots withdrawn from the box for spoiled ballots because they were erroneously placed therein, the total number of yellow and white excess ballots, the total number of yellow and white rejected ballots and the total number of votes polled by each candidate." (Section 150.) A certificate, according to the same law, section 153, is a document which the board of inspectors issues to the watchers giving "the number of votes received by a candidate, or by the opposing candidates."

This Court has already had an occasion to say, in Benitez vs. Paredes and Dizon, 52 Phil., 1, that although, "in a broad sense, the returns are also certificates of votes in regard to the result of the election," "the returns and the certificate are two entirely different things." It explains that "the returns are the documents to be sent to the authorities indicated in the law, and the certificate of votes is the document that is delivered to the watchers who may request it."

It is trite to emphasize that legislative intention is the law; that in expounding one part of a statute resort should be had to every other part, and that where the meaning of one word in one instance is clear, this meaning will be attached to it elsewhere, (59 C. J. 1003.)

It is clear beyond cavil from what has been said in the preceding paragraphs, that the only consideration which authorizes the court of first instance to recount the votes is discrepancy or contradiction among the statements or returns. Discrepancy or contradiction between statements or returns on the one hand and certificates on the other are not ground for a recounting.

And reason is not lacking for the distinction thus made. Certificates after they have been handed to watchers are beyond the control of responsible officials. They are more susceptible of falsification, and a recounting of the ballots under sections 163 and 168 on the strength of a certificate would be likely to entail delay in the proclamation of the result of the election which, in the interest of the public, as the majority say, should be released at the earliest possible date. Prudence demands that recounting be limited to instances where the discrepancies are found in authentic copies kept or received by responsible officials who are presumed to be disinterested and to act in good faith. As a matter of necessity, the ground for recounting the votes has to be confined to contradictions between copies of the document which, to the exclusion of all others, the board of inspectors is bound to look to in the computation of the votes polled by each candidate. With so many watchers—one for each candidate, except candidates for municipal councilors who are entitled to only one watcher for each party (section 93)—it is extremely unwise, not to say dangerous, to allow an error, intentional or honest, in a certificate of votes to serve as foundation for recounting of the ballots. A candidate not satisfied with the count of votes could secure a recount by falsifying one of the certificates. Forgery of a certificate can be made so perfect as to defy detection except with the aid of scientific investigation. If investigation be made, that would take time, I make this observation not as a factor for disregarding the law but as a help to fix its meanings "We test the rule by its results."

The fact that the prohibition, covered by section 154, against making any alteration or amendment win any of its statement" immediately follows the provision for the issuance of certificates embodied in section 153, does not connote that statement and certificate are synonymous or that the prohibition relates to certificates as well as statements. We may presume that for the sake of clearness and symmetry, the matter of issuing certificates to watchers (section 153) was given precedence in the order of arrangements over the prohibition against making alterations or amendments (section 154), because the issuance of certificates is contemporaneous with the distribution of the returns provided for in section 152 and is closer to the latter in its nature than to amendments. It should be noted in this connection that the sections of the Election Code are arranged according to the order in which the successive stages and steps of an election are accomplished.

At any rate, it seems to me an incongruity to say that the prohibition of section 154 against alterations or amendments refers to certificates issued to watchers when the election inspectors, once they have parted with such certificates, lose control over them. It is difficult to understand that in prohibiting the amendment or alteration of statements section 154 could contemplate papers or documents which are beyond the reach of the board of election inspectors, the board of canvassers, of the competent court. Can it be conceived that any watoher or candidate would surrender a certificate for the purpose of amendment if the change; be unfavorable to its holder? And what could be the practical good of amending a certificate when it is the returns which the board of canvassers has to use as guide in the proclamation of the results of an election?

It is also said that "no one should believe that the law makers had contemplated differences of votes in authentic copies or statements or copies of the same statements when the municipal treasurer cannot submit to the municipal board of canvassers more than one copy of the eleotlon return." This argument applies with greater

force against the contention that the copies mentioned in section 154 comprehend certificates of votes. In the first place, while the municipal board of canvassers has one copy of the statement, it does not receive a single certificate or copy of a certificate from the municipal treasurer or from any other election official. In the second place, a certificate is not by any means a copy. In a general sense it is an original—a written testimony to the truth that certain candidates obtained the numbers of votes certified therein. A certificate contains only a brief extract of one of the numerous items specified in the statement.

The important thing, however, is the intention of the legislature. Even though only one copy of the statement finds its way into the hands of the municipal or provincial board of canvassers, it is plain from the wording of section 153 that it has in view discrepancies between the statement submitted to the board from an election precinct and the copy or copies thereof submitted to other officials of the government. Although the four copies of the statement are distributed among four different officials or entities, differences between them do have a sure way of showing up, what with the candidates, their followers and the officials connected with the holding of the election showing keen interest in the result, checking up documents in their possession with those in the hands of others and making their own computations. Discrepancies between such copies had cropped up time and time again giving rise to controversies, litigations and difficulties over the method for adjusting the conflicts. It was in the light of these controversies that sections 163 and 168 were, in my opinion, enacted.

Courts cannot transcend the powers granted to them by law, nor will their jurisdiction be enlarged by intendment. (5 C.J., 810.) So where a court of general jurisdiction exercises in a special statutory manner, or otherwise than according to the course of the common law, specific statutory powers not 'belonging to it as such court, and not within its ordinary jurisdiction, it (the court), under such circumstances, stands, with respect to the special power exercised, on the same footing with courts of limited and inferior jurisdiction. (21 C. J., 152.) Jurisdiction in such cases must affirmatively appear. (Ibid., 153.)

This is specially true where, as here, the power to recount the votes "is an administrative and supervisory power Intended to secure correctness in the amendment of the returns." (G. R. No. 35800; Board of Election Inspectors of Boñgalon vs. Sison, 55 Phil., 915-917.) This function formerly devolved upon the board of canvassers, but has been transferred to the courts with a view, presumably, to secure regularity and fairness in the recount. The function has not become judicial by the fact that the courts exercise it. Its administrative and ministerial character is retained. The court's duty remains purely mechanical or mathematical, as shown by the fact that the court is not called upon to render any judgment, decision or ruling. The court has no greater claim to an enlargement of its authority than the board of election inspectors or the board of canvassers if these performed that authority.

Of course the certificate of votes has a purpose. Its purpose is not to make a certificate the basis for a recount of ballots when the statements conflict with it; it is simply and solely to deter election officials of dishonest intentions from tampering with the outcome of the voting, or if such tampering should in fact be committed, to provide the candidates adversely affected with evidence in the ensuing protest. And yet it is not even a primary evidence; it is only entitled to weight. Its utility is thus stated by this Court: "While this document is not primary evidence in the strict sense, it was nevertheless made in obedience to the precepts of the law and was so nearly contemporaneous with the making of the return that it is entitled to weight," (Dizon vs. Provincial Board of Canvassers of Laguna, 52 Phil., 47, 54.)

The objection then of the petitioners is not a mere "legal technicality, premised on a clumsy misinterpretation of the meaning of the words". The question goes deeper than that.

The Election Law has laid down rules with minute care, allotting functions to each official and specifying when and how they should be performed. These rules are calculated to assure an orderly process in the conduct of an

election and to safeguard both the interests of the candidates and of the public. In consonance with this policy, the law has adopted an elaborate procedure for the threshing out of election controversies, outlining what pleadings should allege, the time within which they should be filed, how the trial is to be conducted, etc., etc. This contest is a judicial proceeding. The recounting of votes, which is summary, administrative and ministerial in character, has not been devised to take the place of a full-dressed contest". Numerous factors enter into an election controversy which cannot be attended to in an interlocutory proceeding. To pay slight regard to this manifest limitation, to give the law greater effect than its terms require, to show disdain for law and precedents, in the name of convenience, efficiency and justice, is unjustified judicial legislation, a spurious interpretation carried to a harmful extreme. Justice is many-sided, and truth is not always what we believe. The courts are not endowed with the power of clairvoyance to divine from scanty allegations in pleadings where justice and truth lie. Quite apart from the fundamental principle of the separation of powers involved, the prevailing decision will pave the way for an avalanche of petitions for recounting of the ballots, and result in prolonging the conditions which the court would put an end to quickly by enlarging the precepts of sections 163 and 168. If a recounting of the ballots in one precinct might, in some cases, decide an election, it does not do so in the majority of cases and so would not, except rarely, eliminate a "full-dressed contest." What is more, there may be in connection with the recounting of ballots matters which cannot be properly alleged and decided except in a regular contest, such as the validity of ballots, the legality of the conduct of the election, etc., matters regarding which the parties must be given the right and the opportunity to be heard in the interest of truth and Justice and, in the last analysis, of efficiency or convenience itself. To paraphrase an author, the election procedure is the expression of a principle of order to which candidates and the courts must conform if friction and waste and delays are to be avoided. Let a judge proceed in each case according to his personal idea of the people's interest and public convenience, and there will be chaos in the place of order, doubts in place of certainty and stability of law. The loss in the long run will be greater than the immediate gain.

Moran, C. J.:

I concur in this dissent.

Hilado, J:

I concur in this dissent.

Bengzon, J.:

I concur in the above dissent.

Padilla, J.:

I join in the foregoing dissent.

Mr. Justice Hilado and Mr. Justice Padilla are no longer members of the Court when this decision was promulgated.

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