

PEDRO R. DIZON, PETITIONER, VS. HON. TITO V. TIZON, JUDGE OF THE COURT OF FIRST INSTANCE OF BATAAN; THE PROVINCIAL BOARD OF CANVASSERS OF BATAAN; AND GUILLERMO ARCENAS, RESPONDE...

G.R. No. L-28563. March 27, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Object of the instant petition for certiorari and prohibition is the decision of the Court of First Instance of Bataan in its Civil Case No. 81, dismissing herein petitioner's petition for mandamus and/or prohibition.

The petitioner was a candidate for reelection to the position of Provincial Governor of Bataan in the elections of November 14, 1967. On December 21, 1967 he instituted his petition in the court a quo, seeking to compel the provincial board of canvassers to exclude (not to count) the votes cast in precinct No. 18 of the municipality of Dinalupihan and to declare the election in said precinct null and void on the ground that the election return therein was "patently manufactured." Reference was made particularly to the fact that while this return shows that 279 ballots had been cast and counted, only 80 persons actually voted according to a certification of the election registrar in Dinalupihan. The specific allegation in the petition below is that "the board of election inspectors in said precinct, through participation and/or tolerance, suffered at least 199 additional ballots to be falsified and allowed to be included in the election returns for said precinct."

Guillermo Arcenas, an opposing candidate for the same position, was allowed by the trial court to intervene, and is now one of the respondents here. Both he and the provincial board of canvassers filed their respective answers to the petition, denying the material averments therein.

We are of the opinion that the dismissal of the petition below is correct, and that the remedy now sought against such dismissal should be denied.

1. The election return for precinct No. 18 of Dinalupihan is not "obviously manufactured" within the meaning of our decision in *Lagumbay vs. Commission on Elections*, G. R. No. L-25444, January 21, 1966. The said return, as found by the lower court, is regular and complete on its face. In fact, when it was canvassed by the provincial board of canvassers on December 7, 1967, the petitioner did not raise any objection to it or point to any defect or infirmity in its contents. The discrepancy on which the petition was based is not one which appears on the face of the return, but between the statement therein that 279 ballots had been cast and an entirely different document, namely the certification of the election registrar that only 80 voters actually voted. This certification, as correctly explained by the trial court, was not material insofar as the board of canvassers was concerned, since its ministerial duty was to read and canvass the results of the election on the basis of the returns, once satisfied that the same were genuine.

2. The certification of the election registrar, which appears below a list of 80 names, states "that the above-named

persons are the only voters who actually voted in Precinct No. 18 of this Municipality as shown in the Precinct Book, although the minutes of the Board of Inspectors show that 279 voters actually voted." (underscoring supplied)

The precinct book referred to is CE form No. 1. The data contained therein with respect to precinct No. 18 of Dinalupihan show that there were 352 registered voters in all (183 male and 169 female) and that the number of registered voters who actually voted and signed the said form was 80 (35 male and 45 female).

The certification of the election registrar relied upon by the petitioner is correct as far as it goes. Only 80 voters appear to have voted according to the precinct book in the sense that only 80 voters affixed their signatures thereon after voting. But this does not necessarily mean that no other voters cast their ballots in the questioned precinct: there were 279 in all, according to the minutes of voting, although only 80 of them signed the precinct book. A certification, dated December 20, 1967, by the chairman of the board of inspectors (Rogelio D. Buenaventura) and the poll clerk (Mrs. Flora D. Dabu) attributes the discrepancy "to our failure to accomplish the voting record at the back of CE Form No. 1 on account of lack of actual time," and makes the additional note that "some registered voters who actually voted failed to sign in their identification record CE form 1 but signed in the list of voters and their voting records in the poll clerk's charge." (underscoring supplied).

3. CE form No. 1, which is the approved individual voter's application for registration, is an innovation introduced by the Commission on Elections under the new registration law, and takes the place of the old registry list of voters. The approved applications are bound together and make up the so-called precinct book of voters. Each voter, after casting his ballot, is supposed to sign and thumbmark the proper spaces on the form corresponding to him. Aside from the precinct book, however, there is another form prescribed by the Commission, namely, CE form No. 39, which is a bound pamphlet entitled "List of Voters who voted and Their Voting Records." The instruction of the Commission in the last elections was for every voter to also sign and thumbmark this form. This is "the list of voters and their voting records" which was signed by the registered voters of precinct No. 18 of Dinalupihan, many of whom failed to do the same on the precinct book of voters, CE form No. 1, as shown on the certification made by the board chairman and the poll clerk, which certification was identified and affirmed by the former at the trial.

The court below accepted the foregoing explanation of the discrepancy between the number of voters who appear to have voted according to the precinct book (80) and the number who voted according to the minutes of voting signed by the election inspectors and as shown by the actual ballots found in the ballot box (279). The explanation is reasonable, especially considering that there were 352 registered voters in the precinct in question, and rules out any conclusion that the election return was "obviously manufactured" so as to justify its annulment under the doctrine of *Lagumbay vs. Commission on Elections*.

If there was any fraud or irregularity committed in the election in said precinct; if, for example, some ballots were filled and cast by persons other than the registered voters themselves, the election return could not, for that reason, be considered as obviously manufactured. It would still reflect the actual number of ballots found and counted, and the remedy to correct the anomaly would be an election contest, not a petition to exclude the return in question from the canvass and thus virtually annul the election in that precinct.

The petition is dismissed, with costs against petitioner.

Reyes, Acting C.J., Dizon, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Ruiz Castro, J., did not take part.

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