

DOMINGO Z. VILLACARLOS, PETITIONER, VS. HON. JOSE B. JIMENEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE. THE MUNICIPAL BOARD OF CANVASSERS OF TERNATE, CAVITE AND BAYANI CAT...

G.R. No. L-16437. December 29, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

In the regular elections held on November 10, 1959 petitioner Domingo Z. Villacarlos and respondent Bayani Catamisan were registered candidates for the office of municipal mayor of Ternate, Cavite. On the following November 21 Villacarlos filed a petition with the Court of First Instance of Cavite, docketed as case No. 57, for recounting of the ballots in three precincts of the said municipality (Nos. 1-A, 5 and 6) pursuant to sections 163 and 168 of the Revised Election Code, on the ground of alleged discrepancies as to number of votes between the election returns and the certificates of election results issued by the board of election inspectors to the watchers in those precincts, in accordance with section 153 of the same Code. As prayed for in the petition the court, presided by respondent Hon. Jose B. Jimenez, issued a writ of preliminary injunction on November 23, 1959 to restrain the municipal board of canvassers from proclaiming the winning candidate for mayor of the municipality of Ternate.

Respondent Bayani Catamisan filed an opposition to petition, interposing affirmative defenses, namely, that the certificates of election results alleged in the petition are not authentic documents referred to in Sections 163 and 168 of the Revised Election Code; that such certificates of election results are falsified, altered, unofficial and/or self-serving statements; and that the ballot boxes in Precincts 1-A and 6 had been tampered with and the integrity of their contents had been destroyed or corrupted and so would not reflect the will of the electorate who voted. In the course of the hearing of the petition evidence was introduced by respondent to prove the alleged tampering of the ballot boxes. Petitioner objected on the ground that the evidence was immaterial and irrelevant, since the jurisdiction of the Court was limited to the ministerial act of recounting the votes and did not extend to an inquiry into the commission of election anomalies, which should be ventilated in an election protest. The court overruled the objection and permitted the evidence to be received. A motion to strike out was thereafter filed but was denied, as was also the subsequent motion to reconsider.

On December 29, 1959 Domingo Villacarlos filed the instant petition for certiorari and prohibition praying that the rulings and resolutions of respondent court allowing the introduction of evidence concerning the alleged tampering of the ballot boxes and denying petitioner's motion to strike out be set aside and annulled and that said court be ordered to desist from allowing further evidence on the point to be presented. A writ of preliminary injunction was issued by us on January 25, 1960, to restrain respondent court from continuing with the trial of the main case until further orders. Before the writ could be served, however, respondent Court, on the basis of our decision in the case of Jose Parlade, Jr., et al. vs. Hon. Perfecto Quicho, et al., G. R. No. L-16259, Dec. 29, 1959, dismissed the petition pending before it and lifted the writ of preliminary injunction it had previously issued. As a

result respondent Bayani Catamisan was, on January 26, 1960, proclaimed mayor by the Municipal Board of Canvassers of Ternate. No appeal or petition for review was taken by any of the parties from the order of dismissal, and in their respective manifestations subsequently filed before this Court they in effect admitted that the issue involved in the instant petition has become academic and moot, although petitioner asks that it be decided on the merits nevertheless, so that a guide for future litigation may be laid down. We believe the reason given by petitioner is not weighty enough to justify a disregard of the established general rule that moot issues, which affect no rights of the parties, are not proper for adjudication by the courts. In any event, consideration of the question posed by petitioner is barred by the defense of lack of jurisdiction on the part of respondent court to order a recount of the ballots cast in the three precincts involved. The *Parlade* case, *supra*, has definitely settled that the discrepancy in number of votes mentioned in section 163 of the Revised Election Code, which would justify a recount, has reference to the number of votes appearing in different copies of the election returns required by section 150, and not to the discrepancy between the election returns and any certificate given by the board of inspectors to the watchers who may request them under section 153.

The petition is dismissed, without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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