

**AMELITO R. MUTUC, GINES SORIANO WITH TV SCREEN NAME
NESTOR DE VILLA, JOSE ALARILLA, TOMAS A. BALUYUT, OSCAR
CALVENTO, RAFAEL GAITE, MICHAEL JOSEPH, AMADO DE VERA, JR.
AND FILOME...**

G.R. No. L-28517. February 21, 1968

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7c143db61acd/>

CASTRO, J.:

The petitioners were the candidates of the Nacionalista Party for the offices of mayor, vice mayor and councilors in the municipality of Makati, Rizal in the general elections held on November 14, 1967. The private respondents were the rival candidates of the Liberal Party.

Originally brought here as an appeal from two resolutions of the Commission on Elections (Comelec) this case, in our resolution of January 17, 1968, was considered, alternatively, as a special civil action for certiorari. In essence, it poses the novel question of whether the Comelec has the power to order a canvass of the returns, disregard-ing the return from one precinct which is blank or incom-plete in the sense that it does not have any entry of the votes cast for any candidate, upon its finding that the votes from that precinct are not likely to alter the results of the election.

In counting the votes from the various precincts in Makati, the municipal board of canvassers was confronted with an election return which, while listing the names of the can-didates, contained no entry at all of the votes cast for them. This was the return from precinct 124. A recourse to the provincial treasurer's copy of the same return yielded no result as it was likewise blank or incomplete. So was the Comelec's copy, except that this showed the total number (263, according to the parties) of the votes cast in the precinct. As a result, counting had to be stopped.

On November 20, the board of canvassers filed a peti-tion with the Court of First Instance of Rizal, alleging that because of discrepancies in the returns from certain precincts in Makati, among them precinct 124, the board could not proclaim the winning candidates, and, for this reason, praying for the opening of the ballot boxes in the precincts in question.

The board did not, however, press its petition. In-stead, it asked the Comelec on November 24 to be allowed to proceed with the proclamation of the winning candidates, disregarding for this purpose the return from precinct 124, on the claim that as the Comelec's copy of the return showed that there was a total of only 263 votes cast in that precinct, the results of the election would not materially be changed by their inclusion.

The Comelec granted the request on the same day and set the proclamation of the winners for the following day, November 25. Accordingly, the board of canvassers reconvened and proclaimed the respondents elected to the various elective offices in Makati on the basis of the canvass it had so far made, minus the return from precinct 124. It subsequently withdrew the petition it had previously filed in court for the opening of the ballot boxes.

The petitioners asked the Comelec to reconsider its resolution of November 24 and to annul the proclamation of the respondents, but their motion was denied in another resolution dated December 22.

Hence the present petition.

It is now settled doctrine that an incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation.[1] Indeed, it is the ministerial duty of a municipal canvassing body to count the votes cast "in the same manner as hereinbefore provided for the provincial board [of canvassers],"[2] which means to say to count all the votes cast. Thus, section 160 of the Election Code enjoins provincial boards of canvassers as follows:

"As soon as all the statements are before it but not later than fifteen days next following the date of the election, the provincial board of canvassers shall proceed to make a canvass of all the votes in the province for national, provincial and city candidates, and upon the completion of the canvass, shall make as the case may be, separate statements of all the votes received by each candidate . . ."[3]

A municipal board of canvassers must therefore count all the votes cast in the election and, for this purpose, must consider all returns presented to it by the municipal treasurer. If material defects there are in the form of the returns, it must send them back to the corresponding boards of inspectors for correction.[4] If certain precincts have not sent in their returns, the board must send for them, and the fiscal should forthwith institute criminal proceedings against those who may be criminally responsible for the delay.[5] If there is a discrepancy between two authentic copies of an election return and the difference affects the result of the election, the board may ask the proper court of first instance to order a recount of the ballots.[6]

All these serve to underscore the need to count all the votes cast in an election. Only when the returns are palpably irregular or obviously manufactured may they be rejected,[7] but even then the board must exercise "extreme caution." [8] And where a return is falsified, the board may apply to the Comelec for authority to use another copy which is genuine and authentic.[9] Why must all the votes be counted when there is a need to finish the canvass on time so that proclamation can be made before the beginning of the term of office? Because to disregard returns is in effect to disfranchise the voters.[10]

The Comelec was, under the circumstances, bereft of power to order the board of canvassers of Makati to disregard the return from precinct 124, even if it noted from its copy (which was likewise blank or incomplete) that the number of votes cast in the precinct (263) was too small to be of any significance to any candidate. This, because the Comelec has no power to decide questions involving the right to vote,[11] as to disregard a return is in effect to deny the voters their votes.

As it is, the Comelec's judgment that the results of the election in Makati would not be materially changed by the inclusion of the votes in precinct 124 is seriously disputed by the petitioners, and indeed it is admitted by the respondents that between the respondent Cesar Alzona, who garnered 18,190 votes to place eighth among the councilors, and the petitioner Michael Joseph, who polled 17,969 to land on the ninth spot, there is a difference of only 221 votes. Conceivably, the 263 votes in precinct 124 could upset the balance.

What the Comelec should have done is to take the logically obvious and simple step of ordering the opening of the ballot box to find out if the copy of the return deposited therein was properly accomplished and, if it was, to order that it be used in the canvassing of the votes. This it had the power to do in the fulfillment of its constitutional duty of insuring "free, orderly, and honest elections." And this it was unimpeded and had ample time to do, considering that from November 24 when it ordered the proclamation, there were still 37 days to go to the statutory date of assumption of office by the elected candidates (January 1).

As this Court said in *Cauton v. Commission on Elections*: [12]

"If it is shown that the copies in the hands of the Commission on Elections and of the municipal treasurer are similarly tampered [with] as the copies in the hands of the provincial treasurer, then it becomes evident that all the three copies of the election returns outside the ballot box do not constitute a reliable basis for a canvass. The only copies left to be checked . . . are the ones inside the ballot boxes. Certainly, the Commission on Elections, in the exercise of its power to administer and enforce the laws relative to the conduct of elections may order the opening of the ballot boxes to ascertain whether the copy inside each ballot box is also tampered [with] like the three copies outside the ballot box, corresponding to each precinct."

This is the reason why in two other cases[13] we upheld the power of the Comelec to direct canvassing boards to use returns other than those specified by law if the latter are found to have been falsified.

It is, however, contended that this Court lacks jurisdiction over this case because the respondents have been proclaimed and have subsequently assumed office, and that as a matter of fact some of the petitioners, more specifically the petitioner Michael Joseph, have pending election protests in the Court of First Instance of Rizal against some of the respondents. It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election test. But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.[14]

In view of the conclusion we have thus reached, the Comelec should direct the opening of the ballot box corresponding to precinct 124 for the purpose of retrieving the copy of the election return deposited therein so that it may be used in canvassing anew the votes cast for the local officials of Makati, and, should it be found that the ballot box copy is likewise blank or incomplete, the Commission should order a count of the ballots, giving notice, for this purpose, to all the candidates. This is the procedure that best recommends itself, what with the lack of special procedure for dealing with a situation such as this. Judicial recount of the ballots under section 163 of the Code[15] cannot be the remedy because there is no discrepancy between one authentic copy and another authentic copy of the same return. As we have earlier stated, the copies of the election return in this case contain no entries as to the number of votes received by each candidate. So there really is no discrepancy, but only a failure to accomplish the form of the return properly. Indeed what has been submitted is no return at all.

In deciding this case in the way we now do, we are by no means to be understood as formulating a rule to control future cases which, although factually and substantially similar to the present case, may require an altogether different qualitative approach. And we recognize that situations may - and do - arise where it becomes advisable and wholly justified not to await all returns before proceeding with the proclamation of the winning candidates. The solution we have here adopted has been impelled by, and is predicated solely upon, the peculiar and unusual circumstances here obtaining, relative to which the Comelec acted with inordinate haste.

ACCORDINGLY, the resolutions of the Commission on Elections of November 24 and December 22, 1967 are set aside, and the proclamation of all the private respondents made on November 25, 1967 is annulled. The Commission on Elections is hereby directed (1) to order the board of inspectors of precinct 124 of Makati, after due notice to all the candidates, to open the ballot box corresponding to the said precinct for the purpose of retrieving therefrom the copy of the election return for use in the new canvass to be held by the municipal board of canvassers, if said copy has been properly accomplished, or, in the event that the said copy is blank or incomplete, to count all the votes cast in the said precinct and then properly accomplish a return based on such count; and (2) thereafter to order the municipal board of canvassers of Makati, without delay and after due notice to all the candidates, to hold a new canvass of all the votes cast in that municipality, and to proclaim the winning candidates in accordance with the results thereof. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Angeles, JJ., concur.

Fernando, J., concurs in a separate opinion.

[1] See, e.g., *Demafiles v. Commission on Elections*, L-28396, Dec. 29, 1967; *Abes v. Commission on Elections*, L-28348, Dec. 15, 1967; *Abendante v. Relato*, 94 Phil. 8 (1953).

[2] Rev. Election Code, sec. 168.

[3] Emphasis supplied.

[4] Rev. Election Code, sec. 162.

[5] *Id.*, sec. 161.

[6] *Id.* secs. 163 and 168.

[7] E.g., *Lagumbay v. Commission on Election*, L-25444, Jan. 31, 1966, 16 S. Ct. Rep. Ann. 175, *Nacionalista Party v. Commission on Elections*, 85 Phil., 149 (1949).

[8] *Estrada v. Navarro*, L-28340 & L-28374, Dec 29, 1967.

[9] *Ong v. Commission on Elections*, L-28415, Jan. 29, 1968; *Espino v. Zaldivar*, L-22325, Dec. 11, 1967.

[10] *Estrada v. Navarro*, *supra*, note 8.

[11] *Nacionalista Party v. Commission on Elections*, *supra*, note 7.

[12] L-25467, April 27, 1967, 19 S. Ct. Rep. Ann. 911, 919, 1967B PHILD 253-254.

[13] *Supra*, note 9.

[14] Cf. *Demafiles v. Commission on Elections*, *supra*, note 1.

[15] The power to order a recount of the ballots under section 163 is lodged in the proper court of first instance.

6 pt 6 pt 0 3

CONCURRING OPINION

FERNANDO, J.:

While agreeing fully as I do with the conclusion reached, expounded with clarity and vigor in the opinion of Justice Castro, I feel that there are implications of weight and of significance that call for the expression of my views. Hence this con-curring opinion.

Less than a month ago, in *Reyes v. Reyes*,^[1] *Acain v. Board of Canvassers*,^[2] was not only cited with approval but was referred to as speaking "with undiminished authority." It was the *Acain* doctrine that from the filing of a petition for quo warranto or an election protest, the proper court of first instance acquires exclusive authority to inquire into and pass upon the validity of a proclamation made by the municipal board of canvassers concerned. That would therefore preclude the Commission on Elections from acting further on the matter.

The above doctrine seems to be qualified by this excerpt from the opinion of Justice Castro: "It is indeed true that after proclamation the usual remedy of any party aggrieved in an election is to be found in an election contest. But that is so only on the assumption that there has been a valid procla-mation. Where as in the case at bar the

proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues."

It is my understanding then that if it be apparent on the face of the pleadings before this Court that the proclamation was illegal, the Commission could still act, notwithstanding the filing of an election protest or a quo warranto proceeding in the meanwhile. To that extent, the Acain doctrine has been modified.

To my mind, there has been, to paraphrase Cardozo, no seismic innovation, this particular mansion of the law stands, its symmetry not marred, its features far from being rendered unrecognizable, still harmonious.

For it could be said with reason that a patently illegal proclamation may be looked upon as devoid of any legal force or effect and therefore considered as not having taken place at all. In which case, the constitutional duty cast on the Commission on Elections to have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections leaves it no alternative but to require that the proper canvass be made, preparatory to a valid proclamation.

Even if realistically viewed, the law on this point is other than what it was before and the Acain ruling no longer speaks with undiminished authority, still the result reached in this case is unavoidable, if the constitutional intent of insuring free, orderly, and honest elections were to be realized, considering the circumstances disclosed by this litigation. Moreover, it affords more leeway for this Tribunal in the exercise of its appellate jurisdiction over the actuations of the respondent Commission, if depending on the facts of each case, it could retain full and ample discretion to determine when it shall consider a matter still proper for the cognizance of the Commission, notwithstanding the filing of an election protest or a quo warranto proceeding in the meanwhile. On principle, there can be no valid objection to such an amplitude of authority assumed by this Court for only thus could it assure full adherence to the constitutional intent that the right to vote for everybody becomes truly meaningful.

One other point. There are those who may cavil at the absence of any specific statutory provision which spells out what has been ordained by this Court today. They may in mock dismay cry out against the evils of judicial legislation. By way of answer, was it not Holmes, who pointed out that judges "do and must legislate, [only] they can do so * * * interstitially; they are confined from molar to molecular motions." [3] They can fill in the gaps, clear up the ambi-guities, and make statutory rules truly responsive to the objective sought to be attained. For thereby there is not merely submission to the dictates of justice but fealty to the overriding concern that prompted the enactment of the statute.

As was so aptly expressed: "To follow the dictates of justice, when in harmony with the law, must be a pleasure, but to follow the rules of law, in their true spirit, to whatever consequences they may lead is a duty. [4]

[1] L-28476, Jan. 31, 1968.

[2] L-16445, May 23, 1960.

[3] Southern Pacific Co. v. Jensen, 244 US 205, 221 (1917).

[4] Duncan v. Mazette, 25 Tex 245, 253 (1860).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.