

AMANTE P. PURTSIMA, PETITIONER, VS. HON. ANGELINO C. SALANGA, ETC., ET AL., RESPONDENTS.*G. R. No. L-22335. December 31, 1965*

Ponente: BENGZON, J.P., J.

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In the election of November 12, 1963, Amante Purisima and Gregorio Cordero were among the candidates for any of the three offices of Provincial Board Member of Ilocos Sur. After the election or on November 25, 1963, the provincial board of canvassers met and started canvassing the returns for said office.

Purisima noted during the canvass that the returns from some precincts, forty-one (41) in all, showed on their face that the words and figures for Cordero's votes had been "obviously and manifestly erased" and superimposed with other words and figures. For purposes of comparison, the Nacionalista Party copies of the returns for the aforesaid precincts were submitted to the board. A discrepancy of 5,042 votes in favor of Cordero was thereby found, thus:

Provincial Treasurer's copy: 7,277 for Cordero

Nacionalista Party's copy; 2,235 for Cordero

A request for suspension of the canvass was thereupon made by Purisima. The board of canvassers denied said request upon the ground that it was not yet ascertainable if the discrepancies would materially affect the result. Canvass proceeded.

After the returns had all been read, the result for the office of third (and last) member of the Provincial Board was the following:

Cordero

41,229 votes

Purisima

39,372 votes

Difference

1,857 votes

Purisima again called attention to the erasures and discrepancies and asked for suspension of canvass - for him to have recourse to judicial remedy. Denying said request, the board of canvassers finished the canvass and proclaimed Cordero the winner, on November 28.

On November 29, Purisima filed a petition in the Commission on Elections to annul the canvass and proclamation abovementioned. The Commission on Elections issued a resolution on November 30, annulling the canvass and proclamation, as regards Cordero and Purisima.

Purisima, on December 10, filed in the Court of First Instance a petition for recount under Section 163 of the Revised Election Code. Subsequently, motions to dismiss the same were filed by the board of canvassers and by Cordero. In his motion to dismiss, Cordero admitted the erasures and discrepancies on the face of the returns from 41 precincts, but denied that said erasures were due to tampering or falsification.

After a preliminary hearing on the motions to dismiss, the Court of First Instance, on December 27, dismissed the petition for recount. And on December 28, Cordero filed in the Commission on Elections a motion for resumption of the canvass.

Purisima, on January 2, 1964, moved for reconsideration of the Court of First Instance's order of dismissal. In the same case, he also filed, on January 8, a petition for preliminary injunction to restrain the holding of another canvass. Annexed to said petition were certified photostatic copies of the Comelec's copies of the returns from the 41 precincts in question. Furthermore, Purisima filed with the Commission on Elections, on January 11, an opposition to the resumption of the canvass.

Alleging that the Commission on Elections was about to order the canvass resumed, Purisima came to this Court, on January 17, 1964, by petition for certiorari with preliminary injunction. Petitioner asked that the lower court's order dismissing his petition for recount be set aside and that the Commission on Elections be enjoined from ordering resumption of the canvass until after the judicial recount.

On January 22, 1964, we ordered respondents to answer, and allowed preliminary injunction to be issued as prayed for upon the posting of a bond of P500.00. After respondents filed their answer, the case heard and submitted for decision.

"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 proceedings shall be given to all candidates affected."

In dismissing the petition for recount, respondent Judge stated that some of the requisites were not present, namely: first, that it appears to the provincial board of canvassers that a discrepancy exists; second, that said discrepancy is between the copy submitted to the board and another authentic copy thereof; and third, that said authentic copy must also be submitted to the board.

First of all it is not disputed that a candidate affected can file the petition for recount, even if he does so alone, without the concurrence of the provincial board of canvassers (*Cawa vs. Del Rosario*, 108 Phil., 520). From the fact, therefore, that the provincial board of canvassers has not petitioned for a recount it cannot be inferred that they were not convinced a discrepancy existed.

In fact, when Purisima first called attention to the discrepancy between the Nacionalista Party copies and the Provincial Treasurer's copies, the board of canvassers admitted the discrepancy but stated that it was not yet ascertainable whether the discrepancy would amount to enough votes as to affect the result. There is no more question now that the number of votes involved in said discrepancy is more than enough to alter the result.

Finally, in the motion to dismiss filed by the board of canvassers, the existence of the discrepancy is not disputed, and the board merely raises the defense that the recount is up to the court and not to said board (Annex D, Petition).

Passing on to the next point, the basis of the petition for recount was not merely a discrepancy between the Nacionalista Party's copies and the Provincial Treasurer's copies of returns. Paragraph 8 of said petition shows that, in addition, the Commission on Elections' copies were relied upon:

"That as a result of the aforesaid erasures, tamperings and apparent falsifications, there exist discrepancies between the Provincial Treasurer's copies (the basis of the canvass) of the election returns in the precincts in question, on one hand, and the copies pertaining to the Commission on Elections, on the other, and that said discrepancies materially affect the result of the elections as between herein petitioner and respondent Gregorio Cordero;"

Accordingly, even assuming for the nonce—a point we do not here decide—that the the Nacionalista Party's copies are not copies that may be the basis of a petition for recount, the fact remains that the Commission on Elections' copies were said to reflect the same discrepancy with the Provincial Treasurer's copies. It is settled that the Commission on Elections' copies are authentic copies within the meaning of Section 163 of the Revised Election Code (*Lawsin vs. Escalona*, L-22540, July 31, 1964; *Matanog vs. Alejandro*, L-22502-03, June 30, 1964).

The trial court, however, ruled that the Commission on Elections' copies had no application to the petition for recount because they were not submitted to the board of canvassers. The record definitely shows that the reason why Purisima was not able to submit to the board said Commission on Elections' copies was because the board declined to suspend the canvass and proclamation.

It is the duty of the board of canvassers to suspend the canvass in case of patent irregularity in the election returns. In the present case, there were patent erasures and superimpositions in words and figures on the face of the election returns submitted to the board of canvassers. It was therefore imperative for the board to stop the canvass so as to allow time for verification of authentic copies and recourse to the courts (*Javier vs. Commission on Elections*, 121 Phil. 168). A canvass or proclamation made notwithstanding such patent defects, without awaiting proper remedies, is null and void (*Ibid.*). In fact, as stated, the Commission on Elections declared the canvass and proclamation, made by respondent provincial board of canvassers, null and void.

Since the board of canvassers presented Purisima from securing the Commission on Elections' copies of the returns to establish a discrepancy between them and the Provincial Treasurer's copies the failure to submit the Commission on Elections' copies to said board should not prejudice Purisima's right to petition for recount before the court. It was therefore grave abuse of discretion for respondent court to refuse to consider the Commission on Elections' copies, regardless of the patent and admitted irregularities on the face of the Provincial Treasurer's copies and the alleged discrepancy amounting to thousands of votes sufficient to affect the results.

Interpretation of election laws should give effect to the expressed will of the electorate. Patent erasures and superimpositions in words and figures of the votes stated in the election returns strike at the reliability of said returns as basis for canvass and proclamation. A comparison with the other copies, and, in case of discrepancy, a recount, is the only way to remove grave doubts as to the correctness of said returns as well as of ascertaining that they reflect the will of the people.

Wherefore, the dismissal of the petition for recount is set aside, respondent Judge, is ordered to proceed with the petition for recount, and respondents Commission on Elections and Provincial Board of Canvassers are enjoined, until after the termination of proceedings in the petition for recount, from ordering or holding another canvass and proclamation as between petitioner Purisima and respondent Cordero.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

Petition granted.

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