

RENEE AGUDO, PETITIONER, VS. THE COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.

G.R. No. L-31609. June 26, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The above-entitled case was set for rehearing on 7 May 1970 because the present ten (10) members of the Court became equally divided on the question whether the Commission on Elections, in its Case RR-698, after setting aside the proclamation of respondent Antonio, correctly ordered a recanvass of the results of the 1969 election for the lone congressional district of the Province of Batanes, on the basis of the returns of Precincts Nos. 1 to 7 of Basco and Precinct No. 4 of Sabtang, or whether it should certify to a failure of election, as prayed for by candidate Mrs. Renee Agudo.

The case having been reheard and reargued, the equal division (5 to 5) in the Justices' opinions has persisted, thus calling for the application of Section 11 of Rule 56 of the 1964 Revised Rules of Court, that is couched in the following terms:

"SEC. 11. Procedure if opinion is equally divided. - Where the court in banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on re-hearing no decision is reached, the action shall be dismissed if originally commenced in the court; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied."

WHEREFORE, as no majority can be had on the issue, the petition for certiorari against the Commission on Elections is, conformably to Section 11 of Rule 56 aforesaid, hereby ordered dismissed. No costs. This order to be immediately executory.

Mr. Justice Antonio P. Barredo reserves his right to file a separate opinion.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Villamor, J., on leave but certified by Justice J.B.L., Reyes that he voted for this resolution.

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