

MAUYAG MATANOG, PETITIONER, VS. HON. CRISTOBAL ALEJANDRO AS JUDGE OF THE COURT OF FIRST INSTANCE OF LANA DEL SUR, THE MUNICIPAL BOARD OF CANVASSERS OF MARANTAO, LANA DEL SUR, ...

G.R. Nos. L-22502-03. June 30, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

In the November 12, 1963 elections, petitioner Mauyag Matanog and respondent Cota Cornel were among the candidates voted for the office of Municipal Mayor of Marantao, Lanao del Sur. While the conduct of the elections was peaceful and orderly, two cases arose out of the said elections. One for Mandamus (Special Civil Action No. 1290) to compel the Municipal Board of Canvassers to canvass the election returns including that of Precinct No. 9 and proclaim the duly elected officials, presented by respondent Cota Cornel, and the other for a Judicial Recount with Preliminary Injunction (Sp. Civil Action No. 1292) instituted by petitioner Matanog, to count the votes cast in Precinct No. 9, claiming that in the preparation of Election Return Exhibit K, in question, the Board of Inspectors unlawfully increased the number of votes for respondent from 157 to 297; and said election return was not prepared at the time and place it should have been prepared; and that the difference appearing in the said return will adversely affect the results of the election. The two cases were heard jointly and after the parties have adduced their respective evidence, the lower court rendered judgment, the pertinent portions of which read—

"* * * The Municipal Treasurer of Marantao who acted as Secretary of the Board of Canvassers presented the election return for Precinct No. 9. In this election return, there appears the Mayoralty Candidates obtained the following votes (Exhibit 'K'):

Cota Cornel	297
Mauyag Matanog.....	1
Macurambon Barodi	70
Andang Rascal	0
Mangondato Dato	65
Naga Tagoranao	15

This caused some confusion in the proceedings of the Board of Canvassers because there was also presented a tally board where the said candidates garnered the following votes (Exhibit J):

Cota Cornel.....	157
Mauyag Matanog.....	1

Hacarambon Barodi	118
Andang Rascal	0
Hangondato Dato.....	105
Naga Tagoranao	30

During the proceedings of the Municipal Board of Canvassers, there was also presented the copy of the election return from Ibrahim Ali, official candidate of the Nacionalista Party for Board member. This copy of the election return was sent to him by the Chairman of the Board of Election Inspectors. In this copy, it was alleged that Cota Cornel gathered 157 votes only but when Atty. Isaac Geolina, representative of the Comelec was going to take it, said copy disappeared and up to the present time, it has never been recovered.

Lucas Calaca, a member of the Board of Canvassers, questioned the canvassing of the election return for Precinct No. 9 alleging that it should not be canvassed because it was prepared outside the polling place. But Magondacan Gutok, another member of the Board of Canvassers filed a motion to canvass because he said there was no alteration in the election return. There was controversy in the proceedings and when the representative of the Comelec stated that there would be trouble, he suspended the canvassing and advised the aid of Mauyag Matanog to file a petition for a judicial recount.

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The evidence of candidate Mauyag Matanog tends to disclose that at about 11:00 p.m. of November 14, 1963, the Board of Election Inspectors of Precinct No. 9, Marantao, Lanao del Sur, had finished its counting of votes. But the inspectors could not accomplish the election return because the chairman claimed that the blank forms of the election return were lost. When Atty. Benjamin de la Peña, a representative of the Comelec, was apprised of this incident, he raised his voice and insisted that the election return be accomplished. However, later on, he said he would wire the Comelec in Manila to send the blank forms. *****

Then at about 7:00 a.m., November 15, 1963, Atty. Mangontawar Guro, Cota Cornel and Maripa Bantki chairman of the board of Inspectors handed to Atty Benjamin de la Peña, a copy of the election return which was already accomplished. The copy of the election return for the Municipal Treasurer was received by him thru the mail on November 21, 1963, Exh. 'K'. And this is the copy submitted by him to the Municipal Board of Canvassers.

The evidence of Candidate Cota Cornel tends to show that tally board. Exhibits 'J' and J-F are not the tally boards which were used by the board of election inspectors in counting the votes for Precinct No. 9 of Marantao, Lanao del Sur. According to the poll-clerk. Bonayo Renayong, he was the one who wrote the number of votes for each candidate on the tally boards. After the counting, they were signed by all members of the board. He was not able to deliver them to the Municipal Treasurer in Marantao because he was not at the polling place until dawn. So, he kept them. Then he could not also find the Municipal Treasurer in Marantao, he then gave them to the chairman of the board of inspectors to send to the Municipal Treasurer by mail.

Mariga Bangki, the chairman of the board of election inspectors, testified that tally boards Exhibits 'J' and 'J-I' are not the tally boards which they used in the counting of votes. The tally boards which they used were duly signed by all members of the board of inspectors. x x x.

After counting of votes at midnight of November 14, 1963, all members of the board signed the copies of the election return and placed them in the envelopes. He could not find the Municipal Treasurer of Marantao in order to give him the copies of the election return. So at 2:00 a.m., November 15, 1963, he placed all copies of the election return inside the ballot box and locked it. And then he gave the ballot box to the P.C. In the morning at

about 7:00, he returned to the P.C. Headquarters to see Atty. de la Peña. He asked him where was the election return. He answered that they were all inside the ballot box. They opened the box and retrieved four (4) envelopes containing copies of election return. He gave the envelope to Atty. de la Peña intended for the Comelec. He denied that there was no blank form of election return, he also denied the testimony of Lt. Decena and he denied having issued the certificate of votes. Exh. 'O'. He also denied having seen Atty. Mangontawar and Cota Cornel at seven o'clock (7:00 a.m.) in the morning of November 15, 1963 at the P.C. Headquarters.

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In the rebuttal, the petitioner in ease No. 1292 presented Atty. Isaac Geolina of the Comelec who confirmed the order he has gives in Exhibits 'F' 'G', 'H' and 'I' appearing in the body of Exh. 'E'. He further testified that the Comelec ordered to suspend the canvassing and let the parties come to Court because the election return was made outside of the polling place, and that the tally boards Exhs. 'J' and 'J-I' do not tally with the said election return. He said that the chairman of the board of inspectors wanted to get back the tally board because it was not complete. x x x.

Atty. Benjamin de la Peña, another attorney of the Comelec elucidated some important matter in controversy. According to him, the counting of votes in Precinct No. 9, Harantao, was finished at 11:00 p.m. of November 14. But the election return was not accomplished thereafter because the chairman said that there was no election return blank form and he would accomplish it the following morning, Exh. 'T' . After the counting, the members of the Board of inspectors left the polling place without accomplishing the election return. Then Atty. de la Peña ordered the chairman of the board to deposit the ballot box and tally boards, Exhs. 'J' und 'J-I' to the P.C. Camp Kcithley. The tally boards were not signed by the members of the board of inspectors because he did not anticipate that there would be fraud.

Early morning cf November IS. 1963, at about 8:00 o'clock. Atty. Mangontawar in company with Cota Cornel and Chairman of the board handed to him an envelope containing an election return. It is not true that Atty. Mangontawar Guro retrieved the said envelope from the ballot box.

The Court in deciding these cases is confronted with two (2) questions:

First. Are the tally boards. Exhibits 'J' and 'J-I' admissible as evidence?

Second. Should the election return. Exhibit 'K' be the basis of the Municipal Board of Canvassers in canvassing the election return from Precinct No. 9, Marantao, Lanao del Sur?

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The Court has observed that the tally boards, Exhs. 'J' and 'J-I' have not been signed by all the members of the Board of inspectors. The said tally boards are not complete and cause some doubt as to their due execution and genuineness. They are not public documents. The signatures of the members of the board of inspectors are essential to their validity. It is obvious that documents like these are susceptible to substitution and falsification.

It has been found that the election return. Exhibit 'K' has not been vitiated by another election return having; a different entry; or that there is a difference of votes of the same candidate written in words and those written in figures in the same election return; or that the entry of votes in the election return is falsified clearly; or that the entry in the election is not legible; or that the election return was prepared thru force or intimidation (Sec. 163, Revised Election Code. * * *).

Anyone of these irregularities found in the accomplished election return is sufficient basis for a Petition for Judicial Recounting. But in this particular case at bar, it can be said that none exists.

IN VIEW OF THE FOREGOING , the Petition for Judicial Recounting is hereby denied; the Municipal Board of Canvassers for Marantao, Lanao del Sur, is hereby ordered to canvass the election return, Exhibit 'K' from Precinct No. 9; the Provincial Fiscal is hereby ordered to investigate if in the accomplishment of the election return, Exhibit 'K', the members of the Board of Inspectors violated any provision of the Election Code and prosecute the party or parties responsible thereof as warranted by the evidence."

After the motion to have the above judgment reconsidered was denied, Mauyag Matanog brought the matter to Us on an original petition for Certiorari, with Writ of Preliminary Injunction. In the petition it is claimed that respondent judge in denying the petition for judicial recount, in spite of his findings that serious irregularities attended the preparation of the Election Return for Precinct No. 9 (Exh. K), and the standing order of the suspension of the canvass issued by the COMELEC, thru its duly authorized representatives, acted WITHOUT or in EXCESS of his jurisdiction, or with GRAVE ABUSE of discretion, for which there is no other plain, speedy and adequate remedy in the ordinary course of law.

The petition was given due course and respondent were required to Answer. And upon the posting of P1,000.00 bond, a Writ of Preliminary Injunction was issued, enjoining the respondents, their agents and representatives from making a canvass of the election return from Precinct No, 9 and from making any proclamation for the office of Mayor of Marantao, Lanao del Sur.

In due time the Answer was presented, which alter the customary admissions and denials, interposed affirmative defenses destined to show that no irregularity was committed in the preparation of the election return in question. The cases were heard in argument. On June 8, 1964, this Court dismissed the petition in a minute resolution, without prejudice to the writing of an extended opinion, which is the present one.

The facts and circumstances obtaining in the case at bar, do not warrant the remedy of Judicial Recount. That there might have been irregularities attendant to the preparation of the only election return in question, seem to be admitted by the learned trial court and the representatives of the Commission on Elections. However, said irregularities may not be proper causes for a judicial counting.

In the case of Municipal Board of Canvassers, et al. vs. Hon. Benitez, et al., G.R. No. L-16319, June 30, 1960, this Court declared that the Court has no jurisdiction to order the opening of the ballot boxes for the purpose of recounting under sections 163 and 168 of the Rev. Election Code, based upon the discrepancy between the election return and the certificate given to the watcher, under the doctrine of the Parlade and Samson cases—G.R. No. L-16259, Dec. 29, 1959, and G.R. No. L-16286, Jan. 30, 1960, respectively.

"Similar to the right of the election inspectors to amend or correct their statements (election returns) in accordance with Sec. 154 expressly mentioned in the preceding quotation is the right of the candidates affected (proper parties) to go to the court in case of discrepancies pursuant to Secs. 163 and 168 above quoted. Consequently, paragraph (k) of the rules and regulations issued by the Commission on Elections is equally applicable to the case at bar where two contradictory statements (election re(urng) were presented to the board of canvassers, for which reason and for the purpose of giving the parties opportunity to go to court, the Board was specifically instructed not to proclaim the mayor-elect". (Salcedo, Jr. vs. Com. on Elections, et al., 108 Phil., 1184).

This Court in the case of Lim vs. Hon. E. Maglanoc & Francia, G.R. No. L-16566, Aug. 31, 1961, held:

"* * * In the case of Jose Parlade, et al vs. Judges Perfecto Quicho and Mateo Alcasid, et al., G.R. No. L-16259, Dec. 29, 1959. We have stated:

'Secs. 163 and 168 refer to differences between the statement (before the Board of Canvassers for purposes of canvassing) and another copy or other authentic copies thereof. What is such statement? Obviously, the

statement of election returns presented by the Provincial Treasurer (in case of Provincial Board of Canvassers) and the Municipal Treasurer (in case of municipal board of canvassers). Those two sections 163 and 168 should be read together.'

Respondent, therefore, finally contends that inasmuch as said sections authorize the Court to order the opening of the ballot box when there are contradictions among the different copies of the same election return; and the discrepancy in this precinct consisted merely in the difference in the reported result, as to the number of votes received by the petitioner, between the votes expressed in words and that expressed in figures, the general rule of statutory construction to the effect that the number of words must prevail over that in figures, must perforce be applied. It would seem, however, that what we have suggested in the *Parlade* case (*supra*), would help in our efforts to find a solution. It was also there stated—'

'* * * In this connection, it is best to emphasize that the whole theory of the election law rests on the *prima facie* presumption of honesty and integrity of the board of inspectors. On this presumption, it directs the board of canvassers to make the proclamation on the basis of such reports ('statements the law calls them' as the inspectors shall make. Aware, however, of the failings of human nature and foreseeing the possibility of error; the Legislature has permitted the correction by the court in clear cases at the request of the inspectors themselves (sec. 154 and the *Benitez* and *Sison* cases, *supra*). Also where there are conflict between one copy thereof (or in the statement itself, words contradicting figures), there arises *ex necessitate* the need of finding, which statement or number should be followed by the Board. So the law gives the Court of First Instance power to recount the votes cast in the precinct."

"* * *. 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 in 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" (*Villacarlos vs. Hon. Jimenez, et al, et al*, G.R. No. L-16437, Dec. 21, 1962).

In the case of *Natano vs. Hon. Moya, et al.*, G.R. No. L-16869, March 30, 1968, where a clear mistake was shown and admitted by the entire precinct Board of Inspectors, this Court denied the writ of certiorari.

"Considering that the proclamation of the herein petitioners as the sixth elected councilor of the municipality of Del Gallego, Camarines Sur, is disputed, respondent Silverio Balanlayos contending that the former was not proclaimed as such, and this contention seems to find support in Resolution No. 1 passed or adopted by the Municipal Board of Canvassers on 16 November 1950 which in turn is supported by the certification signed and issued on 13 November 1951) by the precinct board of inspectors concerned, and there being a discrepancy between the election return where the name of the respondent Ralanlayos and the number of votes he has obtained in the precinct referred to at such election were omitted or left out in the report of the precinct board of inspectors submitted to the municipal treasurer of Del Gallego, the controversy comes under the provisions of section 168 in connection with section 163 of the Revised Election Code and not under the provisions of section 174 of the same Code."

In the case at bar, the alleged discrepancies appear in Annex B of the petition, supposedly certificate of votes given to a watcher of petitioner. The other document purporting to show a discrepancy in the election return in question is Annex E, a certificate executed by Lt. Nemecio Decena, Ex-0 of the 75th PC Company. These documents are not those which can be considered authentic copies of the elections return, and election return Exh. K. in question is not within the purview of the abovesited authorities. It becomes obvious, therefore, that the ruling of the respondent Court, appealed from, is correct, and that the remedy of petitioner is not for a Judicial Recount but something else, which he is free to pursue.

Moreover, having jurisdiction over the subject-matter of the case, the actuations of the respondent Judge, in the

exercise of such jurisdiction, erroneous conclusions of either fact or law are not correctible by certiorari. Even if We assume, that certiorari would be the adequate remedy, there is no showing that respondent Judge acted without or in excess of his jurisdiction and/or with grave or capricious abuse of discretion, in rendering the judgment, subject of the instant proceedings.

Premises considered, the petition is hereby dismissed without costs.

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

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