

MATEO RAMOS, PETITIONER, VS. COMMISSION ON ELECTIONS, BATO MUNICIPAL BOARD OF CANVASSERS, CAMARINES SUR, AND OSMUNDO POSUGAC, RESPONDENTS.

G.R. No. L-1882. April 10, 1948

Ponente: PARAS, J.

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PARAS, J.:

On November 16, 1947, the respondent Osmundo Posugac was proclaimed mayor-elect of the municipality of Bato, Camarines Sur, by the municipal board of canvassers. The next day the local representative of the Nacionalista Party addressed a complaint to the Commission on Elections requesting an investigation and the annulment of the canvass made by the said board of canvassers, on the ground that the latter, instead of counting the genuine election return from precinct No. 10, included in the canvass a falsified return. On December 12, 1947, the Commission on Elections resolved to abstain from proceeding with the investigation in view of the pendency of an election protest filed in the meantime by the petitioner Mateo Ramos in the Court of First Instance of Camarines Sur, seeking to nullify the election of the respondent Osmundo Posugac. Failing to obtain a reconsideration of the action of the Commission on Elections, the petitioner has brought the present original action for mandamus, praying for the reversal of the ruling of the Commission on Elections, for an order directing the municipal board of canvassers of Bato to make a new canvass and to include therein the genuine election return from precinct No. 10, and for the consequent proclamation of the petitioner as mayor-elect of the municipality of Bato, Camarines Sur.

We are of course not called upon in these proceedings to determine whether the municipal board of canvassers of Bato in fact counted a falsified election return from precinct No. 10, since the only question that properly presents itself is whether the respondent Commission on Elections had unlawfully neglected to perform an act specifically enjoined as a duty or, stated otherwise, whether the duty of the respondent Commission to investigate and act on a matter such as that denounced to it by the petitioner or his representative, is ministerial (in which case mandamus lies) or discretionary (in which case mandamus does not lie).

In our opinion, the duty involved is discretionary. It is true that this Court, in the case of *Mintu et al. vs. Enage et al.*, G. R. No. L-1834, held that the Commission on Elections did not act in excess of its jurisdiction or with grave abuse of discretion in annulling the canvass made by the municipal board of canvassers of Tanza, Cavite, of the votes cast in only some of the eighteen precincts; but this does not necessarily amount to a pronouncement that its function regarding the propriety or legality of a canvass of election returns is ministerial. At any rate, the aforesaid case is distinguishable from the case at bar, inasmuch as in the first case, the board of canvassers of Tanza, merely failed or refused to include in the canvass the election returns from some of the precincts, while in the second the board of canvassers of Bato already counted one of two contradictory election returns from precinct No. 10 and the Commission on Elections was called upon to receive evidence before it could determine which of said two returns was genuine.

Upon the other hand, there is every indication that the Commission on Elections is clothed with a discretion in the matter. Before the proclamation of election, any candidate may petition the Court of First Instance to recount the votes cast in any precinct in case of discrepancies between copies of statements of election (secs. 163 and 168, Revised Election Code). After the proclamation, any candidate may file an election protest within two weeks (sec. 174 Id.). These specific legal provisions logically compel any candidate, within short time limits, to seek in the Court of First Instance the corresponding relief against the regularity of a canvass of election, and to the same extent relieve the Commission on Elections from the duty of conducting similar investigations. To contend that the Commission on Elections has the ministerial function, and therefore may be compelled by mandamus, to look into and act on all election frauds, is indirectly to incapacitate it; for with its limited personnel and facilities, the Commission on Elections cannot be expected to take cognizance and promptly dispose of every complaint, similar to that made by the petitioner, possibly to originate from countless municipalities in the Philippines.

If the charges alleged by the petitioner are true, we have no doubt that the Court of First Instance will be as able as the Commission on Elections, or any competent authority for that matter, to see the point; and it is needless to state that there is enough in our laws under which the culprits may be prosecuted and punished.

As the vote of the Court both during the first deliberation and after a rehearing is five to five, pursuant to Rule of Court No. 56, section 2, the petition is hereby denied and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioner. So ordered.

Hilado and Bengzon, JJ., concur.

CONCURRING

TUASON, J.:

I concur in the result of the resolution.

I can not share the opinion that the Commission on Elections has discretionary power to annul a canvass by the board of canvassers. If it had such power I would be inclined to agree that a grave abuse of discretion was committed when the Commission denied or declined to act on the petition of the local representatives of the Nacionalista Party, in the face of its (Commission's) finding that the returns used in the canvass were forged. In my opinion the Commission had no other alternative but to refrain, as it did, from taking cognizance of the complaint. A machinery of justice with special, summary jurisdiction and clearly outlined procedure has been set up to hear and decide precisely such irregularities as are charged in the case at bar. The Commission on Elections is an administrative body endowed with administrative functions only. Determination of which of two or more conflicting returns is authentic is a judicial prerogative. It requires the taking of evidence, the holding of a regular trial, if justice is to be done to both parties. It amounts to a power to declare, in some cases as in this, that one candidate has been elected over another candidate or other candidates.

In other words, the Commission on Elections has both the power and the duty to correct any error committed by election officials in ministerial and administrative matters which do not call for the exercise of judgment. The case of *Minto et al. vs. Enage et al.*, G. R. No. L-1834, comes under this category. There, the board of canvassers failed to perform an administrative duty by omitting to count the votes in some of the returns. To count all the returns instead of only some is an administrative function which the Commission had the authority and the duty to have performed; just as it is its authority and duty to compel the board of canvassers to act when the latter refuses absolutely to make any canvass.

As I have said, the subject-matter of the present petition is one which falls within the exclusive jurisdiction of the Court of First Instance. If ballot boxes have been destroyed together with their contents, that is no ground for taking the case out of the method of procedure provided by law. The counting of ballots is not the only mode by which a protestant can establish his right to be declared elected to an office.

The same goes with the objection that a regular election contest takes up much time. Possible delays or indubitableness of the frauds is never a justification for extraordinary measure. Wrongs, no matter how brazen and flagrant do not countenance the use of arbitrary, extra legal remedy to replace the recognized processes of law, no matter how slow these may be. Let that happen once, and it will become an established practice which may give us cause for regret when, in the change of circumstances, the case becomes our own. The rights guaranteed by the Constitution can only be safeguarded through observance of legally established rules.

Padilla, J., I join in this opinion.

DISSENTING

PERFECTO, J.:

The election fraud, bared in this case with all its repugnant shamelessness, has no parallel in the annals of our half a century of democratic government. Perpetrated, not by lawless dissidents or ignorant private citizens, not by bandits' or anarchists, nor by highway robbers or super modern gangsters, but by officers of government who have sworn to obey the law and the Constitution, who have been appointed to administer the law for the purpose of insuring free, orderly, and honest elections, and upon whom the whole world looks as defenders of the popular sovereignty, as guardians to protect the electorate from being cheated, as the official guarantors so that the will of the people may not be defeated. They were and are the trusted guardians of the purity of suffrage, but instead of keeping her untarnished in the ivory tower of the law, turned into beastly rapers to ravish her with impunity in the quagmire of partisan unscrupulousness.

The ravished beauty shouted in vain for help. Her clamors resounded to the high heavens. In the desolation of her tragedy, she directed her tearful eyes to the Commission on Elections, the sturdy fortress where the Constitution has placed powerful officers to direct, supervise, control and command, the national army of guards entrusted with the function of insuring the safety and the purity of suffrage. Although convinced of the actuality of the attack, described as "brutal" by its own counsel, Atty. Perez, inconsistent with the legal principle it enunciated and followed in several other cases, the commission hesitated to lift a finger to come to the rescue. Not yielding completely to the creeping advances of exasperating despair, the victim, still holding in her wounded heart, the last ambers of hope, in a supreme effort, addressed herself to the Supreme Court, but the thick walls of this last bulwark of democracy were as deaf as the black and mossy stones of a deserted castle, standing mute as death in an inaccessible cliff surrounded by an ocean of silence.

A deep feeling of humiliation overcomes us upon fulfilling our constitutional duty of writing this opinion. There is no task more painful to perform than to confess a failure of the tribunal in which we have the honor of sitting as a member. That failure is a failure of justice. With that failure, democracy is immolated in the altar of a new Mammon, where the lust for power is made a religion to justify and sanctify all kinds of means, whether tainted with fraud or parading the insolence of despicable perversity. The reality is repugnantly ugly, but loyalty to truth compels us to face and bear it with manliness. No matter how much it may hurt our pride, we have to admit that in this case the action of the Supreme Court could hardly be defended.

Divided five to five, this Court's failure reach a majority decision after about three months, will result in the

accomplishment of a wanton electoral fraud, one of the most shameless and scandalous ever officially recorded. With our deadlock, we will allow the consummation of one of the most insolent conspiracies to defeat the will of the people and to impose upon them the rule of a usurper, the very man who has been conclusively repudiated by a majority of the electorate. By our failure to administer justice, we will allow the conspirators to profit by the falsification of a public document, the criminal scheme by which they intended to cheat of his election the candidate chosen by suffrage of the people.

Two candidates ran for mayor of Bato, Camarines Sur in the elections of November 11, 1947: Mateo Ramos, Nacionalista, and Osmundo Posugac, Liberal. The former was elected with a majority of 48 votes, both candidates receiving the following votes.

Ramos..... 1,033

Posugac..... 985

The above results were published by the municipal treasurer by recording the votes received by each candidate in the twelve precincts of Bato in a public blackboard in the municipal building.

On November 16, 1947, the municipal board of canvassers presided by Mayor Eulogio Buquid, by using a falsified copy of the election returns of precinct No. 10, in which the 60 votes actually received by defeated Posugac was increased to 133, with the addition of false and imaginary 73 votes, instead of proclaiming the election of winning candidate Ramos, proclaimed Posugac, by falsely adjudicating to him 1,058 votes instead of 985 he actually received, giving him a false majority of 23 votes over Ramos.

The criminal alteration made in the election returns was made at the instigation of Mayor Eulogio Buquid, Liberal, that is, of the same political party as Posugac. Cognizant of the true results of the election, in which Posugac appears to have been defeated, one day after the election, or on November 12, 1947, Mayor Buquid sent a letter to the president of the board of inspectors of precinct No. 10, Simeon Cedron, Liberal, advising him to take all steps to alter the election returns of precinct No. 10 so as to make Posugac lead by at least 50 or 60 votes, to overcome Ramos' majority of 36 votes in the 11 remaining precincts of Bato. The letter was written in plain Bicol, a dialect known to the writer of this opinion since his childhood. A photostatic copy of the letter is filed in the records of this case as Exhibit 4 and has been published in the Free Press, a weekly of wide circulation.

Our own translation of the letter is as follows:

"Bato, Nov. 12, 1947

"Dear Mion:

"Upon the result of the eleven precincts, 'Pading' Osmundo appears to have lost by 36 votes, excluding Pagatpatan, your precinct. Hence, if he has lost there, you do all the means to amend the election returns so that 'Pading' Osmundo may have there a majority of around 50 or 60 votes.

"I pin my hope that you will be able to help, inasmuch as this is the wish of the two lawyers accompanying Governor Gallego this morning. If we have won, according to what is said, we have a majority of 100 votes for the mayoralty, but we do not believe it.

"Yours for victory

"E. BUQUID"

The letter reveals that the conspiracy was entered into by Mayor Buquid and two lawyers in the entourage of Governor Gallego. There is no showing that the governor took positive part in the conspiracy and there is no evidence that he lifted a finger to stop it. There are grounds to believe that he must be cognizant of what his

attorneys and Mayor Buquid had planned to do. The two lawyers, knowing the grave consequences of the criminal conspiracy in which they took part, would not have entered into it if not assured of impunity by a powerful backing.

According to Exhibit 5, written by provincial surgeon Domingo Abella, first lieutenant of the military police command, in charge of the duties of watching the elections for the maintenance of peace and order in Bato "the most scandalous irregularity during the election in the whole province of Camarines Sur was perpetrated if not with connivance of public officials, at least with their knowledge and consent," and it is therein stated that the letter of Mayor Buquid was endorsed by Cedron to Pedro Sornillo as follows:

"Manong PEDRO:

"The election returns there should not be given by you to Reynales or to Escape; you should be the one to keep it yourself and I shall wait for you in San Juan because there we shall take care of doing all means about today's election. We hope that you will do all your means.

"Signature."

The indorsement was made because Simeon Cedron and Pedro Sornillo had agreed to split between them the tenure of the chairmanship of the board of inspectors in precinct No. 10, and under said agreement Sornillo served on election day. Hence, at the time he received Mayor Buquid's letter Cedron was not in the service but Sornillo.

We cannot resist the temptation of reproducing Exhibit 5:

"RESTRICTED

"HEADQUARTERS

"CAMARINES SUR PROVINCE

"MILITARY POLICE COND (AFP)

"25 November 1947

"SUBJECT: Report of Team in Charge of Iriga, Nabua, Buhi and Bato, Camarines Sur During November Election, 1947.

"TO: The Provincial Commander, Camarines Sur Province MPC (AFP), Camarines Sur.

"In compliance with the orders from the Provincial Commander, Camarines Sur Province, MPC (AFP) issued during an Officers conference on November 8, 1947, I took charge of the maintenance of peace and order in the towns of Iriga, Nabua, Buhi and Bato, Camarines Sur, during election day, 11 November 1947, and the collection of the keys of ballot boxes therefrom after the canvassing, and their subsequent delivery to the Provincial Commander, MPC, as provided by law.

"Assigned with me as my subordinate officer was 1st. Lt. Artemio D. Gonzales of the 101st MP Company. Twenty EM from the 101st MP Co. and five EM from my Medical Detachment completed our team.

"After planning our distribution to cover our area I briefed my men on the purpose, extent and limitation of our mission in accordance with orders. We left our station on the 10th of November in order that everyone would be in his assigned place early the following day. In the disposition of my men I took into consideration the likely trouble spots per my experience during past elections—the places charged with high election fever and bitter political passions.

"INTRODUCTION

"As I had expected, irregularities which threatened to disrupt peace and order condition began to pop early in

the day of the 11th. And as usual they were committed by the personnel of the party in power.

"In the 1946 Presidential election I was given the same assignment as was given to me this year and the same territory. Then abuses were committed by the Nacionalista henchmen, public officials and mere campaigners alike. Complaints, charges and denunciations from then Liberal Wing against alleged excesses of the party in power rent the air and had to be heard, investigated and settled by me as impartially as I could. It must be pointed out here, that most if not all of the cases referred to me, in addition to those discovered by me on my own account were decided in favor of the Liberal Wing after I formed the conviction that the Nacionalistas were really misusing their power and office. I have in my personal files the records of these cases. Because of my prompt action and dispassionate decisions, I am sure, the Nacionalistas on the one hand, had to soft-pedal with the commission of injustices, and the Liberals on the other hand, were reassured of the protection of the law. In this manner, I believe, I forestalled disorder and bloodshed then.

"In the election just held on 11 November 1947, the rules were reversed. The Nacionalistas were in the minority and were the complainants against the abuses of the Liberals who were in the saddle with the great differences that the abuses this time were widespread, flagrant, offensive to the conscience of any decent-thinking individual, and done so brazenly and with such audacity and self-assertion as to imply to the gullible that the law is on the side of the Liberals no matter what boners they might commit.

"IRIGA

* * * * *

"BUHI

* * * * *

"NABUA

* * * * *

"BATO

"In this town the most scandalous irregularity during the election in the whole province of Camarines Sur was perpetrated if not with connivance of public officials, at least with their knowledge and consent.

"This town had 12 precincts, 11 in poblacion and outlying barrios and across the lake, at barrio Fagatpatan Precinct No. 10. The day following the election the returns from all precincts with the exception of that No. 10 were known and certified to by the Municipal Treasurer. The NP candidate for Mayor was leading by 36 votes. On the night of that same day the Poll Clerk of No. 10 arrived in town and immediately submitted to the municipal treasurer the return of his Precinct where the NP candidate likewise won by 12 votes, thus giving him a total of 48 votes majority over his LP rival.

"This was the situation when my EM posted in Bato and assigned to collect the keys for the ballot boxes of that town reported to me that after three days wait, the ballot boxes and keys of Precinct No. 10 had not been turned into the proper authorities. In the company of Lt. Gonzales I immediately proceeded to Bato to conduct an inquiry. The most logical course of action for us offhand was to investigate the members of the Board of Inspectors of No. 10. We found and get affidavits of the Poll Clerk and the NP Inspector. The latter were nowhere to be found in town nor had anyone seen them since election day. Three days after election (On 14 November 1947) and they had not shown up even just to report to the Municipal Treasurer about what happened to them, if any. Verily something was fishy somewhere, we sensed.

"From then on all members of my team worked day and night and through the worst storm of the year on November 15, to solve the "mystery" of Precinct No. 10. We learned from our intelligence men that the two missing LP inspectors were in the house of the Governor in Naga (hiding), a fact corroborated by later

disclosures. I went to the Fiscal to request a warrant of arrest or a subpoena in order that I might get the LP inspectors statements. None was issued to me to this date. All the news we had was the allegation of the Mayor to the effect that the baroto carrying the LP inspectors and the ballot boxes across the lake to town on the night of 12 November 1947 had capsized and that the ballot boxes were beyond recovery from the bottom of the lake.

"When on 16 November 1947, the Municipal Board of Canvassers for Bato proclaimed the LP candidate Mayor-elect on the basis of a large majority supposed to have been garnered by him in Precinct No. 10 per the election Return submitted by the LP inspectors, my mental picture of the whole "mystery" became crystal clear. The ballot boxes were made to disappear I concluded in order that whatever tampering was done with the figures on the Election Return might never be discovered. And it did not need a wise man to know who were responsible for the loss of the boxes—and who the mastermind of the whole trick was.

"Let it be noted here that we, MPs, were not concerned with the tampering of returns, nor with the result of the election. That was not our mission. Ours was the elucidation of the whereabouts of the ballot boxes (government property) and especially the keys, the collection of which and their safe delivery to the Provincial Commander was specifically entrusted by law to my team. But in working out a solution to the problem confronting us, we had to dig facts connected with it and go around about specially because the principal suspects were not to be found—I mean the LP inspectors. And in our investigation, if many events and facts in connection with election frauds came to light, they were incidental findings.

"As I said above, we had to go round—about to arrive at definite conclusion. Our intelligence men headed by Sgt. Felipe Lazarte found a clue on November 19th which he reported to me. Forthwith I dispatched Lt. Gonzales and some EM to trace and follow it. They did as instructed, spread the net on the night of that day, and the haul was abundant in terms of good results. The clue led to the solution of week old 'mystery.'

"Brought to Naga for investigation were four men and a canvass bag full of pertinent and incriminatory objects. The men were Sergio Laganzon, Cristobal Tuyay both from Bato, Telesforo de Silva and Agapito Casili from barrio San Vicente, Nabua.

"The bag contained copies of Certificates of candidacy of all registered candidates issued to Precinct No. 10, a padlock with key (Eagle brand No. 36805), and several confidential letters written in longhand.

"Sergio Laganzon declared that he rowed the baroto on which the LP inspectors, Pedro Sornillo and Cornelio Solares carrying the ballot boxes of Precinct No. 10 crosses the lake on November 12 in the afternoon; that they did not capsize at all, but instead of proceeding direct to Bato, they docked at barrio San Vicente, Nabua, Camarines Sur where he left the two inspectors in the house of one Telesforo de Silva; that the following day, 13 Nov. together with Cristobal Tuyay, and upon orders of Mayor Buquid of Bato, he went back to San Vicente to fetch the two inspectors and to convey to them Mayor Buquid's order to the effect that the two ballot boxes should be destroyed immediately; that at about 6 p.m. that day, he and Pedro Sornillo in one baroto sailed for Bato closely followed behind by another baroto carrying Cornelio Solares and the ballot boxes, rowed by Cristobal Tuyay. This second baroto went direct to the middle of the lake to dump the ballot boxes into the water per order of Mayor Buquid.

"Cristobal Tuyay, on his part, after corroborating the statement of Sergio Laganzon declared that once in the middle of the lake on that eventful afternoon of the 13th November, he saw as he paddled the baroto how inspector Solares dumped the ballot boxes into the lake, one after another.

"Telesforo de Silva is the owner of the house where the two LP inspectors stayed overnight from the evening of the 12th to the afternoon of the 13th. He declared that the two inspectors were carrying two tins, a big one painted white and smaller one painted red; that he saw the two messengers of Mayor Buquid arrive Laganzon and Tuyay on the afternoon of the 13th; that he saw them all depart dusk in two barotos carrying the two tins; that in their hurry or probably nervousness, they left behind in his house the canvass bag which he surrendered

to the MPs.

"Agapito Casili, a resident in the house of De Silva, merely corroborated the latter's declaration about the overnight stay in their house of the two LP inspectors, and that he, too saw the two tins carried by the inspectors.

"Who was the mastermind of the whole scheme? In addition to the declaration of Laganzon and Tuyay above, inside the canvass bag left by the LP inspectors in the house of the De Silva we have found the most incontrovertible answer to that question. He is no other than the Mayor of Bato, the one official charged by law to lead in safe-guarding the purity of the election in his town. In this strongest of evidences, the Mayor points to some important personages who presumably had acted as his advisers. This significant proof unearthed by my team, in the form of a letter in Mayor Buquid's own penmanship addressed to the chairman of the Board of Inspectors of Precinct No. 10, Simeon Cedron, is self explanatory. A photostatic copy of same is hereto attached and its English version follows:

"Dear Mion:

"The result of 11 precincts shows that Compadre Osmundo lost by 36 votes excluding Pagatpatan, your precinct. Hence, if he has also lost there, you make all means to amend the election return so as to have Compadre Osmundo win there by at least 50 or 60 votes.

"I hope that you will be able to help inasmuch as this is the wish of the two lawyers accompanying Gov. Gallego this morning. According to rumors we have won the mayorship by 100 votes, but I do not believe so.

"Yours for victory

"E. BUQUID"

"In the same letter there is what amounts to an indorsement of Cedron to Pedro Sornillo. It is to be noted here that according to the declaration of Cedron, there was an agreement between him and Sornillo to split between them the tenure of the Chairmanship of the Board. In accordance with this agreement, Cedron served during registration days and Sornillo served on October 3 to 4 and on election day. Hence at the time Mayor Buquid's letter was received by Cedron, Sornillo was acting as Chairman and Cedron was not in the service. Hence his endorsement as follows:

"Manong Pedro: The election return there should not be given by you to Reynales or to Escape; you should be the one to keep it yourself, and I shall wait for you in San Juan because there we shall take care of doing all means about today's election. We hope that you will do all your means.

"(SIGNATURE)

"It is a pleasure for me to report to the Provincial Commander Camarines Sur Province, MPC (AFP) that his team headed by the undersigned has accomplished its mission. I am proud to report that despite non-cooperation and intentional indifference of certain public officials my team has succeeded in averting disorder.

"With regard to our second mission of collecting keys of the ballot boxes, the only keys missing are those from Precinct No. 10 of Bato, Camarines Sur. Our team however has successfully solved the supposed mystery and acquired all evidences for prosecution of the guilty parties before the court of justice, much to the embarrassment of the scheming Mayor of Bato, his advisers and his police force. Policemen of the town were adverse, even antagonistic to our aims and the pursuit of the truth. Persons we wanted to summon for investigation were tipped by them beforehand and could not be located by us. My men had to cross the wide Bato lake several times because our wanted persons either live on the opposite shore or had escaped there too to hide; even at midnight my men had to sail because that was the only time they could find or surprise the persons looked for in their houses. During the typhoon, all of us stayed soaked to the bones the whole day to say nothing of surviving on wet

crackers.

"I wish to mention here that in Bato there was only one official who was on the level with us, so to say, who was impartial in his attitude, ever ready to tell the truth and civic-minded enough not to be afraid of political repercussions. He is Mr. Jose Aytona the Municipal Treasurer of Bato exemplary public servant; may his tribe increase. I have a high regard for him.

"Because I am the head of the team that nipped in the bud all designs to frustrate the peoples' verdict and the course of justice, I know that wrath of the gods will be heaped upon me. Already I hear talks about persons in high government councils moving heaven and earth in Manila to have me removed from the service; I hear too, that charges will be filed against me in Naga on imaginary and fabricated offenses. One LP attorney 'was overheard as outspokenly saying that I am one pernicious element in the MPG here who has to be gotten rid of by all means.

"I am ready to face the music. One thing said about me is that I was partial to the Nacionalistas. Yes, I am not afraid to admit it—because by force of the evidences unearthed by me I had to take sides against the law breakers who happened to be the Liberals this time. But how about my partiality to the Liberal wing during the 1946 Presidential elections when the Nacionalistas were the ones abusing their power? Then, I was not a pernicious element in the eyes of the Liberals.

"A month ago or so before the elections I had expressed to the Provincial Commander my request that I should not be assigned to the area that had always been given me in previous elections. I could foresee the troubles that were forthcoming, and specially I could anticipate anomalies perpetrated by those in power. I knew that I could not be coward into closing my eyes to them to the detriment of my sworn duty and that it would mean antagonizing the powers that be. I had my lesson during the March 1947 plebiscite when I caught frauds in Iriga and Nabua and when despite pressure, I reported them to the Commission on Elections and to the Provincial Fiscal for appropriate action, I was in trouble. But the Provincial Commander who must have had reasons of his own, at the last hour ordered me to handle the same assignment I was trying to evade from. As a good soldier I had to obey orders.

"However, I have faith in the justice of my cause. My conscience tells me that I have done my duty well without fear or favor. I am happy in the belief that what I have done will redound to the credit of our organization in particular and to our government in general. It will be in the eyes of impartial observers, even of rabid but civic-minded and level headed Liberals, a vindication of those who have entertained the notion that nowadays all government agencies have been converted into mere tools of cheap unscrupulous politician. At least in this province the MPC can proudly claim to be an exception to that shameful indictment in the lights of its conduct during the last election.

"Before closing I want to pay a deserve tribute to the members sf my team. Lt. Artemio D. Gonzalez my subordinate officer, deserves a great credit for the success of our mission. His devotion to duty and untiring efforts are worthy of emulation. Sgt. Felipe Lazarte, MS, was responsible for the cracking open of the seemingly impenetrable wall of secrecy and mystery built around the case by the interested parties. His efficient sleuthing and intelligence work obtained for us the necessary clues. Sgt. Federico Verano was a great help in the investigation of suspects. Lastly Pvt. Leon Tigui, who hails from Bato was invaluable. His knowledge of the terrain and the people of Bato effect whatever handicap we at first had due to the non-cooperation, apathy and even hostility of the local municipal police.

"(Sgd.) DOMINGO ABELLA

"1st. Lieut. MCC

"Provincial Surgeon
"Chairman of Team."

Exhibit A is a photo of the falsified election returns which unmistakably shows how the votes of Posugac were increased from 60 to 133. The word "sixty" was substituted with the words "one hundred thirty three" and the figure "60" was replaced by figure "133". The authors of the falsification, superimposed with a new handwriting the several handwritten names and words, with the purpose of disguising the alteration by giving it the appearance only bolder than what has been formerly written. But they over exerted themselves in the date by changing the figure "12," the correct date of the return, with the figure "11."

The ballot boxes of precinct No. 10 were thrown into the lake, the perpetrators of the falsification believing that with the destruction and disappearance of the ballots, they can get away with their crime unpunished.

At the time the municipal board of canvassers made the canvass, it had before it two copies of the election returns for precinct No. 10, one genuine, giving Posugac 60 votes, and the other falsified giving him 133 votes. The board disregarded the genuine election returns and counted the votes appearing in the falsified copy. This is a conclusive evidence that besides Mayor Buquid, presiding it, the other members of the board were and are parties to the conspiracy.

It is evident that there is no question that a large group of public officials, chairman and members of the board of inspectors, the mayor of Bato, the municipal councilors of Bato, took part in the conspiracy, with the help of two attorneys in the entourage of Governor Gallego. Other officials in the province of Camarines Sur participated in trying to induce the municipal treasurer to be a party in the conspiracy. It is encouraging that other officials have shown courage to do their duty, such as the poll clerk, the municipal treasurer, and the peace officers, without whose efforts the criminal falsification would not have been so easily discovered.

The following facts are gathered from Exhibit 5: As the ballot boxes and keys of precinct No. 10 have never been turned over to the proper authorities, investigation was made, but only the affidavits of poll clerk Gil Escape and of inspector Gregorio Calleja, Nacionalista, were taken, the two Liberal inspectors having remained in hiding, as lately was discovered, in the house of the provincial governor in Naga. A request to the fiscal for a warrant of arrest of the inspectors in hiding remained unacted upon.

Mayor Buquid alleged that the "baroto" carrying the two Liberal inspectors and the ballot boxes across the lake had capsized on the night of November 12, and the ballot boxes were beyond recovery. According to Sergio Laganzon, he rowed the "baroto" on which inspectors Pedro Zornillo and Cornelio Solares were carrying the ballot boxes of precinct No. 10 across the lake in the afternoon of November 12, but instead of proceeding direct to Bato they docked at barrio San Vicente, Nabua, where he left the two inspectors in the house of Telesforo de Silva. The following day, November 13, upon orders of Mayor Buquid, he went back with Cristobal Tuyay to San Vicente, to fetch the inspectors and convey to them Mayor Buquid's order that the two ballot boxes be destroyed immediately. At about 6 p.m., Laganzon and Zornillo sailed for Bato in one "baroto" closely followed behind by another "baroto" carrying Cornelio Solares who had with him the ballot boxes and rowed by Cristobal Tuyay. In the middle of the lake, the ballot boxes were dumped into the water as per order of Mayor Buquid. Tuyay testified that he was the one who paddled the "baroto" carrying Solares and from which the latter dumped the ballot boxes into the lake. Telesforo de Silva, owner of the house where the two Liberal inspectors stayed overnight, corroborated the testimonies of Laganzon and Tuyay, adding that the inspectors left behind in his house a canvass bag which he surrendered to the MPs. Inside the canvass bag the MPs found Mayor Buquid's letter, Exhibit 4, instructing alterations in the election returns of precinct No. 10.

In Exhibit 7, a communication sent by Teodoro V. Saison to the Commission on Elections, it is stated that on

November 13, municipal treasurer Jose Aytona, of Bato, was taken to Naga by assistant provincial fiscal Jose Nepumuceno. At about 2 o'clock at night, Mayor Buquid and attorney Cesareo Fabricante, provincial board member and brother-in-law of Secretary Garchitorena of the Department of Agriculture and Commerce, went to the room where Aytona was resting and proposed to him about making some alterations in the election returns of precinct No. 10. Aytona did not agree.

Aytona testified in his affidavit, Exhibit 9, that on Sunday, November 16, 1947, having been notified that the municipal board of canvassers was ready to canvass the election, he submitted the election returns of the 12 precincts of Bato, with the statement that there were two election returns for precinct No. 10, one submitted by poll clerk Gil Escape on November 12, and the other submitted by election inspector Pedro Zornillo only on November 16, at 11 a. m.

According to Aytona, Zornillo came to his house with hands tied up with abaca rope and under the custody of a policeman from Naga. At about 3 p.m., when Aytona went to the house of the Mayor, he met there only the municipal secretary who turned the election returns over to him. Upon checking them, he found out that there was a sheet missing from the election returns of precinct No. 10, the one submitted by a poll clerk. The sheet missing was the one corresponding to the votes received by several candidates for several positions, including the mayoralty. He reported the anomaly to the Commission on Elections, furnishing copy of the report to the provincial fiscal and to the provost marshal of the MP.

On December 18, 1947, Teodoro V. Saison, local representative of the Nacionalista Party in Bato, Camarines Sur, addressed a communication to the Commission on Elections, Exhibit 14, requesting reconsideration of the resolution of December 12, 1947, and insisting that the municipal board of canvassers be directed to reconvene and make a new canvass in accordance with law, after narrating the scandalous fraud committed to proclaim defeated Posugac as the winning candidate instead of Mateo Ramos.

Petitioner, in complaining against the refusal of the Commission on Elections to order the municipal board of canvassers of Bato to make a canvass in accordance with the authentic election returns of precinct No. 10 of Bato, invoked the action of the Commission on Elections on similar cases in the municipality of Mulanay, Exhibit 15. municipality of January, Iloilo, and in the municipality of Tanza, Cavite, where the action of the Commission on Elections was expressly approved and ratified by the Supreme Court in its resolution, L-1834, promulgated on December 31, 1947.

There is no question as to the truth of the facts above stated. Posugac himself has never dared to question the truth of said facts. He had several opportunities to do so. He could have questioned it in his answer, in the first hearing of this case, in his written memorandum, or at the rehearing of this case. He chose not to deny the facts upon which there is overwhelming and conclusive evidence in the documents attached to the petition.

The Commission on Elections, through its counsel, has advised this Court that it is convinced that the election returns of precinct No. 10 was criminally altered to give majority to Posugac, the defeated candidate. Although at the time the petition was filed before us it has not yet completed its investigation as to the fraud, at the time the rehearing of this case took place it had gathered enough evidence to conclude that such a fraud has been committed, although it was not yet able to get the declarations of the election inspectors who were still in hiding. Counsel for the Commission on Elections used the adjective "brutal" to describe the fraud.

No one among the members of this Court has questioned the truth of the facts as alleged in the petition and narrated in this opinion.

When the petition was filed with the Supreme Court on December 27, 1947, we issued immediately a writ of

preliminary injunction ordering Osmundo Posugac to desist from assuming the office of mayor of Bato on January 1, 1948, or thereafter, until further orders from this Court. With this timely writ, we were able to prevent in the meantime the consummation of the criminal conspiracy, perpetrated by a number of public officials, to cheat the popular will of Bato, by placing in the office of mayor the defeated candidate in lieu of the one who had won in the elections.

With the result of the last vote taken by this Court on the merits of this case, the writ of preliminary injunction will have to be dissolved. It means that, by practical operation, this Court is giving the green light for the accomplishment of the work of the conspirators.

No amount of explanations and excuses will be enough to condone the evil effects of our failure to grant the relief sought in the petition. This lack of positive action on the part of the Supreme Court is an outright reversal of its courageous stand, recently taken in the Tanza case.

The result in this case will not curtail the legal power and constitutional duty of the Commission on Elections to set aside the proclamation of Fosugac and to order the municipal board of canvassers to reconvene and make a new canvass on the basis of the authentic election returns of precinct No. 10. A canvass based on a false return is no legal canvass and should be brushed aside as if it had never been made. Its refusal to act in December, 1941 before the petition was filed before us, was justified if it is true that it was not yet in possession of enough evidence to conclude that a fraudulent alteration has been made. Now the situation has changed. The Commission on Elections has the necessary evidence and we hope that it will not lose a single moment to take the necessary stops so that the winning candidate may be proclaimed, and the man repudiated by the electorate be not allowed to usurp the mayoralty of Bato.

Having in mind the scandalous frauds committed in the elections of November 11, 1947, as revealed in several cases in this Court, including the present one, we said in a speech, which recently provoked oratorical fireworks in the Senate, the following:

"We are believers in democracy. Popular suffrage is the means of expression of the will of our people in whom, according to our fundamental law, sovereignty resides. Suffrage is the strong trunk which connects and supports all the branches of the government on the solid, firm and life-giving earth of popular support. That is why it is indispensable that we should not allow that trunk to be weakened and broken by wood borers and termites of fraud and lawlessness. Otherwise, all the structure is liable to crumble. Since nearly 30 years ago, as a newspaperman, I undertook a vigorous and unrelentless crusade for clean elections. I wrote strong editorials which caused prosecutions in court. I worked hard for the improvement of defective election laws. I believed then and still believe that the survival of our democracy hinges on the maintenance of clean elections. Those who cheat the free decision of the majority of the electorate are the number one enemies of the peace and happiness of our country. Those who prostitute suffrage are worse than the merchants driven by Christ from the temple. They are no better than the traitors who made common cause with the Nippon Empire and tortured and killed their brothers. They should be kept in perpetual hospitalization as political lepers.

"On one occasion, President Franklin Delano Roosevelt made a favorable appraisal of democracy among the peoples of Latin America. Someone reminded him of their frequent resort to revolution. President Roosevelt answered that there are two ways of practicing democracy, one by revolution and another through peaceful elections.

"In the American Declaration of Independence we read the following solemn words:

" 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Government are instituted among Men, deriving their just powers from the consent of the

governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.'

"Our people have decided to choose democracy through, peaceful elections. Let us abide by that decision, and avoid all grounds for its reversal.

"Proper care in choosing means and procedures to attain an objective is an essential duty imposed upon all individuals by the mandates of human dignity. The means and procedures selected should never violate any moral principle or ethical standard. Do to others what you would have them do to you. Never do to others what you would not have them do to you. There is no greater principle than the golden rule enunciated in the Sermon on the Mount. That rule should lie behind all human action. If its violation is not permissible to a private person, the prohibition is more imperative in the case of a public official. The weight and imperativeness of a duty are co-extensive with the scope of the authority and responsibility held by a person. The men who are holding positions in government, especially those wielding great authority and power and occupying places of such prominence should be more scrupulous in the selection of their means and procedures, as any bad example they may give will soon be followed by those who look on them as models worthy to be imitated. If public officers are willing to violate or are violating without any compunction constitutional precepts and principles just to satisfy their political ends, they will be in fact inducing the people to disregard the law and the Constitution if they should be an obstacle to the accomplishment of their objectives.

"The responsibility of public officers to adjust their actions, procedures, and means to accomplish a purpose to moral principles or rules based on strictly ethical standards is greater now than ever. The slackening of decent principles, decay in ethical sense, disintegration of moral virtues are prevailing in many sectors. The moral level of many portions of our people has lowered to an alarmingly dangerous plane. In no other time is the need of the best examples from above, from the leaders, more felt, if people have to consider persons placed in high authority as paragons of moral conduct so that they may accomplish the moral rehabilitation, without which peace and order, law and security, social well-being and happiness will always be in jeopardy.

"The leaders who have no scruple in using indiscriminately any means to attain their ends are toying with fire and dynamite. Those who would not stop at any illegality are performing reckless hurdles somersaults on the brink of an abyss. It is highly disturbing that in our records we have conclusive evidence of many official abuses and illegalities. When the leaders are bent in ignoring the law the common people are necessarily carried into the maelstrom of lawlessness. When the will of the electorate is defeated or suppressed through illegal maneuvers, or the legal officers are eliminated to be replaced by those favored by political predilection, there is peril of driving the people into administering swift and drastic justice to depose the impostors and usurpers of popular sovereignty. Only those suffering from paralexia cannot read the signs written on the wall. Only those who are blind to the teachings of our history may ignore the fact that our race has long ago ceased to be submissive to abuses, illegalities, and despotism. Even under the dreaded rule of the Nippon murderers, our people were not able to suppress the promptings of human dignity to protest against injustices of through militant, energetic, crushing means. Half a century of training in American democracy could not fail to make us absorb the doctrines of our teachers, one of them being embodied in the American declaration of Independence. Let us beware, so that the people should not reach the breaking point and, at last, shall not have to exclaim with Cicero: 'Quousque tendem abutere, Catalina, patientia nostra:' "

No effort must be spared for our democracy to enjoy agerasia. Legal and judicial guarantees to insure clean elections are indispensable to it. Without such guarantees decay will ensue, and complete collapse may be the end.

For the sake of truth we feel it our duty to record the fact that when this case was submitted for our decision for the first time the voting was five to grant the petition and four to deny. Those who voted to grant were the Chief Justice, Mr. Justice Feria, Mr. Justice Pablo, Mr. Justice Briones and ourselves. Those who voted to deny were Mr. Justice Paras, Mr. Justice Bengzon, Mr. Justice Padilla, and Mr. Justice Tuason. Notwithstanding this result, decision was withheld because of the mistaken idea entertained by the majority to the effect that to render an affirmative decision, it is necessary that, at least, six affirmative votes be cast. An executive order is invoked in support of such an error.

The necessity of disabusing ourselves of such an error is imperative if the independence of the Supreme Court is to be safeguarded. No law or executive order may validly provide for the number of votes for the Supreme Court or any of its divisions to render an affirmative decision. Such matter is absolutely beyond legislative or executive powers. That matter is constitutional and can be regulated only by constitutional provision.

Section 10 of Article VIII of the Constitution provides that "no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court." In all other cases, in the absence of specific provisions of the fundamental law, the basic majority should and shall be followed. Even in a plebiscite to ratify a constitutional amendment that Congress may propose, that basic rule is the one that governs. There is no reason why such rule shall not be followed in the Supreme Court in the absence of contrary constitutional precept.

A majority of one in the Supreme Court is as good as a majority of one in a national plebiscite or election. The President of the Philippines may be elected by a majority of one. The same may happen with any senator, any member of the House of Representatives and any other elective official. If that majority of one is enough to make effective a constitutional amendment and to elect any elective official, including the highest among them all, and the last vote to make that majority of one may be cast by the humblest voter, it is absurd to maintain that a majority of one justice would not be enough to reach an affirmative decision in the Supreme Court. Such absurdity has never been entertained in the Supreme Court of the United States of America, the model upon which our Court is patterned.

The exception provided by the Constitution requiring two-thirds of all the members of the court to declare null and void a treaty or law was a concession made by the Constitutional Convention to the sector of opinion opposing the power of the Supreme Court to nullify laws enacted by Congress. With regard to all other cases, the Convention did not see any reason to swerve from the universal rule of simple majority prevailing and followed in all democracy and democratic institutions.

When we were about to write an opinion regarding this question, Mr. Justice Hilado, who was absent in the first voting arrived. A new voting was taken, and he cast his vote with the minority of four. As a result of the tie, a rehearing was ordered in accordance with the provisions of the Rules of Court.

The above facts will show the dual tragedy suffered by the petitioner. He won the election as mayor of Bato. A fraudulent falsification deprived him of the position to which he was elected. The first vote taken by this Court in this case shows that he also won. A fundamental error of the majority deprived him of the benefit of a decision rendered in his favor.

We insist that the petition should be granted.

Briones, J., I concur in the foregoing dissenting opinion.

Paras, J., I hereby certify that Chief Justice Moran, and Justices Feria and Pablo voted with Justices Perfecto and

Briones.

Petition denied.

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