

ZAFIRO RESPICIO, PETITIONER, VS. HON. VICENTE N. CUSI, JR., AS PRESIDING JUDGE, CFI OF DAVAO, BRANCH I, AND FRANCISCO TESORERO, RESPONDENTS.

G.R. No. L-34427. April 11, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition, with preliminary injunction, to declare null and void the orders of November 23, 1971 and November 29, 1971 issued by respondent judge giving due course, respectively, to the original and amended petitions filed with his court by respondent Francisco Tesorero asking for judicial recount of the votes cast in a total of twenty-nine electoral precincts in the City of Davao, wherein both petitioner Zafiro Respicio and private respondent Francisco Tesorero were opposing candidates for councilor of said city in the general elections of November 8, 1971 fighting for the last position.

Pertinent portions of the petition state:

"18. In his' Amended Petition'dated November 27, 1971 (ANNEX 'G'), the respondent TESORERO prays for the judicial recount of the votes cast in a total (of) Twenty-nine (29) electoral precincts of Davao City, which may (be) classified or grouped together, into three (3) separate groups, for convenience and easier comprehension, to wit:

"(a) GROUP I —

Twenty-Two (22) Precincts — namely Precincts Nos. 300, 395, 432, 463, 301-A, 209, 14, 70-A, 75, 93, 126, 192, 197, 281, 298, 328, 390, 418-A, 422, 466-A[1], 467 and 470-I[2] -

In these 22 precincts, the common denominator or allegation is that there are discrepancies in the election returns, between the words and figures on the one hand, and the 'tally' portion of the same return; that the election return (i.e. —the words aid figures) give to me petitioner RESPICIO, more votes than are supposedly indicated in the 'tally' portion of the return. The alleged excess votes of petitioner total 35 votes.

"(b) GROUP II — Six (6) Precincts- namely, Precincts Nos. 224, 185, 195, 208, 312 and 340.[3]

In these 6 precincts, the common denominator or allegation is that there are discrepancies in the election returns,

between the words and figures on the one hand and the 'tally' portion of the same return, on the other; that the election return (i.e. — the words and figures), give to the respondent TESORERO, less votes than are supposedly indicated in the 'Tally' portion of the same return. The alleged reduced votes of respondent Tesorero total 7 votes.

"(c) GROUP III— One (1) Precinct— namely: Precinct No. 470-J.

The 'Amended Petition' alleges that in this one precinct, while in the election return, the words, figures and 'tally' portion coincide and read '20 votes,' the announcement of the votes for the petitioner RESPICIO above-cited, was 'misheard' by the tally clerics during the canvass, so that said petitioner was supposedly credited with '40 votes' instead of the '20 votes' shown in the election return."

On these factual premises, expressly admitted in the answer of respondent Tesorero, petitioner submits the following grounds for his petition:

"x x x It thus appear obvious that said petition for 'judicial recount' was filed by respondent TESORERO under the provisions of Section 206, Rep. Act No. 6388, The Election Code of 1971, which reads as follows:

'SEC. 206. Recounting of votes.— In case it appears to the board of canvassers that there exists discrepancies in two or more authentic copies of election returns, other than the copies furnished the political parties from an election precinct or discrepancies in the votes of any candidate in words and figures in the same return and in either case, the difference affects the result of the election, the proper Court of First Instance, upon motion of the board or of any candidate affected and after due notice to all candidates concerned shall proceed summarily to determine whether the integrity of the ballot box had been preserved and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the precinct solely for the purpose of determining the true result of the count of votes of the candidate concerned: Provided, however, That if upon the opening of the ballot box it should appear that there are evidences or signs of replacement or tampering of the ballots, the Court shall not recount the ballots but shall forthwith seal the ballot box and deliver the same to the Commission for safekeeping.'

"20. It appears obvious that under the aforequoted legal proviso, a Court of First Instance will have jurisdiction to entertain and give due course to a petition for 'judicial recounting of votes,' ONLY IF AND WHEN, it is alleged and shown:

"(a) 'xxx that there exists discrepancies in two or more authentic copies of election returns, other than the copies furnished the political parties from an election precinct, xxx,'

"(b) 'xxx discrepancies in the votes of any candidate in words and figures in the same return, xxx,'

'xxx and in either case, the difference affects the results of the election, xxx.'

"(Sec. 206, Rep. Act No. 6388).

"21. A careful perusal of the 'Petition' (Annex 'B') and the 'Amended Petition' (Annex 'G') in Special Case No. 9-71 will show, that therein, respondent TESORERO relies upon an alleged discrepancy between the votes shown in the election return (i.e., the words and figures) on the one hand, and the 'tally' portion in the same return, on the other, with respect to Groups I and II of the protested precincts, under the foregoing paragraph 18, supra.

"And with respect to Precinct No. 470-J, (under Group III cited in the foregoing paragraph 18, supra), no discrepancy, whether in the words, figures or 'tally' is alleged to it exist in the election return; the grievance with respect to said precinct No. 470-J, is that the votes of petitioner Respicio, which is shown in the returns as '20 votes,' when announced during the canvass, was 'misheard' by the tally clerks in said canvass.

"22. Respondent TESORERO, in his 'Opposition to Motion To Dismiss' dated November 29, 1971 (Annex 'F'), impliedly admits that his petition for 'judicial recount' is anchored upon the provisions of Section 206, Rep. Act No. 6388, when he argues, that —

"(a)

'xxx When Sec. 206 of the Election Code of 1971 provided for 'discrepancies in words and figures in the same return,' it did not refer solely to the numerical figure which indicated the total votes that the candidate obtained but also the vertical lines appearing in said return and which forms the basis of the total votes written in numerical figures; xxx.' (p. 8, Annex 'F')

"(b)

'xxx when judicial recount was permitted under the provisions of Sec. 206 of the Election Code of 1971 in cases where there are discrepancies in the same election return between the words and figures, it embraced likewise, a discrepancy between the total number of votes written in words as well as figures written in vertical lines, xxx' (p. 9, Annex 'F')

"(c)

'xxx With respect to the allegation of the petition referring to Precinct No. 470-J (sub-paragraph 'CC, paragraph 10, Amended Petition), we respectfully submit that while it may not be within the strict letter of the provisions of Section 206 of the Election Code of 1971, it is within the intent and purpose behind a judicial recount, xxx.' (p. 10, Annex 'F').

"x x x the language of Section 206, Rep. Act No. 6388, The Election Code of 1971, is clear and plain, when it alludes to 'discrepancies in the words and figures in the same return,' as to the 'votes of any candidate.' The term 'figures' can have only one common meaning, which is, the numeral indicating the number of votes received by the candidate. The respondent Tesorero, in his 'Opposition To Motion To Dismiss' (Annex 'F') laboriously argues and expands the scope of the term 'figures' to the vertical lines in the tally' portion of the return. This is a mental exercise, which we respectfully submit, is self-serving and deserving of scant consideration.

"As for the election return of Precinct No. 470-J, respondent Tesorero makes no pretense of any discrepancy in the returns, as to the words, figures and tally, but merely relies upon an alleged intent and purpose of a judicial recount. Can such intent and purpose substitute for the requirement of the law?

"In the election returns form issued by the COMELEC (see Annexes T, 'K' and 'L'), there is a column reading 'TOTAL VOTES OBTAINED (In figures)' and another column reading 'TOTAL VOTES OBTAINED (In Words).' These columns indicate the understanding of the COMELEC, as to the meaning of Sec. 206, Rep. Act No. 6388, as to the meaning of the term 'words and figures' in the election returns. And to come within the context and meaning of the 'discrepancy' to justify a judicial recounting of votes under said Sec. 206, Rep. Act No. 6388, it is respectfully submitted, that the noted discrepancy must be that which appears under these columns. Any other view would be to do havoc to the clear and plain meaning of the statute.

"(d) The rule — *Expressio unius est exclusio alterium*.

'It is a general rule of statutory construction that the express mention of one person, thing, or consequence is tantamount to express exclusion of all others. The maxim is based upon the rules of logic and the natural workings of human mind. It is particularly applicable in the construction of such statutes as create new rights or remedies, impose penalties or punishments, or otherwise come under the rule of strict construction.'

"(Black on Interpretation of Laws, 2nd ed.. pp. 219-220; cited in Francisco's 'Statutory Construction,' 1959 ed., p. 173).

"Sec. 188, Rep. Act 6388, The Election Code of 1971, mentions the tally of votes to be indicated in the election returns. And yet, Sec. 206, of said law, omits any mention of a discrepancy in the tally with any other portion of the election returns, as a justification for a judicial recount. The above-cited rule, must apply to mean," that the legislative intent is to restrict the alleged discrepancy to justify a judicial recount, only when such discrepancy refers to the 'words and figures.'"

In connection with the thrust of petitioner's contention as regards the first twenty-eight (28) precincts, wherein indisputably there are discrepancies between the number of votes commonly credited to both petitioner and private respondent in "words" and "figures," on the one hand, and on the other, the number of vertical lines supposed to represent the votes counted or tallied for each of them pursuant to Section 188 of the Election Code of 1971, Republic Act 6388, which is that the sole and exclusive legal basis for a judicial recount under Section 206 of the Electoral Code is discrepancy between the votes in "figures," on the one hand, and the votes in "words," on the other, and, therefore, any discrepancy of any or both of these with the number of vertical lines in the tally appearing on the return itself is not a ground for such recount, it is important to consider first that said Section 188 reads as follows:

"SEC. 188. Manner of counting votes.— The counting of votes shall be made in the following manner: the board shall form separate piles of one hundred ballots fully extended, which shall be held together with rubber bands, with cardboards of the size of the ballots to serve as folders. The chairman of the board shall take the ballots of the first pile one by one and read the names of the persons voted and the offices for which they were voted in the order in which they appear thereon, assuming such a position as to enable the two party inspectors and all or at least a majority of the watchers to read such names. One teacher-inspector shall record on the tally board as the names voted for each office are read, the number of votes received by each candidate, each vote being recorded by a vertical line, except every fifth vote of the same candidate which shall be recorded by a diagonal line crossing the previous four vertical lines. The poll clerk shall do likewise on the election returns as prescribed in Section one hundred ninety hereof. After finishing the first pile of ballots, the board shall determine the total number of the votes recorded for each candidate, the sum being noted on the tally sheet and on the election returns. In case of discrepancy such recount as may be necessary shall be made. The ballots shall then be grouped together again as before the reading. Thereafter, the same procedure shall be followed with the second pile of ballots and so on successively. After all the votes of the precinct have been counted the board shall sum up the totals recorded for each candidate, and the aggregate sum shall be likewise recorded on the tally sheet and on the election returns. It shall then place each pile of ballots in an envelope prepared for the purpose, and each envelope shall be closed, signed, and deposited in the compartment for valid ballots. The tally sheet on which the votes have been recorded and wherein the partial and total sums appear shall not be changed or destroyed but shall be kept in the compartment for valid ballots."

and Section 190, therein referred to, correspondingly provides thus:

"SEC. 190. Statement of the count— The board of inspectors shall prepare the statement of the count, commonly known as the election returns, simultaneously with the counting of the votes as prescribed in Section one hundred eighty-eight hereof. The statement shall be prepared in sextuplicate and shall be of such

size and so located as to be in full view of the public within the polling place while being accomplished. For this purpose, it shall be placed against a blackboard or panel board also in full view of the public. Each vote read shall be recorded by the poll clerk on the election returns by means of a vertical line, and every fifth vote for the same candidate shall be tallied with a diagonal line across the four vertical lines previously tallied. The entry of votes for each candidate shall be closed with the signature of all the members present, likewise to be affixed in full view of the public, immediately after the last vertical line, or immediately after the name of the candidate who did not receive any vote.

"x x x

xxx

xxx."

In the light of these provisions, the Court is fully convinced that the mere omission of any reference to possible discrepancy between the votes written either in words or in figures or both, if these be identical, on the one hand, and what should be the corresponding number of vertical lines in the tally appearing in the return, on the other, does not necessarily limit the instances wherein judicial recount may be ordered only to those referred to by petitioner. It is, on the contrary, obvious to Us that in providing for the tallying on the election return itself of the votes of the candidates, in the manner prescribed by Section 188 and 190, aforequoted, the legislature intended to provide an additional safeguard against the tampering of the results of an election by means of altering the entry of the votes in words and in figures in the return. The cases heretofore decided by this Court involving judicial recounts spawned by discrepancies in such entries of votes attest to the ease with which said entries could be altered without regard to the true number of votes cast by the voters for the candidates concerned. The new requirement of tallying on the return itself introduced by the above provisions are indeed to be welcomed as one of the much needed reforms in our electoral processes tending to make the election returns as faithful a record of the presumptive results of an election as can be presently conceived, thereby minimizing, if not entirely eliminating, the chances of any candidate grabbing a proclamation to which he is not entitled.

In this connection, it must be noted that Section 190 pointedly requires, with respect to the tally on the election return, that "the entry of votes of each candidate shall be closed with the signature of all the members (of the board of inspectors) present, likewise to be affixed in full view of the public, immediately after the last vertical line, or immediately after the name of the candidate who did not receive any vote." Thus, the signatures of the members of the board of inspectors serve as the guarantee of the genuineness of the tally. What for, were such signatures required, if they are not to serve as legal basis for insuring the correctness of the tally as well as the entries of the number of votes appearing elsewhere in the return? In other words, We are of the considered view that it was within the contemplation of Section 206, aforequoted, of the new electoral code to consider any discrepancy between the tally of votes in the return itself and the entry of votes in words and/or figures in the same return of the corresponding candidate as sufficient basis for a judicial recount, taking into account that the phrase "votes of any candidate ... in figures" can reasonably include the figures which must necessarily be written at the end of the tally of votes for each candidate as required by Section 188 which provides that "after finishing (each) pile of ballots (separated into piles of one hundred each), the board shall determine the total number of votes recorded for each candidate, the sum being noted on the tally sheet and on the election returns" (which naturally includes the tally in the return). In fact, even if actually no such notation of the total number of votes as thus required by Section 188 is made, the number of vertical lines alone could be considered as "figures" within the spirit of the provisions aforementioned read together and in complement of each other. No cogent reason has been urged by petitioner and We imagine none that can be cited why this construction may not be adopted. True,

the provision could have been made more precise, but considering that sometimes, in the process of perfecting a legislation, amendments to some provisions of the bill are not correspondingly reconciled by the appropriate amendment of other related provisions thereof, even as there can be no doubt that the whole law is intended to operate as a harmonious and integrated instrument designed to eliminate past errors and deficiencies, it behooves the Court to seek and follow that construction which most approximates the evident purpose of the legislature.

Of course, it is to be emphasized that in order that the tally in the return may be used as basis for judicial recount, as already explained, it is imperative that the same must be closed by the signatures of the inspectors as required by Section 190. It was, indeed, for this reason that before deciding this case, the Court required respondent judge in its resolution of January 20, 1972 "to enter an order, after hearing the parties, containing specific findings" as to whether or not the pertinent provisions of Section 190 just referred to have been complied with, inasmuch as the copies of the returns submitted to the trial court have not been forwarded to this Court and the pleadings and memoranda of the parties filed in this case make no reference thereto. And complying with said resolution, the respondent judge issued an order, pertinently reading thus:

"During the hearing on February 11, 1972, it was established that the entry of votes of each candidate in the election returns for Precincts 14, 70-A, 75, 93, 185, 197, 224, 281, 312, 328, 340, 390, 418-A, 422, 432, 466, and 467 were closed with the signatures of all the Members of the Board of Inspectors present, that is, they closed the tallies in the returns with their signatures.

"The election returns for Precinct 192 showed that the Members of the Board of Inspectors did not close with their signatures the entry of votes of each candidate. However, immediately after the name of the candidates who did not receive any vote, the signatures of the Members of the Board of Inspectors were affixed. The petitioner and the respondent received votes in this precinct.

"The copy for the NP of the election returns for Precinct 197 showed that the entry of votes of some candidates were closed with some signatures numbering three or four, whereas the copy for the LP of the said election returns showed that the entry of votes of each candidate was not closed with the signatures of the Members of the Board of Inspectors, except the entry of votes of candidates Almendras and Aytona.

"It also appears that the entry of votes of each candidate in the election returns for Precincts 126, 192, 195, 208, 209, 298, 300, 301-A, 395, 463 and 470-F was not closed with the signatures of the Members of the Board of Inspectors. The Board of Canvassers, however, during the canvassing, directed the Members of the Board of Inspectors to comply with the requirements of Section 190 of the Election Code and so the entry of votes of each candidate in the election returns for Precincts 126, 209 and 301-A, were closed with the signatures of three members of the Board of Inspectors, while the election returns for Precinct 395, with the initials of the five Members of the Board of Inspectors; those for Precincts 192, 195, 208 and 463, with the initials of three Members of the Board of Inspectors and those for Precincts 300 and 470-F, with the initials of two members."

It results, therefore, that in sixteen precincts mentioned in the petition, to wit: Precincts Nos. 432, 224, 14, 70-A, 75, 93, 281, 328, 390, 418-A, 422, 466[4], 467, 185, 312 and 340, all the tallies in the returns respectively therefor were duly closed in the manner prescribed by Section 190. Accordingly, there can be no valid reason why the recount of the votes in said precincts cannot be made. As to Precincts Nos. 300, 395, 463, 301-A, 209, 126, 298, 470-F[5], 195 and 208, it appearing that no less than three inspectors closed the tallies in the returns respectively therefor, also in the manner prescribed by Section 190, when they were called by the Board of Canvassers to precisely cure the omission, We hold that there has been substantial compliance with the law, the three inspectors of each of said precincts, composing as they did the majority in the Board of Inspectors. The action taken by the Board of Canvassers in so requiring the completion of the returns by the inspectors by closing the tallies therein with their signatures may be deemed as a reasonable application of Section 204 of the electoral code which

provides that:

"SEC. 204.—Material defects in the election returns.— If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board shall return them by the most expeditious means, to the corresponding boards of inspectors for correction. Said election returns, however, shall not be returned for a recount of the ballots or for any alteration of the number of votes set forth therein; Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of inspectors concerned to complete the necessary data in the election returns and affix therein their initials: x x x."

We are likewise of the view—that, as regards Precinct 197 wherein the tallies in the return were closed only with the initials of all five inspectors, there has been sufficient observance of the requirement of the provision aforementioned, albeit We feel that it would have been better had they signed their full names.

Anent Precinct 470-J, it is claimed by respondent Tesorero that whereas petitioner Respicio actually received therein only 20 votes, the latter was credited with forty (40) votes as a result of "mishearing" by the tally clerks. In these circumstances, no judicial recount is warranted.

The appropriate remedy in such a situation is for the Board of Canvassers to merely examine the return again, considering that the board has not yet become functus officio inasmuch as it has not yet proclaimed the 14th councilor-elect of Davao City. Indeed, as a general rule, judicial corrections and recounts and proceedings within the board of canvassers under Section 204 are in order as long as no proclamation of the affected candidates has been made by the board.

We make no pronouncement as to the returns in Precincts 466-A and 470-1, in view of the fact that the records do not disclose the condition thereof in relation to the issues of this case. As earlier noted, these two precincts were substituted for Precincts 466 and 470-F after this case had already been submitted for decision. At any rate, it does not appear that the number of votes corresponding to the said precincts will materially affect the result of the election here in question.

IN VIEW OF ALL THE FOREGOING, the petition is denied. The restraining order heretofore issued by this Court is hereby lifted. And this being an electoral case wherein full hearing has already been given the parties, this decision is declared immediately executory. No costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

[1] As per correction in respondent Tesorero's Manifestation of February 19, 1972, also referred to in the order of respondent judge of February 14, 1972.

[2] Id.

[3] The number of this precinct does not appear in the copies of the original and amended petitions attached to the petition herein; but the omission may be disregarded as the one (1) vote to which it might refer will not affect the result of this case.

[4] Substituted with Precinct 466-A, as previously noted.

[5] Substituted with Precinct 470-1, as previously noted.

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