

PABLO C. SANIDAD, PETITIONER, VS. HON. CRESCENCIANO L. SAQUING, AS PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ILOCOS SUR, BRANCH II, AND LUCAS V. CAUTON, RESPONDENTS.

G.R. No. L-27951. May 28, 1968

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PER CURIAM:

As we are asked by petitioner for the implementation of this Court's directive, compliance with which is now long overdue, requiring respondent Judge to proceed with the recount of the votes in the 122 precincts questioned by petitioner, we pause to ponder. Because that petition asks of us that the recount be conducted at the offices of the Commission on Elections in Manila. The problem that this petition thrusts upon us is at once novel and far-reaching.

For, theory had been advanced that a judge of first instance, even in the exercise of his authority under Section 163 of the Revised Election Code, is not to perform his task outside of the territorial limits of his jurisdiction. Such act, if performed outside of his district, it has been said, should be stricken down as a nullity. Exercise of contemplative wisdom is thus required.

And now to our task. We start with the statute. Section 163 of the Revised Election Code reads:

"SEC. 163. When statements of a precinct are contradictory. - In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. No-tice of such proceeding shall be given to all candidates affected."

Within the framework of the Revised Election Code and read in context, said Section 163 of the Revised Election Code confers on a judge of first instance a special authority to recount. That authority is restrictively construed. It is aimed at delaying as little as possible proclamation of a winning candidate. (Ong vs. Etcubañez, L-28415, January 29, 1968; Lawsin vs. Escalona, L-22540, July 31, 1964; Parlade vs. Quicho, L-16259, December 20, 1959) The judges duty is limited to the recount of the votes as the statute prescribes - not the appreciation of ballots which "is proper in an election contest after proclamation." (Ong vs. Etcubañez, supra).

The findings of the judge under the statute in question are not by any means conclusive in an election contest. To be noted is that the power allocated a judge of first instance is even less than the authority granted a board of election inspectors. For, that board is given latitude in the appreciation of ballots. The judge's duty in turn is restricted to the recount of votes as they appear on the face of the ballots. Stated otherwise, recount does not in itself involve a decision in a judicial controversy. In fact, there is no appeal from the findings and conclusions reached at a recount.

The controlling legal issue - whether a judge of first instance may conduct the recount outside of his territorial

jurisdiction - we must say, is apt to be blurred by a strict adherence to the general rule that it is impermissible for him to go outside his district in the exercise of his powers essentially judicial. But even in the exercise of his regular judicial functions, a judge may be called upon to go outside of his territory. Take for instance the case of replevin of personal property which at the time of the action was within the jurisdiction of the court but thereafter was spirited away. Can it be successfully maintained that the judge cannot go out of his territorial limits to ascertain whether that property allegedly taken away is the same property the subject of the action? And then there is the case of the Judge of a Court of First Instance assigned to another court. He is authorized under Section 51, par. 2 of the Judiciary Act of 1948 to prepare and sign his decision in any case submitted to him for decision anywhere within the Philippines. Conceivably, other instances there are where a judge may act in the exercise of the judicial power outside of his district.

Since a judge of first instance under Section 163 of the Revised Election Code is called upon to perform a duty specially conferred by law separate and apart from the general exercise of jurisdiction set forth in the Judiciary Act of 1948, as amended, and only as a step in the election process leading to canvass and proclamation, we perceive of situations whereunder a judge may recount the votes outside of his district.

In the course of our deliberations, grave misgivings were entertained by some members of the Court that to grant the petition here may open the floodgates to abuse. As we mull over the probability that the resolution herein may be taken as an inflexible prece-dent, we reached a consensus that, indeed, most any authority could be subject to abuse. On one point, however, the members of the Court are in accord, and it is that if and when some such problems should arise, courts of justice are not powerless to apply the appro-priate remedy. Courts of justice, it has been said, are temples of right.

That recount should be made at the offices of the Commission on Elections in Manila is not without reason. The 122 boxes are now with the Commission on Elections. For purposes of safekeeping, it is preferable that those ballot boxes remain where they are. The problem of transporting them, the possibility of loss in transit from Manila to Candon, Ilocos Sur, where the judge sits, and the problem of adopting security measures once the ballot boxes are in Candon - all these - weigh heavily against recount being made in Candon. We must not discount the possibility of an election protest following the recount. In such eventuality, the House Electoral Tribunal will take jurisdiction. That Tribunal sits in Manila. One more point. If the recount were to be made in the offices of the Commission on Elections in Manila, it will be in an environment relatively under lesser political tension and passion.

Definite guidelines are necessary to empty all sources of mis-understanding. Respondent judge shall recount the votes in the 122 precincts, in the words of this Court in *Cawa vs. Del Rosario*, L-16837-40, May 30, 1960, "as they appear on the ballots." He is not to exercise discretion as to the validity of the ballots cast. Nor is he to indulge in ballot appreciation. For, these are matters proper in a full-dress election protest, after proclamation of the winning candidate. He must promptly perform his task, given the fact that the second district of Ilocos Sur is without representation in the House of Representatives since the elections of 1965.

FOR THE REASONS GIVEN, the Court RESOLVED to grant petitioner's motion, and to direct respondent judge to proceed with, and to continue until termination, the recount of the votes in the 122 precincts in question "as they appear on the face of the ballots, "with notice to the parties, said recount to be held at the offices of the Commission on Elections in Manila, and to start within fifteen (15) days from notice hereof.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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