

ANTONIO V. CUENCO, PETITIONER, VS. THE HON. ALFREDO C. LAYA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCHES II AND XII, EDUARDO GULLAS, IGNA...*G.R. No. L-31252. December 22, 1969*

Ponente: CASTRO, J.

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This is a petition for certiorari and prohibition to annul the order dated November 18, 1969 of the respondent Judge Alfredo C. Laya of the Court of First Instance of Cebu (Branch II and Branch XII), ordering and authorizing the board of election inspectors of precinct 33 of the municipality of Carcar, province of Cebu, "to complete and/or correct" the election return they had prepared, by (a) including in said return the name of Eduardo Gullas, one of the candidates for representative of the third congressional district of Cebu, and (c) crediting him with sixty-seven votes. The court issued the order on the basis of the sworn testimony of the poll chairman and poll clerk and the unanimous written sworn petition of the members of the board alleging that because of "fatigue and exhaustion" they had inadvertently failed to write the name of candidate Gullas "and the number of votes [obtained by him] per actual count, which is sixty-seven (67), as reflected in the tally board, in the tally sheet and the advance copy of the election results."

In the elections held on November 11, 1969 in the third congressional district of Cebu, the petitioner Antonio V. Cuenco of the Liberal Party and the respondent Eduardo Gullas of the Nacionalista Party were among the candidates for congressman. The election return for precinct 33 in Carcar recites that the petitioner Cuenco obtained 61 votes but made no mention of the name of Gullas nor the number of votes cast for him. This omission was brought to the attention of the Cebu provincial board of canvassers by NP representative Abundio A. Aldemita who, in a letter dated November 13, 1969, asked the said board of canvassers to return the election return to the board of inspectors for correction. The request was denied. Obviously in anticipation of any judicial action that the NPs might pertinently take, the petitioner's counsel forthwith wrote the executive judge of the Court of First Instance of Cebu and all the judges of the branches thereof, requesting that "we be informed" of any action that "Atty. Eduardo Gullas may file . . . in connection with the election returns from the third congressional district of Cebu."

On November 17, 1969 the board of election inspectors (composed of Ignacia Alesna, chairman, Gerarda Nadela, poll clerk, Susana Satinitigan, LP inspector, and Faustino de la Cerena, NP inspector), in a unanimous sworn petition, asked the court for authority to "complete the entries of all the copies of the election return of Election Precinct No. 33 of Carcar, Cebu, by writing thereon the name of candidate for congressman Eduardo Gullas and the sixty-seven (67) votes he obtained in said precinct, in words and figures, on the space in the election return provided for this purpose," explaining that their failure to do so was "through honest mistake and inadvertence due to mental and physical fatigue and exhaustion." On November 18, 1969, after a summary and ex parte hearing, the court granted the petition; and so at the meeting of the provincial board of canvassers on November

20, 1969, the chairman of the board of inspectors, over the objection of the petitioner's counsel, made the correction on the election return.

Hence this petition for certiorari and prohibition, which in essence imputes to the respondent judge grave abuse of discretion in issuing the order in question.

The petitioner's thesis is that although under section 154 of the Revised Election Code a petition for correction may be heard ex parte, the respondent judge nevertheless should have notified him of the hearing after he had requested to be informed of any action that the respondent Gullas might bring; that under section 154 a petition may be heard summarily and ex parte only if the members of the board of inspectors are unanimously agreed on the existence of an error - which does not obtain here as the signature of LP inspector Satinitigan on the petition was procured through "fraud and intimidation," which Satinitigan herself denounced in her affidavit of November 21, 1969; that at any rate under section 154 the court may only authorize, but not order, the correction of errors in the election return.

In their answers, the respondents deny and traverse the petitioner's allegations, and contend that, contrary to her later statement of November 21, 1969, LP inspector Satinitigan voluntarily signed the petition for correction. They argue that, in line with the decisions of this Court, the respondent judge correctly and properly held a summary and ex parte proceeding, not being bound to give notice to the petitioner. They stress that the petitioner's letter-request to the court referred to any action that "Atty. Eduardo Gullas may file" and not to one that might be filed "by any party," and that as the petition filed in the lower court was in fact brought not by the respondent Gullas but by the board of inspectors, the respondent judge was not duty bound to notify the petitioner thereof, especially in view of the urgent nature of the action. The respondents aver that the number of votes credited to the respondent Gullas is confirmed by the number of votes credited to him in the tally sheet and the tally board, and that, as found by the provincial board of canvassers Gullas polled a total of 17,498 votes, against the petitioner's total of 17,482 votes, winning by a plurality of 16 votes.

It is our view that the present petition must be dismissed.

The action for correction of errors in election returns authorized by section 154[1] of the Revised Election Code is a summary one, having in view the limited time, before proclamation, within which the court must act. As such, the petition for authority to correct may be entertained and granted only if it is made upon the unanimous petition of the members of the board of inspectors. For when the members do not agree on the existence of an error, the matter becomes contentious, necessitating a full-dress hearing.[2] As this Court has said, "From the moment that the inspectors or any of them do [sic] not agree with the corrections of the returns, the case becomes contentious and, as such, requires the presentation of evidence in order that the court may determine on what ground to grant or not grant authority to amend the returns in question." [3]

The petitioner Cuenco vehemently argues that the petition for correction, made under the authority of section 154, should not have been heard and resolved without notice to him, especially in view of the fact that he explicitly asked by letter to be informed of any action that Eduardo Gullas might file in connection with the election returns from the third congressional district of Cebu and, further, because the correction sought to be made would materially affect the result of the election. Upon a similar contention made in *Gumpal vs. Court of First Instance of Isabela*, [4] this Court ruled that section 154 "does not require notice to the candidates. The absence of such requirement becomes significant when contrasted with the last sentence of section 163 specifically directing that notice of the proceeding for the recounting of votes be given to all candidates affected." This Court went on to say, "it is true that, as stated by the petitioner herein, 'the summary nature of the proceeding under section 154 does not preclude notice to other affected candidates as the alteration or amendment sought to

be made would materially affect the election.' Indeed it would be a good practice to require such notice in appropriate cases, particularly when there is sufficient time therefor and there are circumstances indicating that the allegations of the petition for correction may not be entirely truth-ful." We may perhaps add that in this case before us, due process, the community's sense of fairness, would seem to indicate the need of hearing the petitioner Cuenco, consistently with the summary character of the proceeding. Indeed the respondent judge might have accommodated the petitioner's request, considering that the latter's residence is only a stone's throw from the court-house.

However, paraphrasing the language of this Court in *Gumpal*, all indications pointed to the veracity of the unanimous petition filed in the present case by the board of election inspectors. Thus, (a) the petition was unanimously subscribed and sworn to: by the chairman, the poll clerk, the LP inspector and the NP inspector; (b) the petition was corroborated by the "advance election returns" duly signed by the said four members of the board of inspectors and transmitted to the COMELEC-OQC tabulation center on election night as required by the COMELEC; (c) the number of votes sought to be credited to the respondent Gullas was corroborated as well by the tally board, an official COMELEC form; (d) the petition was substantiated by the testimony in court of the chairman and poll clerk. It is noteworthy that the petitioner Cuenco does not deny that the respondent Gullas was a candidate; the omission from the election return of mention of the latter's name and of the votes that he garnered, was therefore a patent mistake. Nor does the petitioner categorically deny that the respondent Gullas obtained 67 votes: all he candidly says is that he does not really know how many votes Gullas got. Nor does he asseverate that Gullas obtained much less than 67, as would materially affect the result of the election. Consequently, we are not prepared to say that the petitioner Cuenco was denied due process by the court a quo when no notice was given to him of the petition for correction.

The above observations notwithstanding, and assuming in *gratia argumenti* that the petitioner Cuenco was "entitled" to be heard in the proceeding before the court below, it bears emphasis that even after the lapse of more than 25 days - from the time the elections were held on November 11 to the time he filed his memorandum in this case on December 8 - the petitioner Cuenco still has failed to demonstrate that the respondent Gullas obtained a number of votes much less than the 67 that were credited to the latter in precinct 33 as would materially affect the result of the election.

It is true that the petitioner claims that the signature of Satinitigan, the LP inspector, on the petition for correction was procured through fraud and intimidation. Put this is squarely controverted by the affidavit of the COMELEC registrar of Carcar and by the other members of the board of inspectors; thus belied is the petitioner's claim that Satinitigan is an unread person who was made or compelled to sign a petition that she did not understand. Indeed the petitioner appears to be unsure of his claim, as, in point of fact, at the oral argument on December 4, 1969 before this Court he practically disowned Satinitigan, presumably in an effort to discredit her, by asserting that she was not the person whom he had appointed as LP inspector for precinct 33.

We are satisfied, on the basis of the foregoing disquisition, that the respondent court acted with jurisdiction and in accordance with law. Under section 154, unanimity need only exist upon the filing of the petition or before the court issues the order of correction. Thereafter, any change of heart or mind on the part of any of the members of the board of inspectors, no matter how well or badly motivated it may be, can have no effect. Otherwise any one of the inspectors could with facility trifle with the law, and the court would be going through the motions of a use-less and meaningless act.

Javier vs. Court of First Instance of Antiques[5] does not sustain the petitioner's thesis. In that case one inspector never joined the petition filed with the court. It is true that he had joined earlier similar petitions filed with the municipal treasurer and the board of canvassers, but these two bodies obviously could not lawfully act thereon.

When the judicial petition was filed, the inspector did not sign it; on the contrary, he opposed it. Therefore the court never acquired jurisdiction under section 154. In this case before us, the facts are widely disparate. The LP inspector Satinitigan, with all the other inspectors, signed the petition. She never disowned or withdrew her signature. Even now she does not deny it. Her recantation - an obvious afterthought - came only after the petition had been decided and the correction had been made.

Broad perspectives of public policy impose upon courts the imperative duty to ascertain by all means within their command who is the real candidate elected, but always in as expeditious a manner as possible, without being fettered by technicalities and procedural barriers.[6]

Incidentally, the petitioner and the respondent Gullas swap charges of terrorism and vote-buying in the election adverted to. Suffice it to say that the present petition is not the proper remedy, nor is this Court the proper forum for the ventilation of these charges.

In sum, the petitioner has not fashioned out a case that per-force would compel this Court's intervention.

ACCORDINGLY, the petition is dismissed and the writs prayed for are denied; as a logical consequence, the petitioner's prayer that the proclamation of the respondent Eduardo Gullas as the duly elected representative of the third congressional district of Cebu made by the Cebu provincial board of canvassers on November 27, 1969 be declared null and void, is hereby denied. No pronouncement as to costs.

Concepcion, C.J., did not take part.

Reyes, Makalintal, Sanchez, and Teehankee, JJ., concur.

Zaldivar, J., dissents in a separate opinion.

Barredo, J., concurs in a separate opinion.

Fernando, J., concurs in dissenting opinion of J. Dizon on the due process.

[1] "SEC. 154. Alterations in the statement. - After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

[2] E.g., *Astilla v. Asuncion*, G.R. No. L-22246, Feb. 29, 1964, 10 SCRA 456; *Felix v. Commission on Elections*, G.R. No. L-28378, June 29, 1968, 23 SCRA 1288; *Benitez v. Paredes*, 52 Phil. 1(1928).

[3] *Benitez v. Paredes*, supra, note 2 at 12.

[4] G.R. Nos. L-16409 & L-16416, Nov. 29, 1960.

[5] G.R. No. L-24727, February 28, 1966, 16 SCRA 362-364.

[6] See *De Mesa vs. Mencias*, 18 SCRA 538.

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CONCURRING OPINION

BARREDO, J.:

I concur in the dismissal of the petition in this case.

The facts are correctly stated in the main opinion of Mr. Justice Castro.

I believe that in the light of said facts, the crux of petitioner's case is in the legal significance of his letter, Annex G-3, Petition, addressed to and received by the court a quo before the filing and hearing of the joint petition for correction here in question whereby a request was made that petitioner be notified of the "act-ion (which Atty. Eduardo Gullas) may file - in connection with the election returns from the third congressional district of Cebu which will soon be canvassed by the Provincial Board of Canvassers - so that we can be present during the raffling."

To begin with, I cannot agree to the idea of sub-jecting such letter to a strict literal interpretation of its words. There is no question in my mind that what petitioner intended to convey thereby was simply that he wanted to be heard before the court should act on any proceeding of whatever nature Atty. Gullas or any party, on his behalf or in furtherance of his interests, may file in connection with the election returns to be uti-lized in the canvass of the election returns of the third congressional district of Cebu. Any reasonable man in the place of respondent judge should have understood such letter as sufficiently comprehensive to include the peti-tion here in question. The central thought contained therein is that a judicial step affecting the returns of the third district may be filed with the court and petitioner was asking to be notified thereof. Under the circumstances, petitioner could not be expected to spe-cify the particular nature of the remedy, and the request to be notified necessarily implies a desire to be heard not only in regard to the raffling of the petition, which is secondary, but also as to the merits of any such re-medy Atty. Gullas might initiate, which is more decisive. In this connection, I would like to emphasize that in his answer respondent judge does not deny, hence he admits, that he received the above letter. What he denies to have received is a specific request that petitioner be notified of "the hearing of the petition for correction of the entry of the return in Precinct No. 33 of Carcar, Province of Cebu," which no one has alleged, and so, I would even say that in a sense this denial could mislead the court, for it gives the impression that respondent judge did not receive the subject letter when that is not exactly what is intended to be conveyed. Indeed, if this were not an election case, this manner of making a denial should deserve stronger stricture.

On the other hand, however, I do not believe that the failure of the court to notify petitioner of the hear-ing of the petition in question constitutes a denial of due process. I have no hesitation in holding that where a party is entitled to notice of a proceeding by express mandate of the law, failure to notify him renders the pro-ceeding held without hearing him null and void, irrespect-ive of whether or not such party shows merit in his basic claim. Where, however, the opportunity to be heard is not prescribed by any law or rule of court, and the matter be-fore the court is not contentious in nature, it is incumbent upon the party concerned, if he wants the court to give him a chance to be heard, to show first on the face of his pleading that if he is not heard, he may be de-prived of a favorable result, and where there is no such showing, the court is fully justified in denying the request for notice and hearing.

Herein may be found, precisely, what to my mind is the difference in their elements between procedural and substantive due process. In the first, there is denial of due process when notice and hearing expressly required by law are not accorded, irrespective of the merits of the party's claim. In the latter, hearing is not indis-pensable when there is no showing that the results would be possibly or probably favorable, if the party were to be heard. In the first, the hearing is a mandate that cannot be ignored only because the law specifically re-quires it and not necessarily because the party has an apparent right of which he would be denied without being heard. In the latter,

the duty to hear is imposed more by a sporting sense of fair play rather than by any statute or rule of court, hence it is but logical and proper that before the court grants a hearing, it should be informed of the nature of the right imperilled, and if no such showing appears, no unfairness can be said to be involved, since there is no apparent deprivation of any right that can take place. In other words, it is my considered view that the essence of substantive due process is not in the need for a hearing for the mere sake of a hearing, but rather the possibility of a substantive right being denied to a party without such party having had an opportunity to be heard. How is the court to know that there is a right to be lost and that the hearing requested will not amount to an empty formality, unless it is informed in the pleadings as to the nature of such right? Otherwise stated, a party cannot just come to court and demand that he be heard; he must first tell the court that he has something else substantial, aside from the chance of being heard, of which he may be deprived unless he is heard.

Applying these views to the present case, I hold that inasmuch as under Section 154 of the Revised Election Code, it is already settled that none of the candidates has any right to notice of the hearing of a unanimous petition for correction of an election return filed unanimously by the members of the board of inspectors of the corresponding precinct, the court a quo was under no compulsion, whether legal, moral or equitable, to call petitioner to the hearing of the petition in question notwithstanding his letter, Annex G-3, no matter how liberally we may construe the same. Petitioner himself admits, and rightly, that he is not entitled to notice as a matter of statutory and jurisprudential right. He bases his claim to due process only on his having expressly requested the court for a chance to be heard thru his letter, Annex G-3, and as a matter of fairness. Such being the case, it was imperative for him to inform the court of what right he stood to lose and the basis of his claim to such right. This, petitioner did not do. The most his letter can amount to is that of a demand to be heard in regard to any remedy affecting the returns in the third congressional district of Cebu. There is nothing in said letter to indicate what right petitioner stood to lose, if he were heard; much less is there any allegation therein of the basis of any such right. In cases of this nature, the general requirement would be for the petitioner to state under oath that he would be able to prove that the correction requested was not in accordance with the facts because in truth Atty. Gullas got less votes than what is alleged in the petition and that the votes he actually got would not alter the apparent result of the count favorable to herein petitioner. These things cannot be presumed, precisely because it is entirely possible, and it is more likely than not, that the electoral proceedings are being merely delayed for one reason or another not related to public interest but, rather, to the unsportsmanlike inability of a loser to immediately accept defeat. Indeed, it was not enough to claim a right to be present in the "raffling" of the case for assignment among the different judges of the court as indicated in Section 7 of Rule 22 of the Rules of Court, specially because said provision of the Rules, by its very nature, cannot apply to election cases and incidents. Surely, a request to be present in the raffling does not necessarily imply a desire to be heard because one has a right to be lost. The most that it means is that one wants an assurance that there would be no irregularity in the selection of the judge to be assigned to handle the case.

I cannot buy petitioner's pretense that he did not know and had no means of knowing the number of votes Atty. Gullas got in Precinct 33 in Carcar, Cebu at the time he filed the petition in the court below. Considering the closeness of the contest between petitioner and respondent Gullas, we would be utterly naive, if we were to believe that petitioner had no reliable information regarding such matter. On the other hand, if he did not know on what ground he stood vis-a-vis Precinct 33 of Carcar, what right could he have to ask the court for a hearing?

Petitioner admits that Atty. Gullas had some votes in said precinct. Definitely, under Section 150 of the Revised Election Code, therefore, Atty. Gullas was entitled to have those votes duly entered in the election return for that precinct, and there can be no doubt that the proper procedure for this is that provided for in Section 154. In American jurisprudence, a mandamus is available under these circumstances (The Revised Election Code by V. Francisco, 1965 ed., p. 497), but our legislature did not see it fit to adopt that remedy here, and it is to be

presumed that the intention is to allow the parties concerned to avail of Section 154, the language of said provision being broad enough to reasonably comprehend such a situation. I reject the premise that there is no remedy within the existing provisions of the Revised Election Code for a contingency like this, if only because this is not a very uncommon occurrence and Congress cannot be presumed to have been ignorant thereof. If a mere erroneous entry of the number of votes of a candidate can be altered in order to state the correct or true one, with much more reason should such alteration be permitted when it is publicly known that a certain person is a candidate and that he received votes and yet the return does not even contain his name. I believe that to show on the return that a candidate has received votes is equally, if not even more, compelling than to enter his correct number of votes thereon.

Viewing petitioner's cause from another angle, the question may be asked, if this case is remanded to the lower court in order that petitioner may be given a hearing, what ground or fact can he show there to defeat the petition, which is not yet known to be inconsequential or unavailing? Petitioner's belated allegation made for the first time in this Court, that the name of Susana Satinitigan who appears to have signed the unanimous petition, as the Liberal Party Inspector in Precinct 33 of Carcar, is not included in the list of official inspectors proposed by him, thereby suggesting possible unauthorized substitution, cannot stand closer scrutiny. To start with, in his own sworn petition in this case, petitioner states categorically that Satinitigan is the "LP Inspector" in said precinct. (Par. 7, p. 3, Petition) This is a judicial admission which, as a rule, petitioner is not allowed to contradict (*Cunanan v. Amparo*, 80 Phil. 227). It is only when judicial admissions are "made improvidently and by mistake, and the improvidence and mis-take (is) be clearly shown, (that) the court is vested with discretion to relieve (the party making the admission) from their consequences, a discretion which should be exercised sparingly and cautiously". (5 Moran, Comments on the Rules of Court, p. 58) Obviously, herein petitioner's case does not come within the exception. Petitioner's verbal unsworn allegation at the oral argument is far from being a clear showing of his alleged mistake, and in the memorandum submitted after the hearing, no mention whatever is made of this point; much less is any convincing evidence submitted regarding it. Besides, in her own affidavit attached to the petition, Satinitigan swore that she was an inspector in Precinct 33.

Moreover, examining closely Satinitigan's affidavit, I find nothing in it which can overthrow the solemn testimonies given to the court a quo by the chairman of the board of inspectors and the poll clerk of Precinct 33, both of them being public school teachers, to the effect that Atty. Gullas actually got 67 votes in said precinct, as evidenced additionally by the tally sheet and advance election results duly signed by Satinitigan, who has not disowned her signatures thereon.

Still further, inasmuch as the court below issued its order in question on November 20, 1969 yet, petitioner had all the opportunity to file a motion for reopening in that court, if indeed he had enough evidence in his hands to prove that Atty. Gullas did not receive 67 votes in the disputed precinct. The truth is that he had no such evidence. In fact, he has not been able to indicate any such evidence even here in this Court. What is worse, he cannot, at least, honestly allege that the true number of votes Atty. Gullas got in said precinct cannot affect the apparent lead petitioner had over him before the correction ordered by the lower court was made. Under these circumstances, I am at a loss to see what substantial justice could petitioner be deprived of if his present petition is denied by this Court.

Mention was also made during the hearing of this case before Us of the desirability, perhaps, of opening the ballot box of Precinct 33 and counting the ballots therein, thereby settling once and for all any doubts that may be entertained as to the true number of votes of Atty. Gullas therein. I must express with all vehemence my objection to such a procedure.

This is not an electoral protest wherein the ballots are the best evidence. What is involved in this proceeding is

only a preliminary procedure leading to the proclamation. The proclamation is essentially a presumptive act; it has never been intended to be a final title to the office for which an election is held, unless it is uncontested. The series of proceedings elaborately outlined in the election law have been designed in order to meet the imperative demand of public interest and orderly administration of public affairs that as soon as possible, before the term of the office involved begins, one of the candidates may be considered as having been elected and thereby assume the functions thereof, without prejudice to any protest the other candidates may file later. Ordinarily, such scheme outlined in the law suffices to prevent proclamation "grabbers" from trampling with the popular will. I, for one, feel very strongly that the courts can always plug the loopholes which unscrupulous candidates and lawyers often take advantage of to circumvent the clearly discernible intent of the law. All that is needed is for the judiciary to be more active in dealing with clear cases of attempts to make a mockery of the popular suffrage, the very foundation of the republican nature of our government. Otherwise, even the judiciary can be blamed for the tendency, which is becoming more and more apparent, of the electoral process deteriorating into a game for opportunists and schemers.

I consider the pragmatic approach suggested as pregnant with dire consequences. Let alone the fact that if this Court sanctions here the opening of the ballot box, We will hardly be able to deny a similar request in all other cases where the pragmatic theory will necessarily be invoked; consider only that if the counting of the ballots is allowed today, next time, in pursuance of the same pragmatic reasoning, the appreciation of the ballots can already be demanded before the canvass, thereby eliminating altogether the necessity of an electoral protest. True it is that the ballots are the primary evidence of the will of the electorate, but, at the same time, the very sanctity of the ballots makes it naturally logical that they be considered as the last resort, and this should be in the protest already and not before the canvass which must be based, as already observed, on some reasonable presumptive means required by the imperativeness of having a proclamation within the short time there is between the date of election and the beginning of the term of office of those elected. Accordingly, I cannot favor the adoption, at any stage before the proclamation, of any procedure which is proper only in an electoral contest, for that would be undermining the whole studied system of electoral proceedings envisioned in the Revised Election Code.

These are the considerations that compel me to vote against the granting of the petition in this case.

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Dissenting Opinion

DIZON, J.:

Much to my regret, I am constrained to dissent from the majority opinion penned by Mr. Justice Castro. The pertinent facts, as stated therein, are the following:

"This is a petition for certiorari and prohibition to annul the order dated November 18, 1969 of the respondent Judge Alfredo C. Laya of the Court of First Instance of Cebu (Branch II and Branch XII), authorizing the board of election inspectors of precinct 33 of the municipality of Carcar, province of Cebu, 'to complete and/or correct' the election return they had prepared, by (a) including in the said return the name of Eduardo Gullas, one of the candidates for representative of the third congressional district of Cebu, and (b) crediting him with sixty-seven (67) votes. The court issued the order on the basis of the sworn testimony of the poll

chairman and poll clerk, together with the unanimous written sworn petition of the members of the board alleging that because of 'fatigue and exhaustion' they had inadvertently failed to write the name of candidate Gullas and the number of votes he received, which is and should be 67 as evidenced by the tally sheet, tally board and advance copies of the election return.

"In the elections held on November 11, 1969 in the third congressional district of Cebu, the petitioner Antonio V. Cuenco of the Liberal Party and the respondent Eduardo Gullas of the Nacionalista Party were among the candidates for congressman. The election return for precinct 33 in Carcar recites that the petitioner Cuenco obtained 61 votes but made no mention of the name of Gullas nor the number of votes cast for him. This omission was brought to the attention of the Cebu pro-vincial board of canvassers by NP representative Abundio A. Aldemita, who, in a letter dated November 13, 1969, asked the said board of canvassers to return the election return to the board of inspectors for correction. The request was denied. Obviously in anticipation of any judicial action that the NPs might pertinently take, the petitioner's counsel forth-with wrote the executive judge of the Court of First Instance of Cebu and all the judges of the branches thereof, requesting that 'we be informed' of any action that 'Atty. Eduardo Gullas may file . . . in connection with the election returns from the third congressional district of Cebu.'

"On November 17, 1969 the board of election inspectors (composed of Ignacio Alesna, chairman, Gerarda Nadela, poll clerk, Susana Satinitigan, LP inspector, and Faustino de la Cerna, NP inspector), in a unanimous sworn petition, asked the court for authority to 'complete the entries of all the copies of the election return of Election Precinct No. 33 of Carcar, Cebu, by writing thereon the name of candidate for congressman Eduardo Gullas and the sixty-seven (67) votes he obtained in said precinct, in words and figures, on the space in the election return provided for this purpose,' explaining that their failure to do so was 'through honest mistake and inadvertence due to mental and physical fatigue and exhaustion.' On November 18, 1969, after a summary and ex parte hearing, the court granted the petition; and so at the meeting of the provincial board of canvassers on November 20, 1969, the chairman of the board of inspectors, over the objection of the petitioner's counsel, made the correction on the election return.

"Hence this petition for certiorari and prohibition, which in essence imputes to the respondent judge grave abuse of discretion in issuing the order in question."

This dissent is based firstly, upon the ground that the Urgent Petition filed on November 17, 1969 with the branch of the Court of First Instance of Cebu presided by the respondent judge, by the Board of Election Inspectors of Election Precinct No. 33 of Carcar, Cebu, praying that said Board be authorized "to complete the entries of all the copies of the election return of Election Precinct No. 33 of Carcar, Cebu, by writing thereon the name of candidate for congressman Eduardo Gullas and the sixty-seven (67) votes he obtained in said precinct, in words and figures, on the space in the election return provided for this purpose", does not fall within the purview of the provisions of Section 154 of the Revised Election Code; and secondly, upon the further ground that, assuming, arguendo, that the said Urgent Petition falls within the purview of said legal provision, the respondent judge, upon the undisputed facts of the case, acted with grave abuse of discretion in considering it ex-parte and in issuing his order of November 18, 1969 authorizing the Board of Election Inspectors of Precinct 33 of Carcar, Cebu, "to complete and/or correct" the election return they had prepared for the precinct aforesaid.

Section 154 of the Revised Election Code is of the following tenor:

"Alterations in the statement. - After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

We might begin by assuming, for the purposes of this dissent, that the terms alteration and amendment mean the same thing, and that the term "alteration", just like the term "amendment" means - legally speaking - to add,

change, substitute or omit something from a pleading or instrument. In plain words, a pleading or instrument may be amended either by correcting or by omitting any word, phrase or sentence set forth therein, or by adding something to it. In the last instance we have the case of an amendment by addition.

Now, what exactly does Section 154 of the Revised Election Code authorize? This, I believe, is vital and decisive of this case. It is plain even from a cursory reading of its provisions that the alteration or amendment it authorizes is to be made not in the election return but "in any of its statements". The election return is one thing and "any of its statements" is clearly something else. If the legal provision in question were to refer to the alteration or amendment of the election return itself, without any qualification, there could arise no question at all. The cold fact, however, is that it authorizes nothing more than the alteration or amendment of "any of its statements". In view thereof I ask: is there, in the election return for Election Precinct No. 33 of Carcar, any "state-ment" concerning Eduardo Gullas and the number of votes polled by him in the last general election that could be altered or amended? There is none. It was precisely for this reason, I presume, that the Board of Inspectors of Precinct 33 asked for authority to "complete" and the respondent judge autho-rized said Board of Inspectors to complete the document. There can be no clearer admission than this of the fact that the election return in question contains no statement regarding Eduardo Gullas and the number of votes allegedly cast in his favor.

It seems clear from the foregoing that what the Board of Election Inspectors wanted, and was authorized to do by the respondent judge, is to set forth in the aforesaid election return a statement that did not exist there before, and not merely to alter or amend a statement already made therein concerning Eduardo Gullas and the number of votes cast in his favor. This, I believe, is not within the purview of the legal provision under con-sideration. As a result, the conclusion must be that the Court presided by the respondent judge had no jurisdiction over the Urgent Petition filed by the Board of Inspectors of Precinct No. 33 of Carcar, Cebu, or, at the very least, His Honor had no authority to consider it as a summary proceeding under the provisions of Section 154 of the Revised Election Code. If at all, it should have con-sidered it as an unnamed contentious special proceeding, notice of which should have been served on all the parties to be affected by the relief sought.

Two important considerations lead me to this con-clusion. One is the fact that in taking cognizance of any election case or a proceeding affecting elections Courts of First Instance exercise limited jurisdiction. This limited jurisdiction should not be unduly enlarged, for this would be contrary to the purpose of the law granting the limited jurisdiction. The second is that the cases for correction of election returns should not be unnecessarily multiplied but must be limited strictly to the cases clearly provided in Section 154 of the Re-vised Election Code, lest we enable the members of Boards of Inspectors to be the final arbiters of election con-tests by conspiring unanimously to correct, with leave of court, election returns.

(2) Assuming, however, for the sake of argument, that the urgent petition mentioned heretofore falls within the purview of Section 154 of the Revised Election Code, it is my opinion that, upon the facts set forth above, the respondent judge committed a grave abuse of discretion in considering it ex-parte and in issuing the order complained of.

It is admitted that, prior to the filing of said urgent petition, petitioner Antonio V. Cuenco, through counsel, "wrote the executive judge of the Court of First Instance of Cebu and all the judges of the branches there-of" (majority opinion) requesting that he be informed of any action that "Atty. Gullas may file ... in connection with the election returns from the third congressional district of Cebu" (Idem).

It is now contended that, because petitioner's letter-request refer to any action filed by Atty. Eduardo Gullas, the respondent judge had every right to ignore his request because the urgent petition was filed not by Gullas but by the Board of Inspectors of Election Precinct No. 33 of Carcar. This, I submit, is without merit. The res-pondent

judge, who, as such, is supposed to be of mature judgment, was bound to construe petitioner's letter-request as meaning and referring to any action or proceeding commenced by Gullas or by any other party, in connection with the election returns from the third congressional district of Cebu. Mental honesty on his part demanded this.

On the other hand, the respondent judge likewise knew or was supposed to know that, as stated in the majority opinion, notice could have been easily served by the Court upon petitioner whose residence "is only a stone's throw from the courthouse". And yet, His Honor, chose to ignore this fact, just as he ignored the written request of petitioner for an opportunity to be heard before any action was taken on any judicial action or proceeding in his court materially affecting the elections held in the third congressional district of Cebu.

We agree with the majority opinion that "broad perspectives of public policy impose upon courts the imperative duty to ascertain who is the real candidate elected, in as expeditious a manner as possible, without being fettered by technicalities and procedural barriers", but I also submit that equally broad and imperative perspectives of public policy demand that the courts should do so with fairness and understanding, and without taking any precipitous action - violative of due process - that might give rise to suspicions of bias.

Much is made in the majority opinion of the fact that petitioner dared not deny categorically during the oral argument before this court that Gullas obtained sixty-seven (67) votes, nor assert that Gullas obtained much less than sixty-seven (67) votes; that all that he candidly admitted was that "he does not really know how many votes Gullas got". This position is perfectly understandable. Why expect him to prove his opponent's case, or supply what the members of the Board of Inspectors say they forgot to write on the return allegedly because they were sleepy or otherwise physically exhausted? Instead of petitioner's candidness and sincerity being taken against him, it should be considered as an unmistakable sign of his good faith.

Lastly, even admitting, arguendo, that the proceeding had before the respondent judge falls within the provisions of Section 154 of the Revised Election Code and that, therefore, it was discretionary with His Honor to make it summary or give notice to petitioner Cuenco before taking any action therein, I say that such discretion must always be deemed to be sound judicial discretion and that, in the present case, it was not so exercised.

I, therefore, vote to grant the writs prayed for, with the result that the order complained of is hereby set aside, and the respondent judge is ordered to re-open the case, serving due notice of the proceeding upon petitioner herein and other parties who might be adversely affected by the relief sought by the Board of Election Inspectors of Precinct 33 of Carcar, Cebu.

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Dissenting Opinion

ZALDIVAR, J.:

I concur with Mr. Justice Arsenio Dizon that "upon the facts set forth above (in his dissenting opinion), the respondent judge committed a grave abuse of discretion in considering it (the petition) ex parte and in issuing the order complained of." After reading the record I cannot help but get the impression that respondent Judge denied petitioner Antonio V. Cuenco a chance to present his side regarding the controverted election return of precinct 33 of the municipality of Carcar, province of Cebu. While the correction of an election return, under Section 154 of

the Revised Election Code, may proceed ex parte, it would only be in consonance with fairness and sound discretion had respondent Judge given petitioner Cuenco notice of the filing of the petition so he could take the steps that he considered necessary for the protection of his rights and interests, because this was precisely what he intended to do when he wrote the letter requesting respondent Judge to inform him of any action that Atty. Eduardo Gullas would file "in connection with the election returns from the third congressional district of Cebu which will soon be canvassed by the Provincial Board of Canvassers." [1] Again, it would only be in consonance with fairness and sound discretion if respondent judge afforded petitioner Cuenco a chance to be present at the hearing on the petition when he took the testimonies of the chairman and the poll clerk of the board of inspectors of precinct 33 of Carcar, and in receiving the only documentary evidence consisting of a copy of the alleged advance election results [2]. Had petitioner Cuenco been given notice of the filing of the petition, and of the hearing on the petition, he could have ascertained whether the election inspector representing his party had knowingly joined the petition for correction of the election return in question; he could have cross-examined the two witnesses, to test their credibility and to determine the correctness of their statements; and he could have had a chance to show whether the alleged copy of the advance election results was genuine or not, or whether the statements contained therein were accurate or not. I have taken note of the fact, as gathered from the order of respondent Judge, complained of, that he mainly based his order on the testimonies of the chairman and the poll clerk of the board of election inspectors, and on the alleged copy of the advance election results. It strikes me that while the two witnesses made mention of the tally board in precinct 33 of Carcar, said tally board was not presented at all during the hearing. The tally board is a document that was not placed inside the ballot box after the canvass of the votes, but was delivered to the municipal treasurer of Carcar. The record shows that the hearing on the petition for correction was held in the very municipality of Carcar and respondent Judge could have asked for the tally board to find out if candidate Eduardo Gullas had obtained votes in precinct 33 of Carcar. I consider the tally board a very vital piece of evidence which should have been examined by respondent Judge, especially because the proceeding was held ex parte. The tally board could easily be tampered. The herein respondents have attached a photographic copy of the tally board in their answers to the petition before this Court. But according to counsel for the respondents who argued the case before this Court on December 4, 1969, the photograph of the tally board was taken only on December 2, 1969. The ex-parte hearing before respondent Judge took place on November 18, 1969. That tally board was in the possession of the municipal treasurer of Carcar and was available for examination. Whoever was, or were, interested in the correction of the election return -- by adding therein the name of candidate Gullas and the votes he obtained -- could, and should, have brought that tally board before the respondent Judge. Or the respondent Judge should have asked for the tally board after hearing the chairman and the poll clerk make reference to it in their testimonies. It is, therefore, my view that respondent Judge abused his discretion when he failed to give petitioner a chance to be heard regarding the petition for correction, and that respondent Judge had not acted with due diligence when he issued the order in question without first examining the tally board. I believe that public interest will be subserved if the order complained of is set aside and the hearing of the petition in Election Proceeding No. 1 in the Court of First Instance of Cebu (Branch XII) is reopened to give petitioner Cuenco an opportunity to present evidence, or show cause, why the election return in precinct 33 of Carcar, Cebu, in the elections of November 11, 1969, should not be corrected or amended.

In view of the foregoing observations, I dissent from the opinion of the majority.

[1] Annex G-3.

[2] Exhibit B in the court below.

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