

FEDERICO B. ABLAN, SR., PETITIONER, VS. THE HONORABLE JOSE A. MADARANG AND DR. DAMASO T. SAMONTE, RESPONDENTS.*G.R. No. L-32963. September 30, 1971*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b3167849a0bd/>**FERNANDO, J.:**

The question before us in this certiorari and prohibition proceeding, one raised for the first time, is the interpretation to be accorded the provision in the 1971 Constitutional Convention Act[1] empowering courts of first instance to recount the votes cast at the election of delegates, but only on a showing of the existence of "another authentic copy or copies of returns from an election precinct submitted to the [Board of Canvassers] giving any candidate a different number of votes, or there is a difference in the words and figures of the number of votes for any candidate, and in either case the difference affects the result of the election, * * *." [2] Petitioner Federico B. Ablan, Sr., a candidate for the post of delegate in such an election would have been proclaimed as a winner, having garnered the second largest number of votes, had it not been for respondent Judge entertaining a petition for judicial recount filed by the other respondent, Dr. Damaso T. Samonte, the candidate who obtained the third place in such voting. Petitioner assailed the assumption of jurisdiction in a motion to dismiss, there being a failure to satisfy the above statutory requirements, evident on the face of the pleading filed by respondent Samonte. Respondent Judge was not impressed, unable to discern any merit in such a plea, and would not budge from his position notwithstanding a vigorous motion for reconsideration. Hence this petition before us. For reasons to be set forth, we find for petitioner.

The facts alleged in the petition filed on December 24, 1970 are undisputed. In the election for delegates to the first district of Ilocos Norte held on November 10, 1970 for the 1971 Constitutional Convention, both petitioner and respondent Samonte were candidates, the former, having in his favor 15,415 votes as shown by the canvass, next to Delegate Antonio V. Raquiza, who was proclaimed as such, no objection having been raised as to his election. Respondent Samonte, with 12,802 votes, was in the third place. Thereafter, on November 23, 1970, respondent Samonte filed with the lower court, presided by respondent Judge, a petition for judicial recount for the counting of votes in the enumerated precincts in the municipalities of Pagudpud, Bangui, Bacarra and Sarrat, alleging that the election returns as prepared and submitted by the Board of Election Inspectors of each of the above precincts did not reflect the true, correct and actual results of the election in view of the irregularities enumerated thus: "(a) That the election returns in each and all of the precincts questioned in paragraph 6 hereof, were tampered and/or prepared under duress; (b) In each and all of the above-mentioned questioned precincts, votes cast for petitioner Damaso Samonte were read, counted, and illegally adjudicated in favor of respondent Federico Ablan, Sr. ; (c) In each and all of the above-mentioned questioned precincts, whenever the total votes cast in favor of the petitioner was greater than that of respondent Ablan, their respective votes were interchanged in order to make it appear in the election returns that the respondent Ablan obtained the greater number of votes and the petitioner received the lesser number of votes; (d) In each and all of the above-mentioned questioned precincts, ballots wherein the space were left blank or ballots containing the names of persons other than that of respondent Ablan were deliberately, maliciously, and illegally read, counted, and adjudicated in favor of

respondent Ablan; (e) In each and all of the above-mentioned questioned precincts, watchers for petitioner and other candidates, were not permitted by the Board of Election Inspectors to stay at a vantage point where they could read the ballots being read by the Chairman; (f) That in precincts 45, 45-A, 46, 86 and 87, of Laoag City, the votes cast as mentioned in the election returns of said precincts are obviously contrary to all statistical probabilities, utterly improbable and clearly incredible, and/or manifestly fabricated which fraud or falsification is so palpable from the returns themselves; * * *. "[3]

In view of the above allegation failing to show on its face that the lower court was duly vested with authority to order a judicial recount under the express provision of Section 6, paragraph (H) of the 1971 Constitutional Convention Act, a motion to dismiss was filed by petitioner on December 7, 1970 alleging lack of jurisdiction.[4] There was an opposition to such motion to dismiss dated December 12, 1970 as well as a reply by petitioner three days thereafter.[5] On December 17, 1970, an order was issued by the lower court denying such motion to dismiss.[6] Then came a motion for reconsideration of December 20, 1970, stressing anew that the requirements of the law are too plain to be misinterpreted and that the petition of respondent for judicial recount did not fall within its purview. The motion for reconsideration was denied by respondent Judge in an order of December 22, 1970. Hence this petition.

The factual allegations were admitted in the answer of respondent Samonte of January 20, 1971, but he would stress that this suit for certiorari and prohibition before us is premature.[7] Thereafter, in his supplemental answer, for which leave was sought and granted, he set up as affirmative defenses the procedural objection to this proceeding not being available to contest an order denying a motion to dismiss and that respondent Judge did not act without or in excess of his jurisdiction in denying petitioner's motion to dismiss. It is to be noted that respondent Judge himself, as early as January 11, 1971, filed his own answer maintaining a jurisdiction to act on the petition of respondent before him. Thereafter, petitioner as well as respondents filed their respective memoranda, and the case was deemed submitted for decision.

The foregoing recital yields no other conclusion except that the adamant stand of respondent Judge is difficult to understand and legally impossible to justify. He ought to have sustained the jurisdictional objection raised. His failure to do so calls for a remedy from this Court. Petitioner, to repeat, is entitled to the writs prayed for.

1. The threshold question is one of procedure. Private respondent is unable to discern the appropriateness of the certiorari proceeding under the circumstances obtaining. It is his view that the denial of a motion to dismiss does not suffice for reliance on such a special civil action. Private respondent ought to have known better. Only last May, in *Time, Inc. v. Reyes*,[8] in an opinion penned by Justice J. B. L. Reyes, speaking for the Court, it was categorically announced: "The motion to dismiss was predicated on the respondent court's lack of jurisdiction to entertain the action; and the rulings of this Court are that writs of certiorari or prohibition, or both, may issue in case of a denial or deferment of action on such a motion to dismiss for lack of jurisdiction." [9] More specifically, in two cases involving judicial recounts, with the question of jurisdiction being adversely decided to the party obtaining, certiorari was successfully invoked. Reference is made to *Ginete v. Arcangel*[10] and *Baloria v. Abalos*. [11] Thus the special defense raised by private respondent that certiorari does not lie is manifestly untenable.

2. Now as to the merits. As noted, to prevent the proclamation of petitioner as the candidate who obtained the second highest number of votes in the election for delegates to the Constitutional Convention, private respondent filed a petition on November 23, 1970 with respondent Judge alleging that in the enumerated precincts in the municipalities of Pagudpud, Bangui, Bacarra and Sarrat the election returns submitted by the Board of Election Inspectors did not reflect the true, correct and actual results of the voting, as the preparation thereof was made under duress or tampering was resorted to, votes cast for private respondent Samonte being read and counted in

favor of now petitioner Ablan, who was likewise favored by making it appear through the interchange of votes that he obtained the greater number, with ballots either left blank or containing the names of candidates other than now petitioner Ablan being read and counted in his favor. There was likewise the assertion that watchers for petitioners and other candidates in such precincts were not permitted to stay at a place where they could perform their duties as such and thus see for whom the ballots were really cast. The last ground in such petition by private respondent was the claim that the doctrine of statistical probability could be rightfully invoked by him.

The 1971 Constitutional Convention Act, on the other hand, limits the power of the Court in a petition for judicial recount only on a showing of "another authentic copy or copies of returns from an election precinct submitted to the Board giving any candidate a different number or votes" or of "a difference in the words and figures of the number of votes for any candidate, " in either of which cases the results of the election would be affected by such discrepancy. Evidently the intent of the law is to distinguish grounds appropriate for a protest.

Private respondent did not meet the requirements of the law. His allegations were not covered by the above provision. Respondent Judge then, upon his attention being called to such fatal defect, ought to have sustained the motion to dismiss. He is devoid of jurisdiction. This is a case where the law is clear. It speaks in a language that is categorical. It is quite explicit; it is too plain to be misread. No interpretation is needed. All that is called for is to apply the statutory command.[12] Obedience on the part of the lower court is mandatory. Surprisingly and certainly unjustifiably, he failed to do so. He would go ahead and entertain the suit. Without his so intending it, the result was a plain defiance of what is expressly ordained in the 1971 Constitutional Convention Act. Such conduct calls for correction; there can be no more appropriate occasion for the remedy of certiorari. The rule of law cannot be satisfied with anything less.

3. The conclusion reached by us gains added strength from the doctrine invariably and consistently adhered to in the adjudication of cases under the Election Code that a court of first instance may order a judicial recount only on the statutory grounds therein specifically enumerated.[13] Absent such a showing, it cannot assume jurisdiction. The boundaries of its competence are spelled out. It is thus strictly circumscribed. It can go no further than the law allows. To do so would be to act outside its competence.[14] Respondent Judge was unmindful of such a well-settled principle. This Court, under the circumstances then, cannot lend the imprimatur of its approval.

Nowhere has this doctrine applied with such undeviating rigidity been better stated than in *Acuña v. Golez*.^[15] In the opinion for the Court by the Chief Justice "Indeed, since *Provincial Board v. Baron*, G. R. No. L-3483 (December 16, 1949), we have consistently adhered to the view that Section 163 of the Revised Election Code should be construed restrictively * * * because of the special nature of the authority conferred therein and because otherwise that authority could be so used as to delay the proclamation of the winning candidate beyond the date set for the beginning of the term of the office involved. The necessity of avoiding this contingency becomes apparent when we consider that, the effect of said delay is, in the case of national offices, for which there is no hold over, to leave the office without any incumbent, and, in the case of local offices, whose incumbents may hold over, to often permit the defeated candidate to unduly extend his tenure, at the expense of the true choice of the electorate."^[16] The remedy of judicial recount, as was emphasized by Justice Makalintal in *Navarro v. Tizon*,^[17] "is a special one" that "may be resorted to" only if there be strict compliance with the statutory requisites. There is no resisting the conclusion, therefore, that there was an utter failure on the part of respondent Judge to abide by the statutory limits set forth by the Constitutional Convention Act of 1971. The lack of jurisdiction is thus manifest.

WHEREFORE, the writ of certiorari prayed for is granted. The order of respondent Judge of December 17, 1970 denying the motion to dismiss of petitioner as well as his order of December 22, 1970 denying petitioner's motion for reconsideration are declared null and set aside. The writ of prohibition is likewise granted, restraining

respondent Judge from further taking cognizance of the petition before him, Election Case No. 4643, filed by private respondent Damaso T. Samonte on December 7, 1970, except for the purpose of issuing an order dismissing the same for lack of jurisdiction. With costs against respondent Damaso T. Samonte.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Castro, J., did not take part.

[1] Republic Act No. 6132 (1970).

[2] Section 6 (H) of the above Republic Act No. 6132 reads as follows: "In case it appears to the Board of Canvassers that there exist another authentic copy or copies of returns from an election precinct submitted to the Board giving any candidate a different number of votes, or there is a difference in the words and figures of the number of votes for any candidate, and in either case the difference affects the result of the election, upon motion of the Board or any candidate affected, the corresponding Court of First Instance shall proceed to determine summarily on the face of the original and copy or copies of the returns whether or not the contradiction or difference is the result of tampering, alteration or falsification of the original or any copy or copies thereof after they had been signed by the Board of Inspectors; and should it so find, it shall direct the Board to use whichever document or documents it finds authentic. Should the Court entertain any doubt as to which document is authentic, or should the contradiction or difference in their contents be an authentic discrepancy, and if there are no visible signs on the key or on the clamp to which the key is attached and/or on the ballot box of an attempt to open the box or replace the key nor signs of welding on any side which would give the court reasonable grounds to believe that the integrity of the ballot box has been violated, it may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true result of the count of the votes cast in the precinct in question: Provided, however, That if upon opening there are extraneous matters or visible signs of replacement or tampering, the court may not proceed to recount and shall forthwith close and seal the ballot box and deliver the same to the Commission on Elections for safekeeping. Should it be impossible to determine the true result of the count, the court shall instruct the Board that no votes shall be counted from the precinct."

[3] Petition, Annex A, par. 7.

[4] Ibid, Annex B.

[5] Ibid, Annexes D and E.

[6] Ibid, Annex F.

[7] Answer of respondent Damaso T. Samonte.

[8] L-28882, May 31, 1971, 39 SCRA 303.

[9] Ibid, p. 315. Cf. *Baguioro v. Barrios*, 77 Phil. 120 (1946); *Torres v. Peña*, 78 Phil. 231 (1947); *Jamora v. Blanco*, 78 Phil. 497 (1947); *General v. De Venecia*, 78 Phil. 780 (1947); *Espinosa v. Makalintal*, 79 Phil. 134 (1947); *Ma-ao Sugar Central Co. v. Barrios*, 79 Phil. 666 (1947); *Bangala v. Barbaza, Jr.*, 80 Phil. 767 (1948); *Nico v. Blanco*, 81 Phil. 213 (1948); *Alvarez v. Ibañez*, 83 Phil. 104 (1949); *Floro v. Granada*, 83 Phil. 487 (1949); *Ruperto v. Tianco*, 83 Phil. 943 (1949); *Pacific Importing and Exporting Co. v. Tinio*, 85 Phil. 239 (1949); *Rural Progress Administration v. Guzman*, 87 Phil. 176 (1950); *Muñoz v. Llamas*, 87 Phil. 737 (1950); *Treasurer of the Philippines v. Encarnacion*, 93 Phil. 610 (1953); *Pillado v. Lasala*, 95 Phil. 490 (1954); *Benga-Oras v. Evangelista*, 97 Phil. 612 (1955); *Reyes v. Yatco*, 100 Phil. 964 (1957); *Blaquera v. Rodriguez*,

103 Phil. 267 (1958); *Phil. Land-Sea Labor Union v. Ortiz*, 103 Phil. 409 (1958); *Yao Lit v. Geraldez*, 106 Phil. 545 (1959); *Lopez v. Santiago*, 107 Phil. 668 (1960).

[10] L-28358, December 8, 1967, 21 SCRA 1178.

[11] L-28457, April 30, 1970, 32 SCRA 368.

[12] Cf. *People v. Mapa*, L-22301, Aug. 30, 1967, 20 SCRA 1164; *Pacific Oxygen & Acetylene Co. v. Central Bank*, L-21881, March 1, 1968, 22 SCRA 917; *Dequito v. Lopez*, L-27757, March 28, 1968, 22 SCRA 1352; *Padilla v. City of Pasay*, L-24039, June 29, 1968, 23 SCRA 1349; *Garcia v. Vasquez*, L-26808, March 28, 1969, 27 SCRA 505; *La Perla Cigar & Cigarette Factory v. Capapas*, L-27948 & 28001-11, July 31, 1969, 28 SCRA 1085; *Mobil Oil Phil., Inc. v. Diocares*, L-26371, Sept. 30, 1969, 29 SCRA 656; *Luzon Surety Co., Inc. v. De Garcia*, L-25659, Oct. 31, 1969, 30 SCRA 111; *Vda. de Macabenta v. Davao Stevedore Terminal Company*, L-27489, April 30, 1970, 32 SCRA 553; *Republic Flour Mills, Inc. v. Commissioner of Customs*, L-28463, May 31, 1971, 39 SCRA 269; *Maritime Company of the Philippines v. Reparations Commission*, L-29203, July 26, 1971; *Allied Brokerage Corp. v. Commissioner of Customs*, L-27641, Aug. 31, 1971.

[13] According to Section 163 of Republic Act No. 180 (1947) as amended: "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. Notice of such proceeding shall be given to all candidates affected." Section 168 is likewise relevant. Thus: "The municipal board of canvassers shall meet immediately after the election. The municipal treasurer shall produce before it the statements of election from the different election precincts filed with him, and the board shall count the votes cast for candidates for municipal offices and proclaim as elected for said offices those who have polled the largest number of votes for the different offices, in the same number as hereinbefore provided for the provincial board, and to that end it shall have the same powers including that of resorting to the court in the case of contradictory statements. The municipal board of canvassers shall not recount the ballots nor examine any of them but shall proceed upon the statements presented to it. In case of contradictions or discrepancies between the copies of the same statements, the procedure provided in section one hundred and sixty-three of this Code shall be followed." The present Election Code, Rep. Act No. 6388 (1971) has a substantially similar provision in its Section 206.

[14] Cf. *Clarín v. Alo*, 94 Phil. 432 (1954); *Cawa v. Del Rosario*, 108 Phil. 520 (1960); *Lim v. Maglanoc*, L-16566, August 31, 1961, 2 SCRA 1189; *Lawsin v. Escalona*, L-22540, July 31, 1964, 11 SCRA 643; *Acuña v. Golez*, L-25399, January 27, 1966, 16 SCRA 32; *Ong v. Commission on Elections*, L-28415, January 29, 1968, 22 SCRA 241; *Sanidad v. Saquing*, L-27951, May 28, 1968, 23 SCRA 878; *French v. Commission on Elections*, L-28561, July 8, 1968, 24 SCRA 23; *Navarro v. Tizon*, L-28524, July 29, 1968, 24 SCRA 374; *Villalon v. Arrieta*, L-29177, September 30, 1969, 29 SCRA 671; *Abrigo v. Commission on Elections*, L-31374, January 21, 1970, 31 SCRA 26; *Baloria v. Abalos*, L-28457, April 30, 1970, 32 SCRA 368.

[15] L-25399, January 27, 1966, 16 SCRA 32.

[16] *Ibid*, pp. 37-38 citing *Parlade v. Quicho*, 106 Phil. 1171 (1959); *Samson v. Estenzo*, 106 Phil. 1140 (1960); *Lawsin v. Escalona*, L-22540, July 31, 1964, 11 SCRA 643.

[17] L-28524, July 29, 1968, 24 SCRA 374.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.