

BARTOLOME LAWSIN, PETITIONER, VS. HON. GODOFREDO ESCALONA, JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, BR. I, AND VIRGINIO A. ASTILLA, RESPONDENTS.*G.R. No. L-22540. July 31, 1964*

Ponente: REYES, J.B.L., J.

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In the general elections of November 12, 1963, the herein petitioner, Bartolome Lawsin, and respondent, Virginio Astilla, were duly registered official candidates of the Nacionalista and Liberal parties, respectively, for one of the posts for councilors in the City of Tacloban. On November 27, 1963, Astilla filed a verified petition in Branch I of the Court of First Instance of Leyte (Election Case No. 3423) pleading that the election inspectors of Precinct No. 65 had erroneously credited candidate Lawsin with seventy-five (75) votes in the election returns, instead of sixty-five (65) votes, as shown in the tally board and certificates of votes duly issued by the election inspectors; that the said discrepancy erroneously credited candidate Lawsin an additional ten (10) votes, an error which would affect the result of the elections in that were it not for the same petitioner Astilla should be rightfully declared elected with a majority of eight votes over Lawsin; and prayed for the recount of the votes cast in said precinct 65 of Tacloban City

Lawsin answered denying that any error was committed; that an action involving same facts, parties, cause of action, and ultimate relief was already pending before Branch IV of the same court, being Election Case No. 3415; and that the petition stated no cause of action, in that a discrepancy between the election returns and the corresponding tally board or tally sheet did not warrant a recount of votes under section 163 of the Revised Election Code.

It is admitted that eleven days previous to the petition in this case, i.e., on November 16, 1963, Astilla had docketed, in Branch I of the Court of First Instance of Leyte, a petition against Bartolome Lawsin, the City Treasurer of Tacloban, and the Boards of Election Inspectors of Precincts (55 and 70, seeking to compel the latter to correct their election returns, on the basis of the same discrepancy between the 75 votes credited to Lawsin and the allegedly true number of votes (65) cast for him. Later, on November 25, 1964, an amended petition was filed, praying for a recount of votes as alternative remedy. The amendment was subsequently withdrawn, and the present petition for recount was filed independently in Branch IV. This petition for correction of returns was dismissed by Judge Elias B. Asuncion of Branch I, and the judgment was sustained by the Court in R. G. No. L-22246, decided on February 29, 1964.

But while said case (L-22246) was still pending in the Supreme Court. Judge Godofredo Escalona of Branch IV of the Court of First Instance of Leyte, on January 22, 1964, adjudged that Astilla was entitled to a recount due to the discrepancies alleged in his petition, and enjoined the board of canvassers from proclaiming Lawsin. The latter moved for a reconsideration, and upon its denial resorted to the Supreme Court on Certiorari and Prohibition, no appeal being provided for by law. Upon his request, and the posting of a bond of P1,000.00, this Court issued a

preliminary injunction to halt further proceedings in the case below.

The issue squarely presented, both in the Court of First Instance and in this Court, is whether a discrepancy between the tally board or tally sheet and the election returns constitutes sufficient ground for the Court of First Instance to order a recount of the votes cast in the precinct affected (No. 65 of Tacloban City). Section 163 and 168 of the Revised Election Code provide as follows:

"163. When statements of a precinct are contradictory.—In 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."

"168. Canvass of the election for municipal offices. The municipal board of canvassers shall meet immediately after the election. The municipal treasurer shall produce before it the statements of the 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 manner as hereinbefore provided for the provincial board, and to that end it shall have the same powers including that of reporting 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."

We have held in *Parlade vs. Quicho*, G. R. No. L-16259, December 29, 1959, that a judicial recount of votes under section 163—

"is a special authority conferred on the Court and must be restrictively construed, so as not to extend to other cases that may, more or less, bear some resemblance to the situation described in said sections";

that the discrepancy between the statement and another copy or other authentic copies thereof (mentioned in sections 163 and 168) means a variance existing between copies of the statement of the election returns presented by the local treasurers to the respective boards of canvassers, "exclusively", as stated in *Galang vs. Miranda*, 36 Phil., 316, p. 320; and that a discrepancy between the election returns and a certificate issued to the watchers is not a ground for a recount, because said certificate is not the authentic copy of the statement of election returns contemplated by the law.

The *Parlade* ruling is decisive in the case before us. It should be obvious that if a discrepancy between the statements of election returns and a certificate signed by the inspectors and issued to a watcher does not warrant a recount as ruled in that case, then a variance between the returns and the corresponding tally board or sheet can not be a ground for a recount either, since the sheet is not a copy of the former. Tally board and tally sheet were already provided by law and were in life in previous elections (see R.A. No. 180 (1947) section 148) and yet they were not included or referred to in sections 163 and 168 of the Election Code as documents to be taken into account in determining discrepancies that justify a recount.

It is argued that under the "instructions for Boards of Inspectors", issued by the Commission on Elections in 1963, the votes counted are recorded in the tally board by the poll clerk and on the tally sheet by one inspector; that the tally sheet is certified by the later as true and correct, while the chairman, the other inspector and the poll clerk certify in turn that it is the tally sheet used by the certifying inspector, so that the tally sheet has the same guarantees of authenticity as the election returns. Yet a certification of correctness by one inspector is certainly

not the equivalent of a certification by all the members of the board of inspectors, who, in the case of the election returns, collectively attest that the data contained therein are true and correct. The additional precautions prescribed by the Commission on Elections, pursuant to its regulatory power, would not warrant the conclusion that the tally sheet is one of the authentic copies referred to in Section 163, since the Commission on Elections may not increase its scope, nor alter or amend the Election Code elected by the Legislature. If sections 163 and 168 did not originally include the tally sheet (or board), the Commission is powerless to subsequently insert it therein.

The special nature and limited scope of the summary judicial recount provided by section 168 of the Election Code is admittedly aimed at delaying as little as practicable the proclamation of the winning candidate, without prejudice to a thorough revision of the election results in proper cases by means of the corresponding election protest, which is the normal process provided for the purpose. To multiply the grounds for a recount of votes before a proclamation by the board of canvassers is made has the effect of downgrading the election protest as a remedy, and to prolong the periods during which the contested positions will remain without an occupant, thereby provoking suspicion, conjecture, and unrest. The case at bar is a prime example; over six months have elapsed since the election without the canvassers being able to make a proclamation. Thus it seems fair and just to require clear statutory authority for a recount based on discrepancies found elsewhere than in election returns.

But there is another ground upon which Astilla's petition for recount should be denied; by filing separate proceedings for the correction of the returns and for the recount of votes, respondent herein, Virgilio Astilla, was guilty of splitting one and the same cause of action. The operative facts were the same in the two cases he has filed in the Court of First Instance of Leyte, to wit, the averred discrepancy between the tally sheet and the copies of the election returns, whereby Lawsin was allegedly credited with ten more votes than he really obtained, to the prejudice of Astilla. Upon that single cause of action^[1], Astilla could seek either a correction of returns or a recount, but not make it the subject of two or more suits, either simultaneously or successively. Wherefore, in accordance with section 4 of Rule 2 of the Revised Rules of Court (also section 4 of Rule 2 of the old Rules), the judgment in the correction case should be a bar to the other suit for recount.^[2] Even when he resorted to this Court (in case L-22246) against the denial by Judge Asuncion of his petition for correction, Astilla could still have asked that this Court direct the Judge to order a recount; but he did not do so, evidently preferring to continue with the separate proceeding before Judge Escalena, and thereby maintain an unnecessary multiplicity of suits. This fact was called by petitioner Lawsin to the attention of respondent Judge, but the latter improperly failed to consider it. The result, as previously observed, was to unwarrantedly delay the proclamation for eight months, contrary to the spirit of the Election Code.

Respondent Astilla urges that the certiorari petition should be considered barred for not having been interposed within five days, citing section 178 of the Election Code. That legal provision, be it noted, clearly refers to an appeal from a decision in an electoral protest. We have found no unnecessary delay in Lawsin's seeking reconsideration, nor in his resort to this Court, allowing for the fact that the judgment complained of was rendered in Leyte. Basically, the delay was due to Astilla's filing two suits for one and the same cause of action.

For the foregoing reasons, the lower court's order for recount and its injunction against a proclamation by the municipal board of canvassers are hereby revoked and set aside, and the preliminary injunction issued heretofore by this Court is made permanent. Costs against respondent Virgilio Astilla.

Bengzon, C. J., Bautista Angelo, Concepcion Parades, Regala and Makalintal, JJ., concur.

[1]Cf. *Baguioro vs. Baguio*, 77 Phil., 120

[2] Camara vs. Aguilar, 94 Phil., 527; 50 Off. Gaz, 1549; Lavarro vs. Labitona, 54 Phil., 791-792.

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