

ARTURO SERIÑA, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF BUKIDNON, ERNESTO VILLALON, RESPONDENTS.*G.R. No. L-28511. August 22, 1968*

Ponente: FERNANDO, J.

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In this petition for certiorari with preliminary injunction and mandamus, filed on January 12, 1968, Arturo Seriña, then Municipal Mayor of Kibawe, Bukidnon, and a candidate for reelection to the same position in the November 14, 1967 election, prayed for the setting aside of an order of the respondent Court of First Instance of Bukidnon, the Hon. Abundio Z. Arrieta presiding, dated December 14, 1967, denying his motion to permit the Municipal Treasurer to open the ballot box of Precinct No. 20 of Kibawe, Bukidnon for the sole purpose of retrieving the ballot box copy therein contained, as well as another order of respondent court of December 19, 1967, directing the Municipal Board of Canvassers to proceed with the canvass of the votes in such precinct without requiring such Board of Inspectors to fill up omissions of certain data in both the Commission of Elections as well as the Municipal Treasurer's copies of election returns as required by Section 162 of the Revised Election Code.

It was alleged in the petition: "As the Municipal Board of Canvassers of Kibawe, Bukidnon were about to convene to canvass the results of the elections for the different municipal offices of Kibawe, Bukidnon, petitioner received a report that the election returns of Precinct No. 20 of Kibawe was tampered with, altered and falsified particularly the copies thereof which correspond to the Provincial Treasurer, Municipal Treasurer and the Commission on Elections. Thereupon, Petitioner filed with respondent Court a petition for the judicial recount of the ballots in Precinct No. 20 of Kibawe." [1]

More particularly, it was noted that according to the copy for the Commission on Elections, the other respondent, Ernesto Villalon, likewise a candidate for municipal mayor, received 525 votes while in the copy for the Municipal Treasurer, the number of votes appearing opposite his name is 2,525. [2] Moreover, on both "the Comelec's and Municipal Treasurer's copies of the election returns, the spaces on Page 1 thereof, regarding the number of voters registered, number of voters who actually voted, number of ballots found in the compartment for valid ballots and others, have not been filled up nor accomplished by the Board of Inspectors of said Precinct No. 20; * * *." [3]

As noted earlier, respondent court denied petitioner's urgent motion to permit Municipal Treasurer of Kibawe, Bukidnon to retrieve election returns contained in the ballot box of Precinct No. 20 and granted a motion of respondent Villalon to proceed with the canvass of votes in such precinct without first requiring the Board of Inspectors to fill up such omissions complained of. [4] Hence this petition.

This Court, in a resolution of January 16, 1968, gave due course to the above petition with a temporary restraining order, respondents being required to file not later than January 23, 1968, an answer. The hearing was set on January 25, 1968. There was an urgent motion, filed by respondent Villalon, for an extension of 10 days within which to file the answer and the postponement to a later date of the oral argument. This Court granted such

extension of 10 days to file the answer, but denied the request for postponement of the hearing, petitioner being given 10 days to submit a memorandum, the same period being granted respondents within which to submit a reply memorandum, if they so desire.

An answer, dated February 2, 1968, was filed by respondent Villalon, where he admitted some of the allegations contained in the petition, but stated "that on January 17, 1968, the ballot box in question (for Precinct No. 20) was opened in the Court of First Instance of Bukidnon, before the respondent Presiding Judge and the lawyers and representatives of both parties, and on January 19, 1968, when the election returns in question was retrieved inside the ballot box for Precinct No. 20, a comparison was made with the two (2) other authentic copies of the election returns, namely, The Municipal Treasurer's Copy and the Commission on Elections Copy as mentioned above, and the same showed a [uniformity of votes], to wit: FIVE HUNDRED TWENTY FIVE, (525) votes, in words and figures, for your respondent Villalon; * * *." [5] After noting that in a petition for a judicial recount, there is no necessity for directing the Municipal board of Canvassers to observe and comply with Section 150 of the Revised Election Code as to the alleged omissions, respondent Villalon prayed for the dismissal of the petition "for the reason that the issues raised in the present petition had already been rendered moot and academic, and for utter lack of merit * * *." [6]

Subsequently, in a pleading dated February 7, 1968 and filed with this Court the next day, respondent Villalon filed a motion to dismiss, reiterating that the issues raised in this petition had become moot and academic. It was alleged anew that even before the filing of the petition, the act sought to be enjoined and set aside had already been done. [7]

In the memorandum for petitioner, filed on February 17, 1968, there was an admission "that the respondent Court has in fact re-considered its order and had authorized the opening of the ballot box for the sole purpose of retrieving the ballot box copy of the election returns, Petitioner agrees with respondent Villalon that the issue as to the propriety of its earlier order dated December 5, 1967 * * * has become academic and moot." [8] He was opposed to the dismissal of the petition, however, as according to him, there is another issue still to be resolved centering "on the question as to whether the respondent Court correctly considered that the matter of the omitted information in the election return as to the total number of registered voters, the total number of ballots found in the compartment for valid ballots and others are more 'Clerical Omissions' that may be disregarded or rather are 'Substantial, Material and Requisite Omissions' which must first be completed by the Board of Inspectors before the Municipal Board of Canvassers can proceed to the canvass of the votes * * *." [9]

This Court, in a resolution of March 7, 1968, denied the motion to dismiss of respondent Villalon and granted respondents a period of 10 days from notice within which to submit the reply memorandum. Then came a motion for reconsideration, dated April 18, 1968, wherein it was stated: "1. The main petition in the Court below which is a petition for judicial recounting of the votes in precinct No. 20 of Kibawe, Bukidnon, has already been dismissed by the Lower Court. * * *; and 2. Since the principal petition has already been dismissed it follows, as a legal and logical consequence that the other relief sought, namely, that an order be issued to comply with the resolution of the Commission on Elections requiring the observance of Section 162 of the Revised Election Code first require the Board of Inspectors to fill up or comply the requisite information omitted in the election returns, be denied as this is merely ancillary to the principal petition for judicial recount as adverted to above, has already been dismissed by the Court below." [10] The prayer of the motion for reconsideration was for the dismissal of the petition, there being a reiteration of the allegation that the issues had already been rendered moot and academic. While a copy of the aforesaid motion for reconsideration was served on the counsel for petitioners, no pleading denying that there was indeed such a definitive dismissal had ever been filed by petitioner.

There is therefore no occasion for the coming into play of the supervisory power of this Court over inferior

tribunals, the matter having been rendered moot and academic. It is not amiss to state, however, that respondent court, in the exercise of its limited jurisdiction under either Section 163 or 168 of the Revised Election Code as the case may be, should dispose of the matter with promptness and dispatch. That would assure that the proclamation would not be unduly delayed. It is equally relevant to state that under such circumstances there should not be on the part of the judiciary timidity and hesitancy in lending its approval to pleas from any party before it, if thereby the true and honest result of the elections could be elicited. That would enable the provinc[i]al or municipal board of canvassers to discharge its function in the shortest possible time and with the utmost degree of accuracy.

Inferior tribunals must likewise bear in mind that where the provisions of the Election Code as in Sections 142 and 162 are couched in mandatory form the power does not exist for any court to distinguish between material and immaterial omissions. What the law decrees must be obeyed. It is as peremptory and as simple as that.

WHEREFORE, this petition for certiorari with preliminary injunction and mandamus is dismissed. Without pronouncement as to costs.

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

[1] Petition, paragraphs 5 and 6.

[2] Ibid, paragraphs 7 and 8.

[3] Ibid, paragraph 9.

[4] Ibid, paragraphs 14 and 15.

[5] Answer, paragraph 4.

[6] Ibid, prayer.

[7] Motion to Dismiss, paragraph 3.

[8] Memorandum for Petitioner, p. 5.

[9] Ibid, p. 5.

[10] Motion for reconsideration for respondent Villalon, p. 1.

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