

ERNESTO VILLALON, PETITIONER, VS. HON. ABUNDIO Z. ARRIETA AND ARTURO SERIÑA, RESPONDENTS.*G.R. No. L-29177. September 30, 1969*

Ponente: BARREDO, J.

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These two cases arose from related circumstances connected with the election for Mayor in the Municipality of Kibawe, Bukidnon held on November 14, 1967. The first (G. R. No. L-29177) is a petition for certiorari seeking the annulment of the order of the respondent judge dated April 1, 1968 declaring null and void the proclamation of petitioner as the duly elected Mayor made by the municipal board of canvassers on March 14, 1968 on the ground that the same was made in excess of the court's jurisdiction. The second (G. R. No. L-29394) is a petition for certiorari and prohibition purporting to enjoin the respondent Commission on Elections from requiring delivery to it and investigating and determining the genuineness of the election returns from Precinct 20 of said municipality with a view to their being used in the canvass of the votes for mayor, based upon the theory that the Comelec is without authority to review the finding of a court in a judicial recount regarding the condition of the envelop containing one of the copies of the election returns. We sustain the petitioner in the first, We overrule him in the second.

On November 17, 1967, respondent Seriña filed with respondent judge a petition for recount of the votes in Precinct 20. He stated as grounds therefor, alleged tampering of the returns and discrepancy between the total number of votes cast in said precinct, as appearing in C. L. Form 40, Minutes of Voting, on the one hand, and, on the other, the total of the votes cast for all the candidates for mayor, as appearing in the election returns, the former being 419 and the latter 642, 525 of which were credited to petitioner. This petition was amended on December 7, 1967 to make more detailed the particulars of the grounds already alleged in the original petition. Subsequently, on January 12, 1968, a second amendment of the petition was attempted but this was denied by the court. Meanwhile, on December 17, 1967, petitioner filed his answer challenging the jurisdiction of the court and alleging insufficiency of the facts alleged to constitute a "cause of action" under Section 163 of the Revised Election Law, since the petition, even as amended, does not allege any discrepancy in the numbers of the votes for the different candidates for mayor in all the extant genuine copies of the returns and, on the other hand, any discrepancy thereof with what appears in the minutes of voting is not a ground for judicial recount. After proceedings considerably less summary than they should be, on February 7, 1968, the respondent judge, at first, granted the petition; but, later, upon motion for reconsideration filed by herein petitioner on February 14, 1967, he reconsidered his previous order and denied the petition on March 13, 1968 ruling thus:

"The pivotal question in this case has definitely been resolved by the Supreme Court in its decision in the most recent case of *Ong vs. Commission on Elections, et al.*, G. R. No. L-28415, promulgated on January 29, 1968, fixing a dividing line between the powers of the board of canvassers and the Commission on Elections on the one hand and the court of first instance on the other. The highest tribunal ruled that 'where before or during canvass or before proclamation representations are made that returns are falsified, it becomes the primary duty, first of the board of canvassers and then the Commission on Elections, to ascertain this fact'; that

the latter is clothed with broad constitutional powers to have the re-turns corrected in order to secure that only genuine returns are pre-sented to the board of canvassers for the purpose of canvass and thus prevent any dastardly attempt to subvert the people's choice with the use of patently doctored re-turns, while the court of first instance is delimited by section 163 of the Revised Election Code in the exercise of its authority to order a recount to situations where an authentic copy of the election re-turns gives a different number of votes to a candidate from those appearing in another authentic copy and the difference would affect the result of the election. It is evident that the remedy available to the petitioner in the present instance lies with the Commission on Elections and not with this court because no differences in the number of votes of the respondent Ernesto Villalon that would affect the result of the election were found in the available copies of the election returns. The absence of the corresponding entry in words as to the number of votes received by said respondent for the Office of Mayor in the municipal treasurer's copy of the election statement may not be considered a discrepancy within the context of the law sufficient enough to warrant the application of Section 163 of the Code."

On March 14, 1968, allegedly even before respondent Serina had received copy of the order of denial, the municipal board of canvassers proclaimed petitioner Ernesto Villalon as the duly elected mayor. This caused the filing of an omnibus motion for contempt against the members of the municipal board of canvassers and for annulment of said proclamation by respondent Serina, and the subsequent issuance by respondent judge of the disputed order of April 1, 1968, denying the said prayer for contempt but granting that for annulment of the proclamation. A motion for the reconsideration of this order was filed on April 8, 1967, but the same was denied on June 4, 1968. On June 29, 1968, the present first petition was filed.

Petitioner assails the order of April 1, 1968 insofar as the annulment declared by it is concerned as having been issued without or in excess of jurisdiction. Petitioner is right.

The only reason given by respondent judge in support of his order is that the proclamation "was premature because (the order of March 13) had not yet become final as the petitioner had not yet even been notified thereof on March 14, 1968." Such reason is erroneous. It is in the very nature of a proceeding for judicial recount of votes in an election that orders disposing of the petition by either granting the petition and accordingly proceeding to the actual recount or denying the same, as well as the order certifying the result of the recount, should not be appealable. This Court has already held that there is no appeal therefrom (*Sanidad vs. Saquing*, 23 SCRA, 878, 880). If at all, only questions of jurisdiction and of law may be brought to the Supreme Court in appropriate instances by certiorari, prohibition or mandamus with a request for the issuance of the corresponding writ of preliminary injunction, if necessary. The procedure has been made summary precisely to accomplish its purpose of aiding the electoral authorities in ascertaining the apparent results of an election exclusively for purposes of proclamation without unnecessary loss of time and without prejudice to the final outcome of a full-dressed determination of the true result of the election thru an election contest. As this Court indicated in *Ong vs. Comelec*, 22 SCRA 241, judicial recounts must be speedily terminated in order not "to prolong the periods during which the contested positions will remain without an occupant, thereby provoking suspicion, conjecture and unrest." This Court emphasized this to these same parties now before Us in *Serina vs. Court of First Instance of Bukidnon*, a previous case involving practically the same facts as here:

"x x x 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 provincial or municipal board of canvassers to discharge its function in the shortest possible time and with the utmost degree of accuracy." (24 SCRA 715, 719.)

Indeed, this aspect of the electoral process could as well be performed by Comelec officials or other public officials designated by that body or by law, and the only reason why it has been given to the courts seems to be just to impress solemnity and dignity to its result which may serve as the basis of a temporary color of title to an elective office, without implying that the courts should follow the usual cumbersome and complicated procedure of a judicial proceeding, since, after all, what is contemplated is more of a mechanical process rather than one requiring the exercise of judgment and discretion. In *Albano vs. Provincial Board of Canvassers of Isabela*, 5 SCRA 13, 18-19, this Court said:

"It is well to emphasize once again that the authority given to a court of first instance to allow the recount of votes under Section 163 of the Revised Election Code is restrictive in nature. The law is explicit that the proceeding is summary in character and merely consists in the mathematical counting of the votes received by each candidate. It does not involve any appreciation of the ballots or determination of their validity as is required in an election contest. Its only purpose is to count the number of votes as they appear in the face of the ballots. (*Cawa, et al. v. Hon. Vicente del Rosario, et al.*, G. R. Nos. L-16837-40, May 30, 1960.) Thus, as this Court has aptly said: 'The purpose of the law is to offer a prompt relief to a simple controversy, that can immediately be settled through a summary judicial proceeding that may dispense with the long drawn and complicated proceedings of a full-dressed election contest and, at the same time, x x x to restore public tranquility by dispelling all doubts as to the true number of votes cast in a given precinct. Legal technicalities should be used to help in arriving at a clear intention of the law and not to defeat said intention'. (*Board of Election Inspectors vs. Piccio*, 81 Phil. 577. See also *Cawa, et al. vs. Hon. Vicente del Rosario, et al.*, *supra*.) (Italics supplied) Verily, in this instance, legal technicalities were applied to defeat the purpose of the law."

The case at bar is not the first one where the matter of a judicial recount has remained pending without final resolution by the courts far beyond the beginning of the term of office being contested. It must be admitted that such a situation is not only undesirable; it is inconsistent with the intent and spirit of the law. Truth to tell, even a full blown electoral contest could have been terminated within a shorter period since the elections of 1967; which is absurd, to say the least.

A judicial recount is not an action. It is not, strictly speaking, even a special proceeding. It is a part of the electoral administrative process preparatory to the canvass and proclamation of the results of an election. The fact that it is performed by the Court of First Instance does not make of it a purely judicial proceeding. Only that aspect of it wherein the court determines whether or not the requirements of the law for a recount are present is judicial. (*Binging Ho vs. Municipal Board of Canvassers of Bongao, Sulu, et al.*, G. R. No. L-29051, July 28, 1969.) The exact procedure to be followed after the proper motion is filed is prescribed neither in the election law nor in the rules of court. The law merely lays down three requisites for the exercise of jurisdiction by the court, namely, (1) there must be a discrepancy between authentic copies of the election returns from a precinct in the number of votes given to a candidate and the difference affects the results of the election; (2) a motion must be filed by the board of canvassers or by any candidate affected; and (3) notice of the proceeding shall be given to all the candidates affected. These three requisites complied with, the law evidently leaves it to the court to devise the means for the exercise of its powers and the performance of its assigned role in the manner which may appear to it to be most consistent with the fundamental purpose of the proceeding. The practice of some judges of requiring pleadings to be filed within specified periods and holding pre-trials is definitely outside of the contemplation of the law. It is not conformable to its spirit. (Sec. 6, Rule 135)

Barring unusual and inevitable circumstances, this kind of proceedings should consume but a number of days, if not hours. All that the judge has to determine is whether the copies of the genuine election returns submitted to it, tally with each other or not, as to the votes of the candidates concerned, and if they don't, he should promptly proceed to have the corresponding ballot box brought to the court and opened and then count the votes of the

candidates for the office in question as they appear on the face of the ballots found therein without in any manner applying the rules on appreciation of ballots and without passing on their validity, which are matters that should be reserved for an election contest. (Cava et al. vs. Del Rosario, G. R. No. L-16837, May 30, 1960; Samson vs. Estenzo, 106 Phil. 1140.) It is obvious that such a simple function can be performed and finished in a very short time.

These considerations are equally persuasive against allowing any appeal from the court's orders in the premises. As already stated, the purpose of the proceeding is the prompt if not immediate solution to a problem related to the proclamation of the apparent winner in an election which as a rule must be made before the term of the contested office begins, and the matter placed before the judge for action is so simple that from the very nature of the action the court is required to take, the principal ingredient of review 9 thereof by a higher court is wanting, namely, the element of finality in the consequences of the pronouncements the judge is called upon to make, considering that whatever be the outcome of the recount and the resolutions of the court in the course thereof as well as the subsequent canvass based thereon may still be reopened and passed upon in the ensuing electoral contest should there be any. In other words, whatever resolution the court may make therein can at best have only provisional legal consequences, not in any way controlling in the eventual electoral protest case that may follow.

For all the foregoing considerations, We hold that respondent judge erred in holding albeit impliedly that his order of April 1, 1968, denying the petition for re-count of herein respondent had any period of finality before it could be executed. We further hold that such kind of order is immediately executory and the only way to stop its implementation or compliance is thru an order of a higher court in an appropriate special remedy as above indicated. Otherwise stated, it is the holding of this Court that immediately after a recount of votes has been made and certified by the Court of First Instance pursuant to Section 163 and 168 of the Revised Election Code, or after it has issued an order of denial of the petition for such a recount, the court becomes functus officio and is henceforth powerless to issue any order in connection therewith except, perhaps, such as will insure the expedient effectuation of its basic order.

It is, therefore, sufficient answer to respondent Serina's contention to the effect that respondent judge's annulment order is merely a consequence of the writ of preliminary injunction issued by the latter upon the filing of the petition for recount to say that said writ lost its force and effect upon the issuance of the order denying the petition, not only because respondent judge did, in fact, declare in the same order that the said "writ of preliminary injunction issued by the (this) Court shall be automatically dissolved", which dissolution is in itself immediately executory, but also because being a mere auxiliary remedy to the main petition, it could not have survived beyond the life of such principal remedy.

With regard to the same respondent's contention in his answer that the proclamation in question was null and void because it was made in violation of a Comelec resolution of December 20, 1967 ordering the suspension of said proclamation until further orders of the Commission, and none such has come, it must be clarified that the two proceedings, the one before the respondent judge and that before the Comelec are distinct and separate ones. As a matter of fact, the respondent judge did not base his order of annulment on the Comelec resolution but on the theory alone that his order of denial of March 13, 1968 had not yet become final. Indeed, this could have been due to the fact that this point was not raised in the court below, and it is doubtful if it can be raised for the first time in this certiorari. In any event, the Comelec has broad powers to enforce its own injunctions by its own fiat and it would be less productive of confusion and conflict of authority for the courts to keep off where the Comelec has already assumed its jurisdiction. After all, it bears repeating here, the authority of the courts under Section 163 of the Revised Election Code is strictly limited only to the recount of the votes, if the requisites therefor appear to it to be existent, and whether or not its certification of the results of the re-count will be utilized properly by the

election officials is entirely another matter which, if necessary, has to be the subject of another entirely distinct proceeding.

Coming now to the second petition before Us, We do not find any plausible legal basis therefor. Petitioner seeks to enjoin the Comelec from investigating the election returns for Precinct 20, the same one subject of the first petition disposed of above, allegedly because the Court of First Instance of Bukidnon had already made an adverse finding as to its integrity. To start with, it is to be noted that petitioner's pose is quite inconsistent. The order of the Court of First Instance of Bukidnon, which according to petitioner, found "that the Provincial Treasurer's copy of the election returns for Precinct No. 20 of Kibawe, Bukidnon, was spurious and of doubtful origin for the reason that it was found only inside the mail box of Malaybalay, Bukidnon, on December 9, 1968, long after the canvassing of votes for and the proclamation of the Provincial Officials of Bukidnon in the last elections" was made in the court's order of January 17, 1968. Said order was issued only as a preliminary step to the recount sought by respondent Serina. Petitioner knows very well, however, that precisely upon his own motion, the order of February 7th which granted the petition for recount, was reconsidered and set aside in the order of March 13, 1968, which upheld petitioner's contention that the court had no authority to make the recount requested. It is not clear to Us, how petitioner can base his challenge against the Comelec's actuation on a proceeding he has successfully challenged to have been conducted without jurisdiction. The order of January 17th was a denial of a motion to reconsider a previous order of the court denying, in turn, an earlier motion of respondent Serina asking for production of the envelope containing the copy of the return intended for the Provincial Treasurer in order to be used in the determination of discrepancy among the genuine copies of the returns, and as the recount was ultimately denied by the court, for want of jurisdiction, it logically follows that whatever finding the court had made in the process should lose any legal significance. We hold that inasmuch as the finding relied upon by petitioner was made in an order which was merely preparatory to a judicial recount which could not be held because the court was without jurisdiction or would have acted in excess of its jurisdiction, the same cannot serve any legal purpose, since in law, it is devoid of any existence whatsoever. Incidentally, the point raised by petitioner regarding the effect of the failure of the parties to take any appeal from the order of January 17th deserves scant consideration, for the simple reason that the said order was at best interlocutory and whatever legal significance it might have had was completely absorbed in the final result of the proceedings. Accordingly, the main basis of the present petition against the Comelec must fall.

Moreover, it cannot be overemphasized that proceedings under Section 163 of the Revised Election Code are exclusively for purposes of the recount therein requested only, hence any ruling of the Court made in the course thereof cannot have the effect of res adjudicata upon proceedings for any other purpose whether in court or in the Comelec. This is perhaps even more true with respect to the Comelec, in so far as the genuineness of the returns are concerned, because in *Ong vs. Comelec*, supra, it was held that the investigation of this matter pertains peculiarly to the province of the Comelec. We reiterate that:

"3. Appropriately to be drawn then is the line that divides the powers of the boards of canvassers and the Comelec, on the one hand, and the Court of First Instance, on the other. We are unprepared to say that the election law intended that where, in a given precinct, some of the returns are authentic and others are falsified, both the Comelec and the Court of First Instance will have concurrent jurisdiction - prior to proclamation. Such procedure breeds confusion. It detracts so much from the powers granted the boards of canvassers and Comelec to proceed with dispatch with the work of canvassing and proclamation.

"Where before or during canvassing or before proclamation representations are made that returns are falsified, it becomes the primary duty, first of the board of canvassers, and then of the Comelec, to ascertain this fact.

"If finally the Comelec summarily finds that there was falsification of the copies to be used for canvassing purposes, then canvassing must be made upon the basis of authentic copies. Because a falsified return or

spurious return amounts to no return at all.

"If, on the other hand, the discrepancy in the returns was the result of honest mistakes of the board of inspectors, two courses of action are open in the court of first instance: (1) a petition for correction of returns with the consent of all the members of the board of inspectors under Section 154 of the Revised Election Code [Section 154, Revised Election Code, reads: 'Alterations 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.' Unanimity of the board of inspectors has long been considered to be a requisite to correction under this provision. *Estrada vs. Navarro*, L-23340 & L-28374, December 29, 1967, and cases cited therein.] and (2) a petition by the said board or any candidate affected for summary judicial recount under Sections 163 and 168 of the same Code."

Earlier, in *Caution vs. Comelec*, We ruled:

"Where the election returns produced by the provincial treasurer have been shown to have been tampered, and all the other copies outside the ballot box have also been shown to have been tampered or falsified, it is certainly within the power of the Commission on Elections to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns, and thus open the way for the summary recount of the votes, in accordance with law, for the purposes only of the canvass of the votes and the proclamation of the candidate found to have obtained the highest number of votes.

"The purpose of the Revised Election Code is to protect the integrity of elections and to suppress all evils that may violate its purity and defeat the will of the voters. x x x The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created - to promote free, orderly, and honest elections. The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion should not be interfered with x x x x."

The present case comes squarely within the scope of the powers of the Comelec thus defined and explained. To be clearer, should it happen that the Comelec discovers a discrepancy between the returns already examined by the court, on the one hand, and any other genuine copy thereof not yet brought to the court, on the other, the Comelec may require the parties concerned to request for a judicial recount in spite of a previous order of denial thereof on the basis only of the formerly extant copies.

Finally, in the case of *Chiongbian vs. Comelec*, G. R. No. L-19202, February 20, 1962 (decided by resolution), this Court did hold that when there is evidence that the ballot box and the ballots therein have been tampered prior to a judicial recount, the recount even if conducted already may be disregarded in favor of the contents of genuine copies of the returns before the court. We make it clear, however, that the finding of tampering by the court therein served no other end than to make the recount prayed for pointless, but such finding could not have any binding effect or any legal significance in the ensuing electoral protest.

WHEREFORE, the petition for certiorari in G. R. No. L-29177 is granted and the order of respondent judge of March 14, 1968 declaring null and void the proclamation of petitioner Villalon as the elected mayor of Kibawe, Bukidnon, is hereby annulled and set aside, without prejudice to whatever action may be taken by the Comelec or any steps the interested parties may wish to initiate in regard to the Comelec resolution ordering the suspension of the canvass of the votes for mayor of said municipality, but the petition for certiorari and prohibition in G. R. No. L-29394 is hereby dismissed, with costs against respondent Serina in the first case and against petitioner Villalon in the second case.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

Sanchez and Reyes, JBL, JJ., on official leave of absence.

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