

EUSTAQUIO R. CAWA, ET AL., PETITIONERS, VS. HON. VICENTE DEL ROSARIO, ET AL., RESPONDENTS.*G.R. Nos. L-16837-40. May 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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This is a petition seeking to set aside the decision rendered by respondent judge on February 19, 1960 ordering the municipal board of canvassers of Buenavista, Quezon, to proceed with the canvassing of votes on the basis of the municipal treasurer's copy of the election return for Precinct 2-A before its alleged amendment and to proclaim the winning candidate for the office of municipal mayor, awarding costs and attorney's fees in the amount of P1,000.00 and damages in the amount of P500.00, as well as his order of March 25, 1960 denying the motion for reconsideration and granting the motion for immediate execution. Petition also prays for the issuance of a writ of preliminary injunction.

In a resolution entered on April 4, 1960, the petition was given due course and the writ prayed for was granted upon petitioners' posting of bond of P1,000.00.

Eustaquio R. Cawa and Primitivo R. Pasta were the only registered candidates for Mayor of Buenavista, Quezon, in the elections held on November 10, 1959. In said municipality there were six election precincts, namely, 1, 1-A, 2, 2-A, 3 and 3-A. During the canvassing conducted by the municipal board of canvassers of the election returns of said precincts, except Precinct No. 2-A Cawa obtained 609 votes while Pasta 623 votes.

In the election return for Precinct No. 2-A submitted by the municipal treasurer, the municipal board found the following discrepancies: Cawa received 62 votes in words and 102 votes in figures, while Pasta received 102 votes in words and 62 votes in figures. The board also found that in the copy of the election return for said precinct furnished the provincial treasurer, Cawa received 102 votes in words and in figures, while Pasta received 62 votes in words and in figures. In the copy furnished the Commission on Elections, the board also found 102 votes in words and in figures for Cawa, while Pasta received 62 votes in words and in figures. In view of these discrepancies, the municipal board of canvassers chose to suspend the canvass of votes as regards the office of mayor until the true result of the count of votes in said precinct could be determined by the proper court under Sections 163 and 168 of the Revised Election Code.

On November 19, 1959, Eustaquio R. Cawa, together with the chairman of the board of election inspectors for Precinct No. 2-A, Miss Caridad Lago, and the poll clerk Profiteza Budoy, filed a verified petition with the Court of First Instance of Quezon asking (a) for authority to correct the number of votes appearing in the municipal treasurer's copy of the election return for said precinct; and (b) in the event that it be denied, a recounting be ordered under Section 168, in relation to Section 163, of the Revised Election Code (Case No. 360-G). When the petition came up for hearing, respondent judge denied, the request for authority to correct on the ground that the chairman of the board and the poll clerk do not constitute the majority of the members of the board of inspectors who are authorized by law to ask for such correction, and with regard to the petition for recounting, it was

likewise denied unless the members of the municipal board of canvassers be included as party petitioners. The Court is of the opinion that a candidate for the office who is affected by the recount cannot alone petition for such recount.

Yielding to the opinion of the court, Eustaquio R. Cawa filed a motion for leave to admit his amended petition joining as co-petitioners the majority members of the municipal board of canvassers, but before respondent judge could act on said motion, Primitivo R. Pasta, opponent of Cawa, filed a petition for mandamus, which was later amended, praying that the municipal board of canvassers be compelled to count the total votes received by each candidate in the election returns from all the six precincts of the municipality and that with respect to Precinct 2-A that the court declare null and void the number of votes written in figures opposite the names of the candidates and to consider only the number of votes written in words (Civil Case No. 366-G). Respondents therein were required by the court to answer, not to file a motion to dismiss, within 10 days from notice, which they did wherein they set up several special defenses showing that the canvassing would be futile because of the discrepancy appearing in the number of votes for the office in question in the election return of the municipal treasurer for Precinct 2-A. Immediately upon filing their answer, respondents therein received copy of the order of the court denying their motion for leave to amend their petition on the ground that its purpose is not to correct as stated in the original petition but to recount the votes which, in the opinion of the court, is in violation of the rules.

Confronted with this adverse ruling, the majority members of the municipal board of canvassers, on December 28, 1959, filed a verified separate petition for recount based on the same ground of discrepancy appearing on the election return for Precinct 2-A which was docketed as Election Case No. 369-G. When this petition came up for hearing, petitioners therein were surprised when they were informed by respondent judge in open court that their petition could not be entertained because they failed to include as respondents all the affected candidates, and so, yielding to the opinion of the court, they filed an amended petition as suggested. And not to be outdone, considering himself to be the one directly affected, Eustaquio R. Cawa filed another petition for recounting based on the same ground of discrepancy in the same election return not only insofar as its contents are concerned but also when it is compared with the election returns in possession of the provincial treasurer and the Commission on Elections (Election Case No. 372-G). And confronted with the three cases for recounting and the one for mandamus which involved similar issues and same parties, the court held a joint trial wherein both oral and documentary evidence was presented. Thereafter, the court rendered decision dismissing the three cases for recounting but granting the writ of mandamus, and to that effect it ordered the municipal board of canvassers to proceed with the canvassing of the election returns of Buenavista but taking into account the election returns of Precinct 2-A before its amendment by Caridad Lago under the circumstances pointed out in the decision, and awarding to petitioner damages and attorney's fees.

The issues posed by petitioners are: (1) When all the requisites prescribed in Sections 163 and 168 of the Revised Election Code are present, is it mandatory for the court to recount the votes?; (2) Is the remedy of mandamus available while the petition for recount is pending?; (3) Before the finality of the judgment in a case of mandamus, may a writ of execution be granted without a hearing?; and (4) Has respondent judge acted with grave abuse of discretion?

The pertinent provisions of the Revised Election Code covering the issues herein involved are Sections 163 and 168, which are quoted hereunder:

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

It would appear from the above that the canvass of the election for a municipal office shall be undertaken by the municipal board of canvassers on the basis of the statements or election returns submitted to it by the municipal treasurer, and that in case of contradictions or discrepancies between the copies of the same statements or returns, the court of first instance of the province, upon motion of the board or any candidate affected, may proceed to recount the votes cast in the precinct involved 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. As to what election returns are involved, this has already been clarified in the *Parlade* case.[1] They only refer to the return in possession of the municipal treasurer and to the authentic copies in possession of the provincial treasurer and the Commission on Elections. The discrepancies must appear "between copies of the same statements", and do not refer to those appearing in an election return and in the certificate of votes that may be given to the watchers by the inspectors. The law is also clear as to who may move for the recount. It says "upon motion of the board or of any candidate affected." No other party is authorized.

Having these authorities in mind, we may ask: Do the cases before us present facts which show that a recount of the votes is necessary in order that the true result of the election may be known? The answer must of necessity be in the affirmative, for here it clearly appears that the election return for Precinct 2-A in possession of the municipal treasurer of Buenavista which was submitted to the municipal board of canvassers appears not only to contain discrepancies on its face but is in conflict with the entries appearing in the election returns for the same precinct in possession of the provincial treasurer and of the Commission on Elections. But the record discloses more than what we have just noted. The series of steps taken by the very officials or parties authorized by law to ask not only for correction but even for recounting of votes were apparently sidetracked if not altogether disregarded by the trial court to the detriment of public interest.

Thus, it appears that because of the discrepancies appearing on the face of the election return in dispute, Eustaquio R. Cawa, the candidate affected, together with the chairman of the board of election inspectors and the poll clerk, filed a verified petition for authority to correct the number of votes cast for the different candidates and, in the alternative, for authority to recount the votes under Section 168 in relation to Section 163 of the Revised Election Code. This was not entertained on the ground that the chairman and the poll clerk cannot represent the board in asking for the required relief under the above provision of law. But it should be noted that the prayer is in the alternative form, one for correction and another for recount, and the motion was filed not only by the chairman and poll clerk but also by the very candidate affected. That being the case, the trial court was in error in ignoring the petition because under the law a candidate affected is authorized to file such petition even if he does it alone.

Then came the verified petition of the majority of the members of the municipal board of canvassers praying for the same relief on the same ground of discrepancy existing between the election return in dispute and those in the

possession of the provincial treasurer and the Commission on Elections. Again, no action was taken on this motion, because its consideration was only taken up when the petition for mandamus came up for hearing before the court. Finally, apparently impatient for the apparent inaction of the court, Eustaquio R. Cawa himself, the candidate affected, filed also a verified petition for recounting based on the same ground. And when these three cases for recount were tried jointly with the petition for mandamus, the trial court dismissed the cases for recount but granted the petition for mandamus on the ground that if discrepancies appear in the return they were the result of an unauthorized action on the part of the chairman of the board of inspectors, Miss Caridad Lago, who wrote some figures thereon without authority from the court. The trial court further justified its denial of the recount by making the following comment: "The Court cannot consult the ballots because it will have a different criterion of appreciating their validity from that of the election inspectors who in appreciating the ballots must necessarily be different from that criterion which the Court might adopt in appreciating the ballots of the contending candidates. No two human judgment coincide on varied controverted facts of varying nature and scope."

As to why in the election return in dispute Cawa received 62 votes in words and 102 votes in figures, while Pasta received 102 votes in words and 62 votes in figures, Miss Lago explained that she wanted to correct the number of votes appearing after the names of Pasta and Cawa in order to make them conform with the number of votes appearing after their names in the other copies of election return for the same precinct, but was able to go as far as correcting the figures only, and this was done with the approval of one inspector and the poll clerk who also intervened in the preparation of said returns. That Miss Lago was right in making the correction is borne by the fact that in the copies of the election returns in possession of the provincial treasurer and the Commission on Elections Cawa received 102 votes in words and figures while Pasta received 62 votes in words and in figures. There was, therefore, every reason not only for correction but for recounting and yet the move was denied by the trial court. Even granting that the correction made by Miss Lago was unauthorized, however, she wanted to rectify the same by asking the court for the necessary authority, but her request was denied on a mere technical ground. And even if erasures were found by the trial court on the face of the copies of the election returns in possession of the provincial treasurer and the Commission on Elections, they should not however deter the court from complying with the law with regard to the recount for, undoubtedly, if said erasures are true, they furnish additional reason why the recount should be made. Only in that way can the truth be determined and the true result of the election ascertained.

In expressing the opinion that it cannot consult the ballots for it will have a different criterion of appreciating them from that of the election inspectors because no two human judgment can coincide, the trial court undoubtedly is of the impression that it can exercise such discretion in acting on a motion for a recounting of votes. No such authority is contemplated by law. The law is explicit that the proceeding is summary in nature 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. The only purpose of the recount is merely to count the number of votes received by each candidate as they appear on the face of the ballots.

"* * * any conflict between the several statements and certificates issued by the same board of election inspectors as to the result of the election regarding municipal and provincial positions should be right away threshed out by the summary procedure of the judicial recounting of the voters, which will take a small fraction of the day. 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 electoral contest and, at the same time, * * * 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)

Moreover, the remedy of mandamus lies only where the party concerned "unlawfully neglects the performance of an action which the law specifically enjoins as a duty" or "unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled" and "there is no other plain, speedy and adequate remedy in the ordinary course of law" (Section 3, Rule 67, of the Rules of Court). Here there is no such neglect in the performance of a duty enjoined by law. On the contrary, the municipal board of canvassers, petitioners herein, wanted to perform their duty of canvassing the results of the elections but were prevented from doing so because of the discrepancy they found in the election return in question, and so that they may proceed with the canvassing, they took the only step offered to them for that purpose—to file a motion for recount as authorized by law. And, then, petitioners cannot find their way to comply with the injunction of the trial court that they proceed with the canvassing taking into account the election return as originally prepared or before its amendment by Miss Lago for then they will be confronted by the fact that the same is at odds with the election returns in the possession of the provincial treasurer and the Commission on Elections. Verily, the trial court committed an error in sustaining the petition for mandamus.

Wherefore, the decision of the trial court dated February 19, 1960, as well as its order of March 25, 1960 granting the motion for immediate execution, are hereby set aside. The trial court is hereby ordered to proceed with the recount of the votes as prayed for by petitioners in the several motions they filed to that effect. Costs against respondent Primitivo R. Pasta.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

[1] *Parlade vs. Quicho*, G. R. No. L-16259, December 29, 1959.

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