

ALFREDO BER PALARCA, PETITIONER, VS. HON. ABUNDIO ARRIETA, PEDRO G. PEREZ, ET AL., RESPONDENTS.*G. R. No. L-22224. October 24, 1966*

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

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Petition for a writ of certiorari to annul the order of the Court of First Instance of Misamis Oriental, in its Special Case No. 2280, dismissing the petitioner's petition for judicial recount of the election returns for the position of lieutenant-governor in the 1963 elections, coming from Precincts Nos. 9, 14, 18, 19 and 25 of Mambajao, Camiguin Subprovince. It is alleged that if the said order were annulled, the result of the election would change in favor of the petitioner.

Petitioner Alfredo Ber. Palarca and respondent Jose P. Neri were candidates of the Nacionalista Party-Pelaez Loyalist Coalition and of the Liberal Party, respectively, for lieutenant-governor of Camiguin Subprovince in the elections held on 12 November 1963.

During the canvass of the election returns by the provincial board of canvassers, the representative of the Nacionalista Party, discovering what he believed to be indubitable discrepancies in the copies of the returns, moved the board to petition for a judicial recount. The board refused, whereupon the petitioner filed before the respondent court a petition for judicial recount. The court, on 29 November 1963, enjoined, by a writ of preliminary injunction, the members of the provincial board of canvassers from proclaiming Jose P. Neri as the lieutenant-governor-elect, until otherwise directed by the court.

On 9 December 1963, the respondent court issued the order that is sought to be annulled, which, as aforesaid, dismissed the petition with respect to the afore-enumerated precincts but ordered a recount with respect to Precinct No. 16. The questioned order is predicated on the examination by the respondent court of the election returns involved, wherein it found the following:

"In Precinct No. 9, there is no contradiction or conflict whatsoever in the copies submitted to the Provincial Treasurer and the municipal treasurer as well as those found in the ballot box. Petitioner Alfredo Palarca is credited in all those copies with 'thirty-two' votes, in words and figures, and Neri with 'seventy-seven' votes also in words and figures. The only discrepancy noted is that found in the copy of the Nacionalista Party wherein candidate Jose P. Neri has been credited with 'seventy' votes in words and figures. The Court found, however, some erasures after the word 'seventy' and also after the figures '70' written in said copy.

"In Precinct No. 14, the Court also found no conflict or contradiction in all the four copies, namely, those of the Provincial Treasurer, the municipal treasurer, the ballot box and the Nacionalista Party. The only discrepancy, if at all, is that found in the superimposition of the figure '1' over the figure '6' in the 81 votes accredited to candidate Alfredo Palarca in the copies of the Provincial Treasurer and the municipal treasurer, which apparently shows that the Board of Inspectors corrected the original entry from '86' to '81' as they bear the Initials of the person who wrote the entries on said copies.

"In Precinct No. 16, the Court found the votes credited to candidate Alfredo Palarca written very clearly in words and figures as 'Fifty-Six' in the copy of the statement submitted to the municipal treasurer, whereas, in the copy sent to the Provincial Treasurer, that deposited in the ballot box and that given to the Nacionalista Party, the votes for said candidate written in words may be read either as 'Fifty-Six', 'Fixty-Six', 'Finty-Six' or 'Sixty-Six' depending upon the appreciation of the first capital letter and the third small letter in the hyphenated word.

"In Precinct No. 18, the Court found no conflict or contradiction in the copies of the municipal treasurer, the Provincial Treasurer and in the ballot box. The only discrepancy noted by the Court is in the copy of the Nacionalista Party wherein candidate Palarca was credited with '67' votes in words instead of '47' in words appearing in the three other copies above-mentioned. In the said copy, however, of the Nacionalista Party, the figures representing the votes of the same candidate Alfredo Palarca is clearly written as '47'.

"In Precinct No. 19, the Court found no contradiction in the copies of the Provincial Treasurer, the municipal treasurer and in the ballot box, as candidate Jose P. Neri was credited in all copies with 'One Hundred Twenty-Five' votes in words and figures and candidate Alfredo Palarca with 'Forty-Eight' votes in words and figures. In the Nacionalista Party's copy, however, candidate Jose P. Neri appear credited with 'One Hundred Twenty' in words and '125' in figures.

"In Precinct No. 25, the copy of the election statement submitted to the provincial treasurer, that deposited in the ballot box and that of the Nacionalista Party show no contradiction or conflict, and show candidate Alfredo Palarca to have been credited with 'Fifty-One' votes in words and figures and Jose Neri with 'Forty-Nine' votes also clearly written in words and figures."

From the foregoing findings, it is observed that the copies of the election returns for Precincts Nos. 9, 14, 18, 19 and 25 of the provincial treasurer, of the municipal treasurer and the one deposited in the ballot box (except for the initialed corrections pertaining to Precinct No. 14) all tallied with one another; and that the only copy that did not tally with the aforesaid three (3) copies, with respect to these precincts, was the copy of the Nacionalista Party.

The issue, therefore, is whether or not the copy or statement of the election returns sent to the Nacionalista Party is one of those contemplated by Section 163 of the Revised Election Code, which provides:

"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."

The lower court, in its order of 9 December 1963, resolved the issue in the negative.

On 13 December 1963, petitioner Palarca filed the present petition with this Court, praying for the nullification of the lower court's dismissal order and an ex-parte preliminary injunction to restrain the respondent court from lifting the preliminary injunction that it had previously issued against the proclamation of candidate Neri. This Court issued the writ, as prayed for, under bond in the amount of P2,000.00

It is urged by petitioner Palarca that the number of copies of election returns to be prepared by the Board of Election Inspectors prior to 1961 were only four in accordance with Section 150 of the election code; that the Commission on Elections, in its resolution of 6 June 1961 (2 February 1961, according to respondent Neri), increased the number of copies from four to six and, in its resolution of 18 June 1962 (Resolution No. 414 of 14

July 1963, according to respondent Neri), again increased the number of copies from six to seven; that the manner of preparation of the returns, however, remained unchanged, and, therefore, any of these additional three (3) copies should be understood as "another copy or other authentic copies of the statement x x x " for purposes of judicial recount under Section 163, these copies being either originals or duplicate originals.

The lower court correctly ruled that the copy of the Nacionalista Party is not one of those contemplated by Section 163, and rightly feared that a contrary ruling would set a widespread suspension of the proclamation of the results of an election as the copies of the statements given to the political parties are susceptible of tampering to suit their partisan objectives. The judgment of the court below is in conformity with this Court's doctrine in *Acuña vs. Golez*, L-25399, January 27, 1966, wherein it was held that:

"Upon mature consideration of the pros and cons of the aforementioned question, the Court is of the considered opinion that the same must be decided in the negative, for the simple reason that, in using the aforementioned phrase the framers of the Revised Election Code evidently had in mind the four (4) copies mentioned in Section 150 thereof and intended, one for the ballot box, another for the municipal treasurer, still another for the provincial treasurer and the last for the Commission on Elections. In other words, the lawmakers could not have referred to any other copies, for no such copies were prescribed in the Code.

Indeed, since *Provincial Board v. Barot*, 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 (*Parlade v. Quicho*, L-16259, December 29, 1959; *Samson v. Estenzo*, L-16268, January 30, 1960; *Laws in v. Escalona*, L-22540, July 31, 1964), 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."

For the foregoing reasons, the writ is denied and the petition dismissed, The writ of preliminary injunction issued by this Court on 16 December 1963 is hereby lifted. Costs against petitioner Alfredo Ber. Palarca.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

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