

GOV. PEDRO R. DIZON, PETITIONER, VS. HON. TITO V. TIZON, JUDGE OF THE COURT OF FIRST INSTANCE OF BATAAN; THE PROVINCIAL BOARD OF CANVASSERS OF BATAAN; GUILLERMO ARCENAS; AND MED...

G.R. No. L-28550 to L-28552. March 27, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

These three cases, docketed here under G.R. Nos. L-28550 to L-28552, inclusive, have their origin in Cases Nos. 80, 83 and 84, respectively, of the Court of First Instance of Bataan.

In the elections of November 14, 1967 three candidates ran for the office of Governor in said province: Pedro R. Dizon, petitioner herein; Guillermo Arcenas and Mrs. Medina Lacson de Leon, the last two now respondents.

Case No. 80 was a petition filed by Dizon on December 21, 1967 for a judicial recount of votes in precinct No. 5 of Balanga and precinct No. 10 of Hermosa; Case No. 83 was a similar petition filed by Dizon on December 27, 1967, with respect to the votes in precinct No. 9 of Abucay and precinct No. 31 of Balanga; and Case No. 84 was also a petition of the same nature with respect to precinct No. 1 of Abucay. After trial the court a quo dismissed Case No. 80 in its decision of January 12, 1968; Cases Nos. 83 and 84 met the same fate, but merely on a motion to dismiss filed by the two respondents and resolved in an order dated January 15, 1968. The petitions before us are for certiorari, mandamus and/or prohibition, with preliminary injunction. In essence the petitioner seeks a reversal of the actuations of the court below and an order for the judicial recount of the votes cast for the office of Governor in the precincts above referred to and the inclusion of the votes as thus recounted in the canvass to be made.

We gave due course to the petition and issued a restraining order to stop the respondents, particularly the provincial board of canvassers of Bataan, from resuming the canvass of the returns for the contested office and from making the corresponding proclamation of the winning candidate. As a result of the restraining order the petitioner here, as incumbent Governor, continues to hold the position.

In case No. 80, judicial recount is sought in view of certain alleged discrepancies in the various copies of the election returns in precincts No. 5 of Balanga and No. 10 of Hermosa. With respect to precinct No. 5 of Balanga, the discrepancy alleged in the petition and found by the trial court is that while in the copies of the return for the municipal treasurer and the provincial treasurer Arcenas appears to have obtained 68 votes, in the copy for the Commission on Elections he appears to have obtained 67 votes. The court also noted that the first two copies aforesaid contain erasures and superimpositions, which it said were made by the election inspectors to correct erroneous entries, but that the entries in the third copy, that is, in the one for the Commission on Elections, are clear and legible. It is this third copy that the supervisor of the Commission on Elections in Bataan instructed the board of canvassers to use once the injunction issued by the lower court was lifted.

Since the discrepancy between the different copies of the return consists of only one (1) vote and would not materially affect the result of the election for the office of Governor, the lower court held that a judicial recount was not in order. This conclusion is correct, as far as it goes, for under Section 163 of the Revised Election Code the difference must really be such as to affect the result of the election in order to justify a judicial recount.

However, the petitioner has asked for a recount not only in precinct No. 5 of Balanga but also in precinct No. 10 of Hermosa, and alleges in effect that a recount in these two precincts together could change the result of the election. In precinct No. 10 of Hermosa the petitioner points out the following discrepancy: in the copies of the return for the municipal treasurer, the provincial treasurer and the Commission on Elections, respondent Arcenas is credited with 132 votes, both in words and figures, although there are visible erasures in said entries, while in the "advance municipal treasurer's copy" he is credited with 122 votes, both in words and figures, also with erasures.

It is alleged in the petition that if the questioned entries for respondent Arcenas are read as 68 votes in precinct No. 5 of Balanga and 132 votes in precinct No. 10 of Hermosa, he would win by a plurality of 3 votes over petitioner Dizon, but if said entries are read as 67 and 122 votes, respectively, the petitioner would win by 8 votes. There is no dispute as to the materiality of the differences referred to. The issue is whether or not these differences, particularly in precinct No. 10 of Hermosa, are such as to justify a judicial recount under the law.

The findings of the trial court are as follows:

"Coming now to the returns for precinct 10 of Hermosa: A perusal of the copy of the return for the Municipal Treasurer (Exhibit R-1-Court); copy for the Provincial Treasurer, Exhibit W-1-Court; copy for the Commission on Elections, Exhibit Y-1-Court, shows the entries clearly written in words that respondent Guillermo Arcenas obtained "one hundred thirty-two" votes; Pedro R. Dixon obtained "twenty-six" votes; and Medina Lacson de Leon obtained "two" votes. In figures, the corresponding votes clearly and legibly read "132", "26" and "2", respectively, for the three candidates. In these three copies of the returns for Precinct 10 of Hermosa, the words "thirty-two" written after the words "one hundred" opposite the name of candidate Guillermo Arcenas appear to have been erased and corrected; nevertheless, the correction, which is in the same handwriting is clear and legible, so that the number of votes obtained by Guillermo Arcenas is clearly recorded as "one hundred thirty-two".

This observation of the Court was affirmed by Atty. Arturo Lopez, supervisor of the Commission on Elections, when he concluded "that all the erasures were done by members of the Board of Inspectors merely to rectify an error because the hand-writing in the three (3) copies are very similar." (See p. 4, Minutes of the Board of Canvassers, Annex B to Answer of respondent Arcenas). Atty. Lopez instructed the provincial board of canvassers to use the copy of the return for the Provincial Treasurer (Exhibit W-1-Court) as "the basis of the canvass because the three (3) copies are all authentic copies, they are all genuine." Id., p. 5)."

"From this circumstance, the Court finds and so concludes that the erasures complained of by petitioner in the entries on the number of votes obtained by the candidates for the office of governor in the returns for Precinct 10 of Hermosa are merely corrections to rectify an erroneous entry, which could be attributed to clerical error. The discrepancy was not attributed to tamper or obvious fraudulent practices. Consequently, the Court finds no contradictory statements in the returns for Precinct 10 of Hermosa to warrant a judicial re-count of the votes recorded therein."

The conclusion thus reached by the trial court is not without strong basis both in law and in fact. In law, because the advance municipal treasurer's copy of the return, which shows a different entry (122 votes) from that in the three other copies (132 votes) - the official copy for the municipal treasurer and the copies for the provincial treasurer and the Commission on Elections - is not one of the copies which can be the basis of a recount (*Acuña Golez*, 16 Sup. Ct. Rep. Anno. 32; *Palarca vs. Arleta*, G.R. No. L-22224, Oct. 24, 1966). And in fact, because the

three official copies not only tally with each other but also with the tally board, which was produced before the trial court. A photostat of this tally board is annexed to the answer of respondent Arcenas, and his allegation that the entries therein coincide with the figures appearing in those official copies of the returns, particularly insofar as the votes for Arcenas are concerned, has not been denied by the petitioner.

It is our opinion, therefore, that the trial court committed no error in denying a recount with respect to precinct 5 of Balanga and precinct 10 of Hermosa, and in dismissing Case No. 80 accordingly.

Going now to Cases Nos. 83 and 84, the lower court dismissed the petitions for recount upon motion by the respondents on two grounds: (1) lack of jurisdiction and (2) splitting of a single cause of action.

In connection with the first ground it appears that the election returns for Abucay and for Balanga were canvassed by the provincial board of canvassers on December 5 and 6, respectively. No question was then raised by the petitioner or by anyone acting for him in connection with any one of those returns. Section 163 of the Revised Election Code authorizes a judicial recount, upon motion of the board or of any candidate affected, "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," In other words the discrepancy must be brought to the attention of the board in the process of the canvass. This was done with respect to the returns subject of Case No. 80. In fact the board had to suspend the canvass in order to allow the petitioner to go to court, as he did; but with respect to the returns subject of Cases Nos. 83 and 84, the canvass had long been terminated when he filed his petitions therein on December 27, 1967 and January 8, 1968, respectively.

Concerning the second basis of the order of dismissal, we really see no justifiable reason why several distinct petitions should be filed. Nor has the petitioner given any. A judicial recount under Section 163 of the Revised Election Code, no matter how many precincts may be involved, constitutes only one cause of action: the ground is the same and so is the relief which the court may grant in all of them. The proceeding envisioned by the law is more or less summary in character and is designed to settle the causative controversy without unnecessary delay so that the winning candidate may be identified and duly proclaimed. This objective of the law would be nullified if a petitioner is permitted to seek his redress piecemeal, or in installments - asking for a recount now with respect to one precinct, next week with respect to another precinct, and so on successively as long as there is yet no proclamation. Public policy, which is behind the rule against splitting causes of action, forbids such a course.

We are of the opinion that the respondent court did not commit a grave abuse of discretion or so neglected a duty enjoined by law as to justify the issuance of the writs prayed for. The petition is therefore dismissed and the restrain order heretofore issued is lifted, with costs.

Reyes, Acting C.J., Dizon, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on official leave.

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