

REP. FELIPE J. ABRIGO, PETITIONER, VS. THE COMMISSION ON ELEC-TIONS, HON. FELIX T. CARO, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR, BRANCH VIII, THE PROVINCIAL ...

G.R. No. L-31374. January 21, 1970

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Upon the averment that the copies for the municipal treasurer of Oras, Eastern Samar, of the election returns - in so far as they affect the office of Congressman - from precincts 9, 9-A, 12, 15, 16, 17, 18-A, 21-A and 22 have been falsified to show that in those precincts petitioner Felipe J. Abrigo obtained only 49 votes and respondent Vicente O. Valley 885 votes, contrary to the genuine returns which show 417 votes for petitioner and 463 for respondent; that the ballot boxes corresponding to said pre-cincts have been tampered with; that the provincial board of canvassers had so far advanced in the counting of the votes that it would appear that petitioner was the winner in that election, petitioner went to this Court on December 22, 1969[1] on certiorari, prohibition and mandamus with prayer to stop respondent judge from further proceeding with the petition for recount of votes in the precincts mentioned lodged by respondent Vicente O. Valley in Election Case No. 42 of the Court of First Instance of Eastern Samar;[2] to nullify the preliminary injunction issued by respondent judge in said case directing the provincial board of canvassers to desist and refrain from proclaiming petitioner as Congressman elect; to annul the resolution of the Commission on Elections (Comelec) dated December 18, 1969 directing said canvassing board to refrain from proclaiming the winning candidate; and to direct petitioner's proclamation, further averment having been made that the terms of Congressmen would start on December 30, 1969. We issued a cease-and-desist order against respondent judge.

From the averments of the petition and the returns thereto and the statements made at the hearing on oral arguments on January 12, 1970 together with the documents presented, following are the facts:

Amongst the registered candidates for the congressional seat of the lone district of Eastern Samar during the 1969 elections are Felipe J. Abrigo, petitioner, and Vicente O. Valley, private respondent.

Forming the backdrop of the dispute are the events subsequent to November 11, 1969, the day of the election.

The canvass of the election returns by the provincial board of canvassers of Eastern Samar was started on November 26, 1969 in the Philippine Constabulary barracks at Camp Acedillo in Borongan, the provincial capital.

During the board's meeting on November 29 and December 1, 1969, respondent Valley called the attention of the board that for precincts 9 of the municipality of Hernani, and 5-A, 9, 9-A of Oras, their "record" showed a different result from that of the provincial treasurer's copy of the returns then being used by the board. This "record" turned out to be the certificate of votes by precinct purportedly issued by the board of inspectors to the respective watchers of the candidates. As this was not an election return, much less an authentic copy of the

election return required by Section 163 of the Revised Election Code, the board conditionally suspended the canvass of the questioned returns until December 3, 1969 so that Valley could produce the contradictory authentic copies of those returns or such other returns as might be similarly questioned.

On December 4, 1969, Comelec, at petitioner's behest, directed that the canvass be transferred to Manila.

On December 5, 1969, respondent Valley presented to Comelec a petition to authorize the board to use the municipal treasurer's copies of the questioned election returns and for this purpose to order the municipal treasurers of the municipalities involved to produced before the board their election return copies. The petition listed the following returns and the respective objections thereto: (a) Precinct 5-A, Oras - the name and votes of Valley were omitted in the copy for the provincial treasurer but the certificate of votes issued by the inspectors to Valley's watchers showed that he obtained 42 votes; (b) Pre-cinct 9, Oras - the provincial treasurer's copy showed that Abrigo got 26 votes and Valley 67 votes but the certificate of votes gave Abrigo 6 votes and Valley 87 votes; (c) Precinct 9-A, Oras - the provincial treasurer's copy credited Abrigo with 34 votes and Valley 51 votes but the certificate of votes listed 4 for Abrigo and 81 for Valley; and (d) Precinct 9, Hernani - in the provincial treasurer's copy Abrigo was credited with 47 votes but in the certificate Abrigo only had 27 votes.

On the same day, December 5, Valley was granted by Comelec, in a telegraphic order to the municipal treasurer of Oras quoted below, the authority to photograph the municipal treasurer's copy of the questioned election returns:

"Pursuant Commission resolution of Dec 5 1969 cma be advised that candidate Vicente O Valley is authorized to take photograph copies of all election returns of that mun cma copy for the mun treas cma which photograph shall take place in your office during regular hours and after providing notice to all heads of political parties and congressional candidates cma who may witness the taking of photographs pd in this connection cma you are authorized to open the special envelope containing the election return intended for the mun treas and break the seals of the envelopes and the return itself smcln and that the proceedings in connection herewith shall be recorded and attested to by your witnesses and representatives of congressional candidates pd in no case shall the election return copy for mun treas be taken out of your office for the above purposes and if situation tense cma you may request the provl commander or local police authorities to provide you with necessary security during the taking of photographs smcln you shall take all necessary precaution for the preservation said election return pd par wire rush compliance hereof attn Law Dept."[3]

The photographing was done in the morning of December 10 at the office of the municipal treasurer. Neither petitioner nor anyone in his behalf was present thereat, because the treasurer's notice which was sent on December 9 was received by petitioner only on December 11.

At the meeting of the canvassing board at the Comelec office in Manila on December 9, disagreement cropped up between representatives for petitioner and respondent Valley over the canvass of the questioned returns. On advice of Comelec supervisor, Atty. Adolfo Alagar, the meeting was adjourned to enable him to refer the question to Comelec. In the afternoon of the same day, Atty. Alagar presented before the board Comelec resolution instructing the board, thus:

- "1. If the provincial treasurer's copy of any particular return is clean on its face and does not show any sign of alteration or tampering, the same should be included in the canvass by the Board. Resort to other copies of said returns is not necessary;
2. Should any candidate question the inclusion of said returns on other grounds, such as that although said returns are clean, they have been prepared under duress or "gun point", the Board shall note said objections but nonetheless include said returns in the canvass. The adverse party may, however, at the end of the canvass, appeal to the Commission from the ruling of the Board including said returns in the canvass;

3. Individual appeals from each ruling of the Board will not be countenanced by the Commission. Therefore, all appeals or petitions for review by any of the parties on the ruling of the Board should be elevated only after the determination of the canvass and said appeals should be consolidated;
4. In case there are questions involving the inclusion or exclusion of any return, the Board shall desist from proclaiming the winner to give an opportunity to the parties to elevate their exceptions or appeals from the ruling of the Board to the Commission; and
5. The Board shall follow strictly Resolution No. RR-650 of the Commission dated September 4, 1969, except as herein modified."

The board then continued with the canvass on the same day, December 9, and on December 10, 11 and 12, 1969. On December 12, 1969, the canvass was concluded, except for precinct 5-A of Oras where the parties agreed to defer the tally because the name of Valley as well as the votes received by him were not recorded in the return. Representatives for Valley asked that they be given time to present the photographs of the copies for the municipal treasurer of all the returns questioned by them. The Comelec representative decided to adjourn the meeting in order to give Valley a chance to raise the issue on the questioned returns to Comelec. The tabulated result which does not include the 42 votes for Valley in precinct 5-A of Oras was as follows: Felipe J. Abrigo - 23,389 votes; Vicente O. Valley - 23,103 votes; Jose T. Ramirez - 8,319 votes; Remigio Sabulao - 50 votes; and Honor Moslares - 10 votes.

The corresponding statements of votes in each municipality were signed by all the members of the board,^[4] except that for the municipality of Oras the following three members did not sign: Vice-Governor Federico Mengote and board members Fernando Lugay and Galo Alvor, Jr. The apparent reason being that the returns for the provincial treasurer from precincts 9-A, 12, 15, 16, 17, 18-A, 21-A and 22 were disputed due to the alleged discrepancy with the corresponding returns for the municipal treasurer; and that as to precinct 5-A the name of Valley and the votes obtained by him were omitted.

The certificate of canvass and proclamation of petitioner was also prepared. Here, four members signed the certificate, namely: Governor Victor Amasa, board member Celestino Sabate, Highway District Engineer Benito Ramos and District Health Officer Faustino Reyes. The other four members did not sign, namely: Provincial Fiscal Vicente Ramirez, Vice-Governor Federico Mengote, board members Fernando Lugay and Galo Alvor, Jr.

The deadlocked board thus adjourned and set the next hearing for December 15, 1969.

Meanwhile, on December 13, respondent Valley went to the Court of First Instance of Eastern Samar on petition dated December 11 (Election Case 42 heretofore mentioned), for a recount of votes cast in the nine precincts (9, 9-A, 12, 15, 16, 17, 18-A, 21-A and 22) of Oras aforesaid.

On December 15, 1969, respondent Valley did two things: (1) He presented before the canvassing board photographs of the municipal treasurer's copies of the questioned returns from the precincts just enumerated; and (2) he obtained from the Court of First Instance of Eastern Samar, upon the basis of the photographs of the municipal treasurer's returns from said precincts, the disputed writ of preliminary injunction directing the board to refrain from proclaiming Abrigo as the Representative-elect of Eastern Samar. At the hearing on oral arguments before this Court on January 12, 1970, respondent judge manifested that it was after he issued the injunctive writ that he went on leave of absence for medical check-up.

On December 22, 1969, petitioner Felipe Abrigo, upon learning of the preliminary injunction just mentioned, filed before this Court the present petition for certiorari, prohibition and mandamus against the presiding judge of the Court of First Instance of Eastern Samar and Vicente O. Valley.

Subsequently, petitioner received the telegraphic order of Comelec dated December 18, 1969, viz:

"Be advised that Commission acting on writ of preliminary injunction issued in connection with Election Case No 42 (Valley vs Abrigo and provincial canvassers) resolved as follows: (1) that Commission proceed with scheduled hearing on Dec 23 1969 insofar as those returns not involved in judicial recount are concerned and (2) in the meantime provincial canvassers is hereby ordered not to make any proclamation until further orders from Commission." [5]

On January 2, 1970, in pursuance of the resolution of this Court of December 22, 1969, petitioner amended his petition to include as party respondents Comelec, the provincial board of canvassers of Eastern Samar, and the municipal treasurer of Oras, Eastern Samar.

Meanwhile, on December 23, 1969, Comelec heard respondent Valley's petition of November 5 heretofore adverted to, to use the municipal treasurer's copies in place of the questioned copies of the provincial treasurer, and made the following rulings: (1) as to precincts 1, 2, 3 and 4 of Arteche, Comelec overruled respondent Valley's objection that all the returns were prepared by a single person, after a finding by the NBI that the returns were not prepared by a single hand; (2) as to precinct 5-A of Oras, the board of inspectors of said precinct having wired Comelec that they inadvertently omitted to write 42 votes for Valley, Comelec deferred the disposition of the return therefor so that the board of inspectors could file a petition for correction; (3) as to precinct 9 of Hernani, respondent Valley verbally withdrew his objection; and (4) as to precinct 4 of Salcedo wherein the entry of votes for the congressional candidates appeared to have been crossed out by a single diagonal line, Comelec directed the taking of depositions of the members of the board of inspectors.

The case is now before us for decision.

It is conceded on both sides that the difference in the number of votes from the nine precincts, the subject of the recount petition, as appearing in the copies of the returns for the municipal treasurer, on the one hand, and that recorded in the originals of said returns for the Comelec and the carbon copies thereof for the provincial treasurer, on the other (which last two are both confirmed by the copies for the Nacionalista Party and the affidavit of the chairman of the Liberal Party), is decisive of the result of the election for Congressman.

The crucial issue is this: Can the Court of First Instance validly act upon a petition for recount under Section 163 of the Revised Election Code, absent an averment that the canvassing board or Comelec has found a discrepancy between two authentic copies of the election returns and upon mere presentation of photographs of copies of the election returns which photographs reflect apparent alterations and tampering of the originals?

1. The controlling statute, Section 163 of the Revised Election Code, in its pertinent portion reads:

"SEC. 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. x x x."

The codal provision just quoted significantly starts with the requirement of an initial finding by the board of canvassers of a discrepancy in the number of votes given to a candidate between authentic copies of election returns. This provision does not impart a meaning other than what the plain wording literally gives. The statutory authority to the Court of First Instance to recount is preconditioned upon, first, the averment that a discrepancy exists between two or more genuine returns; second, the alleged discrepancy being brought to the attention of the board of canvassers; third, the board of canvassers ruling that such a discrepancy in the authentic copies of the

returns exists; and fourth, "the difference [in the number of votes]" which "affects the result of the election." Speaking thru Mr. Justice Makalintal, we have ruled in *Dizon vs. Tizon*,^[6] that "the discrepancy must be brought to the attention of the board in the process of canvassing"; otherwise the Court of First Instance has no authority to order a recount of the votes.

And this requirement, we must say, follows the practical mechanics of a canvass. After the preparation of the election returns by the board of inspectors, the next step outlined by the law is the canvass thereof by the canvassing board. It is before this body that a candidate must present any question regarding the election returns. The Code, of course, recognizes the right of the inspectors, by a unanimous vote, to petition for correction of the returns under codal Section 154. The law envisions that while the board is doing its work in canvassing the election returns and tallying the results, its attention should be called to any question which could affect its work. The board should be given an opportunity, as Section 163 plainly directs, to decide whether - on the existence or non-existence of discrepancy - to defer the canvass or to continue with it. After all, it is upon this body that the duty to canvass is reposed. This function, it would seem to us, complements its authority to canvass only election returns which are in due form and to exclude those which are "obviously manufactured or palpably irregular."^[7]

It is true that on December 15, 1969, respondent Valley presented to the board of canvassers photographs of the copies of the returns from the disputed precincts for the municipal treasurer. But petitioner objected upon the ground that even the photographs on their face show that the copies of the returns for the municipal treasurer have been tampered with. These photographs are not the authentic copies of the returns. No effort was made by Valley to produce the municipal treasurer's copies of the returns themselves. The board was thus deprived of its authority to rule on the question of whether or not there was a mere case of discrepancy amongst authentic returns or one of tampering. In *Tagoranao vs. Commission on Elections*,^[8] this Court, thru Mr. Justice Castro, specifically ruled that "[w]hether the returns in question are spurious is a question that should have been laid before the board of canvassers, not before the Comelec." As timely it is to recall the guidelines we have formulated in *Ong vs. Commission on Elections*,^[9] thus -

"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; 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."

We have not overlooked the fact that at the board's meeting on November 29, 1969, respondent Valley sought to prove discrepant entries with a certificate of votes by precinct issued to the watchers of the registered candidates and another certificate of votes based on the advance copies for the municipal treasurer signed allegedly on November 18, 1969 by the assistant municipal treasurer.^[10] These are not returns. The board could have disregarded them and proceeded with the canvass. But the board still accommodated respondent Valley by granting him time to produce authentic copies. And yet he did not. It is appropriate to note here that another certificate of votes^[11] issued by the same assistant municipal treasurer at an earlier date, November 14, 1969, does not contain any discrepant entries. This last certificate precisely confirms the votes which petitioner all along has been claiming were the actual votes received by him and Valley in those nine precincts. Even the original

advance election results^[12] issued to the municipal treasurer reflect the same entries.

Without evidence upon which the board of canvassers could properly draw a conclusion as to the alleged discrepancies, and it appearing upon the copy of the returns for the provincial treasurer and the original thereof for the Comelec that the entries in these documents are clean on their face and do not show any sign of alteration or tampering, we rule that necessity there was none for a petition for recount under Section 163 of the Revised Election Code.

2. Argument has been advanced that the Court of First Instance of Eastern Samar may, in a petition for recount, resolve the question of whether or not there is discrepancy amongst authentic returns or outright falsification, even before this question is resolved either by the board of canvassers during canvass or thereafter by Comelec. Concurrence of jurisdiction is thus advocated.

The Revised Election Code is a special law. The mechanics of its enforcement are therein delineated. For so long as the law requires that the board of canvassers first resolve the question of whether such discrepancy exists, we cannot subscribe to the view that courts of first instance should be given equal jurisdiction to determine the question of falsification or mere discrepancy. Because, the court's jurisdiction in this respect only arises after a determination by the board of canvassers that discrepancy is between genuine - not falsified tampered or spurious - returns.

A view that has become stabilized is that judicial recount of votes under codal Sections 163 and 168 is but a special authority conferred on the court. In the language of this Court in *Lawsin vs. Escalona*,^[13] it [court's authority to recount] "must be restrictively construed, so as not to extend to other cases that may, more or less, bear some resemblance to the situation described in said sections." We cannot thus simply write off the prerequisite that before a court of justice may exercise jurisdiction under Sections 163 and 168, the alleged discrepancy must first be brought to the attention of the board of canvassers and an administrative ruling thereon had. Such is the scheme of the election law which has chosen to grant to the court of first instance but a delimited power.^[14]

3. Even conceding that such a concurrence of jurisdiction exists, the canvassing board and Comelec have already acquired priority of jurisdiction. Long accepted is the rule that in case of parity of jurisdiction between two bodies, one which first acquires jurisdiction in point of time has the power to continue and decide the dispute.^[15] We adhere to, rather than deviate from, so wholesome a rule. No two courts should simultaneously take cognizance of and hear one and the same case. A contrary rule would foment confusion; it would give a party opportunity to harass the other. No litigant should be required to shuttle from one court to another to defend his rights in a case.

Nor may the board of canvassers or Comelec, for that matter, abdicate its jurisdiction to hear and determine the question of discrepancy here presented. The duty to so hear and determine is by law imposed upon them. Besides, it is an exercise of futility to throw the burden upon a court which, after all, has no jurisdiction to entertain the case.

4. One more reason there is why respondent Valley may not go to court on judicial recount. It is because he has to rely on the copy for the municipal treasurer of each of the returns from precincts 9, 9-A, 12, 15, 16, 17, 18-A, 21-A and 22 of Oras.

We have examined these returns. We have compared them with those for the provincial treasurer and for the Comelec. We find that both the copies for the municipal treasurer and the provincial treasurer are but carbon impressions of those - the originals - for Comelec. It simply is unreal to palm off the copies for the municipal treasurer as genuine returns. We note with interest that the changes in votes therein were solely for the office of

Congressman. Such changes do not even bear the initials of any one member of the board of inspectors. Nothing there is to attest to the legitimacy of the material changes in the votes, which worked to the prejudice of petitioner. Evidence aliunde need not be resorted to; a handwriting expert with a trained mind need not be summoned. The falsification in the returns is so patent to the naked eye. Let us take the case of precinct No. 9. In the original for Comelec and the carbon copy for the provincial treasurer, petitioner Abrigo garnered 26 votes in words and figures, while respondent Valley obtained 67 votes, also in words and figures. In contrast, in the carbon copy for the municipal treasurer, it would appear that the words "twenty six" representing Abrigo's votes were erased and signs of erasure still exist; and the 2 before 6 in the figures 26 was likewise erased, so that only 6 remains; and Valley's original 67 votes were upped to 87. The word six of sixty seven was changed to eight and the figure 6 of 67 was retouched with pencil to read 8 to make out 87 votes. The pattern is the same with the returns from the other eight precincts.

Another interesting case study, is precinct 21-A. The original of this return for Comelec shows 56 votes for Abrigo and 54 for Valley. One other congressional candidate, Jose T. Ramirez, obtained 5 votes. The total number of votes cast for Congressman is 115 votes. In the municipal treasurer's copy, the words fifty six corresponding to the votes for Abrigo were erased and replaced with six. The figure 5 of 56 was erased, leaving 6. Ramirez, who obtained 5 votes, was credited with zero in the municipal treasurer's copy. Valley's 54 votes swelled to 112. The fact that the word one in one hundred and twelve was written to the left and way out of alignment speaks a lot about the brazenness with which the falsifications were committed. The doer did not even as much as attempt at pre-cision-tooling. Not escaping notice, too, is that in the falsified municipal treasurer's return, the total number of votes is not 115, as heretofore stated, but 118.

We may not thus regard the copies for the municipal treasurer of Oras as authentic returns. We have said, and repeatedly, that a falsified return or spurious return amounts to no return at all.[16]

Considering the foregoing and the fact that there was no prior ruling by the board of canvassers on the question of dis-crepancy between authentic copies of the returns[17] and that judicial recount is not thus the remedy,[18] respondent judge acted without jurisdiction in entertaining and proceeding to act on respondent Valley's petition for recount.

5. Another trespass upon orderly election process is brought to the attention of this Court by petitioner in his aver-ment that the ballot boxes corresponding to the nine precincts in Oras just mentioned have been tampered with allegedly for the purpose of altering the ballots therein. The inability to produce before this Court the ballot boxes for inspection com-pounds the weakness of respondent Valley's petition for recount.

Suggestion there is in the record, in the form of a report of a constabulary major and affidavits as well as the proceedings had on December 19, 1969 for the delivery of the ballot boxes to the court of first instance, that an inquiry be made into the alleged tampering of these ballot boxes. The present is not the time nor is this Court the forum for a full-dress investigation. After all, sufficient reasons there are already in the record on which to base our decision in the case herein.

6. We are here confronted with the determination of the appropriate remedy, one which should avoid the mischief of unjustifiedly delayed proclamation. The Congressman-elect for the lone district of Eastern Samar should have taken his oath of office on December 30, 1969. The opening of the sessions of Congress - January 26, 1970 - is fast approaching. Time then is of the essence.

The record of this case discloses that the returns from all the precincts in all towns of Eastern Samar, with the exception of precinct No. 5-A of Oras, have been canvassed. In that precinct, it will be remembered, both the name of and the 42 votes cast for respondent Valley were omitted. Comelec suggested that the members of the board of inspectors file a petition for correction of the return before the Court of First Instance as authorized by

Section 154 of the Revised Election Code. There is no necessity for this. Because, during the course of the oral arguments before this Court, petitioner conceded, for proclamation purposes, that Valley should be credited with 42 votes in that precinct.

Only one other question remains. It is whether the votes for petitioner and respondent Valley in precinct No. 4 of Salcedo, Eastern Samar, had been correctly tallied. It would appear that in that precinct, Abrigo obtained 66 votes and Valley 49 votes. Even as petitioner had expressed willingness, undoubtedly for expediency, to concede and have deducted the 17 votes' difference, it would seem proper that we look into the matter.

The problem arose because there is a diagonal line appearing in pencil running from above the line 1 of "Felipe Abrigo" down to the word "by" in printed words at the left bottom side of the election return which reads: "Excess spaces after writing the names of all candidates for REPRESENTATIVE shall be cancelled by a diagonal line." In a telegram by Election Registrar Garrado for Salcedo, Eastern Samar, to Comelec, he explained that said line was inadvertently placed in that space before the board of inspectors discovered their failure to enter the names of the candidates for Congressman and the votes obtained by them. The depositions of all the inspectors, the poll clerk and the substitute poll clerk, separately executed on December 26, 1969, required by and now on file with Comelec, all confirm the statement of the election registrar.

The net result then is that the total number of votes obtained by Felipe Abrigo remains to be and is 23,389 votes. Valley's votes, which originally were 23,103, should be increased by the 42 votes (precinct 5-A, Oras) to make a total of 23,145 votes, the total number of votes which should really have been credited to him.[19] For proclamation purposes, Abrigo still holds a majority of 244 votes.

We find it difficult to stand mute at the undisguised effort - once again resorted to - to frustrate proclamation by falsification. This vicious election tactic is a chisel-blow to the constitutional precept of "free, orderly, and honest elections." [20] The following passage from *Gardiner vs. Romulo* (1914), 26 Phil. 521, 560, is worth remembering: "They who in Rome watched and kept the sacred fire were vestal virgins. Equally pure should they be who watch and guard that which is far more to us than mystic altar fires."

FOR THE REASONS GIVEN, the petition for certiorari, prohibition and mandamus herein is hereby granted; and

(1) Respondent judge of the Court of First Instance of Eastern Samar is hereby declared without jurisdiction to entertain the petition for recount in Election Case No. 42 therein filed by respondent Valley;

(2) The injunctive writ dated December 15, 1969 issued by respondent judge in said Election Case No. 42 prohibiting proclamation of the winning candidate for Congressman for the lone district of Eastern Samar is hereby set aside;

(3) Respondent judge is hereby directed to dismiss Election Case No. 42 aforesaid;

(4) The directive of respondent Commission on Elections enjoining the provincial board of canvassers from proclaiming the winning candidate in the congressional elections for Eastern Samar is hereby set aside; and

(5) Respondent provincial board of canvassers of Eastern Samar is hereby directed forthwith and not later than Saturday noon, January 24, 1970, to convene and proclaim petitioner Felipe J. Abrigo as the duly elected Member of the House of Representatives for the lone Representative District of the province of Eastern Samar, said candidate having received after canvass 23,389 votes, the same being a plurality of the votes legally cast.[21]

In view of the impending opening of the sessions of Congress, this decision shall be immediately executory.[22]

Costs against private respondent Vicente O. Valley.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., did not take part.

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- [1] Amended per resolution of this Court on December 22, 1969.
- [2] Entitled "Vicente O. Valley, Petitioner, versus Felipe J. Abrigo and the Provincial Board of Canvassers of Eastern Samar, Respondents."
- [3] Annex D, Respondent Valley's Memorandum; emphasis supplied.
- [4] Provincial Fiscal Vicente N. Ramirez, Chairman; Governor Victor A. Amasa, Vice-Governor Federico O. Mengote, Board Member Fernando B. Lugay, Board Member Celestino B. Sabate, Board Member Galo B. Alvor, Jr., Highway District Engineer Benito P. Ramos and District Health Officer Faustino P. Reyes, Members.
- [5] Annex I, Amended Petition.
- [6] L-28550-2, March 27, 1968, 22 SCRA 1311, 1316; emphasis supplied.
- [7] *Pacis vs. Commission on Elections*, L-29026, September 28, 1968, 25 SCRA 377, 388, citing *Tagoranao vs. Commission on Elections*, L-28590 and *Cota Cornell vs. Commission on Elections*, L-28598, March 2, 1968, 1968A Phil. 806, 813; *Ong vs. Commission on Elections*, L-28415, January 29, 1968, 1968A Phil. 248, 254, citing *Nacionalista Party vs. Commission on Elections*, 85 Phil. 149, 157, 158, and *Lagumbay vs. Climaco*, L-25444, January 31, 1966.
- [8] L-28598, March 12, 1968, 22 SCRA 978, 983.
- [9] L-28415, January 29, 1968, 22 SCRA 241, 251-252.
- [10] Annex A of Respondent Valley's Answer.
- [11] Exhibit 1 of Petitioner Abrigo.
- [12] Submitted to this Court during the course of the oral arguments.
- [13] L-22540, July 31, 1964; 11 SCRA 643, 646, citing *Parlade vs. Quicho*, L-16259, December 29, 1959.
- [14] See: *Ong vs. Commission on Elections*, *supra*, at pp. 250-251.
- [15] See: *Reyes vs. Reyes*, L-28476, January 31, 1968, 22 SCRA 485, 490, citing *Acain vs. Board of Canvassers*, L-16445, May 23, 1960; *Ondona vs. Commission on Elections*, L-29199, March 28, 1969, 27 SCRA 554, 560.
- [16] *Espino vs. Zaldivar*, L-22325, December 11, 1967, 21 SCRA 1204, 1215; *Ong vs. Commission on Elections*, *supra*; *French vs. Commission on Elections*, L-28561, July 8, 1968, 24 SCRA 23, 28.
- [17] *Pacis vs. Commission on Elections*, *supra*, at p. 391.
- [18] *Balindong vs. Commission on Elections*, L-29610, March 28, 1969, 27 SCRA 567, 583.
- [19] See: Annex 1 of Comelec's Answer; Valley's Answer, para-graphs 10 and 11; Annex B of the Amended Petition, p. 2.
- [20] Section 2, Article X, Constitution.

[21] See: C.E. Form 75.

[22] See: Dispositive part of the decision in Estrada vs. Sto. Domingo, L-30570, July 29, 1969, 28 SCRA 890, 919.

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