

FILEMON SALCEDO, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, LEON S. MAMPUSTI AND LUCIANO A. JOSON, RESPONDENTS.*G.R. No. L-16835. July 26, 1960*

Ponente: BARRERA, J.

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This is the second time the matter of the proclamation of the elected mayor of the newly created municipality of Bansud, Oriental Mindoro has been brought up before this Court. In G. R. No. L-16360, this same petitioner, Filemon Salcedo, Jr. questioned the authority of the same respondent Commission on Elections, to annul the proclamation made in his favor by the Provincial Board of Oriental Mindoro acting allegedly pursuant to Section 167 (b) of the Revised Election Code which provides: "(b) For the first election in a new municipality, the provincial board shall act as board of canvassers to proclaim the result of the municipal election". In our decision promulgated January 29, 1960, we upheld, for the reasons therein stated, the action of the Commission on Elections setting aside the proclamation and ordering the already existing municipal council to meet as municipal board of canvassers and make a new canvass and proclaim the winning candidates.

After our decision in that case had become final and executory, respondent Commission instructed the Municipal Council of Bansud to proceed with the canvass, sending to supervise the same its representative (Atty. Osmundo L. Oppus) to said municipality. Pursuant to said instruction, the municipal board of canvassers met for the second time,^[1] and canvassed the votes cast for municipal offices. During the canvass, when the municipal treasurer's copy of the election return for Precinct No. 2 was read, respondent Mampusti's representative discovered that petitioner Salcedo's votes and his (Mampusti's) votes in said election return did not tally with the votes of the same candidates appearing in the certified true and correct photostatic copy of the election return for the Commission on Elections corresponding to the said precinct, for while the municipal treasurer's copy^[2] showed that petitioner obtained 95 votes and respondent Mampusti, 148 votes, in the photostatic copy of the election returns for the same precinct, in the hands of the Commission on Elections, it appears that petitioner obtained only 75 votes and the respondent Mampusti received 168 votes. And this discrepancy affects the result of the election because on the basis of the first return, Salcedo would get a total of 1248 votes as against Mampusti's 1216, while under the second copy, Salcedo's votes would only be 1228 and Mampusti's would be 1236.

In view of this discrepancy in the two returns, Atty. Oppus thereupon instructed the municipal board of canvassers to continue the canvass and proclaim only the winning candidates for vice-mayor and councilors, but to refrain from proclaiming the mayor-elect so that any interested party may seek the proper court remedy, pursuant to the provisions of Section 168 in relation to Section 163 of the Revised Election Code, as well as Letter k, paragraph 4, Title IV of the Instructions of respondent Commission in C.E. Case No. 334, promulgated on August 18, 1959. Despite said order, the municipal board of canvassers proclaimed petitioner as mayor-elect of Bansud. Atty. Oppus immediately sent to respondent Commission a telegram of this tenor:

"CANVASS AND PROCLAMATION IN BANSUD WERE FINISHED MARCH 24 1960 AND

DISCREPANCIES WERE DISCOVERED IN COPY ELECTION RETURN FOR MUNICIPAL RETURN FOR COMMISSION FOR PRECINCT 2 AFTER CANVASS OF SAID PRECINCT BUT BEFORE COMPLETION OF CANVASS FOR ALL PRECINCTS FOR WHICH REASON I ORDERED SUSPENSION PROCLAMATION WINNING CANDIDATE FOR MAYOR TO ENABLE AGGRIEVED PARTY FILE ACTION IN COURT FOR JUDICIAL RECOUNT AND INSPITE MY ORDER MUNICIPAL BOARD OF CANVASSERS PROCLAIMED WINNING CANDIDATE FOR MAYOR PD DEFEATED MAYORALTY CANDIDATE MIGHT PETITION COMMISSION TO ANNUL SAID PROCLAMATION."

Upon his arrival in Manila, Atty. Oppus submitted his report (Annex A) of the proceedings of the municipal board of canvassers of Bansud to respondent Commission.

On March 29, 1960, respondent Mampusti and Luciano A. Joson (incumbent Governor of Oriental Mindoro) filed with respondent Commission a petition praying, inter alia, for the annulment of the canvass and proclamation of petitioner on the ground that the municipal board of canvassers acted in violation of the election law, the rules and regulations promulgated by the Commission on Elections and the specific instructions of the Commission's representative. To this petition, the latter filed an opposition with motion to dismiss, on the ground that respondent Commission had no jurisdiction over the case.

On March 30, 1960, after due hearing, respondent Commission denied petitioner's motion to dismiss. Petitioner then moved to reconsider said denial, but respondent Commission denied the same and set the petition for hearing.

Against this order of the Commission on Elections, petitioner filed with this Court this present action for certiorari and prohibition, contesting the jurisdiction of respondent Commission to entertain the petition of respondents Mampusti and Joson.

In a number of cases, we have already held that the Commission on Elections has the authority to annul proclamations on certain grounds, such as an illegal canvass;^[3] proclamation based on incomplete returns;^[4] proclamation made despite a timely petition filed with the board of canvassers by all the members of the Board of Election Inspectors calling attention to an inadvertent and unintentional mistake in the election return and correcting the same, as well as a petition by the candidate affected, for suspension to give him opportunity to go to court, both of which petitions were denied by the board;^[5] and a proclamation made in an unauthorized meeting of the board of canvassers because held over the objections of the Commission's representative and against the express instructions of the Commission itself in the exercise of its supervisory powers.^[6]

Sections 163 and 168 of the Revised Election Code, respectively provide:

"Sec. 163. When statements of a precinct are contradictory.—In case it appears to the provincial canvassers that another copy or 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 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." (Emphasis supplied.)

"Sec. 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 one 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." (Id.)

Under the above-quoted provisions, whenever there are contradictory statements as therein provided, the board itself, or any candidate affected, may resort to the court. It is for the purpose of implementing these legal provisions and in order to prevent fraudulent proclamations that otherwise would give rise to protracted and costly election protests, that the Commission on Elections promulgated on August 18, 1959, its rules and instructions in Case No. C.E.-334, Letter k of which reads as follows:

"k. If it should clearly appear that another copy or other authentic copies of the statements of the election results 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 canvass for the precinct or precincts affected shall be suspended and reported immediately to the Commission on Elections, without prejudice to the immediate filing by the aggrieved party of a motion before the court of first instance for the recount of the votes cast in the precinct or precincts concerned, 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; provided, that the board shall continue the canvass of the remaining election returns until finished, and, provided, further, that in the meantime no proclamation of the winning candidates shall be made until further orders from the Commission on Elections or competent court, and any proclamation made in violation hereof shall be considered null and void ab initio." (Emphasis supplied.)

As stated in the Lacson case (vide, footnote 5)—

"In line with its duty to enforce and administer all laws relative to the conduct of elections and to insure free, orderly and honest elections, the Commission on Elections may take appropriate measures in order that the rights of the proper parties to avail of the benefits granted by the Constitution and the Revised Election Code, such, for instance, as Section 154 of the said Code, may not be defeated. Pursuant to such authority (see, also, *Sumulong vs. Commission on Elections*, 70 Phil., 703), paragraph k of the rules and regulations (were) issued by the Commission on Elections."

Similar to the right of the election inspectors to amend or correct their statements (election returns) in accordance with Section 154 expressly mentioned in the preceding quotation is the right of the candidates affected (proper parties) to go to the court in case of discrepancies, pursuant to Sections 163 and 168 above-quoted. Consequently, paragraph k of the rules and regulations issued by the Commission on Elections is equally applicable to the case at bar where two contradictory statements (election returns) were presented to the board of canvassers, for which reason and for the purpose of giving the parties opportunity to go to court, the board was specifically instructed not to proclaim the mayor-elect.

Now, if the Commission on Elections has the power to annul a proclamation, if one had been made, under the circumstances of this case, there is no cogent reason why it would have no jurisdiction to entertain a petition of the affected party for the purpose of determining whether there are grounds for suspending the making of such proclamation. It certainly would be incongruous to declare the Commission with authority to annul a proclamation under certain circumstances and conditions and without authority to entertain and investigate a petition to prevent such a proclamation under the same circumstances and conditions.

Wherefore, confirming the appealed order of the Commission on Elections, the present petition is dismissed and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioner. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

Gutierrez David, J., concurs in the result.

[1] Before the Provincial Board made the first proclamation, the municipal council had already met as municipal board of canvassers and canvassed the result of the elections, but before a proclamation could be made, the council was instructed to forward all election returns to the Provincial Board, which as stated, proceeded to act by itself as the board of canvassers.

[2] This copy must have been tampered with recently because in (the first canvass made by the Municipal Board of Canvassers on November 17, 1959, this same election returns showed that Salcedo obtained in this same precinct No. 2, only 75 votes and respondent Mampusti received 168 votes.

[3] Mintu vs. Enage, et al., G. R. No. L-1834, December 31, 1947; Ramos vs. Commission on Election, 80 Phil., 722.

[4] Abendante vs. Relatado, 94 Phil., 8.

[5] Lacson vs. Commission on Elections, G. R. No. Ir-16261, December 28, 1959.

[6] Santos vs. Commission on Elections, 106 Phil., 877; 60 Off. Gaz. (26) 3738.

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