

BINGING HO, PETITIONER-APPELLEE, VS. THE MUNICIPAL BOARD OF CANVASSERS OF BONGAO, SULU, AND BONSAN GO, RESPONDENTS, BONSAN GO, RESPONDENT-APPELLANT.*G.R. No. L-29051. July 28, 1969*

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

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Appeal from separate orders of the Court of First Instance of Sulu, decreeing the judicial recount of ballots cast in Precinct No. 13 of Bongao, Sulu, and directing the municipal board of canvassers to canvass the election returns from all the precincts in said municipality, including the judicial canvass return of Precinct No. 13 and, based upon the returns, to proclaim the winner to the position of municipal mayor.

The factual background of the case is that in the November elections of 1967 Binging Ho and Bonsan Go were candidates duly voted for the position of municipal mayor of Bongao, Sulu. In the course of the canvass of the election returns, the municipal board of canvassers found out that the return for Precinct No. 13 contained the following entries:

"FOR THE OFFICE OF MAYOR

"Names of Total Votes Obtained Total Votes Obtained

Candidates: (In Words) (In Figures)

BINGING HO ONE HUNDRED 100

BONSAN GO ONE HUNDRED SEVEN 127"

The municipal board of canvassers thereupon decided to hold in abeyance the canvass of the said return and proceeded with the canvass of returns from the other precincts. The returns from all the precincts, excluding that from Precinct No. 13, gave to candidate Binging Ho a total of 1,599 votes and to candidate Go 1,582 votes. In the meantime, the winners in, the other municipal positions were all proclaimed.

As the discrepancy in the election return from Precinct No. 13 involves 20 votes which, if counted in favor of candidate Go, would materially affect the result of the election, Binging Ho filed on November 21, 1967 in the Court of First Instance of Sulu a petition for recount of the ballots cast in Precinct No. 13. Alleging further that six of the ten (10)-man board of canvassers, without notice to the other members, convened on November 17, 1967 and proclaimed Bonsan Go as elected mayor, petitioner also prayed the court for the annulment of said proclamation. On December 8, 1967, while the court was receiving evidence on the motion to dismiss filed by respondent Bonsan Go, who claimed that his proclamation had rendered the petition moot, the Commission on Elections issued a resolution declaring the earlier proclamation of said respondent null and void. Consequently, the motion to dismiss was denied, and the court of first instance proceeded with the reception of evidence on the petition for judicial recount.

On March 26, 1968, after both parties were duly heard, the court granted the petition and ordered a recount of the ballots in Precinct No. 13. The judicial canvass was carried out; on the same day, the Board of Judicial Recount for Precinct No. 13 submitted in open court the result of the recount showing petitioner Binging Ho to have obtained 112 votes against 98 for respondent Bonsan Go. In view thereof, the court issued an order of even date, directing the municipal board of canvassers to convene on April 15, 1968 to canvass the votes in Precinct No. 13, using the judicial canvass return, and thereafter, to proclaim the winning candidate on the basis of the total votes received by the candidates in all precincts. From these court orders, respondent interposed the present appeal.

It cannot be disputed that, as to the number of votes received by candidate Go, there was discrepancy between the figures and words appearing in the election return for Precinct No. 13, which conflict or discrepancy would materially affect the result of the election. And, since there was no showing of alteration or falsification committed on the said statement or return, the case clearly calls for a judicial recount pursuant to Section 163, in relation to Section 168, of the Revised Election Code.[1]

In contesting the validity of the recount-order of the court below, respondent-appellant raises the issue of the constitutionality of the aforementioned Sections 163 and 168 of the Revised Election Code. He urges that, insofar as they confer upon the court of first instance the administrative function of judicial recount, the questioned provisions violate the constitutional mandates vesting judicial power upon the courts,[2] and on the Commission on Elections the authority to "decide, save those involving the right to vote all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials - - - ."[3] In other words, it is appellant's contention that, since the special power to recount votes conferred on the court of first instance by the Revised Election Code "does not in itself involve a decision in a judicial controversy"; that it is "separate and apart from the general exercise (by the court) of jurisdiction set forth in the Judiciary Act of 1948, as amended, and only a step in the election process leading to canvass and proclamation";[4] then, recount is a proceeding essentially administrative or, at most, quasi-judicial in nature, which the court has no authority to entertain. The power to recount votes, according to appellant, pertains to the Commission on Elections, the body empowered to determine all administrative questions relative to elections, except the right to vote (Section 2, Article X).

Appellant's argument overlooks the fact that the actual recount of the ballots by the court of first instance is but the necessary consequence of its resolution of a preliminary controversy, to wit, whether or not there are sufficient facts that would warrant the opening of the ballot boxes and the recount of the ballots, under section 163 of the Election Code. The ascertaining that such basic facts do exist according to the evidence submitted by the parties is essentially a judicial function, and it is only after the court decides that the recount is legally justified that the actual recount takes place. Hence, while the actual recount does not in itself involve a decision in a judicial controversy, as we ruled in *Sanidad vs. Saquing* (May, 1968), 23 S.C.R.A. 880, the preceding finding that a discrepancy exists or does not exist between authentic copies of the returns, as required by the election law, is an exercise of the judicial power to ascertain the facts, pass upon their sufficiency, and apply the law to the controversy.

That the resulting findings of the court are not subject to appeal does not contradict the exercise of judicial power, for it is elementary that appeal is not an inherent right but a purely statutory creation. It may be that the physical recount of the ballots could have been more properly entrusted to an administrative agency after the court decided that such recount is warranted; but as a mere adjunct inextricably linked to the latter, we think that it was within the legislative discretion to confer upon the trial court the authority to carry out the recount, for the sake of expediency, instead of burdening the parties with the task of resorting to another forum.

It must be borne in mind that recount is a special relief designed to meet a special need - to bring prompt

settlement to a controversy that can be attained without going through, and awaiting the result of, a laborious and long-drawn election contest, and restore public tranquility by dispelling doubt as to the true number (although not necessarily the validity) of votes cast for particular candidates in a given precinct.[5] And the advisability of this function as discharged by the court of first instance was already underscored in the case of *Ramos vs. Commission on Elections*, 80 Phil. 722. In that case, where this Court sustained the refusal by the Commission to take cognizance of a complaint against an action of the municipal board of canvassers on the ground of pendency of a protest in the court of first instance, we said:

"- - - Before the proclamation of election, any candidate may petition the Court of First Instance to recount the votes cast in any precinct in case of discrepancies between copies of statements of election (secs. 163 and 168, Revised Election Code). After the proclamation, any candidate may file an election protest within two weeks (sec. 174 Id.). These specific legal provisions logically compel any candidate, within short time limits, to seek in the Court of First Instance the corresponding relief against the regularity of a canvass of election, and to the same extent relieve the Commission on Elections from the duty of conducting similar investigations. To contend that the Commission on Elections has the ministerial function, and therefore may be compelled by mandamus, to look into and act on all election frauds, is indirectly to incapacitate it; for with its limited personnel and facilities, the Commission on Elections cannot be expected to take cognizance and promptly dispose of every complaint, similar to that made by the petitioner, possibly to originate from countless municipalities in the Philippines." (on page 724).

Appellant also seems to have overlooked one basic feature of our tripartite system of government: the existence of what Justice Holmes so appropriately termed penumbra of governmental powers, of authorities "shading gradually from one extreme to the other", and the absence of a mathematically precise distinctive line between the actions of the recognized branches of government.[6] Realistically, the practical demands of efficient government would prevent strict observance of the principle of separation of powers. Thus, it has been said that in determining the constitutionality of the exercise of power by a department, the question to be asked is not whether the power is essentially legislative, executive or judicial, but whether it has been specifically vested in it by the Constitution, or properly incidental to the performance of the functions of that department. And where the power is not peculiarly or distinctly legislative, executive or judicial, it is within the authority of the legislature to determine where its exercise would belong.[7]

It cannot be claimed with certainty that the resolution of the question of whether or not an alleged discrepancy in election returns justifies the recounting of votes cast in the given precinct falls within the competence of the Commission on Elections, under its authority to "decide save those involving the right to vote all administrative questions, affecting elections, including the determination of the number and location of polling places and the appointment of election inspectors and of other election officials". To us, the authority granted to the Commission on Elections by Section 2, Article X, of the Constitution appears to be limited to questions purely administrative in nature. This is evident not only from the explicit withdrawal therefrom of the authority to rule on the issue of right to vote but also from the enumeration of similar matters within the intended coverage of the provision, such as the determination of the number and location of polling places and the appointment of election inspectors, etc. The jurisdiction to order a recount not having been vested by the Constitution upon any entity or body, its conferment upon the court of first instance by the Election Code is within the power and prerogative of the legislature.

Appellant's fear that the above conclusion would encourage the parties to shuttle between the Commission and the court to secure their rights, thus resulting in multiplicity of suits, is not a valid argument against a lawful grant of authority upon the tribunal. The possibility of the parties' availing of different reliefs should not warrant the withdrawal from them of a remedy that may yet be more accessible, adequate and expeditious.

FOR THE FOREGOING CONSIDERATIONS, the orders appealed from are affirmed. The Municipal Board of Canvassers of Bongao, Sulu, is hereby ordered to convene, in 3 days from receipt of this decision, for the purpose of canvassing the returns from all the precincts in the municipality including the judicial return from Precinct No. 13, and immediately there-after, to proclaim the winning candidate for the position of Municipal Mayor on the basis of the total votes appearing in the returns. Costs against the respondent-appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Ong vs. Commission on Elections, L-28415, Jan. 29, 1968, 22 SCRA 241; also Espino vs. Zaldivar, L-22325, Dec. 11, 1967, 21 SCRA 1204; Diaz vs. Reyes, L-25502, Feb. 28, 1966, 16 SCRA 367; Chiongbian vs. Commission on Elections, L-19202, Dec. 11, 1961.

[2] Section 1, Article VIII, Philippine Constitution.

[3] Section 2, Article X, Philippine Constitution.

[4] Sanidad vs. Saquing, L-27951, May 28, 1968, 23 SCRA 878.

[5] Albano vs. Provincial Board of Canvassers, L-19593, May 10, 1962.

[6] Springer vs. Philippine Islands, 277 U. S. 189; 72 L. ed. 845, 852.

[7] See Vol. III, Willoughby on the Constitution of the U. S., pages 1619, 1620.

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