

AGRIPINO DEMAFILES, PETITIONER, VS. COMMISSION ON ELECTIONS, PROVINCIAL BOARD OF ANTIQUE, IN ITS CAPACITY AS BOARD OF CANVASSERS FOR THE NEW-LY CREATED MUNICIPALITY OF SEBASTE O...

G.R. No. L-28396. December 29, 1967

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The new municipality of Sebaste^[1] in Antique province held its first election of officers in the general elections of November 14, 1967, with the petitioner Agripino Demafiles and the respondent Benito B. Galido vying for the mayoralty.

On November 21 the respondent Galido asked the provincial board, acting as municipal board of canvassers pursuant to section 167(b) of the Revised Election Code, to disregard, as "obviously manufactured", the election return from precinct 7 on the ground that the said return shows that 195 voters were registered (of whom 188 voted), when, according to a certificate of the municipal election registrar only 182 had registered in that precinct as of October 30, 1967. At its session on the following day, November 22, the board, over the objection of one member, voted to reject the return from precinct 7 and then proceeded with the canvass of the returns from the other precincts. The resulting tally gave Galido 888 votes as against 844 for Demafiles. Accordingly, Galido was proclaimed mayor-elect of the municipality of Sebaste.

On November 24 Demafiles wired the Commission on Elections, protesting the board's action of rejection of the re-turn from precinct 7 and the subsequent proclamation of Galido, and challenging the right of two board members, Julito Moscoso and Quirico Escaño, to sit, considering that they were reelectionists. Acting on the protest, the COMELEC resolved on November 28, 1967:

"To annul the canvass and proclamation of the local officials of the new municipality of Sebaste, Antique, which was made by the Provincial Board of Antique;

"To constitute the Board of Canvassers by appointing the substitutes pursuant to the provisions of Sec. 167 (a) of the Revised Election Code, which shall canvass anew the results of the election for local offices of Sebaste, Antique, in accordance with the Instructions to Boards of Canvassers contained in the Resolution of the Commission No. RR-544, particularly No. 5-K thereof, and thereafter to proclaim the winning candidates for local offices of said municipality."

In turn, Galido asked for a reconsideration on the ground that the two members of the provincial board who were reelectionists were disqualified from sitting only when the board was acting as a provincial, but not as a municipal, board of canvassers and that the COMELEC resolution annulling the canvass and proclamation of officials was issued without giving him an opportunity to be heard. In its resolution of December 4, 1967 the respondent Commission reconsidered its previous order and held "that the canvass and proclamation already made of the local officials . . . stands".

Failing to secure a reconsideration of this latter resolution, Demafiles filed the present petition for man-damus and certiorari to set aside the aforesaid resolution of the COMELEC, to annul the proclamation of Galido, and to secure an order directing the COMELEC to appoint sub-stitute members of the provincial board and to order a new canvass of the returns, including that from precinct 7.

The three principal issues tendered for resolution in this case are: (1) whether the respondent board of canvassers was within the periphery of its power in rejecting the return from precinct 7 on the strength of an election registrar's certificate that a less number of votes than that shown in the return had registered; (2) whether the provincial board members, who were candidates for reelection, were disqualified from sitting in the board in its capacity as a municipal board of canvassers; and (3) whether the Commission on Elections can order the board of canvassers to count a return from a given precinct.

These issues, together with the arguments of the parties, will be discussed seriatim, but we must first proceed to dispose of the preliminary question raised by the respondent Galido, namely, that this case is moot because he had taken his oath and assumed office on November 22, pursuant to Republic Act 4870.

Obviously, the frame of reference is section 2 of the statute which reads:

"The first mayor, vice-mayor and councilors of the Municipality of Sebaste shall be elected in the next general elections for local officials and shall have qualified [sic]."

In our view the last portion of the provision -- "and shall have qualified" -- is devoid of any meaning, is unmitigated jargon in or out of context, and does not warrant the respondent's reading that the term of office of the first municipal officials of Sebaste begins immediately after their proclamation. It is quite probable that that is what the legislature meant. But here is a clear case of a failure to express a meaning, and a becoming sense of judicial modesty forbids the courts from assuming and, consequently, from supplying. "If there is no meaning in it," said the King in Alice in Wonderland, "that saves a world of trouble you know, as we needn't try to find any." Frankfurter, who himself was fond of quoting this passage, admonishes that "a judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statemanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration."^[2] Accordingly, we have to go by the general rule that the term of office of municipal officials shall begin on the first day of January following their election,^[3] and so the assumption of office by the respondent Galido in no way affected the basic issues in this case, which we now reach and resolve.

First, a canvassing board performs a purely ministerial function - that of compiling and adding the results as they appear in the returns transmitted to it. This is the teaching in *Nacionalista Party v. Commission on Elections*:^[4] "the canvassers are to be satisfied of the genuineness of the returns - namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied, . . . they may not reject any returns because of informalities in them or because of illegal and fraudulent practices in the elections."^[5] Thus, they cannot pass upon the validity of an election return, much less exclude it from the canvass on the ground that the votes cast in the precinct from whence it came are illegal.^[6]

But the exclusion of the return in this case is sought to be justified on the ground that it is "obviously manufactured" because, contrary to the statement therein that there were 195 registered voters, of whom 188 voted, the certificate of the local election registrar states that only 182 voters had registered on October 30, 1967. *Lagumbay v. Commission on Elections*^[7] is cited in support of this view. In *Lagumbay* the returns were palpably false as it was indeed statistically improbable that "all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number, whereas all the eight candidates of the other party got precisely nothing." In other words, the aid of evidence aliunde was not needed, as "the fraud [being] so palpable

from the return itself (*res ipsa loquitur* - the thing speaks for itself), there is no reason to accept it and give it *prima facie* value."

On the other hand, the return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certificate of the election registrar that a discrepancy appears as to the number of registered voters. The return therefore is by no means "obviously manufactured" so as to justify its exclusion.

This is not to belittle the respondent's claim that more people than registered voters were allowed to vote in precinct 7. Perhaps that is true, although the petitioner claims that after October 30, 1967 eight more voters were allowed to register (making a total of 190 voters), and on the day of the election 5 voters erroneously assigned to precinct 6 were allowed to vote in precinct 7 because that was where they were really assigned. The point is simply that this question should be threshed out in an election contest. Lagumbay itself explicitly says -?

"Of course we agree that fraud in the holding of the election should be handled - and finally settled - by the corresponding courts or electoral tribunals. That is the general rule, where testimonial or documentary evidence is necessary . . . "

Consequently, the canvass made and proclamation had should be annulled.[8]

Second, the canvass and proclamation should be annulled because two of the four members of the board of canvassers were disqualified from sitting in it, they being candidates for reelection. As this Court held in *Salcedo v. Commission on Elections*:[9]

"An added reason for the nullification of the actuation of the Provincial Board of Oriental Mindoro is the fact that its members were disqualified to act it appearing that they were all candidates for reelection. This is clear from Section 28 of the Revised Election Code which provides that any member of the provincial board who is a candidate for an elective office shall be incompetent to act in said board in the performance of its duties in connection with the election."

Branding the above statement as *obiter dictum*, the respondent Galido argues that re-electionist members of the provincial board are disqualified under section 28 only when the board acts as a provincial board of canvassers, to prevent them from canvassing their own votes, and not when they sit as a municipal board of canvassers.

With respect to the canvass and proclamation made by the provincial board of Oriental Mindoro, three issues were raised in *Salcedo*, in resolving which this Court held (1) that a provincial board cannot act as a municipal board of canvassers where a municipal council has been formed; (2) that provincial board members who are candidates for reelection are disqualified to sit in the board; and (3) that a board of canvassers which excludes from canvass the return from a precinct acts "in contravention of law."

At any rate the language of section 28 is all-inclusive. Thus:

"Any member of a provincial board or of a municipal council who is a candidate for office in any election, shall be incompetent to act on said body in the performance of the duties thereof relative to said election . . . "

The statute draws no distinction between the provincial board acting as a provincial board of canvassers and the same board acting as a municipal canvassing body for new municipalities, and so we make none, in line with the maxim *ubi lex non distinguit, nec nos distinguere debemus*.

Third, it is now settled doctrine that the COMELEC has the power to annul an illegal canvass and an illegal proclamation as when they are based on incomplete returns, and order a new canvass to be made by counting the returns wrongfully excluded.[10] If it has power to direct that certain copies of election returns be used in

preference to other copies of the same returns,[11] there is no reason why it cannot direct canvassing bodies to count all returns which are otherwise regular. Indeed, it is its duty to do so, failing which it may be compelled by mandamus. As earlier pointed out, it is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities.

ACCORDINGLY, the resolutions dated December 4 and 8, 1967 of the Commission on Elections are set aside, and the canvass of returns made and the subsequent proclamation of the respondent Benito B. Galido are annulled. The respondent Commission on Elections is hereby directed (1) to appoint new members of the board of canvassers in substitution of Julito Moscoso and Quirico Escaño, and (2) immediately thereafter to order the board of canvassers as reconstituted to convene, canvass all votes including those appearing in the return from precinct 7, and, in accordance with the results of such canvass, proclaim the winning candidates. Costs against the private respondent Galido.

Concepcion, CJ., Reyes, JBL, Makalintal, Bengzon, Sanchez, and Angeles JJ., concur.
Dizon, Zaldivar, and Fernando. JJ., took no part.

[1] Created by virtue of Republic Act 4870.

[2] Frankfurter, Some Reflections on the Reading of Statutes, 47 Columbia Law Review 527, 533 (1947).

[3] Revised Election Code, Sec. 7

[4] 85 Phil. 149, 157-158 (1949).

[5] Id. at 157-158.

[6] *Abendante vs. Relato*, 94 Phil. 8 (1953).

[7] L-25444, Jan. 31, 1966

[8] *Salcedo vs. Commission on Elections*, L-16360, Jan. 30, 1960.

[9] Id..

[10] *Abendante vs. Relato*, supra, note 6; *Olaño vs. Ronquillo*, L-17912, May 31, 1963; *Lacson vs. Commission on Elections*, L-16261, Dec. 28, 1961.

[11] *Espino vs. Zaldivar*, L-22325, Dec. 11, 1967.

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