

**SALVADOR Q. PEDIDO AND THE FIRST MUNICIPAL BOARD OF
CAN-VASSERS FOR PIODURAN, ALBAY, PETITIONERS, VS.
COMMISSION ON ELECTIONS, ATTY. GERTRUDO KALAMBAKAL,
ATTY. BARBARA PORTUGAL,...**

G.R. No. L-28539. March 30, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Certiorari to annul the proclamation of respondent Protesto Pavia as Mayor-elect of the Municipality of Pioduran, Albay.

The present petition stems from facts following:

Candidates for Mayor of the Municipality of Pioduran in the November 14, 1967 elections were reelectionist petitioner Salvador Q. Pedido and respondent Protesto Pavia.

On December 13, 1967, the municipal board of canvassers, composed of Vice Mayor Domingo P. Cadag, chairman; and Salazar Floranza, Edmundo Sequitin, Luis Bagamasbad, Ildefonso Nunez, Bernardino Cortez, Mario Tarog and Justinian Perez, members (hereinafter to be referred to as the first board), convened to canvass the election returns for said municipality. After that board had canvasses 27 precincts, and "upon opening the 28th Election Return," the board found that "the said Election Return for Precinct No. 28 was colored white with serial number 439026, instead of the usual pink color with serial number 439011." Objection to said return was thereupon raised by board member Salazar Floranza. Respondent Barbara Portugal, local Comelec Registrar, intervened and asked the board to proceed with the counting of the questionable election return. The board finally sustained Salazar, resolved to send back to the board of inspectors of Precinct 28 the said election return "to explain the discrepancy." All the members left except member Ildefonso Nuñez.

On December 14, 1967, Portugal directed the first board to convene anew and continue with the canvass. The board refused. Whereupon, Portugal named a new board of canvassers (the second board) composed of Mauricio Casimiro, chairman; and Eugenio Nieva, Gabriel Acabado, Tito Pajes, Salvador Espinas and Lourdes Gnilo, members. This new board used the same tally sheet by verifying it with the election returns presented by the municipal treasurer. The second board completed its work.

On the same day - December 14 - the second board, together with Ildefonso Nuñez of the first board, signed both the tally sheet and the certificate of canvass and proclamation. Said certificate and the tally sheet show that respondent Protesto Pavia garnered 2,143 votes as against petitioner Salvador Q. Pedido who obtained 2,086 votes. The second board, with Nuñez, proclaimed Protesto Pavia Mayor-elect.

On December 19, 1967, respondent Commission on Elections (Comelec) - concerned with the delay in proclamation - resolved to direct that an attorney of its Law Department proceed immediately to Pioduran, Albay, and bring with him Comelec's copy of the election return from Precinct 28 for the use of the canvassing board of

said municipality. The resolution explicitly directed said attorney "to supervise the canvass and proclamation with the authority to suspend recalcitrant members of the municipal board of canvassers and appoint their substitutes." Named as such supervising attorney was respondent Gertrudo Kalambakal.

Meanwhile, on December 22, 1967, the first board, whose members were suspended by Election Registrar Portugal, convened again. The first board then claimed that the board of inspectors of Precinct 28 failed to explain the discrepancy in color and serial number of the election return from said precinct. This first board did not notify the municipal treasurer who was in possession of the election returns and the proclamation paper and tally sheets used during the canvass of December 13, 1967. Neither was the election registrar notified. The board's session was held in the house of petitioner and reelectionist Mayor Salvador Q. Pedido, without Comelec supervision, without the election returns or any of the documents or any official forms being produced thereat by the municipal treasurer. The minutes of said board for that day (December 22) show that the canvassers just "agreed to take into consideration whatever figure or information contained in the questioned Election Return of Precinct No. 28," and "then con-tinued to get the sum total of each candidate as per their noted record during the first meeting." [1] The aforesaid first board prepared an improvised tally sheet and proclamation paper without seeing the election returns. The proclamation of petitioner Salvador Q. Pedido made by the first board on this date, December 22, is found in the last paragraph of the minutes of the board. This proclamation was merely based on the improvised tally which shows the following votes for Mayor: Petitioner Salvador Q. Pedido, 2,131 votes; respondent Protesto Pavia, 2,098 votes.

On December 27, 1967, Gertrudo Kalambakal, Comelec's Super-visor, conferred with the municipal treasurer, the election registrar, and the municipal secretary of Pioduran. On that day, Supervisor Kalambakal issued an order - subject to Comelec confirmation -(a) setting aside the proclamation of December 14, 1967 made by the second board, because the same was without prior knowledge or con-firmation by the Commission, and also because of the resolution of December 19, 1967 requiring the canvassing board to use in its canvass Comelec's copy of the election return for Precinct 28; (b) declaring "null and void" the proclamation made by the first board on December 22, 1967, for the reasons that there was lack of proper notice to the election registrar of Pioduran (in violation of Comelec's standing instructions to all canvassing boards) and also to the municipal treasurer who had all the election documents and paraphernalia to be used as basis for preparing the tally sheet and certificate of canvass and proclamation; and that the meeting of the first board was held in the Mayor's house.

That same day, Kalambakal directed the first board, which con-vened on December 13 and December 22, to convene anew at 10:00 a. m. the next day, December 28, 1967, at the session hall. At 10:00 a.m. of that day, the canvassers absented themselves; only their chairman, Domingo P. Cadag, was present. The meeting of the board was post-poned to 1:00 o'clock in the afternoon. At 2:00 p.m., again solely chairman Cadag appeared. Cadag vigorously objected to reconvening the board, insisted that the canvass and proclamation of December 22, 1967 made by the first board be respected.

Faced by the recalcitrance of the members of the first board to appear and the adamant attitude of the chairman, Kalambakal suspended all the members of the said first board. Be substituted them by another board of canvassers (the third board) who are qualified voters, as recommended by the municipal treasurer, viz: Barbara Portugal, chairman; and Avelino Libag, Mrs. Loreto C. Portugal, Mrs. Fe A. Medrano, Osmundo Oyales, Abundio D. Luna, and Regalado Arranza, members.

On the same day, this third board canvassed the returns from all the precincts. However, they used Comelec's copy of the election return from Precinct 28, pursuant to Comelec's directive of December 19, 1967. The third board's certificate of canvass and proclamation of December 28, 1967 and the tally sheet show that respondent Protesto Pavia with 2,143 votes won over petitioner Salvador Q. Pedido who obtained 2,086 votes.

Given the discrepancy between the votes appearing in the first board's improvised tally of December 22, 1967 (Pedido: 2,131 votes; Pavia: 2,098 votes) and the third board's certificate of canvass and proclamation of December 28, 1967 (Pavia: 2,143 votes; Pedido: 2,086 votes, it will be of interest to examine the reason therefor.

There are three tally sheets: the tally sheet used in the December 13 canvass by the first board and also in the December 14 canvass by the second board; the improvised tally sheet of the first board on December 22; and the tally sheet prepared by the third board in the December 28 canvass.

The following tabulation, appearing on page 11 of Comelec's answer to the petition herein, explains how petitioner Salvador Q. Pedido was made to win in the December 22 proclamation:[2]

"IMPROVISED TALLY SHEET TALLY SHEETS

(Made in the December 22 (Used by the first board on
meeting of the first board, December 13 and by the second

Annex 9) board on December 14 - Annex 2;

and Annex 11, the tally sheet used

by the third board)

Pct. 7 : Pct. 8 : Total Pct. 7 : Pct. 8 : Total

(31 pcts.) (31 pcts.)

PAVIA, P. : 193 : 85 : 2,098 217 : 106 : 2,143

PEDIDO, S. : 145 : 94 : 2,131 121 : 73 : 2,086

DIFFERENCE:

PAVIA - 217 votes, per Annexes '2' and '11'

193 votes, per Annex '9'

24 votes deducted in Pct. 7

- 106 votes, per Annexes '2' and '11'

85 votes, per Annex '9'

21 votes deducted in Pct. 8

- 2,143 votes, per Annexes '2' and '11'

2 098 votes, per Annex '9'

45 votes - total deduction for Pavia

PEDIDO - 121 votes, per Annexes '2' and '11'

145 votes, per Annex '9'

24 votes added in Pct 7

- 73 votes, per Annexes '2' and '11'

94 votes, per Annex '9'

21 votes added in Pct 8

- 2,086 votes, per Annexes '2' and '11'

2,131 votes, per Annex '9'

45 votes total increase for Pedido"

That the figures appearing in the tally sheets, Annexes 2 and 11 of Comelec's answer, in respect of Precincts 7 and 8 are correct, is confirmed by the fact that a photostat of Comelec's copy of the election returns for said Precincts 7 and 8 show the following: Precinct 7: "Pavia, Protesto, Two Hundred Seventeen - - 217 votes"; "Pedido, Salvador, One Hundred Twenty-One - - 121 votes"; and Precinct No. 8: "Pavia, Protesto, one hundred six - - 106"; "Pedido, Salvador, seventy-three - - 73." [3]

On December 30, 1967, Comelec's Supervisor, Gertrudo Kalam-bakal, returned to Manila, submitted to Comelec the certificate of canvass and proclamation and tally sheet prepared by the third board on December 28, 1967, and made his report. Incidentally, the tally sheet and certificate of canvass and proclamation made by the first board on December 22, 1967 was received by Comelec on January 4, 1968.

On December 30, 1967, petitioner Salvador Q. Pedido took his oath of office. It is reported, too, that on January 1, 1968, respondent Protesto Pavia also took his oath.

On January 5, 1968, Comelec resolved that the certificate of canvass and proclamation dated December 28, 1967 "be adopted as the valid certificate and that all acts taken by Atty. Gertrudo Kalambakal in connection with said canvass and proclamation are hereby confirmed. "

Challenged here as null and void is the proclamation of respondent Protesto Pavia. The stress of petitioners' argument is that since petitioner Salvador Q. Pedido was already proclaimed by the first board on December 22, 1967, Comelec has "lost jurisdiction over his person and any question regarding his election." They submit that respondent Protesto Pavia's remedy is "an election protest before our courts," and that Comelec's resolution of January 5, 1968 "long after Pedido was proclaimed and had taken his oath," was issued "beyond its jurisdiction."

1. We are called upon to resolve the decisive question: Is the December 22, 1967 proclamation made by the first board valid? For two reasons, the answer must be in the negative.

First. The duty of the municipal board of canvassers to count the votes cast for candidates for municipal offices as shown in all the election returns produced by the municipal treasurer, cannot be avoided.[4] Repeatedly has this Court ruled that the board of can-vassers is to be guided by election returns transmitted to it "which are in due form." Indeed, the board must be "satisfied of the genuineness of the returns." [5] A canvass made on incomplete returns may be annulled.[6]

And yet, at the session of the first board of December 22, the members thereof made an improvised tally and proclaimed Pedido winner - without examining the election returns, or a single election return, for that matter. They did not have and could not have the returns before them. Because, those documents were in the pos-session of the municipal treasurer. And, the municipal treasurer was not notified of that canvass. They did not even have the tally sheets used in their December 13 session. All that the board did was "to get the sum total of each candidate as per their noted record during the first meeting," plus "whatever figure or information obtained in the questioned Election Return of Precinct No. 28." [7] Indeed, the proclamation of Pedido as Mayor-elect was based - quoting from the minutes of the first board's meeting of December 22 - "on the correct sum total as shown by the records of the Board of Canvassers" - not on the election returns.

The net result is that no canvass at all was made on December 22. Without canvass, there can be no proclamation

by the first board.

We cannot afford to depart from the wise rule that canvass can only be made from the election returns. Without the returns, what is there to canvass? The mischief that stems from a contrary rule need not be elaborately essayed. Suffice it to say that the flood gates to fraud will be wide open. Indeed, temporizing with the first board's so-called "noted record [of votes made by them] during the first meeting," to arrive at the number of votes cast for the candidates, must be vigorously condemned. A high regard for the people's will expressed at the polls is the hallmark of our election law.

On this score alone, that proclamation - without canvass - of December 22, 1967 must be nullified.

Second. The alleged tally used in the first board's meeting of December 22 is admittedly in an improvised form. Of course, that tally was not based on any election return produced before the board. But more important is that there is an obvious fabrication of figures for the two candidates for Mayor. It will be recalled that the minutes of the meeting of the same first board of December 13, 1967 shows that by 3:00 o'clock in the afternoon of that day, they have already canvassed 27 precincts, which includes Precincts 7 and 8, and had to stop only when they reached "the 28th Precinct Return."

An examination of the so-called tally sheet prepared by the first board on that day (December 22) covering Precincts 7 and 8 reveals figure-manipulation in those precincts. For, as shown in the tally of December 13 made by the same first board, in Precinct No. 7, Pedido received 121 votes, and in Precinct No. 8, 73 votes. In the improvised tally sheet, as aforesaid, Pedido's votes were upped to 145 votes in Precinct 7, and to 94 votes in Precinct 8. There is an excess of 45 votes to favor Pedido. In turn, in the tally sheet of December 13, Pavia got 217 votes in Precinct 7, and 106 votes in Precinct 8. In the improvised tally sheet of December 22, Pavia's votes shrank to 193 votes in Precinct 7, and to 85 votes in Precinct 8. Pavia thus was made to lose 45 votes.

The members of that first board knew all along the votes tallied for each of the two contending mayoralty candidates. Except for these two precincts, 7 and 8, the votes of the two in all the three tallies remained as they were; and except for the office of Mayor, there was no change in the winning column for all the other candidates for municipal offices. There was a deliberate attempt by the first board to frustrate the people's will. To do so, the first board had to conjure up the scheme of juggling figures that would make Pedido the Mayor-elect. They were too eager to proclaim him. They probably thought then, as they urge upon us now, that once Pedido is proclaimed, the other candidate will be left without recourse except to file an election protest. As we have pointedly stated in *Ong vs. Commission on Elections*, *supra*:

"x x x But to be accentuated is the corner-stone tenet in elections of public officers that the choice of the people expressed at the polls should not be frustrated by wrongful acts which can be remedied. xxx. A defeated candidate may grab proclamation, take his seat, while he keeps the victim out by a long drawn expensive election protest - if protest the latter can afford. x x x. Important is that a canvass and proclamation be made on the basis of authentic returns. The end to be achieved more than compensates the effort, money, and time expended."

As we draw enlightenment gained from experience on the "grab-the proclamation-prolong-the-protest slogan" indulged in, in election after election, we must vigorously reject illegal proclamation to prevent it from congealing into a pattern of conduct in elections. Appropriately to be recalled at this point is the Incisive reminder of Mr. Chief Justice Cesar Bengzon in *Lagumbay vs. Climaco*, *supra*, that "[t]he well-known delay in the adjudication of election protests often gave the successful contestant a mere pyrrhic victory, i.e., a vindication when the term of office is about to expire, or has expired."

And again, we say that the first board's proclamation of December 22, 1967 is null and void.

2. By Section 3 of the Revised Election Code, Comelec has "direct and immediate supervision" over the municipal board of canvassers. That statutory provision empowers Comelec to suspend from the performance of their duties any member of the board of canvassers "who shall fail to comply with its instructions, orders, decisions, or rulings and appoint their temporary substitutes." Jurisprudence has since stabilized that power.[8] This, of course, is in pursuance of Comelec's constitutionally prescribed duty to enforce "all laws relative to the conduct of elections," to decide "all administrative questions, affecting elections," and to insure "free, orderly, and honest elections." [9] Paying full respect to these precepts, Comelec gave express authority to Gertrudo Kalambakal to supervise the canvass and proclamation with power to suspend the recalcitrant members of the board of canvassers of Pioduran and to appoint their substitutes. We see no illegality in Comelec's act. Effective administration and enforcement of the election laws require it. The Commissioners are not expected to do all the functions of office personally. Comelec should not be hamstrung in its efforts to promptly dispose of election cases before it. After all, the act of the subordinate official may be annulled or reversed by Comelec.

That Kalambakal complied with his duty is beyond debate. He gave a chance to the first board to convene. He was patient enough to postpone the canvass and proclamation to give the disobedient members of the first board time to come. But they did not, not even for the second time. Instead their Chairman adamantly stood by the December 22 proclamation made by the said board. Kalambakal correctly suspended them and appointed a new board. And this is the board that proclaimed respondent Protesto Pavia.

We are unable to join petitioners in their view that simply because petitioner Pedido was proclaimed Mayor, Comelec had lost jurisdiction to annul the same. A rule of frequent application is that Comelec is with authority to annul any canvass and proclamation which was illegally made.[10] So that, when Comelec, in its resolution of January 5, 1968, approved the order of Comelec Supervisor Kalambakal (issued in Pioduran), which declared null and void the December 22 proclamation, and adopted the certificate of canvass and proclamation of December 28, 1967 as "the valid certificate" of canvass and proclamation, it certainly acted within its jurisdiction.

For the reasons given, the petition for certiorari herein is denied; the December 22, 1967 proclamation of petitioner Salvador Q. Pedido as Mayor-elect of the Municipality of Pioduran, Albay, as well as his oath of office as such Mayor-elect, are hereby declared null and void; the certificate of canvass and proclamation made on December 28, 1967 whereunder respondent Protesto Pavia was proclaimed Mayor-elect of the said Municipality of Pioduran, Albay, is hereby declared valid, in full force and effect; and the resolution of the Commission on Elections of January 5, 1968 is hereby affirmed.

Costs against petitioners.

SO ORDERED.

Reyes, Acting C.J., Dizon, Bengzon, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Makalintal, J., did not take part.

[1] Annex 7-A, Comelec's answer.

[2] The annexes in the tabulation are those from Comelec's answer.

[3] See Annexes 15 and 15-A of respondent Pavia's memorandum.

[4] Section 168, Revised Election Code.

[5] *Ong vs. Commission on Elections*, G.R. No. L-28415, January 29, 1968, citing *Nacionalista Party vs. Commission on Elections*, 85 Phil. 149, 157, 158; *Lagumbay vs. Climaco*, G.R. No. L-25444, January 31, 1966.

See also: Espino vs. Zaldivar, G.R. No. L-22325, December 11, 1967; Abes vs. Commission on Elections, G.R. No. L-28348, December 15, 1967.

[6] Abes vs. Commission on Elections, *supra*, citing *Abendante vs. Relato*, 94 Phil. 8, 15.

[7] Annex 7-A of Comelec's answer (Minutes of the meeting of the first board on December 22, 1967).

[8] Espino vs. Zaldivar, *supra*. See also: Santos vs. Commission on Elections, G.R. No. L-16413, January 26, 1960.

[9] Section 2, Article X of the Constitution; *Sumulong vs. Commission on Elections*, 73 Phil. 288, 291.

[10] *Mintu vs. Enage*, G.R. No. L-1836, December 31, 1947; *Chiongbian vs. Commission on Elections*, G.R. No. L-19202, December 11, 1961; *Olano vs. Ronquil* G.R. No. L-17912, May 31, 1963; Santos vs. Commission on Elections, *supra*; *Javier vs. Commission on Elections*, G.R. No. L-22248, January 30, 1965; *Espino vs. Zaldivar*, *supra*.

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