

ARNULFO ABAYA, PETITIONER, VS. THE HON. JUDGE CASTOR Z. CONCEPCION, CFI OF ILOCOS SUR, BRANCH IV, CANDON BRANCH, AND ERIC SINGSON, RESPONDENTS.

G.R. No. L-56361. January 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In this special civil action for mandamus and prohibition, which was filed with the Commission on Elections on September 29, 1980, and was certified to this Court on February 20, 1981, the petitioner (protestant in Election Case No. 308-C) seeks - (1) to compel respondent Judge Castor Z. Concepcion to allow him or his representatives to examine the registry lists of voters, voting records and all election documents used in 62 voting centers the examination of which was denied by said judge in his orders dated August 4, 1980 and September 3, 1980; (2) to prohibit said respondent judge from further proceeding with the trial of Election Case No. 308-C until after petitioner's experts shall have completed their examination, comparison, photography and matching of ballots; and (3) to preliminarily enjoin or temporarily restrain the respondent judge, pending resolution of this special civil action, from enforcing his order requiring petitioner-protestant to enter trial in said election case.

The petitioner, Arnulfo Abaya, and the private respondent, Eric Singson, were the candidates for mayor of the Municipality of Candon, Ilocos Sur, in the general election held on January 30, 1980. On January 31, 1980, the Municipal Board of Canvassers of Candon canvassed the election returns from the 68 voting centers of the town and proclaimed Eric Singson as the winning candidate for mayor.

Subsequently, Arnulfo Abaya filed with the Court of First Instance of Ilocos Sur, Branch VI, the "Petition of Protest" dated February 9, 1980, contesting all the election returns in the 68 voting centers of Candon on the grounds stated in par. 7 thereof, to wit:

"a) Votes lawfully and validly cast in favor of protestant were either not read for him or read for protestee and counted in latter's favor;

"b) Votes lawfully and validly cast in favor of protestant after the ballots containing them were allowed to be marked and to annul them;

"c) Votes that were void because the ballots containing them were marked, were read and counted in favor of protestee;

"d) Votes reported in the election returns for protestee were unlawfully increased or padded such that he then appeared to have obtained more votes than those actually cast in his favor;

"e) Votes reported in some returns for protestant were unlawfully reduced such that he then appeared to have obtained less votes than those actually cast for him;

"f) Ballots prepared by one hand, ballots prepared by more than one hand, and ballots prepared by persons other than themselves and, therefore, invalid, were counted in favor of protestee."

Eric Singson filed his Answer dated February 16, 1980, denying the grounds invoked by Abaya in contesting the election returns.

After the issues were joined, Judge Castor Concepcion directed the production in court of all the ballot boxes, registry lists of voters, voting records and other election documents. Likewise, said judge ordered that the ballot boxes be opened and that the ballots therein contained be examined and recounted by the duly appointed revisors and/or commissioners.

After the examination and recounting of the ballots in all the 68 voting centers, the protestant filed a motion to be allowed to examine the registry lists of voters, the voting records and all documents used in the election. The protestee filed an opposition with motion to dismiss.

On August 4, 1980, Judge Concepcion issued the following Order:

"Acting upon the motion to examine the Registry List of Voters and Voting Records filed by counsel for protestant, as well as the opposition thereto with Motion to Dismiss filed by counsel for protestee, the Court observes that except for the general allegations in the protest and the still unsubstantiated objections on the ballots marked by the Commissioners, no actual evidence of substitute voting was shown to the Court. In order to obviate a 'fishing expedition method' of presenting evidence, the Court allows an examination only on the ballot boxes covering Precincts Nos. 29, 9, 9-A, 38, 35 and 35-A in which precincts protestant specified the existence of substitute voting (page 3, No. 1, petition) and providing further that the protestant shall specify in writing the nature and extent of the examination to be made subject to time constraints which may be fixed by the Court.

"The motion to dismiss filed by counsel for protestee being inopportune as the protestant has not yet completed its evidence is hereby denied."

After the examination of the registry lists of voters, voting records and documents used in the said six (6) voting centers, the protestant again filed a motion to be allowed to examine the registry lists of voters, voting records and documents used in the remaining 62 voting centers the examination of which was previously denied. Again, the protestee opposed the motion.

On September 3, 1980, Judge Concepcion issued an order denying protestant's motion as follows:

"Acting upon the motion of counsel for protestant praying for a modification or amendment of the order of this Court dated August 4, 1980, as well as the opposition thereto submitted by counsel for protestee, the Court finds that the ground relied upon by the protestant as contained in paragraph 3 of his motion does not equitably justify further examination of the remaining lists, coupons and other records. Considering that paragraph 7 (f) of the protest refers to ballots which should have been declared invalid but were counted in favor of the protestee, any discrepancy or incompatibility between any particular signature or thumbprint in the coupons, lists or records cannot in any manner whatsoever reveal or indicate which ballot such incompatibility or discrepancy refers to as to bring such ballot within the purview of this particular ground of the protest. Considering further that during the revision of the ballots every opportunity was accorded to the protestant to determine which of the ballots can fall within this category in his protest, the Court finds no more cogent reason to warrant a modification and/or amendment of its order dated August 4, 1980.

"Wherefore, the motion is hereby DENIED.

"Schedule hearing to September 18, 1980, at 8:30 a.m."

The protestant sought reconsideration of said order but the same was denied by Judge Concepcion in his order dated September 19, 1980. In the same order, said judge set the hearing of the case to October 3, 1980.

On September 29, 1980, the protestant filed with the Commission on Elections the petition for mandamus and prohibition with prayer for preliminary injunction and/or restraining order. On October 2, 1980, said commission issued an order requiring the respondents to file an answer to the petition - in compliance with which the respondents filed with the commission on October 17, 1980, their answer to the petition. On January 23, 1981, the Commission on Elections issued an order dismissing the petition for lack of jurisdiction. However, on February 20, 1981, the commission reconsidered the order of dismissal and, instead, certified the petition to this Court.

On March 20, 1981, the petitioner filed with this Court a motion for the issuance of a restraining order and/or preliminary injunction. He likewise filed on August 20, 1981, a supplemental petition seeking to disqualify the respondent judge from further hearing the election protest and to assign the same to another judge.

On October 15, 1981, this Court resolved to deny the supplemental petition to disqualify the respondent judge from further hearing the election protest on the ground that the same did not conform with the provisions of Secs. 1 and 2, Rule 137 of the Rules of Court. However, on November 12, 1981, this Court resolved to issue a temporary restraining order.

The special remedies of mandamus and prohibition are not available in the instant case. Firstly, it is not ministerial on the part of the respondent judge to allow the examination of the registry lists of voters, voting records and other election documents in the 62 voting centers as he is clothed with the discretion to allow or disallow such examination. And secondly, the respondent judge did not abuse his discretion in disallowing such examination.

In support of his contention that it is a ministerial duty on the part of the respondent judge to allow the inspection of the registry lists of voters, voting records and other election documents in the 62 voting centers, the petitioner invokes Sec. 9, Rule VI of the Comelec Resolution No. 1451 (otherwise known as the Procedural Rules of Election Contests in the Courts of First Instance) which reads as follows:

"SEC. 9. Custody of ballot boxes, election documents and paraphernalia. - Where allegations in a protest or counterprotest so warrant, or whenever in the opinion of the Court, the interest of justice so demands, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election to be brought before it. Said election documents and paraphernalia shall be kept and held secure in a place to be designated by the Court in the care and custody of the Clerk of Court."

But such provision does not impose upon the court the duty to allow the protestant to examine whatever election documents he may wish to examine.

Even assuming that the duty to allow inspection of election documents can be implied from the duty to require the production of the same in court, still, petitioner's contention (that the respondent judge is duty-bound to allow the examination of the registry lists of voters, voting records and other documents in the 62 voting centers) cannot be sustained. For even the duty to require the production of the ballot boxes and the election records and documents under the provision invoked exists only when any of the following circumstances is present, namely: (1) when allegations in a protest or counterprotest so warrant; or (2) when the interest of justice so demands. And the determination of the existence of said circumstances rests with the court itself. Ultimately, therefore, the court has the discretion to require or not to require the production of the ballot boxes and the election records and documents. Similarly, the court has the discretion to allow or not to allow the examination of particular ballot boxes or election records and documents depending upon its finding as to whether the allegations of the protest or counterprotest warrant, or that the interest of justice demands, such examination.

Petitioner's contention that the respondent judge acted with grave abuse of discretion in disallowing the examination of the registry lists of voters and the election records and documents in the 62 voting centers cannot,

likewise, be sustained. For, as correctly observed by the respondent judge, the necessity for such examination has not been established and to allow the same may only give way to a "fishing expedition," not to mention the delay to be caused thereby. While it is true that the protestant contests the election returns in all the 68 voting centers of Candon, specific allegations of substitute voting - to which the documents sought to be examined are relevant - refer only to the 6 voting centers where the examination of the subject documents has already been allowed. The respondent judge did not, therefore, err, much less abuse his discretion, in not allowing the examination of the registry lists of voters and other election records and documents in the remaining 62 voting centers.

WHEREFORE, the temporary restraining order issued by this Court on November 12, 1981, is lifted and the petition for mandamus and prohibition is dismissed for lack of merit. Costs against the petitioner.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Fernandez, Guerrero, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur. Makasiar, J., reserve his vote. Aquino, J., in his dissent. Teehankee, J., in the result.

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