

**ADRIANO RABE, PETITIONER, VS. COMMISSION ON ELECTIONS,
JUDGE JOSE BAUTISTA OF THE COURT OF FIRST INSTANCE OF
ILOCOS SUR AND JOSE RAPISURA, RESPONDENTS. ADRIANO RABE,
PETITIONER,...**

G.R. Nos. L-16341 and L-16470. May 25, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

These two cases relate to the outcome of the election for mayor in Santa Catalina, Ilocos Sur, held November 10, 1959.

Three candidates had solicited the endorsement of the town's electorate: Adriano Rabe, Jose Rapisura and Andres Rabaino. When the municipal board of canvassers convened on November 13, 1959 to canvass the votes in the municipality, it noticed that whereas in Precinct No. 7, the Commission on Elections Form No. 8, known as Advance Election Result[1], credited Adriano Rabe with 151 votes, Jose Rapisura with 36 and Andres Rabaino with zero, the official election returns submitted by the municipal treasurer gave Adriano Rabe 151 votes, Jose Rapisura, zero, and Andres Rabaino 36 votes.

The discrepancy was vital, because the contest depended upon Rapisura's getting (or not getting) the thirty six votes: with that number, he won the election—without it, he lost. The four members of the board of election inspectors of said Precinct No. 7 were summoned, and before the canvassers they unanimously admitted error in the returns of the precinct, and declared Rabe had received 151 votes, Rapisura 36 votes and Rabaino, zero. (Thereafter in separate affidavits they ratified such statements).

But the canvassers remained unconvinced: against the protest of Rapisura's leaders, they chose to follow the return submitted by the treasurer and accordingly proclaimed Rabe to be the winner with 1,387 votes, over Rapisura with 1,370 votes—plurality of 17 votes. Rabaino received 65 votes only.

To the Commission on Elections immediately went Rapisura complaining of the canvassers' conduct. After a hearing, the Commission adopted its resolution of November 20, 1959 annulling the proclamation and ordering the board of canvassers either to file an action in court or to give the interested party five days for judicial correction of the election returns of Precinct 7. The annulment rested on the Canvassers' disregard of the instruction of the Commission of August 18, 1959, the pertinent portion of which reads as follows:

"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, * * * and any proclamation made in violation hereof shall be considered null and void ab initio."

In view of the discrepancy, the Canvassers should have suspended the proclamation, said the Commission.

Consequently, on November 23, 1959, Rapisura filed with the court of first instance of Ilocos Sur a petition for recounting of votes, citing the discrepancies between official documents herein above described and also the sworn statements of all the inspectors and the poll-clerk of the precinct. Rabe moved to dismiss, but failed. Whereupon, he submitted here a petition for certiorari and prohibition [G. R. No. L-16341][2] asserting excess or abuse of jurisdiction by the Commission on Elections when it annulled the proclamation, and lack of the jurisdiction of the court to order a recount, the discrepancies being insufficient in law[3], specially after the proclamation.[4] The respondents answered, the parties were heard, and on December 28, 1959, this Court resolved to dismiss the petition, applying its recent decision in a similar case, *Primitivo Lacson vs. Commission on Election*, L-16261.

Thereafter, on January 9, 1960, Rabe filed this new petition (G. R. No. L-16470) against the judge of first instance and Rapisura. He evidently believed that our December 28 resolution merely upheld the action of the Commission in annulling the canvasser' proclamation. And as to the recounting, he found and so alleged that our decision of December 29, 1959 in *Parlade vs. Quicho*, L-16259 fortified his opposition to the recounting of votes. Under the *Parlade* doctrine, he alleges, a court of first instance has no power to order the recounting of votes merely upon a showing of discrepancy between the election result signed by the inspectors, and the certificate given to the watchers (signed by the inspectors too), because "discrepancy among the four copies of the election return is the sole ground for a recounting of the votes." So, he argues, as the discrepancy here is between one election return and C. E. Form No. 8, which is not one of the four copies—there should be no recounting.

Because in the *Lacson* case, a C. E. Form No. 8 was equally mentioned in the pleadings, we gave this petition due course, at the same time suspending the effects of our resolution in G. R. No. L-16341. We wanted to discuss the resultant conflict—if any—between the *Parlade* and *Lacson* adjudications.

The respondents filed their answer. A hearing was held, and the parties have submitted their respective memoranda.

We find—a majority of the members at least— *Lacson* decision did not pass upon the application of sections 163 and 168 of the Revised Election Code to C. E. Form No. 8 as a copy or authentic copy of the statement from an election precinct. Neither did the *Parlade* decision hold that discrepancy among the four copies of the election returns (statement of the election returns) constitutes the only ground for a recounting of the votes under the aforesaid sections.

Now then, when the votes assigned to a candidate in the election return (statement) differ with the votes ascribed to him in C. E. Form No. 8 (advance election result), may the court of first instance authorize recounting of the ballots?

We do not find it necessary to answer this question, inasmuch as the three election inspectors and the poll-clerk of Precinct 7 have signed statements acknowledging their error of having given Rapisura zero instead of 36 in their election return (statement). This, in our opinion, makes out a case for correction or amendment of the election returns (statement) under the provisions of sec. 154 of the Revised Election Code. The situation in the lower court amounts practically to a request of Rapisura for the court to authorize the board of inspectors of Precinct 7 to correct their statement. The affidavits of said inspectors and the poll-clerk may be interpreted as consent to Rapisura's petition[5], and if the court after hearing is satisfied of the truth of said affidavits and of the error, it may, without any need of opening the ballot boxes, order the correction of such error in the inspector's statement of the election result.[6]

For these reasons, our resolution of December 28, 1959 in G. R. No. L-16341 is hereby reiterated[7] and this petition (G. R. No. L-16470) is dismissed with costs against petitioner. So ordered.

Padilla, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

Bautista Angelo, J., concurs in the result.

Paras, C. J.: I dissent for the same reasons stated in my opinion in the case of Lacson vs. Commission, L-16261, there has been a proclamation with complete returns although one of them may contain error.

Endencia, J., took no part.

[1] And the P. C. Score Sheet duly signed by the board of inspectors.

[2] Against the Commission, the judge of first instance and Rapisura.

[3] Between election returns and C. E. Form No. 8, Sec. 168 Revised Election Code.

[4] Dizon vs. Provincial Board of Canvassers, 52 Phil., 47. [5] N B. They do not join Rabe to assail said court's jurisdiction. [6] See Benitez vs. Paredes, 52 Phil., 1; Dizon vs. Provincial Board, 52 Phil., 47. [7] With the dissents noted therein.

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