

DELFIN B. ALBANO, PETITIONERS VS. THE PROVINCIAL BOARD OF CANVASSERS OF ISABELA, ET AL., RESPONDENTS.

G. R. No. L-19593. May 10, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari and mandamus filed with this Court praying (a) that the decision of respondent court dated March 22, 1962, as well as its order of April 18, 1962, in Electoral Case No. Br. II-3, be declared null and void; (b) that respondent court be ordered to immediately declare the result of the judicial recount it conducted in said electoral case and forthwith transmit such declaration to respondent provincial board of canvassers; (c) that respondent provincial board of canvassers be ordered, after the Commission on Elections has lifted its order of suspension of the canvass and respondent court has transmitted to it the result of the judicial recount, to immediately resume the canvass of the votes for the office of representative, and after the canvass is completed, to proclaim the winner in the election for said office; and (d) that, meanwhile, the writ of preliminary injunction issued by this Court on March 29, 1962 be maintained until further order from this court.

It appears that respondent provincial board of canvassers has already finished the canvass of the votes for the position of representative of the lone congressional district of Isabela, with the exception of the votes in four precinct of the municipality of Reina Mercedes, nine precincts in the municipality of Cabagan, and one precinct in the municipality of Sto. Tomas, when the canvass was suspended by order of the Commission on Elections, while, on January 31, 1962, this Court, in *Albano vs. Arranz*, 61 Off. Gaz. 4995, rendered decision the dispositive part of which reads:

"Wherefore, and without prejudice to the right of any proper party to petition for a recount of the votes in the precincts involved, the writ of prohibition prayed for is granted, and the respondent court is ordered to permanently refrain from proceeding in any way with Civil Case No. 365, now pending therein, and from taking any action in relation thereto. Costs against respondent Samuel Reyes."

In line with the reservation contained in the aforesaid decision, petitioner filed with the Court of First Instance of Isabela the corresponding petition for correction and/ or judicial recount, which was substantiated after respondent has filed his answer and after several incidents had ensued which retarded the proceeding with the result that, after opening the ballot boxes involved, the recount resulted in the complete and exact confirmation of the allegation regarding the falsification of the copies of the election return in question. Respondent court, however, instead of making a declaration of the result of the recount as required by law, rendered decision on March 22, 1962 dismissing the petition on the ground that no evidence was presented by petitioner that the recount would affect the result of the election. Whereupon, petitioner filed a motion for new trial calling the attention of the court to, among others, (a) the fact that the allegation which the court ruled has not been proven was impliedly admitted in the answer because the denial thereof was general, (b) the fact that in the proceedings in *G.R. No. L-19260 (Albano vs. Arranz, 61 Off. Gaz., 4995)* brought before this Court it was already an admitted fact that the alteration, if established, would operate to the detriment of petitioner and (c) that, in any event respondent never

raised such issue at any stage of the proceeding and that, the recount having been completed, the only thing remaining was for the court to announce the result of the recount.

During the hearing of the motion for new trial, respondent court hinted that it may allow the presentation of additional evidence if proper petition to that effect were filed, and so, on April 3, 1962, petitioner filed such petition wherein he offered to submit additional evidence in the form of affidavits, besides adverting that the issue raised was not genuine for the simple reason that respondent cannot deny that the recount would vitally affect the result of the election. Petitioner even asked that a subpoena duces tecum be issued for the production of official documents showing the status of the canvass at the time the same was suspended. But respondent court denied said request. Instead, on April 18, 1962, it issued an order denying the motion for new trial, as well as the motion supplementing it, based merely on procedural grounds.

Hence the present petition.

It should be observed that the petition for recount was filled in line with the reservation contained in the dispositive part of the decision of this Court rendered in *Albano vs. Arranz*, 61 Off. Gaz. 4995, and said petition was predicated on Section 163 of the Revised Election Code, which provides:

"SECTION 163. When statements of a precinct are contradictory.— In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement 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 Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected."

It appears that, after respondent was given an opportunity to answer, and after several incidents had ensued affecting certain procedural matters, respondent court ordered the opening of the ballot boxes and proceeded to recount the votes in all of them, the recount resulting in the complete and exact confirmation of the allegation of petitioner regarding the falsification of the copies of the election return presented by the provincial treasurer. But respondent court, instead of making a declaration of the result of the recount as it found, rendered decision dismissing the petition on the simple ground that no evidence was presented by petitioner that the recount will affect the result of the election for the office of representative.

Is this dismissal justified under the circumstances obtaining in this case?

Our answer is in the negative. To begin with, the question raised by respondent court *motu proprio* relative to the allegation that petitioner failed to present evidence that the recount will affect the result of the election came up after the recount had been completed and after it was definitely confirmed that the return was falsified. This fact alone, which confirms the claim that if the recount is made it will affect the result of the election, is in itself clear proof of the truth of the allegation. If such were not the case, petitioner would not have filed his petition. His petition would have no purpose whatsoever.

In the second place, if respondent court was really of the opinion that the proof of such allegation was indispensable before a recount could be made, it should not have proceeded with it in the first place, but should have first required that such evidence be presented. No such move was made until after the recount had been completed. To require the production of such evidence at that stage of the recount would indeed be a surplusage because the very subsequent finding of the court furnished its justification.

In the third place, respondent court has been somewhat harsh in dealing with petitioner with regard to this matter, for it appears that after having hinted that it would allow the presentation of necessary evidence on the matter if a

move to that effect were made by petitioner, it closed every avenue to that effect when it denied petitioner such opportunity on a mere technicality. In effect, petitioner not only submitted affidavits of qualified witnesses but asked that the provincial board of canvassers be required to produce official documents necessary to show that the recount would affect the result of the election, but respondent court denied such request on mere procedural grounds.

Finally, it appears that the issue raised is not genuine for respondent never denied specifically such issue nor made any attempt to disprove it, as in fact he cannot do so in the face of the result of the recount. And even the decision of this Court in G. R. No. L-19260 which authorized the filing of a petition for recount is predicated upon the factual premise that the alteration found in the return would operate to the detriment of petitioner. This statement can only mean that if such alteration is established it would necessarily affect the result of the election.

It is well to emphasize once again that the authority given to a court of first instance to allow the recount of votes under Section 163 of the Revised Election Code is restrictive in nature. The law is explicit that the proceeding is summary in character and merely consists in the mathematical counting of the votes received by each candidate. It does not involve any appreciation of the ballots or determination of their validity as is required in an election contests. Its only purpose is to count the number of votes as they appear in the face of the ballots.^[1] Thus, as this Court has aptly said: "The purpose of the law is to offer a prompt relief to a simple controversy that can immediately be settled through a summary judicial proceeding that may dispense with the long drawn and complicated proceedings of a full-dressed election contest and, at the same time * * * to restore public tranquility by dispelling all doubts as to the true number of votes cast in a given precinct. Legal technicalities should be used to help in arriving at a clear intention of the law and not to defeat said intention.^[2]" (Italics supplied) Verily, in this instance, legal technicalities were applied to defeat the purpose of the law.

The case of *Chiongbian vs. The Honorable Court of First Instance of Misamis Occidental, et al.*, G. R. No. L-19312, February 5, 1962 cannot be invoked as a precedent, for there the ballots and the ballot box in question had been tampered with. Surely, if a ballot box is tampered with, a recount becomes futile. The ballots cannot reflect the true will of the voters. No such showing was made in this case. The only attempt was to present evidence aliunde to prove that certain ballots were marked. This is a matter that comes within the province of an election contest. It is not the function of a summary proceeding under Section 163 of the Revised Election Code.

Wherefore, petition is granted. The decision of respondent court dated March 22, 1962, as well as its order of April 18, 1962, are hereby set aside. Respondent court is hereby ordered to immediately declare the result of the judicial recount it conducted in Electoral Case No. Br. II—3 and transmit its declaration to respondent provincial board of canvassers in order that the latter may resume the canvass as required by law. The injunction issued herein is lifted. Costs against respondent Samuel Reyes.

Bengzon, C. J., Padilla, Conception, Reyes, J. B. L., Barrera and Paredes, JJ., concur.

[1] *Cawa, et al. vs. Hon. Vicente del Rosario, et al.*, 108 Phil., 520.

[2] *Board of Election Inspectors vs. Piccio*, 81 Phil., 577; See also *Cawa, et al. vs. Hon. Vicente del Rosario, et al.*, *supra*.

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