

JOSE I. LIM, PETITIONER, VS. HON. ENRIQUE MAGLANOC AND PEDRO FRANCIA, RESPONDENTS.

G.R. No. L-16566. August 31, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

This is an original action for Certiorari with Preliminary Injunction directed against Hon. Enrique Maglanoc, of the CFI of Quezon Province, and Pedro Francia.

In the November 10, 1959 elections, petitioner Jose I. Lim and respondent Pedro Francia were mayoralty candidates in Agdañgan, Quezon Province. During the canvass of the election returns by the municipal board of canvassers, the petitioners and respondent received 458 and 481 votes, respectively, in 6 out of 9 precincts.

According to the present petition, in the remaining 3 precincts, (1, 3 and 6), there were discrepancies in the statement of election returns, to wit:—

Precinct No. 1:—The votes obtained by petitioner appear "one hundred seven" in words, but "117" in figures;

Precinct No. 3:—The number of votes garnered by respondent Francia written in words, was illegible; and

Precinct No. 6:—The votes listed for Francia appear to be "seventy-nine" in words, but only "19" in figures.

The Board of Canvassers elevated the matter to the respondent Court for recount, pursuant to Sections 163 and 168 of the Revised Election Code. For failure of the Board to file the requisite pleading, however, the petitioner on December 1, 1959, presented a Petition to Recount with a prayer for a writ of Preliminary Injunction (Case No. 6265), which was issued, restraining the Board of Canvassers from taking further steps in the premises and from proclaiming the elected Mayor.

On December 22, 1959, the respondent Judge handed down, the following Order:—

"After reading the memorandums of the petitioner and the respondents and considering the arguments therein contained, this Court is of the opinion and so holds that in this case it should not count the ballots cast in Precincts No. 1, 3 and 6 of the Municipality of Agdañgan, but simply to base the corrections contemplated in Section 163 of the Revised Election Code on the corresponding tally sheets.

Wherefore, the opinion of the petitioner to the effect that the ballots cast in Precincts No. 1, 3 and 6 should be counted is hereby rejected, and the motion for reconsideration and the lifting of the preliminary injunction of the respondents, denied."

Both parties presented motions for reconsideration to the above order, petitioner insisting that for purposes of the recount, the ballots themselves should be read, instead of merely referring to the corresponding tally sheets. The motions were denied on January 22, 1960, and the case for the implementation of the order was set for hearing on February 4, 1960.

Petitioner alleges that respondent Judge in promulgating the order of December 22, 1959, quoted above and denying the motion for reconsideration, acted without or in excess of jurisdiction, or with grave abuse of

discretion.

The petition was given due course, and as prayed for, a writ of preliminary injunction was issued restraining the respondent Court from proceeding with the recount. Respondent Francia denied, in his answer to the petition, the existence of discrepancies in the election returns. The respondent Judge filed a separate answer, submitting the case for a ruling, albeit contending that the corrections should be based upon the corresponding tally sheets. The issues raised before Us, therefore, boil down to the following proposition:

Shall the lower court recount the ballots cast in Precincts Nos. 1, 3 and 6, as prayed for by petitioner or shall it simply rely on the figures contained in the tally sheets, as ordered by said court?

Sections 163 and 168 of the Revised Election Law are cited by the petitioner in support of his contention.

Let us solve the issues by Precincts, having in view the certifications of the Commission on Elections and the Provincial Treasurer.

Precinct No. 1:—The supposed discrepancy consists in the number of votes in favor of the petitioner (Annex C, certification of the Commission on Elections). According to Annex C, the votes obtained by him appear to be "one hundred seven" votes in words and "117" votes in figures; while Francia obtained "seventy-three" in words and "73" in figures. Respondent Francia submits that such discrepancy, which is uniformly carried in all the authentic copies of the return, does not lawfully warrant the opening of the ballot boxes for the purpose of examining the tally sheets, as ordered by the lower court. Respondent argues that Section 163 of the Election Law refers to discrepancies between another copy or other authentic copies of the election return from a precinct, and Section 168 speaks of "contradictions and discrepancies between copies of the same statements", thereby excluding within its purview the discrepancy in question. There is no discrepancy between the copies of the same statement. In the case of Jose Parlade, Jr., et al., vs. Judges Perfecto Quicho and Mateo Alcasid, et al., G. R. No. L-16259, Dec. 29, 1959, We have stated:—

"Sections 163 and 168 refer to differences between the statement (before the Board of Canvassers for purposes of canvassing) and another copy or other authentic copies thereof. What is such statement? Obviously, the statement of election returns presented by the Provincial Treasurer (in case of Provincial Board of Canvassers) and the Municipal Treasurer (in case of municipal board of canvassers). These two sections 163 and 168 should be read together."

Respondent, therefore, finally contends that inasmuch as said sections authorize the Court to order the opening of the ballot boxes when there are contradictions among the different copies of the same election returns; and the discrepancy in this precinct consisted merely in the difference in the reported result, as to the number of votes received by the petitioner, between the votes expressed in words and that expressed in figures, the general rule of statutory construction to the effect that the number in words must prevail over that in figures, must perforce be applied. It would seem, however, that what we have suggested in the Parlade case (*supra*), would help in our efforts to find a solution. It was also there stated:—

"* * *. In this connection, it is best to emphasize that the whole theory of the election law rests on the *prima facie* presumption of honesty and integrity of the board of inspectors. On that presumption, it directs the board of canvassers to make the proclamation on the basis of such reports ('statements' the law calls them) as the inspectors shall make. Aware, however, of the failings of human nature and foreseeing the possibility of error, the Legislature has permitted the correction by the court in clear cases at the request of the inspectors themselves (sec. 154 and the Benitez and Sison cases, *supra*). Also where there are conflicts between one copy of their statement and another copy of authentic copy thereof (or in the statement itself, words contradicting figures), there arises *ex necessitate rei* the need of finding, which statement or number should be followed by the Board. So the law gives the court of first instance power to recount the votes cast in the precinct. * * *".

Precinct No. 3:—Petitioner claims that the votes obtained by Francia in words is "illegible". It appears that this alleged discrepancy consisted merely in the difficulty encountered by certain members of the board of canvassers in reading the written words, appearing after the name of candidate Francia. With the statement of the Provincial Treasurer (Annex A, Answer), certifying to the fact that the votes received in Precinct No. 3 by the respondent and by the other candidates, are clear and legible; and that what appeared in the copy of the election return transmitted to him by the board of inspectors as required by law, is that Pedro Francia obtained "one hundred twenty-seven" in words and "127" in figures, and Lim "seventy" in words and "70" in figures, the doubt is dispelled, and there would seem to be no necessity in resorting to said sections 163 and 168 of the Election law. It is a proposition replete with dangers to allow the opening of the ballot boxes, just because a member of the board of canvassers could not read or pretended not to be able to read, a portion of the return, when the Provincial Treasurer attested that the same was "clear and legible".

Precinct No. 6:—Petitioner alleged that the discrepancy in the return, consists of the supposed difference in the reported votes of respondent between the votes which appear to be "seventy-nine" in words and "19" in figures. The respondent presented a certification of the Commission on Election (Annex B, Answer), to the effect that there is no discrepancy as to the number of votes received by the mayoralty candidates, which is found to be "seventy-nine" in words and "79" in figures for Francia, and "one hundred fifteen" in words and "115" in figures for Lim. In view of the aforesaid clear and unmistakable certification of the Commission on Election, the very constitutional body called upon to supervise elections, further intervention of the lower court in the case, is unnecessary.

Pursuant to the above findings, therefore, the discrepancies found in Precinct No. 1 would substantially affect the result of the election for the position of the Mayor in the municipality in question. As heretofore stated, according to the election returns in this precinct, Lim obtained "one hundred seven" votes (in words) and "117" in figures; while Francia, seventy-three (73) both in words and figures. If 117 is given to Lim and 73 to Francia, each will have the following total of votes:

Precinct:

Lim:

Francia:

1

117

73

(in figures)

3

70

127

6

115

79

Other 6

precincts

458

481

760

760 (tie)

If 107 votes are adjudicated to Lim and 73 to Francia, each will have the following total of votes:

Precinct:

Lim:

Francia:

1

107 (in words)

73

3

70

127

6

115

79

other 6 precincts

458

481

750

760

or a difference of 10 votes in favor of Francia.

Wherefore, the writ is granted. The order of the respondent court dated December 29, 1959, is modified, directing said court to recount the ballots cast in Precinct No. 1 only, for the purpose of determining the true result of the count of votes cast therein, for the position of Municipal Mayor and for further proceedings consistent with the terms of this decision and the law. Without pronouncement as to costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, De Leon, and Natividad, JJ., concur.

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