

**JOSE SOL BALORIA, PETITIONER, VS. HON. ONOFRE SISON ABALOS,
PRESIDING JUDGE, FIRST BRANCH OF THE CFI OF ZAMBOANGA DEL
NORTE, JACOBO S. AMATONG AND MUNICIPAL BOARD OF
CANVASSERS,...**

G.R. No. L-28457. April 30, 1970

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The petitioner Jose Sol Baloria and the respondent Jacobo S. Amatong were among the candidates for councilor of Dipolog, Zamboanga del Norte in the elections held on November 14, 1997. The attention of the municipal board of canvassers, in the course of its work, was called to the fact that while the municipal treasurer's copy of the election returns from precinct 18 showed a total of 37 votes cast for Amatong, the Nacionalista Party and the Liberal Party copies of the same returns as well as the tally sheet gave him 47 votes. As the difference materially affected the result of the election for the eighth councilor, the Board of canvassers suspended proclamation.

Thereafter, on November 23, Amatong asked the Court of First Instance of Zamboanga del Norte to order a recount of the votes in precinct 18, citing the discrepancy in the number of votes cast for him between the municipal treasurer's copy of the election return, on the one hand, and the NP and LP copies of the same return as well as the tally sheet, on the other. Named as respondent, among others, was Baloria "as the candidate most [likely to be] affected" by the action.

Baloria moved to dismiss the action on the principal ground that neither the NP and LP copies of the return nor the tally sheet could be made the basis of an action for judicial re-count, but his motion was denied. His verbal motion for reconsideration was likewise denied.

Thereafter Baloria sought to introduce the provincial treasurer's copy of the return to show that, as similarly indicated in the municipal treasurer's copy, Amatong received only 37 votes in precinct 13 of Dipolog, but the court denied his motion in its resolution of December 4, 1967. His subsequent motion for a subpoena duces tecum for the production of the provincial and municipal treasurers' copies of the return was similarly denied.

Baloria therefore filed this petition for certiorari and mandamus to annul the orders of the respondent Judge Onofre Sison Abalos as having been issued in excess of jurisdiction and with grave abuse of discretion. The thrust of his arguments is that there is no evidence of discrepancy to support the order of recount and that at all events the discrepancy claimed by the respondent Amatong and found by the court is not between a copy of the election return and "another copy or other authentic copies" thereof within the meaning of section 163, in relation to section 168, of the Revised Election Code.

On the other hand Amatong claims that the NP and LP copies of the election return as well as the tally sheet give him a total of 47 votes and that these copies can serve as basis for an order of recount. He likewise presented affidavits of the chairman, the poll clerk and a member of the board of canvassers in precinct 18 who all attest

that contrary to the pertinent recital in the municipal treasurer's copy the respondent Amatong received 47 votes in precinct 18.

Baloria's claim that the order of recount has no factual basis rests on the observation that after denying his motion to dismiss the respondent judge did not set the case for hearing but instead, immediately directed a recount. But we think that it was no longer necessary to do that, considering that the existence of the discrepancy claimed by the respondent Amatong was not in dispute. Indeed it was because of the discrepancy that the municipal board of canvassers suspended the proclamation of the winning candidate. Even Baloria himself impliedly admitted the existence of such discrepancy when in his memorandum to this Court he tried to explain it thus:

"[T]he Tally Sheet shows that Amatong landed the 8th place and Baloria, the 9th place. This was so because of the mistake in the addition and was found wrong by the Board of Canvassers who used three adding machines during the canvass. So it was found that Baloria landed the 8th place and Amatong the 9th. This is how the Tally Sheet created much ado about nothing, as Amatong now avers that the Tally Sheet shows a discrepancy."

In truth the only issue before the trial court was a legal one: whether the discrepancy found was within the contemplation of section of the Code so as to justify a recount of the votes cast.

What is more, actions for judicial recount must be disposed of as promptly as possible. The court is free to observe any procedure that would achieve this end.[1] Technicalities should be kept to a minimum, unless their indulgence is necessary as a requirement of due process. And so it may not be argued that, as a necessary consequence of the denial of Baloria's motion to dismiss the respondent judge should have set the case for hearing. That would have been a useless formality, as already pointed out, as there was never any question as to the existence of the discrepancy.

This brings us to the second question: Whether a discrepancy in the number of votes between the municipal treasurer's copy of the election return which the canvassing board had before it and the NP and LP copies of the same return as well as the tally sheet, can be the basis of a judicial recount. Since 1959 the rule has been that to justify a recount the discrepancy must be between one copy of the election return and another copy or authentic copy of the same return.[2] Now, these copies are those prescribed in section 150 of the Election Code to be distributed as follows: one copy to be placed in the box for valid ballots, a second to be delivered to the municipal treasurer, a third to be sent to the provincial treasurer and a fourth to be forwarded to the Commission on Elections. For sometime now the COMELEC has required boards of inspectors to prepare additional copies of the election return: one to be given to the Nacionalista Party, another to the Liberal Party, and a third to be sent as advance copy to the municipal treasurer. Any discrepancy resulting from a different number of votes recorded in any of these extra copies of the election return cannot serve the purpose of a judicial recount, because section 163, in authorizing such action, must necessarily be taken to refer only to those copies required in section 150 to be prepared.[3]

Moreover, as this Court explained in *Calo vs. Enage*: [4]

"[W]ere the copy furnished to a political party considered a basis for an action under section 163, untold opportunities would be afforded a candidate to tamper with the contents of his party's copy and, on the basis of the artificial discrepancy created between his copy and that of the provincial treasurer, demand a recount of the votes and thus delay or even prevent the proclamation of his opponent. This is not to inveigh against either the validity of the extra copies of the election returns or the wisdom of the resolution of the COMELEC requiring their preparation.... On the contrary, additional copies in the hands of the major political parties may have the general salutary effect of discouraging attempts to tamper with the copies required by the Code owing to the greater probability of detection of irregularities. The point is simply that the extra copies cannot serve

as a legal basis for comparison with any of those prescribed by the Code for the purpose of a judicial recount."

As the conflict here is between the entry in the municipal treasurer's copy of the return, on the one hand, and that in the NP and LP copies of the same return as well as in the tally sheet, on the other, judicial recount is improper. Indeed, this case comes within the ambit of the rule in *Calo vs. Enage* and *Acuña vs. Golez*,^[5] both of which involved a variance between the pro-vincial treasurer's copy and that given to the Nacionalista Party, and, *Lawsin vs. Escalona*,^[6] which involved a discrepancy between a copy of the election return and the tally sheet. In all these cases judicial recount was held improper.

In the light of settled jurisprudence the order of recount made in this case cannot be viewed other than as in excess of the authority conferred on the respondent judge by section 163 of the Code. In view of this conclusion we find it unnecessary to pass on the petitioner's claim that he should have been allowed to introduce the provincial treasurer's copy of the return in order to show that the municipal treasurer's copy is correct.

ACCORDINGLY, the order of the respondent judge for a recount of the votes cast in precinct 18 of Dipolog, Zamboanga del Norte is set aside, and the municipal board of canvassers is directed to reconvene and proceed without delay with the canvass of the votes, using in connection therewith the municipal treasurer's copy of the election return from precinct 18, and thereafter to forthwith proclaim the winner. Costs against the private respondent.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J., took no part.

[1] See *Villalon vs. Arrieta*, L-29177 & L-29394, Sept. 30, 1969, 29 SCRA 671.

[2] E.g., *Parlade vs. Quicho*, L-16259, Dec. 29, 1959

[3] *Calo vs. Enage*, L-28349, Dec. 28, 1957, 21 SCRA 1416; *A Acuña vs. Golez*, L-25399, Jan. 27, 1966; *Javier vs. Commission on Elections*, L-22248, Jan. 30, 1965; *Lawsin vs. Escalona*, L-22540, July 31, 1964.

[4] L-28349, Dec. 28, 1967, 21 SCRA 1416.

[5] L-25399, Jan. 27, 1966.

[6] L-22540, July 31, 1964.

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