

DR. CESAR SAMSON, PETITIONER, VS. HON. NUMERIANO G. ESTENZO, JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, 13TH JUDICIAL DISTRICT, 5TH BRANCH AT ORMOC CITY, AND (MRS.) ASUNCION...

G.R. No. 16286. January 30, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for certiorari and prohibition to enjoin the Court of First Instance of Leyte, presided over by respondent Judge, Hon. Numeriano G. Estenzo, from enforcing its order of December 1, 1959, to open the ballot boxes of Precincts Nos. 8, 17 and 28, of Ormoc City and make a recount of the votes therein cast. The petition, likewise, contained a prayer for a writ of preliminary injunction, which we issued upon the filing of the requisite bond.

Petitioner Dr. Cesar Samson and respondent herein, Mrs. Asuncion Conui Omega, were, among others, candidates for councilor of the City of Ormoc in the general elections held on November 10, 1959. After a canvass by the City Board of Canvassers of the votes then cast, it appeared, on November 23, 1959, that Samson had garnered enough votes to be proclaimed as the last of the eight (8) councilors elected to the city council, with a plurality of three (3) votes over his nearest opponent, said Mrs. Conui Omega. However, on the same date, the latter filed with the aforementioned Court of First Instance a petition for the recounting of the votes cast in Precincts Nos. 17 and 28 of said city, upon the ground that the election returns therefore, which gave her 68 votes in each precinct, were contradicted by the certification of the result of the election therein, incorporated in Form No. 8 of the Commission on Elections, according to which she got only 67 and 59 votes, respectively. On November 24, Mrs. Omega amended her petition by including in her request for recount the ballot box of Precinct No. 8 of Ormoc City, upon the ground that, in said precinct, "the * * * election result certified by the Board of Election Inspectors in the Transcript of Election Returns (Elecsee form) submitted to and as gathered by the 59th PC Company, Ormoc City, which is duly deputized agency of the Commission on Elections, only 41 votes were tallied in favor of Dr. Cesar Samson," whereas "the same Board of Election Inspectors * * * in another statement" (referring to the election returns), "certified that the same candidate Dr. Cesar Samson got 71 votes". Upon the filing of said amended petition, the Court of First Instance issued an order enjoining the Municipal Board of Canvassers "from further proceeding with the canvass" until further orders, and, relying upon sections 163 and 168 of the Revised Election Code, the court issued on November 25, 1959, another order the dispositive part of which reads:

"The Board of Canvassers is hereby directed to open the ballot boxes for precinct Nos. 8, 17 and 28 so that they may proceed to recount the votes of Dr. Samson and Mrs. Omega for the sole purpose of determining who is the elected candidate for city councilor.

"Taking into account the fact that there are ten members of the Board of Canvassers, the members of the Board of Canvassers are hereby directed to divide themselves into three divisions so that each division of three may take care in the counting of votes in every precinct and the Chairman will act as the supervisor. Dr. Samson

and Mrs. Asuncion C. Omega may appoint watchers with one watcher for each of said party for every division. The counting shall take place immediately before this Court."

A reconsideration of this order was denied by another order bearing the same date, which, likewise, stated that:

"Taking into account that tomorrow is a special public holiday and there is no probability that the said keys will arrive Ormoc City on that day, the said members of the Board of Canvassers are hereby notified that the ballot for precincts Nos. 8, 17 and 28 will be opened before this Court on November 27, 1959 at 7:30 A.M., with notice to all the members of the Board of Canvassers, as well as to Attorneys Benjamin Tugonon, Mendola, Teleron, and Brocoy, in open court."

A motion for reconsideration of the latter order having had the same fate, Dr. Samson instituted the present case, for the purpose adverted to above.

At the outset, it is clear that, insofar as they direct the Board of Canvassers to open the ballot boxes of Precincts Nos. 8, 17 and 28, the orders complained of are contrary to law. Respondents herein seem to have acted under the impression that this case falls under section 168, in relation to section 163, of Republic Act No. 180, authorizing the recount of the votes cast in a given precinct when "another copy or other authentic copies of the statement from an election precinct submitted to the board gives a candidate a different number of votes and the difference affects the result of the election * * *". However, the recount so authorized, must be made by "the Court of First Instance" itself, not by the Board of Canvassers, as ordered by respondent Judge. Moreover, said recount is authorized "for the sole purpose of determining", not "who is the elected candidate" as stated in the first order of respondent Judge, dated November 25, 1959, but "which is the true statement or which is the true result of the count of the votes cast" in the precincts in question.

Again, the alleged conflicts in the case at bar exist between the election returns, or statements of the count alluded to in section 150 of said Act, on the one hand, and the certificate mentioned in section 153 thereof, on the other, and we have already held in *Jose Parlade, et al. vs. Hon. Perfecto Quicho, et al.*, G. R. No. L-16259 (December 29, 1959) that the aforementioned sections 163 and 168 are inapplicable to such situation.

Wherefore, the orders complained of are set aside and the writ of preliminary injunction issued herein is hereby made permanent, with costs against respondent Mrs. Asuncion Conui Omega. It is so ordered.

Bengzon, Padilla, Labrador, Reyes, J. B. L., and Barrera, JJ., concur.

Paras, C. J., Bautista Angelo, Endencia and Gutierrez David, JJ., reserve their votes.

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