

FILEMON SALCEDO, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.*G.R. No. 16360. January 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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The municipality of Bansud, Oriental Mindoro, was newly created by Republic Act No. 2514 which was approved on June 21, 1959. On November 10, 1959, said municipality held for the first time an election to fill its municipal offices, including that of mayor, and among the candidates who filed their certificates for this office were Filemon Salcedo, Jr. and Leon Mampusti.

On November 24, 1959, the Provincial Board of Oriental Mindoro, acting as municipal board of canvassers of the new municipality pursuant to the provisions of Section 167 (b) of the Revised Election Code, proclaimed Salcedo as mayor-elect with a plurality of seventy-nine (79) votes. Mampusti, who considered the proclamation invalid because the canvass was made by the provincial board and not by the municipal council of the new municipality, filed a petition with the Commission on Elections praying for the annulment of the canvass and proclamation made by said provincial board, and acting on the petition, the Commission on Elections, after proper hearing, issued a resolution on December 3, 1959 (1) annulling the canvass and proclamation as prayed for; (2) ordering the municipal board of canvassers of the new municipality to immediately make a new canvass of all the votes cast for the municipal offices in said municipality and, thereafter, proclaim the winning candidates; and (3) ordering the provincial board to deliver to the municipal treasurer all election returns submitted by the inspectors of said municipality. And considering that the Commission on Elections has no power, nor authority, to annul the canvass and proclamation made by the Provincial Board of Oriental Mindoro because its authority is merely to act on administrative questions, Filemon Salcedo, Jr. filed the present petition for certiorari with preliminary injunction before this Court praying for the setting aside of its resolution and for an order restraining it from carrying out the instructions and orders contained therein. This Court gave due course to the petition and issued a writ of preliminary injunction upon petitioner's filing a bond in the amount of P1,000.00.

Respondents in their answer state that the canvass and proclamation made by the Provincial Board of Oriental Mindoro are null and void as said board was composed of Governor Francisco Infantado and members Leonardo Macasaet and Jose Basa who were disqualified to sit on said board because they were all candidates for re-election (Section 28, Revised Election Code); that, even assuming that the Provincial Board of Oriental Mindoro could act as board of canvassers of the new municipality, however, having failed to include in the canvass the election return of Precinct No. 5 of said municipality, the canvass and proclamation made are null and void, while the Commission on Elections has the power and authority to declare a proclamation made on incomplete returns null and void (*Mintu, et al. vs. Enage, et al.*, G. R. No. L-1834; *Abandante vs. Relato*, 94., 8) and that the Provincial Board of Oriental Mindoro, assuming that its members were qualified to act, could not lawfully act as municipal board of canvassers for the reason that at the time it arrogated unto itself the powers and functions of said municipal board of canvassers there was already a duly constituted set of municipal officers, or a

municipal council was already then in existence. Respondents prayed that the petition be dismissed and the injunction dissolved.

There is merit in the contention that the Provincial Board of Oriental Mindoro erroneously acted as municipal Board of canvassers of the new municipality for the simple reason that at the time it acted as such there was already a municipal council then in existence. While Section 167 (b) of the Revised Election Code provides that "For the first election in a new municipality, the provincial board shall act as board of canvassers to proclaim the result of the municipal elections", however, this provision should be interpreted in conjunction with Section 10 of the same Code which provides that "In the absence of a municipal or city council, the provincial board shall perform the duties of the former with respect to the first election in the new political subdivision", from which it is logical to infer that even if a new municipality is holding its first election to fill its municipal offices, the provincial board can only assume the functions of a municipal board of canvassers if the municipal council concerned has not yet been constituted, otherwise the latter should act. Verily, the provisions of Section 167 (b) are merely temporary in character which apply when the offices of the new municipality have not yet been duly filed.

An added reason for the nullification of the actuation, of the Provincial Board of Oriental Mindoro is the fact that its members were all disqualified to act it appearing that they were all candidates for reelection. This is clear from Section 28 of the Revised Election Code which provides that any member of the provincial board who is a candidate for an elective office shall be incompetent to act in said board in the performance of its duties in connection with the election.

Finally, we find that the Commission on Elections acted properly in nullifying the canvass and proclamation made by the Provincial Board of Oriental Mindoro not only on the grounds already mentioned but in view of the fact that said board failed to include in its canvass the election return for Precinct No. 5 in contravention of law and of the instructions given by the Commission on Elections (*Mintu, et al. vs. Enage, et al.*, supra; *Abendante vs. Relato*, supra).

Wherefore, petition is dismissed. The injunction issued by this Court is hereby dissolved. Costs against petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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