

**THE CITY BOARD OF CANVASSERS, TACLOBAN CITY, ET AL.,
PETITIONERS VS. THE HON. SEGUNDO MOSCOSO, JUDGE COURT OF
FIRST INSTANCE OF LEYTE, ET AL., RESPONDENTS.***G.R. No. 16365. September 30, 1963*

Ponente: MAKALINTAL, J.

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Respondent Jose Hidalgo was a candidate for the office of city councilor of Tacloban in the elections of November 10, 1959. The city treasurer sent notice to the city board of canvassers to convene on November 20, 1959, "for the purpose of canvassing the returns of votes cast in the city for Senators, Mayor, Vice-Mayor and Members of the Municipal Board, as well as the proclamation of the city elect." On the same date Hidalgo filed a petition in the Court of First Instance of Leyte, presided by respondent Judge Segundo Moscoso, praying that a writ of preliminary injunction be issued to restrain the board of canvassers from canvassing the votes cast in the city and from proclaiming the elected city officials, and that, after hearing, the injunction be made permanent. The petition alleged several grounds, to wit: that the city treasurer was not authorized to convene the board of canvassers, being neither the chairman nor a member thereof; that the members of the board were not duly qualified to act as such; and that the board could not canvass the votes in part, that is, without also including the votes cast for the offices of Governor, Vice-Governor and members of the Provincial Board. It was further alleged that proper petitions for the recanvass of the votes for Governor, Vice Governor, etc., had been filed with the Commission on Elections on the ground that the elections in Tacloban City had been characterized by terrorism and vote-buying.

Immediately upon the filing of the petition respondent Judge issued the writ of preliminary injunction prayed for. On November 24, 1959, the City Attorney, in behalf of the city board of canvassers, filed his answer with an urgent motion to dissolve the injunction and dismiss the case. The hearing was scheduled for November 28, 1959, but on November 27 herein respondent Hidalgo filed an amended petition reproducing the allegations in the first petition but stating the particular instances of terrorism, vote-buying and other irregularities allegedly committed in the elections in Tacloban City and praying, by way of additional relief, that said elections be declared null and void. In its answer to the amended petition the city board of canvassers challenged the sufficiency thereof to support the writ of preliminary injunction as well as the jurisdiction of the court over the subject-matter. These questions were heard, after which respondent Judge, on December 3, 1959, sustained his jurisdiction and issued an amended writ of preliminary injunction. The next day, December 4, the other respondents herein, except the Judge, filed a motion for leave to intervene, alleging that they were candidates for mayor, vice-mayor and councilors, respectively, and making common cause with the petitioner below, herein respondent Jose Hidalgo. The intervention was allowed. The city board of canvassers, petitioner here, moved to reconsider the order of December 3, 1959, and after the motion was denied, commenced the instant proceeding in certiorari and prohibition to review and annul the actuations of respondent Judge and to restrain him from further taking cognizance of the action. As prayed for in the same petition, we issued a writ of preliminary injunction on

December 11, 1959, ordering respondent Judge to desist and refrain from proceeding in the action before him and from enforcing his order of preliminary injunction dated December 3, 1959.

On the first ground relied upon by respondent Jose Hidalgo in his petition below, namely, that the city treasurer was not authorized to convene the city board of canvassers because he was neither the chairman nor a member thereof, it is enough to point out that such authority was contained in the resolution of the Commission on Elections promulgated on August 18, 1959, deputizing the city treasurers, among others, as election officials and instructing them specifically to convene the corresponding boards of canvassers for their respective localities. The said resolution of the Commission on Elections is reproduced textually in the answer to the petition below.

On the second ground, namely, that the members of the city board of canvassers were not duly qualified to act as such, it should be noted that the said members, consisting of the city superintendent of schools, the city engineer, the city health officer, the city register of deeds, the clerk of the municipal court, the judge of the municipal court and the city auditor, were designated as substitutes for the city mayor and six city councilors, respectively, who were all disqualified because they were candidates in the same election. Such designation is in accordance with Section 159 of the Election Code.

The third ground relied upon in the petition is equally unmeritorious, because the canvassing of the votes for the candidates for provincial offices was not the duty of the city board of canvassers but rather of the provincial board of canvassers.

The question of whether or not there had been terrorism, vote-buying and other irregularities in the 1959 elections in Tacloban City should be ventilated in a regular election protest, pursuant to section 174 of the Election Code, and not in a petition to enjoin the city board of canvassers from canvassing the election returns and proclaiming the winning candidates for municipal offices. The duty of the board in this regard is more or less ministerial: it does not pass upon the validity or invalidity of the ballots cast, and its action is necessarily without prejudice to the determination of such question in a proper court proceeding later. This proceeding, under section 174, should be filed within two weeks after the proclamation of the result of the election and hence necessarily implies a previous canvass of the votes by the board of canvassers. Both the logic of the situation and the interests of the public at large demand that the board be allowed to perform this duty. If it should turn out from the returns submitted to it that the petitioner and intervenors below (herein respondents) had won the elections, the much unnecessary delay, expense and labor would have been avoided. If otherwise, then the proper election protests would be in order, wherein the matters raised by them could be duly heard and decided. In either case the prima facie will of the electorate would be expeditiously implemented, without prejudice of course to the results of such protests as might be filed. On the other hand, to enjoin the city board of canvassers from assessing the returns would result in a lack of incumbents in the offices concerned after the termination of the current term and while the case remains pending in court. This is not within the contemplation of the Election Code, which provides for election contests only after proclamation of the winning candidates.

Furthermore, an injunction such as that issued by respondent court would prevent the city board of canvassers from certifying the results of the election even with respect to Senators—as to which the Senate Electoral Tribunal has national offices—in the instant case, the offices of eight Senators as to which the Senate Electoral Tribunal exclusive jurisdiction to pass upon any irregularities committed (Art. VI, section 11 of the Constitution; *Nacionalista Party et al., vs. Commission on Elections* 85 Phil., 149; Off. Gaz., No. 6, 2851).

In view of the foregoing considerations, the writ prayed for is granted, and the preliminary injunction we have heretofore issued is made permanent, with costs against respondents except respondent Judge.

Bengzon C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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