

EMILIO C. SANTOS, PETITIONER, VS. COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.

G.R. No. 16413. January 26, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case concerns the proclamation of the winning candidate for Mayor of Hagonoy by the municipal board of canvassers, originally constituted by the Mayor of said town and nine members, after canvass of the votes cast for municipal offices in the election of November, 1959.

The facts appear from the resolution of the Commission on Elections, promulgated on December 14, 1959:

"During the canvassing on November 19, 1959, when the board reached the election return of Precinct No. 7, some members of the Board of Canvassers observed and insisted that the entries in the column for the office of mayor show the following:

FOR THE OFFICE OF MAYOR

Names of Candidates	Total votes obtained (In words)	Total votes obtained (In figures)
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1. Emilio Santos	Thirty	
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		30
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2. Emilio Santos	One hundred nine	
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		109
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3. Nena S. Marucot	Two	
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		2
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4. Segundo Gonzales	One	
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		1
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and, in view of the said insistence of some members, the municipal board of canvassers suspended the canvass of the votes cast in Precinct No. 7 and proceeded with the canvass of the other election returns until they finished the canvass of all the election returns of the 91 precincts of Hagonoy, Bulacan at 3:40 P.M. on

November 21, 1959, when they adjourned without any decision on the status of the election return of Precinct No. 7 in view of the telegraphic instruction of this Commission issued on November 19, 1959 to the effect that the board shall continue the canvass without counting the votes cast in Precinct No. 7 for Emilio Perez and Emilio Santos, with a further instruction that if the votes in said precinct will materially affect the result of the election for mayor, the municipal board of canvassers shall withhold proclamation of mayor-elect and shall give opportunity to any interested party to seek such remedy in court he may deem proper. On November 23, 1959, Candidate Emilio Perez filed a petition in the Court of First Instance of Bulacan for the recounting of the votes cast in Precinct No. 7 to determine the true result of the count of votes cast in said precinct for the office of mayor. During the hearing of this case on November 27, 1959 where all the four copies of the election returns were produced and marked as exhibits (Copy for the Municipal Treasurer—Exh. D; Copy for the Provincial Treasurer—Exh. E; Copy for the Ballot Box—Exh. F; and Copy for the Commission on Elections—Exh. G), the court, after examining all four copies, observed that Emilio Perez is credited with 30 votes and Emilio Santos is credited with 109 votes in both the copies of the election returns for the Commission on Elections (Exh. G) and the Provincial Treasurer (Exh. E), and that in the Copy for the Municipal Treasurer (Exh. D), there are two "Emilios" and the surname following the name of "Emilio" on the second space for mayor is quite clear and could be read as "Santos" who appears credited with 109 votes, so that the Court made the observation that the "Emilio" appearing on the first space must necessarily refer to "Emilio Perez", opposite which is written 30 votes, hence, there is no discrepancy. As a consequence of this observation by the Court that there is no discrepancy because the election return in question could be read "Emilio Perez" and "Emilio Santos", the petitioner in said case (Case No. 2080, C.P.I. Bulacan) withdrew his petition on December 1, 1959, which withdrawal was granted by the Court in its order of the same date.

On December 1, 1959, respondent members of the board, Saturnina Flores, Andres T. Cruz, Ricardo Garcia, Antonio Soriano and Salud R. Joaquin, requested the Commission for the issuance of the original copy of the election return for Precinct No. 7, copy for the Commission on Elections, to be used as basis by the municipal board of canvassers of Hagonoy, Bulacan, in the canvass of votes casts in said precinct, and, acting on said request, the Commission in its resolution of December 2, 1959, authorized the issuance of photostatic copy of the election return for Precinct No. 7, copy for the Commission on Elections, for the use of the municipal board of canvassers of Hagonoy, Bulacan, in connection with the canvass of the votes cast for municipal offices. On the same date of December 2, 1959, Special Attorney Aurora O. Bautista, who was authorized by this Commission to supervise the municipal canvass by the municipal board of canvassers of Hagonoy, Bulacan, issued notices to the members of said municipal board of canvassers to meet at 2:00 o'clock in the afternoon on December 3, 1959 for the purpose of terminating the canvass and making the corresponding proclamation of the municipal officials-elect. However, the Chairman of the board called for a meeting of the board at 8:00 o'clock in the morning of December 3, 1959 and at this precise hour of the meeting as called for by the Chairman wherein Atty. Bautista was present, the Chairman produced a typewritten copy of a certificate of canvass and proclamation instructing the members of the board to sign said proclamation papers, to which procedure Atty. Bautista objected on the ground that the election return for Precinct No. 7 was no yet canvassed and that no checking and addition of votes in the tally sheet had been undertaken. A motion was made by one of the members of the board of canvassers for a division of the board on the question of whether or not to continue the proclamation, but member Atty. Rafael Suntay moved for adjournment which motion was objected to by a majority of the members. At this juncture, taking advantage of the presence of all the members of the board of canvassers, Atty. Bautista announced to them that¹ the board shall convene then and there instead of at 2:00 P.M., and after such announcement by her, five members of the board—the first five petitioners herein—walked out. This took place at about 9:00 A.M. After the walk-out of said five members of the board, Atty. Bautista suspended the five members who walked out and appointed the substitutes of suspended members Herminio Flores, Leon Reyes, Rafael Suntay and Feliciano Torres. After the appointment and assumption of office of the substitutes, the new municipal board of canvassers composed of nine members proceeded and finished the canvass by including therein the votes cast for mayor in Precinct No. 7 and thereafter proclaimed the winning candidates for municipal offices of Hagonoy, Bulacan, including Candidate

Emilio Perez as mayor-elect.

The issue presented in this case is as to which of the two proclamations is legal and valid. We will first take up the first proclamation. When the original board of canvassers, composed of the first five petitioners and the first five respondents met at 8:00 o'clock in the morning of December 3, 1959, the chairman, Petitioner Trillana, announced that since the board "have completed the canvassing of all precincts, tallied and computed the votes received by all candidates, and by virtue of the order of the court in my hand, my duty today is to proclaim all winning candidates by virtue of the Election Return" (Exh. Q-Petitioners). Special Attorney Bautista objected to the proclamation as the board had not canvassed the election return for Precinct No. 7 and had not added the votes as recorded in the tally sheets, and at the same time she presented a photostatic copy of the election return of Precinct No. 7, copy for the Commission on Elections. After prolonged discussion, the final action of the chairman is to state that she had already presented the proclamation for the signatures of the members, and thereafter, member Suntay moved for adjournment and the first board was adjourned (Exh. G-Petitioners). The first proclamation gave Emilio Santos 6,936 votes after counting in his favor both the 30 and 109 votes appearing in the first and second spaces, respectively, in the election return for Precinct No. 7 as against 6,911 votes for Emilio Perez or a plurality of 25 votes over Perez. The fact of adjournment, however, is disputed by the respondent who ever that the first five petitioners staged a walk-out." (Annex P, Petition)

In view of the subsequent proclamation of Emilio Perez, his rival Emilio Santos and the five signers of the original proclamation resorted to the Commission on Elections, which, after hearing and analyzing the facts and the law, annulled the first proclamation in favor of Santos, signed by the five petitioning members of the municipal board of canvassers, and upheld the proclamation of Emilio Perez made by the reconstituted board of canvassers on the afternoon of December 3, 1959. Whereupon, Santos resorted to this Court in certiorari and prohibition, asking that the resolution of the Commission on Elections and the proclamation of Perez be declared null and void. Upon petition of Santos, this Court issued a writ of preliminary injunction. After the respondents had answered the petition, the case was heard on January 4, 1960 and submitted for decision.

We agree with the respondent Commission on Elections that the first proclamation of petitioner Emilio Santos, made by the original board of canvassers, is null and void and of no force or effect. That proclamation, made in a meeting of the board of canvassers over the objections of the commission's representative, was unauthorized, since "the Electoral Commission, in the exercise of its supervisory powers, had expressly instructed the board of canvassers, by telegram of November 23, 1959, not only—

"to hold action on precinct seven until the party affected can bring case to court,"

but also—

"to hold proclamation until further orders of commission unquote stop."

The Commission had convened the board of canvassers for the afternoon of December 3, and not on the morning of that day. The insistence on meeting in the morning and to proclaim Santos as the winner, in disregard of the supervisory authority of the Commission, clearly evidences a plan to railroad his proclamation.

Worse still, in the morning session, no canvass of the votes of Precinct No. 7 had been made, and the proclamation was signed by only five of the ten members of the board of canvassers, which is not a majority thereof (Petition, Annex E). As correctly stated in the resolution complained of—

"It is clear from the evidence presented by the petitioners themselves that the board as a body composed of the ten original members has not canvassed the disputed election return for Precinct No. 7. In the proceedings of the board during its meeting from November 19 to 21, 1959 when the election return of Precinct No. 7, copy for the municipal treasurer, was fully debated on, the records show that on November 19 when the election return of Precinct No. 7, was opened, while the chairman and member Atty. Torres insisted on reading the

votes appearing in the election return, no decision was reached by the board because of the long distance telephone instruction of this commission given on the same day, which was confirmed by telegram on the same day, enjoining the board to withhold the counting of the votes cast in Precinct No. 7 for either Emilio Perez or Emilio Santos while continuing with the canvass of all the other election returns (Exh. A-Petitioners). Again before adjourning at 4:30 P.M. on November 21, 1959, when they finished all the other election returns, the chairman and member Torres again continued insisting on counting the election return of Precinct No. 7 under the objection of the representatives of the Commission, Special Attorney Aurora O. Bautista and Atty. Primo Jumangit, who were there to enforce the order of the Commission contained in its telegram of November 19, 1959. Accordingly, no decision was made by the board when the chairman adjourned the meeting (Exh. A-Petitioner).

It is clear from the foregoing facts that up to the signing of the proclamation on December 3, 1959 by the five petitioners herein, there had never been any canvas made by the board of the election return for Precinct No. 7 as the board never decided up to the time of the proclamation how the votes cast in Precinct No. 7 should be counted. Consequently, the inclusion of the two figures appearing in the election return namely, the 30 in the first space and the 109 in the second space for candidate Emilio Santos so as to make him win and be proclaimed, is without authority of the board of canvassers and therefore a nullity. Moreover, the first proclamation was signed by five members which is not a majority of the 10 members composing the board of canvasser. While the petitioners maintain that there were only 9 members in the meeting of December 3, 1959, the respondents on the other hand maintain that all the 10 members were present in the meeting and this fact is supported by the report of our Special Attorney Aurora O. Bautista who was present in the meeting." (Annex F. pp. 5-6)

It is regrettable that in its order dismissing the petition of Perez for a recount of ballots (Petition, Annex C), the Court of First Instance failed to express its findings that the return of Precinct No. 7 should be interpreted or read as containing the names of both candidates, Perez and Santos. Such an order would have obviated the present proceedings, and cut short all disputes.

Upon the other hand, this Court is of the opinion that it must declare likewise null and void the second proclamation made by the reconstituted board of canvassers, composed of five members of the original board and the five substitutes appointed by the Commission by virtue of its powers under Section 3 of the Revised Election Law. The reason is that their canvass was not made on the basis of the original returns for Precinct No. 7 received by the Municipal Treasurer, as prescribed by law, but upon the photostatic copy of the duplicate received by the Commission on Elections. It is to be observed that the five substitutes had not seen the original return, which had been locked inside an unused ballot box; nor does it appear that any effort had been made to procure said original return, either by compelling surrender of the keys to the box or resorting to other adequate means to open the container. It would be a dangerous precedent, in our opinion, to authorize the board of canvassers to use any copy of the return other than the one indicated by law, without first establishing that the latter is not available.

It is a corollary of the preceding observations that the proper course of action now is to proceed to a new canvass and proclamation, that must be carried out by the newly elected municipal council, pursuant to the provisions of Section 167.

In view of the foregoing, the Electoral Commission's resolution of December 14, 1959 is hereby modified as follows:

- (1) The two proclamations of December 3, 1959 are hereby declared null and void;
- (2) The Municipal Board of Canvassers of Hagonoy, Bulacan, composed of the present members of the municipal council, is hereby directed to proceed without delay to the canvass of the original return in Precinct No. 7 of Hagonoy, and in view of its result and of those precincts already canvassed, to proclaim the candidate for mayor

who received a plurality of the votes cast for that office in the elections of November 10, 1959;

(3) If doubts should arise as to the name and surname of any candidate that is written in said return for Precinct No. 7, the Board of Canvassers shall determine the correct name written therein on the basis of the other available copies of the return, and of the opinion of the court in election case No. 2080 of the Court of First Instance of Bulacan.

(4) If the Board of Canvassers shall be of the opinion that the return for Precinct No. 7 of Hagonoy contains the name of the same candidate written twice, then, in view of the discrepancy between the same and the copies in the possession of the Electoral Commission and of the provincial treasurer, the Board of Canvassers shall suspend the proclamation in order to give the party concerned ample opportunity to petition for a recount of the ballots laid down in Section 168 of the Revised Election Code, and they shall abide by the judicial resolution referred to in said section.

The preliminary injunction heretofore issued is dissolved. So ordered. Costs against petitioner Emilio Santos.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concur.

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