

MELANIO OLANO, PETITIONER, VS. DOMINADOR RONQUILLO, FERMIN PORTILES, AND THE HON. COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. No. 17912. May 31, 1963

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is a petition to review the resolution of the Commission on Elections ordering the Municipal Board of Canvassers of San Isidro, Samar, to proclaim, as councilors, the candidates-whomever they may be-who obtained the fifth and sixth places in the election held on November 10, 1959.

It appears that said Board, acting upon the belief that in said election, the municipality was entitled to elect four councilors only, proclaimed those candidates obtaining the four largest number of votes; and did not proclaim those candidates who got the fifth and sixth places.

The facts and issues are aptly stated in the resolution in question, the pertinent portions of which read as follows:

"The municipality of San Isidro, Samar, was, pursuant to the Department of Finance Order No. 20, dated August 17, 1959, reclassified effective as of July 1, 1958, as a 7th class municipality. By virtue of Republic Act No. 2368 which took effect on June 20, 1959, the municipality of San Isidro as a 7th class municipality is entitled to elect six councilors in the last November 10, 1959 election. After the last November 10, 1959 election was held, the municipality board of canvassers of San Isidro proclaimed on November 13, 1959 only four councilors-elect. On becoming aware of said proclamation made by the municipal board of canvassers of San Isidro and after an investigation on the matter, the Commission, confirming and retifying a prior action taken on March 28, 1960, by its Law Division on the matter, directed the municipal board of canvassers (composed of the present members of the municipal council) to convene as such and proclaim the 5th and the 6th councilors-elect on the basis or the votes case for councilors in the November 10, 1959 election. * * *."

"A motion for the reconsideration of the aforementioned order (was filed), setting up as grounds therefor: (1) that the circular of the provincial treasurer of Samar regarding the reclassification of the municipalities in the province was received in the municipality of San Isidro only after the election; that the municipal officials and the electorate were not aware of the reclassification and they voted for 4 councilors only; that the board of inspectors considered as stray all votes cast in excess of 4 candidates for councilors; and that the municipal board of canvassers proclaimed only 4 councilor-elect in view of their belief that the municipality was to elect 4 councilors only. * * *."

"There is not the slightest evidence in this case on any act of any official connected with the election which could have the effect of a notice misleading the electorate in San Isidro to believe that the municipality was entitled to elect four councilors only. On the contrary, there were official steps taken which could have the effect of a notice that the said municipality is entitled to elect six councilors. In the first week of October, 1959, this Commission furnished the municipal treasurer of San Isidro a copy of the requisition of the ballots to be used during the November 10, 1959 election in San Isidro, in which it plainly appeared that said municipality is entitled to elect six councilors. On September 18, 1959, the provincial treasurer of Samar

mailed to the same municipal treasurer a copy of the circular that San Isidro has been reclassified according to the new basis of classification into a seventh class municipality, and, therefore, entitled to elect six councilors. And on top of all these, the official ballot used in San Isidro during the last November 10, 1959 election carried six spaces, numbered one to six, for councilors, which in effect was an official notice to every voter in San Isidro who used and filled up said ballot that he is entitled to vote for six councilors. It is of no great moment in the decision of this case that some voters voted for four councilors only. It is the privilege of voters to vote, which is a thing of common occurrence, for less number of candidates than that called for to be elected."

"There is no sufficient evidence submitted to support a finding that the electorate in San Isidro were actually misled to believe that said municipality is entitled to elect four councilors only. On the contrary, there is proof showing that the electorate in San Isidro were not altogether without knowledge that the municipality was entitled to elect six councilors. The records of this Commission show that in the last November 10, 1959 election, both the Nacionalista Party and the Liberal Party presented line-ups of candidates with six candidates for councilors each. It could not have been mere stroke of coincidence that each of said political parties presented six candidates for councilor. They must have done so out of actual knowledge that the municipality of San Isidro is entitled to elect six councilors. Having presented six candidates for councilor each, it is in accord with the ordinary course of things to assume that said political parties (or at least the Liberal Party) campaigned for their six candidates for councilor, thereby in effect informing the electorate that the municipality is entitled to elect six councilors. The very petition itself, in alleging that some (5 out of 12) board of election inspectors declared stray all votes in excess of four councilors, admits that voters voted for six councilors, otherwise there would have been no extra votes to declare stray. The voting by the electorate in San Isidro for six councilors must have been quite general, for the margin of difference (with 2158 voters who voted) between the votes (80 voters) of the fourth councilor and the fifth councilor (677 votes) is only 3 votes, which margin would not have been that small had the voters generally voted for four councilors only as claimed by the petitioner."

On the basis of the above findings and considerations, the Commission on Elections issued the resolution described at the beginning of this decision; and the herein petitioner, as the president of the party that would lose its majority in the council if the resolution be carried into effect, moved for reconsideration alleging it contradicted the evidence, and violated the law. His motion having been overruled, he appealed to this Court by this petition for review; however, obviously aware of the nature of this Court's power in the matter [1] of his counsel concentrated the attacks upon questions of law. He argued, with apparently strong reasons, that (a) "the Commission on Elections being essentially an administrative body, has no jurisdiction to issue said order"; (b) "the appropriate remedy is a petition for mandamus with a court of (appropriate) jurisdiction"; and (c) "the municipal board of canvassers of San Isidro, Samar, having already made its canvass and proclamation, it has become functus officio and, therefore, can no longer be reconvened for the purpose of making a new and/or additional proclamation."

As to the first proposition, we agree that the Commission is an administrative body, but it must be added that it has power to see to it that officers performing administrative functions connected with elections shall comply with the duties assigned to them.

As to the second and third propositions, we may say, Although we have held on one occasion that after having performed its work of proclaiming the result of the count, the municipal board of canvassers is deemed functus officio (*Bautista vs. Fugoso*, 60 Phil. 383), we have also held that where an election return has, after the proclamation been amended by court order, the board of canvassers - even after it had already made the proclamation - may be required to make a new proclamation in accordance with the amended return. (*Sison vs. Provincial Board*, 62 Phil. 47, 60). And where a board of canvassers wrong-fully or erroneously excluded the election return from a certain precinct, the Commission on Elections may-even after said board had made the

proclamation order it to reconvene and make a new canvass by including the return of the aforesaid precinct. (Abendante vs. Relato, 94 Phil.,)

The underlying theory in the decision last mentioned is this it was the ministerial duty of the board of canvassers to make the proclamation in accordance with the election returns of all the precincts of the municipality; now, in excluding the return of one precinct, the board failed to perform its duty; wherefore, it may be compelled to do such duty-even after it had already issued the proclamation of the results.

In this case of San Isidro, Samar, it was the ministerial duty of the board of canvassers to proclaim the six candidates for councilor who received the highest number of votes. In proclaiming only four, notwithstanding there were other candidates receiving votes for fifth and sixth place respectively, the board failed to perform its ministerial duty, which the Commission on Elections by virtue of its functions, has power to enforce.

WHEREFORE, we must hold that there was no excess of jurisdiction of the respondent Commission. And this petition must be dismissed. No costs, however, since the point seems to be a matter of first impression in this Court.

SO ORDERED.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] And the rulings that we do not review findings of fact of the Commission. (Sotto vs. Commission on Elections, 76 Phil. 516.)

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