

MUNICIPAL BOARD OF CANVASSERS OF BANSUD, ORIENTAL MINDORO, ET AL., PETITIONERS, VS. COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.

G.R. No. 18469, August 31, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is the fourth time the matter concerning the proclamation of the elected mayor of the newly created municipality of Bansud, Oriental Mindoro, has been brought before this Court. The first case is G. R. No. L-16360, wherein Filemon Salcedo, Jr. questioned the authority of the Commission on Elections to annul the proclamation made in his favor by the Provincial Board of Oriental Mindoro acting as municipal board of canvassers pursuant to Section 167(6) of the Revised Election Code. In our decision promulgated on January 29, 1960, we upheld the action of the Commission on Elections in setting aside the proclamation and ordering the already existing municipal council to meet as municipal board of canvassers make a new canvass and proclaim the winning candidates.

After our decision in that case had become final and executory, the Commission on Elections ordered the Municipal Council of Bansud to proceed to the canvass sending as its representative Atty. Osmundo L. Oppus. Pursuant to said instruction the municipal board of canvassers met and during the canvass the representatives of Manpusti, Salcedo's opponent, discovered that the votes of both candidates appearing in the municipal treasurer's copy of the return for precinct No. 2 did not tally with the votes of the same candidates appearing in the correct copy of the return of the Commission on Elections for the same precinct, and the discrepancy would affect the result of the election because on the basis of the first return Salcedo would get a total of 1,248 votes as against Manpusti's 1,216, while under the second copy Salcedo's votes would only be 1,223 and Manpusti's 1,236.

In view of the above discrepancy, Atty. Oppus instructed the municipal board of canvassers to canvass only the votes of the candidates for vice-mayor and councilors and refrain from proclaiming the mayor-elect so that any interested party may seek the proper court remedy, but despite said instruction, the municipal board of canvassers proclaimed Salcedo as the mayor-elect of Bansud. Whereupon, Atty. Oppus immediately reported the matter by telegram to the Commission on Elections and proceeded to Manila.

On March 29, 1960, Manpusti and Luciano A. Josen, Governor of Oriental Mindoro, filed with the Commission on Elections a petition praying inter alia for the annulment of the canvass and proclamation of Salcedo on the ground that the municipal board of canvassers acted in violation of the Election Law as well as the rules and regulations promulgated by the Commission on Elections, to which Salcedo filed an opposition. After due hearing, the Commission ignored the opposition of Salcedo while it set Manpusti's petition for hearing. It is against this order that Salcedo brought to second case before this Court in the form of certiorari and prohibition contesting the jurisdiction of the Commission on Elections to annul the canvass and proclamation made in his favor by the Municipal Board of Canvassers of Bansud (108 Phil., 1184). After due hearing, this Court, in a

decision rendered on July 26, 1960, dismissed the petition upholding the authority of the Commission on Elections to entertain the petition of Manpusti concerning the validity of the aforesaid canvass and proclamation.

Said decision having become final and executory, the Commission on Elections proceeded with its scheduled hearing after which it approved a resolution on October 18, 1960 annulling the canvass of votes and proclamation made in favor of Salcedo by the Municipal Board of Canvassers of Bansud on May 24, 1960 and holding that under Section 168, in connection with Section 163, of the Revised Election Code, the remedy of recount on the basis of discrepancy of votes appearing in the two copies of election returns is no longer available because the copy of the return pertaining to the municipal treasurer is falsified and, as a consequence, it ordered said municipal board of canvassers to again convene and make a canvass of the votes cast for mayor using as basis thereof the copy of the election return of precinct No. 2 in possession of the Commission on Elections, proclaiming thereafter the candidate that may have received the highest number of votes. Against this order, Salcedo again came to this Court also in the form of certiorari and prohibition contesting the validity of the aforesaid resolution of the Commission on Elections (G. R. No. L-17672.), but on November 16, 1960, this Court, in a minute resolution, denied the petition thereby affirming the resolution of the respondent Commission.

Again, when the above decision of this Court became final and executory, the Commission on Elections instructed the Municipal Board of Canvassers of Bansud to make a new canvass as previously ordered but while it was in the process of being carried out, an order of the local court of first instance came enjoining the municipal board from making the canvass until further order from the court. As a result, the municipal board desisted from proceeding with the canvass as ordered by the Commission on Elections. However, on February 11, 1961, the court of first instance dissolved the injunction it issued and dismissed the petition for recount of votes. It said that to entertain such petition would in a way have the effect of reviewing a resolution or ruling of the Commission on Elections regarding the propriety of the recount of votes on the basis of discrepancy of votes appearing in two copies of the election returns when one thereof has been falsified, which ruling has been impliedly upheld by the Supreme Court, and hence it considered itself as bereft of jurisdiction to entertain the petition. And so, even if Salcedo filed a motion for reconsideration, Manpusti, his opponent, filed with the Commission a petition for immediate recanvass and proclamation of the mayor-elect. Whereupon, acceding thereto, the Commission directed the municipal board of canvassers to appear before it on June 5, 1961 to then and there undertake the new canvass requested. Pursuant to the order, the members of the municipal board appeared before it on the aforesaid date, with the exception of Vicente de Guia, who was ill.

During the meeting, the members discussed the propriety of the canvass considering that while the court of first instance has dissolved the preliminary injunction issued against the holding of a new canvass, Salcedo has however filed a motion for reconsideration, and they were apprehensive that if they would act without waiting for the resolution of the court on said motion they might be dealt with as for contempt of court. But during the discussion the members of the Commission informed the councilors that they were already given orders to meet and make a new canvass and were made to understand that if by tomorrow, June 6, they would not appear to carry out their instruction, they would be suspended and substituted by others in order that the canvass may be carried out.

On the morning of the next day, June 6, the councilors again appeared, but only to inform the Commission that Vice-Mayor de la Peña, and Councilors Minay, Lalo and Esteva cannot comply with the instruction of the Commission in view of the stand they had previously taken, whereupon the Commission suspended, them and appointed Messrs. Dominador Israel, Jaime Layosa, Quezon D. Manga wang, and V. Rolando Jocson as substitutes, and as thus reconstituted, the new municipal board of canvassers proceeded with the canvass and proclamation of the mayor-elect.

In the meantime, the suspended vice-mayor and councilors filed the present petition contesting the authority of the Commission on Elections to suspend them and appoint substitutes in their places praying at the same time that pending determination of the case a writ of preliminary injunction be issued to restrain respondents from carrying out the proposed new canvass and proclamation of the mayor elect. This is the fourth case. The court gave due course to the petition but declined to issue the writ of preliminary injunction prayed for.

The issue to be determined is whether the long-deJayed recanvass of the election returns for the mayor-elect of Bansud, Oriental Mindoro should proceed or not in spite of the three previous incidents that had arisen relative to the same recanvass and which have merited due and proper consideration by this Court. In said incidents, it should be recalled, this Court had upheld the authority of the Commission on Elections to intervene and take appropriate action in order that the canvass of the votes may be properly made and justice done to the mayor-elect whoever he may be. This is the fourth attempt to forestall and dispute such authority in an effort to further delay the proclamation of the duly elected mayor of said municipality.

It appears that on June 6, 1961, in compliance with the decision of this Court in the third case which upheld the authority of the respondent Commission to order a new canvass of votes for the position of mayor of Bansud, the municipal board of canvassers, as reconstituted, proceeded with the recanvass and proclaimed as duly elected mayor respondent Leon Manpusti, the opponent of Salcedo, in view of the refusal of this Court to enjoin the holding of said recanvass as prayed for in the petition. Mayor-elect Manpusti has already taken the oath of his office and is now discharging the duties of mayor. On the other hand, petitioner Salcedo, not to be outdone, lost no time in filing an election protest before the Court of First Instance of Oriental Mindoro.

The question that now arises is: Has the Commission on Elections acted properly and within its functions and prerogatives in suspending the four members of the municipal board of canvassers and substituting them with others, when they refused to proceed with the canvass as ordered by the Commission on June 6, 1961 on the pretext that Salcedo has filed a motion for reconsideration of the order of the court dissolving the writ of preliminary injunction and dismissing the petition for recount of votes?

Our answer is in the affirmative, it appearing that the petition for recount was dismissed and the writ of preliminary injunction was dissolved because of the main reason that the court found itself bereft of jurisdiction to act thereon in view of the ruling of the Commission on Elections regarding the futility of said recount because of its finding that one of the returns was found to be falsified which was impliedly upheld by the Supreme Court. The futility of said motion for reconsideration was therefore apparent, as in fact no action thereon has up to the present been taken by the court. On the other hand, it appears undisputed that the petitioning members who were suspended and substituted by the Commission on Elections openly defied the authority of said Commission by then and there refusing to act upon the pretext that they might be held in contempt of court in view of the motion for reconsideration filed by Salcedo, which excuse is indeed flimsy considering that the injunction has already been dissolved and they were ordered to comply with their duty by a superior constitutional authority whose power under the law is clear. Their attitude evinces no other purpose than a desire to filibuster in order to further delay the canvass of votes which they knew would be adverse to their colleague, Filemon Salcedo, Jr. Evidently, it was an attempt on their part to befuddle the situation hoping that in the process they might still succeed in proclaiming their colleague thru a ruse, or a technicality, but the Commission on Elections, ever watchful and vigilant, thwarted such a design in spite of all efforts to the contrary.

The incident raised here regarding the alleged certification made by the secretary and attorneys of the Commission on Elections to the effect that petitioners were suspended on June 5, 1961 when, according to the stenographic notes, they were suspended on June 6, 1961, for which they were cited for contempt, we consider of no consequence considering that the date of petitioners' suspension is immaterial it appearing that they filed the

present petition not only as members of the municipal board of canvassers, but in their individual capacity.

Wherefore, petition is denied, with costs against petitioning vice-mayor and councilors.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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