

PATERNO JAVIER, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ANTIQUE, JOSEFINA B. ESPONILLA, ET AL., RESPONDENTS.*G.R. No. 24747. February 28, 1966*

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

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Petition for certiorari to set aside the decision of the Court of First Instance of Antique, issued in its Election Case No. 2-63, and dated May 8, 1965, ordering the summary correction of the election returns for Precinct No. 4 of Culasi, Antique, with ancillary petition for a writ of preliminary injunction to avoid irreparable injury and prevent the principal remedy from becoming academic.

This Court issued the writ of preliminary injunction upon the petitioner's posting a bond of P1,000.00.

Shorn of unnecessary detail, the pertinent facts are as follows:

In the elections of November 12, 1963, petitioner Paterno Javier and respondent Felix Lomugdang were candidates, and were voted for the position of mayor of Culasi, Antique. The original returns of the board of inspectors for Precinct No. 4 credited Lomugdang with 23 votes only. When the attention of the inspectors was called to the fact that the tally board and sheets showed 83 votes for the same candidate, all the members of the board of inspectors for Precinct No. 4, unanimously and immediately, signed and sent a letter to the Municipal Treasurer, and also filed a verified petition with the Municipal Board of Canvassers to correct their return to make it conform with the figures shown in the tally board and tally sheets. But the Board of Canvassers, disregarding the instructions to suspend the canvass, issued on November 15 by the representative of the Commission on Elections and later by the Commission itself, proceeded with the canvass and proclaimed petitioner Javier as Mayor-elect, with a plurality of 53 votes over his opponent, respondent Lomugdang.

On November 26, 1963, the Commission on Elections promulgated a resolution holding the canvass and proclamation of Paterno Javier to be null and void. Petitioner Javier resorted to this Court (Javier vs. Commission on Elections, 121 Phil. 168), but the action of the Commission was sustained and Javier's petition was dismissed, the Court holding that there was reason to suspend the proclamation to enable the interested party to secure proper judicial relief.

Meanwhile, respondents Felix Lomugdang, Josefina B. Esponilla, Honorata V. Gauran and Prudencio Nacionales (the last three being two of the inspectors and the poll clerk of Precinct No. 4) filed a petition (Election Case No. 2-63) in the Court of First Instance of Antique for judicial correction of the election returns of Precinct No. 4 of Culasi, under section 154 of the Revised Election Code. However, another one of the inspectors, Eliseo Amar, filed a subsequent manifestation that his name was included in the petition without his consent; that he had not signed the same; and that he objected to any other proceeding in determining the actual votes obtained by candidate Felix Lomugdang except by actual recount of the votes in the ballot box. Whereupon, Paterno Javier moved to dismiss the petition; and, after it was denied, he answered, raising the issue that the petition was not filed by all the inspectors. The case was then heard and decided by the court below, which held:

"Be that as it may, the truth is that he, with the other members of the board, joined in unison in asking for the correction of the mistake above-mentioned by filing a petition, signed by all of them, to the municipal treasurer (Annex A, p. 5 of the Record) and to the Municipal Board of Canvassers (Annex B, p. 6 of the Record). By said acts, he admitted the existence of the error and indicated a desire to have it corrected. Under the circumstances, a belated manifestation that he is not willing to have the correction made unless the ballot box is opened and the mistake is confirmed by a recount, is merely intended to obstruct the early disposal of the case which, considering that the petition is merely a summary proceeding, should be resolved immediately."

and ordered the correction of the returns, as prayed for.

Javier's motion for reconsideration having been denied, he resorted to this Court.

We have heretofore uniformly ruled that, under section 154, the election inspectors may not make any amendment in their returns unless authorized by a competent court; and that the court may not issue such authority unless the members of the corresponding board of inspectors are unanimous in acknowledging the error and are willing to rectify the same (*Benitez vs. Paredes & Dizon*, 52 Phil. 1; *Bd. Of Inspectors vs. Sison*, 55 Phil. 914; *Gumpal vs. Court of First Instance of Isabela*, 110 Phil., 287; *Astilla vs. Court of First Instance of Leyte*, 119 Phil. 739). The requirement of unanimity on the part of the members of the board of inspectors is motivated by the consideration that in authorizing the correction of the return the court will be summarily disposing of the claim to the office of one of the contesting candidates, and that this may only be done with the maximum assurance obtainable short of a recount. Granting that inspector Eliseo Amar, in refusing to join in the petition for judicial correction of the return for Precinct No. 4 of Culasi, contradicted his previous acts, we do not think that his conduct should be held as placing petitioner Javier (or respondent Lomugdang for that matter) in any sort of estoppel. The stubborn fact is that inspector Amar is not (or claims not to be) now sure that an error was really committed, and that the lack of unanimity among the inspectors bars the court from authorizing a correction that would jeopardize the claims of either candidate, without a proper review of the ballots themselves. Of course, this resolution is without prejudice to whatever action may be proper against Amar himself.

And it further appearing that there is no petition for a recount of the ballots in said Precinct No. 4 of Culasi, Antique, we are of the opinion that the court below exceeded its jurisdiction in ordering the summary correction of the election returns, despite the lack of unanimity of the members of the corresponding board of inspectors.

Wherefore, the writ of certiorari prayed for is granted, and the decision of the Court of First Instance of Antique is annulled and set aside. The preliminary injunction heretofore granted is made permanent. Without costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Sanchez, JJ., concur.

Writ granted.

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