

ALEJANDRO L. GUMPAL, PETITIONER VS. HON. MANUEL ARRANZ AS JUDGE OF THE COURT OF FIRST INSTANCE OF ISABELA, (BRANCH I) ET AL., RESPONDENTS.

G.R. Nos. 16409 and 16416. November 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

These are two (2) petitions for: (1) certiorari, to nullify the proceedings in Election Cases Nos. 1326 and 1330 of the Court of First Instance of Isabela, First Branch, presided over by Hon. Manuel Arranz, Judge and the proclamation, by the Provincial Board of Canvassers of said province of respondent' Leocadio E. Ignacio, as the third elected member of the Provincial Board of Isabela; and (2) a writ of mandamus directing said board of canvassers to reconvene and proclaim petitioner Alejandro L. Gumpal, as the candidate elected to said office, in lieu of respondent Ignacio.

In the elections held on November 10, 1959, the following were candidates for membership of the provincial board of Isabela:

Leocadio E. Ignacio

Felicisima C. Pinpin Liberal Party

Vivencio Guzman

Juan Durian Independent Liberal

Gabriel R. Visaya

Alejandro Gumpal Nacionalista Party

Emilio Cireneo

Eustace Solda

Independent Nacionalista

On December 3, 1959, respondent Ignacio filed the petition with which said election case No. 1326 was initiated, praying for a "recounting" of the votes cast in precinct No. 19 of Santiago, Isabela, "and/or correction" of the election return (Election Form No. 23) for said precinct, upon the ground that he had obtained therein-as candidate for the provincial board as stated in the certificate of votes of candidates (Election Form No. 24), issued

by the board of election inspectors of the aforementioned precinct, copy of which was attached to the petition and made an integral part thereof—174 votes, which were not included in said election return due to inadvertence, and would affect the result of the election. Moreover, Ignacio prayed "that a writ of preliminary injunction be issued to restrain the Provincial Board of Canvassers from effecting a proclamation pending a determination of the petition." Respondent court immediately heard Ignacio and then issued an order, dated December 3, 1959, from which we quote:

"1. The Board of Election Inspectors in said precinct * * * must appear in this Court not later than 2:30 o'clock tomorrow afternoon, December 4, 1959, and make the necessary correction of the clerical mistakes committed by them, if they can, in the preparation and accomplishment of Election Form No. 23 so as to conform with the true statements made by them on Election Form No. 24 (Annex A), in accordance with Section 154 of the Revised Election Code;

"2. If the correction aforesaid could not be effected for valid reason, the judicial recounting of the votes cast in favor of Leocadio E. Ignacio be made before the court on said date and hour in the presence of all the candidates for members of the Provincial Board of Isabela or their representative and the Chairman of the Provincial Board of Canvassers;

"3. The Municipal Treasurer of Santiago, Isabela must immediately bring to the Court on said date and hour the ballot box for valid ballots and the box for spoiled ballots used in Precinct No. 19, Santiago, Isabela in the last election held on November 10, 1959;

"4. The Provincial Commander, the Provincial Fiscal and the Provincial Treasurer of Isabela must bring to this Court on said date and hour the corresponding key in their possession of the ballot boxes used in said precinct; and

"5. The Chairman of the Provincial Board of Canvassers must bring to the Court Election Form No. 23 of said precinct as canvassed by the Provincial Board of Canvassers.

"Let the Provincial Sheriff of Isabela, or his deputy, immediately serve a copy of this order upon the parties and the officials concerned by personal delivery.

"In order not to render nugatory the purpose of this petition, the petition for preliminary writ of injunction is granted, and upon the petitioner filing a cash bond in the sum of P100.00, let a writ of preliminary injunction be issued restraining the Provincial Board of Canvassers from proclaiming the winning candidates until after the correction of said Election Form No. 23 is effected or the judicial recounting is terminated."

Although Gumpal was neither summoned nor officially notified of this order, he appeared at said hearing. So did the chairman and members of the board of canvassers, and its poll clerk, all of whom were unanimous in their testimony to the effect that Ignacio had obtained in precinct No. 19, as candidate for the provincial board, 174 votes; that this is confirmed by the tally sheet used in said precinct and the aforementioned certificate of votes of candidates; that owing to inadvertence, they failed to include said votes in the election return for said precinct; and that they were willing to make therein the necessary correction and/or amendment. On December 7, 1959, the court issued an order, the dispositive part of which reads:

"Wherefore, pursuant to the provisions of Section 154 of the Revised Election Code, the Court hereby order (a) that the Board of Election inspectors in said precinct No. 19 of Santiago, Isabela, should correct and/or amend immediately in open its statement in Election Form No. 23 (Election Returns No. 23712) * * * by inserting and writing thereon the name of the petitioner Leocadio E. Ignacio on the space for candidate for member of the Provincial Board, and the 174 votes received by him should be written in words and in figures; (b) that after the corresponding corrections herein indicated are effected with their corresponding initials the said Election Form 23 (Election Returns No. 23712), should be returned immediately to the Provincial Board of Canvassers

of Isabela which should immediately meet and re-canvass and count the true number of votes received by petitioner Leocadio Ignacio appearing on the corrected statement corresponding said precinct; (c) that upon compliance of this order by the Provincial Board of Canvassers, let the writ of preliminary injunction be dissolved and petitioner's bond cancelled.

"Let a copy of this order be attached to Election Form No. 23 (Election Returns No. 23712), copy for the Provincial Treasurer, and another copies be sent, by registered mail, to the Commission on Elections and to the Municipal Treasurer of Santiago, Isabela."

Herein petitioner Alejandro L. Gumpal, moved for a reconsideration of said order, which was denied immediately.

Soon thereafter, or on December 10, 1959, the chairman and members of the board of election inspectors of precinct No. 23 of Santiago, Isabela, as well as its poll clerk, filed a verified petition, which was docketed as Election Case No. 1330 of the court aforementioned, stating that, during the canvass being made by the Provincial Board of Canvassers of Isabela, they came to know that, according to the election return for said precinct No. 23, respondent Ignacio had obtained therein one hundred-four-teen (114) votes, which is, however, "untruthful", for "in fact and in truth"—as evidenced by a certificate of votes of candidates issued by said board of election inspectors, and attached to and made an integral part of the petition— said respondent had received and obtained one hundred forty (140) votes, and praying that said board of election inspectors be authorized 'to correct and/or amend' its aforesaid election return "by inserting * * * in the proper space * * * 'One Hundred Forty * * * 140' opposite and/or following the name of candidate Leocadio Ignacio."

Alejandro L. Gumpal was neither served with copy of the petition in said case No. 1330 nor notified of its hearing, which took place on the same day. On that occasion everyone of the petitioners therein took the witness stand and testified that Ignacio had obtained, in said precinct No. 23 of Santiago, Isabela, one hundred forty (140) votes, as attested to in the certificate of votes of candidates above referred to, which was copied from the tally sheet deposited in the corresponding ballot box; that they had committed an honest mistake in the preparation of the election return, by erroneously writing thereon "one hundred fourteen 114", instead of " one hundred forty 140"; and that they were willing to rectify such mistake, which was due to inadvertence on their part. Thereupon, respondent court issued an order granting the petition in said case. A motion for reconsideration, filed by petitioner Gumpal on December 11, 1959, was denied on the same date.

Thereupon, the Provincial Board of Canvassers completed the canvass of the votes cast for members of the Provincial Board of Isabela, relying, insofar as precincts Nos. 19 and 23 of Santiago were concerned, upon the election returns thereof as corrected in pursuance of the proceedings aforementioned, and proclaimed Felicisima Cabasal Pinpin, Gabriel E. Visaya and respondent Leocadio E. Ignacio as the elected members of the Provincial Board of Isabela, with 46,049, 33,336 and 32,903 votes, respectively, thus giving herein appellant, Leocadio B. Ignacio, a plurality of ten (10) votes over his closest opponent, petitioner Gumpal, who was credited with 32,893 votes. On December 23, 1959, petitioner Gumpal filed: (a) a "petition for protest" docketed as Election Case No. BR-II-I of the Court of First Instance of Isabela—contesting the election of Ignacio as third member of the Provincial Board of Isabela; and (b) the petitions herein docketed as G.R. No. L-16409, as to precinct No. 23, and G. R. No. L-16416, as to precinct No. 19, against said court, first branch, the Provincial Board of Canvassers of Isabela, the Board of Election Inspectors of Precinct No. 23 (in case G.R. No. L-16409), and the aforementioned Leocadio E. Ignacio. Subsequently, or on January 1, 1960, the latter assumed office as member of the Provincial Board of Isabela. ;

The two (2) cases before us (L-16409 and L-16416) have been jointly heard, owing to the intimate relation between both, for which reason only one decision will be rendered therein. Petitioner Gumpal maintains: '

I. That the board of election inspectors for precinct No. 23 of Isabela may not file, pursuant to the provisions of section 154 of the Revised Election Code, a petition for the correction of its election return (Form No. 23), "after this statement had already been canvassed by the Provincial Board of Canvassers."

II. That a petition for correction, under section 154 of the Revised Election Code, may not be heard and resolved without notice to the other affected candidates, when the correction sought to be made will materially affect the result of the election.

III. That an affected candidate may not validly file a petition for correction under the provisions of section 154 of the Revised Election Code, or the filing of a petition under this provisions is limited to the board of election inspectors.

IV. That a court of record may not validly apply the provisions of section 154 of the Revised Election Code to a petition for recounting of votes filed by an affected candidate.

V. That a court of record may not validly decide a petition for recounting of votes filed by an affected candidate without actually recounting the votes in question.

VI. That a court of record may not validly take cognizance of, hear and decide a petition for recounting of votes filed by an affected candidate without notice of said proceeding having been properly given to all candidates affected.

VII. That the First Branch of the Court of First Instance of Isabela may not validly take cognizance of a case which originated or came from the Municipality of Santiago, Province of Isabela, without the previous approval of the Department of Justice, in the light of this Department's Administrative Order No. 17, T, dated January 20, 1955.

VIII. That an alleged discrepancy between what appears in Election Form No. 23 (Election return) and what appears in Election Form No. 24 (certificate of votes of candidates, issued by boards of election inspectors to watchers under Section 153 of the Revised Election Code) may not constitute a sufficient legal ground for a court to order the correction of the entries appearing in Election Form No. 23, to make the entries in this statement conform to the entries in Election Form No. 24.

1. Petitioner assumes that Election Case No. 1830 was instituted after the return for precinct No. 23 had been canvassed by the provincial board of canvassers. However, the latter is charged by law (Sec. 160, Republic Act No. 180) with the duty to make a canvass, not of the "election return" for each precinct, but "of all the votes cast in the province for national, provincial and city candidates", and such duty is not deemed complied with until: (1) "upon completion of the canvass * * * separate statements of all the votes received" by said candidate shall have been made; and (2) the board shall have proclaimed, in accordance with said statements, "who has been elected to the House of Representatives from each legislative district and who has been elected to each provincial and city office." The Provincial Board of Canvassers of Isabela took these two (2) steps, insofar as the Provincial Board of Isabela was concerned, in the afternoon of December 11, 1959, after respondent court had issued the order granting the petition in election case No. 1330, and denied the motion for reconsideration therein filed by herein petitioner, Alejandro L. Gumpal.

If the latter intends to question the feasibility of correcting an election return, after its examination by the provincial board of canvassers, but before its aforementioned task has been fully discharged, then petitioner's pretense is belied by sections 162 and 163 of Republic Act No. 180, reading:

"Sec. 162. Material defects in form of the statements.—If it should clearly appear that some requisite in form has been omitted in the statements, the board shall return them by messenger or by another more expeditious

means, to the corresponding boards of inspectors for correction. Said statements, however, shall not be returned for a recount of the ballots or for any alteration of the number of votes set forth therein.

"Sec- 163. When statements of a precinct are contradictory.—In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected."

The correction mentioned in section 162 and that which may be required by the result of the recount authorized in Section 163, could only take place after the corresponding election return has been examined by the board of canvassers.

Petitioner cites, in support of his pretense, section 154 of Republic Act No. 180, which we quote:

"After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

This provision contains, however, nothing that would bear out petitioner's claim.

2. Section 154 above quoted does not require notice upon the candidates. The absence of such requirement becomes significant when contrasted with the last sentence of section 163 specifically directing that notice of the proceedings for the recounting of votes be "given to all candidates affected."

It is true that, as stated by petitioner herein, "the summary nature of the proceedings under section 154 does not preclude notice to other affected candidates if the alteration or amendment sought to be made would materially affect the election". Indeed, it would be a good practice to require such notice in appropriate cases, particularly when there is sufficient time therefor and there are circumstances indicating that the allegations of the petition for correction may not be entirely truthful. In election case No. 1330, however, no such time was available, for the fifteen (15) days within which the Board of Canvassers was required by section 160 of Republic Act No. 180 to discharge its duties had expired on November 26, 1959, or fourteen (14) days prior to the institution of said case.

Neither were the circumstances above referred to present in said election case No. 1330. On the contrary, all indications pointed to the veracity of the petition therein. Thus: (a) the petition was subscribed and sworn to by the chairman (a public school teacher) and members of the board of election inspectors of precinct No. 23—including inspector Miguela C. Gabriel, who represented the Nacionalista Party, to which Gumpal belongs—and the poll clerk (another teacher) ; (b) the petition was corroborated by a certificate of votes of candidates, issued by said board of election inspectors; (c) it was fully substantiated by the testimony of the chairman, the members of said board and its poll clerk; and (d) it is in accord with the normal course of events for, considering that numbers one-hundred fourteen (114) and one-hundred forty (140) are idem sonans, as well as possible deficiencies in pronunciation (as testified by said witnesses), it is not unlikely that the one may have been mistaken for the other. In this connection, it is interesting to note that, in the motion for reconsideration filed by petitioner herein in election case No. 1330, he did not deny the truth, either of the allegations of the petition in that case, or of the testimony therein introduced in evidence, as set forth in the appealed order of respondent court, dated December 10, 1959.

3. Section 154 of the Revised Election Code does not specify the party who may institute the proceedings therein contemplated. Upon the other hand, it is already well settled that the alteration therein provided may not be sanctioned unless the members of the corresponding board of election inspectors are unanimous on the existence

of an error in the return and are willing to rectify the same. (Benitez vs. Paredes and Dizon, 52 Phil., 1; Board of Inspectors of Bongabong, vs. Sison, 55 Phil. 914.) So long, therefore, as these conditions are present and the proceedings have been instituted by a party who has a justiciable interest in the matter, the court may authorize the aforementioned correction. A candidate affected by the alleged mistake has such justiciable interest.

4. Petitioner herein assumes that election case No. 1326 was instituted for the sole purpose of securing a "recounting" of the votes cast in precinct No. 19 of Santiago, Isabela. Such assumption is belied by the record of said case. It was alleged in the petition therein that the one-hundred seventy-four (174) votes allegedly obtained by Ignacio in said precinct were "inadvertently omitted" from the election return, and Ignacio prayed in said petition that "a recount of the votes cast in precinct No. 19 of Santiago, Isabela, and/or correction of the Election Form No. 23 for said precinct be made." Moreover, the order of respondent court, dated December 7, 1959, authorizing said correction, expressly relied upon section 154 of Republic Act No. 180. In other words, the petition in said case sought, also, the correction of said election return.

5. Although the petition in election case No. 1326 was for a "recounting and/or correction" of election return, the order of respondent court disposing of the case was limited to the second alternative. The court did not act, therefore, on the matter of recounting, the same having become moot.

6. Respondent court did not "take cognizance of, hear and decide a petition for recounting," in election case No. 1326. It heard and decided the same, insofar only as the petition for "correction" was concerned. Hence, the provisions of section 163 of Republic Act No. 180, relative to the procedure for a "recounting", are inapplicable to test the legality of the proceedings in the lower court or the wisdom of the action taken by the same. At any rate, petitioner was actually present at the hearing of said case on December 4, 1959, and was duly represented by Attorneys Antonio M. Orara and Buenaventura Baccay, who cross-examined the witnesses and otherwise participated actively in the proceeding. After the presentation of the evidence for the petitioner in said election case No. 1326, petitioner herein did not offer to introduce any evidence. In short, he had every opportunity to present his side of the case, and made use of it.

7. On January 22, 1955, the Department of Justice issued Administrative Order No. 17, T, distributing the cases coming from the different municipalities of the province of Isabela between the two branches of the court of first instance thereof. Said order provided, also, that "whenever the interest of the administration of justice so requires, either of the two Judges may try any case coming from any municipality, with the previous approval of this Department." Election cases Nos. 1326 and 1330 were heard and decided by the Judge presiding the first branch of said court, with station in Ilagan, without previous departmental approval, although, pursuant to said Administrative Order No. 17, T, cases coming from the municipality of Santiago are cognizable by the Judge of the second branch, with station in Cauayan. It is trite to say, however, that the validity of a given judicial action is dependent upon the jurisdiction of the court taking it, and that, by specific constitutional mandate, "the power to define, prescribe and apportion the jurisdiction of the various courts" is, subject to the limitations set forth in the fundamental law, within the exclusive province of Congress. Since, being legislative, said power cannot be delegated to the Secretary of Justice, the aforementioned Administrative Order No. 17, T, must be construed, not as a limitation upon the jurisdiction of either branch of the Court of First Instance of Isabela, but, as an administrative measure tending to regulate the exercise of said jurisdiction. No matter, therefore, how reprehensible or suspicious the action of respondent court may have been in taking cognizance of said cases Nos. 1326 and 1330, without previous approval of the Department of Justice, the validity of the orders complained of is unaffected thereby.'

8. Petitioner herein assumes that these orders are based upon the discrepancy between the election returns on the one hand and the certificates of votes of candidates on the other. In fact, however, said orders were predicated

upon the unanimous testimony of the members of the board of election inspectors and the poll clerks of precincts Nos. 19 and 23 of Santiago, Isabela. The certificates of votes of the candidates merely corroborated said testimony and indicated the veracity thereof. Said documentary corroboration, was not indispensable for said testimony to warrant the correction of the returns. Hence, instead of impairing the validity of the orders complained of, the existence of such corroboration tends to bolster up the wisdom of said orders.

Considering lastly, that petitioner herein has filed a protest contesting the proclamation and/or election of respondent Ignacio as member of the Provincial Board of Isabela, and praying that he (petitioner) be declared the one elected to said board, in lieu of respondent Ignacio, and that the latter has already assumed office as member of the board and is discharging his duties as such, petitioner herein should seek his relief in the aforementioned protest, not in his present petitions for mandamus and certiorari (The Municipal Board of Canvassers, Borongan, Samar, et al. vs. Hon. Emilio Benitez, et al., L-16319 [promulgated June 30, 1960]).

Wherefore, said petitions are hereby dismissed, with costs against petitioner herein. It is so ordered.

Paras, C.J., Bengzon, Padilla, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Petitions dismissed.

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