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**[ G.R. No. L-6404. January 12, 1954 ]**

**PEDRO CALANO, PETITIONER AND APPELLANT, VS. PEDRO CRUZ, RESPONDENT AND APPELLEE.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

For purposes of the present appeal the following facts, not disputed, may be briefly stated. As a result of the 1951 elections respondent Pedro Cruz was proclaimed a councilor-elect in the municipality of Orion, Bataan, by the Municipal Board of Canvasser. Petitioner Pedro Calano filed a complaint or petition for quo warranto under section 173 of the Revised Election Code (Republic Act No. 180, contesting the right of Cruz to the office on the ground that Cruz was not eligible for the office of municipal councilor. In his prayer petitioner besides asking for other remedies which in law and equity he is entitled to, asked that after declaring null and void the proclamation made by the Municipal Board of Canvasser in November, 1951, to the effect that Cruz was councilor-elect, he (Calano) be declared the councilor elected in respondent's place.

Acting upon a motion to dismiss the petition, the Court of First Instance of Bataan issued the order of December 27, 1951, dismissing the petition for quo warranto on the ground that it was filed out of time, and also because petitioner had no legal capacity to sue as contended by respondent. On appeal to this Court by petitioner from the order of dismissal, in a decision promulgated on May 7, 1952, we held that the petition was filed within the period prescribed by law; and that although the petition might be regarded as somewhat defective for failure to state a sufficient cause of action, said question was not

raised in the motion to dismiss because the ground relied upon, namely, that petitioner had no legal capacity to sue, did not refer to the failure to state a sufficient cause of action but rather to minority, insanity, coverture, lack of juridical personality, or any other disqualification of a party. As a result, the order of dismissal was reversed and the case was remanded to the court of origin for further proceedings.

Upon the return of the case to the trial court, respondent again moved for dismissal on the ground that the petition failed to state a sufficient cause of action, presumably relying upon the observation made by us in our decision. Further elaborating on our observation that the petition did not state a sufficient cause of action, we said that paragraphs 3 and 8 of the petition which reads thus—

> "8. Que el recurrente tenia y tiene derecho a ocupar el cargo de concejal de Orion, Bataan, si no habia sido proclamado electo concejal de Orion, Bataan, al aqui recurrido.
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> "3. Que el recurrente era candidato a concejal del municipio de Orion, Bataan con el certificado de candidatura debidamente presentado, y registrado asi como tambien fue votado *y elegido* para dicho cargo, en la eleccion del 13 de noviembre de 1951." (Italics ours.)

were conclusions of law and not statement of facts.

The trial court sustained the second motion to dismiss in its order of September 30, 1952, on the ground that the petition failed to state a sufficient cause of action. Again petitioner has appealed from that order to this court.

Appellant urges that the trial court erred not only in not holding that the motion to dismiss was filed out of time but also in declaring that the complaint failed to state a sufficient cause of action. In answer respondent-appellee contends that the appeal should not have

been given due course by the trial court because under the law there is no appeal from a decision of a Court of First Instance in protests against the eligibility or election of a municipal councilor, the appeal being limited to election contests involving the offices of Provincial Governor, Members of the Provincial Board, City Councilors and City Mayors, this under section 178 of the Revised Election Code.

In the past we had occasion to rule upon a similar point of law. In the case of Marquez vs. Prodigalidad, 46 Off. Gaz., Supp. No. 11, p. 204, we held that section 178 of the Revised Election Code limiting appeals from decisions of Courts of First Instance in election contests over the offices of Provincial Governor, Members of the Provincial Board, City Councilors and City Mayors, did not intend to prohibit or prevent the appeal to the Supreme Court in protests involving purely questions of law, that is to say, that protests involving other offices such as municipal councilor may be appealed provided that only legal questions are involved in the appeal. Consequently, the appeal in the present case involving as it does purely questions of law is proper.

Going to the question of sufficiency of cause of action, it should be stated that our observation when the case came up for the first time on appeal was neither meant nor intended as a rule or doctrine. We were merely considering the main prayer contained in appellant's petition, namely, that he be declared councilor-elect in the place of the respondent-appellee. In other words, we only observed that petitioner could not properly ask for his proclamation as councilor-elect without alleging and stating not mere conclusions of law but facts showing that he had the right and was entitled to the granting of his main prayer.

Considering the subject of cause of action in its entirety, it will be noticed that section 173 of the Revised Election Code provides that when a person who is not eligible is elected, any registered candidate for the same office like the petitioner-appellant in this case, may contest his right to the office by filing a petition for quo warranto. To legalize the contest this section just mentioned does not require that the contestant prove that he is entitled to the office. In the case of Llamoso vs. Ferrer, 47 Off. Gaz., No. 2, p. 727, wherein

petitioner Llamoso who claimed to have received the next highest number of votes for the post of Mayor, contested the right of respondent Ferrer to the office for which he was proclaimed elected, on the ground of ineligibility, we held that section 173 of the Revised Election Code while providing that any registered candidate may contest the right of one elected to any provincial or municipal office on the ground of ineligibility, it does not provide that if the contestee is later declared ineligible, the contestant will be proclaimed elected. In other words, in that case, we practically declared that under section 173, any registered candidate may file a petition for quo warranto on the ground of ineligibility, and that would constitute a sufficient cause of action. It is not necessary for the contestant to claim that if the contestee is declared ineligible, he (contestant) be declared entitled to the office. As a matter of fact, in the case of Llamoso vs. Ferrer, we declared the office vacant.

In view of the foregoing, the failure of Calano to allege that he is entitled to the office of councilor now occupied by the respondent Cruz does not affect the sufficiency of his cause of action. Reversing the order of dismissal, the case is hereby remanded to the trial court for further proceedings. No costs.

*Paras, C. J., Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo*, and *Labrador, JJ.,* concur.

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