

94 Phil. 487

[G.R. No. L-7312. February 26, 1954]

TITO V. TIZON, Y OTROS RECURRENTES, CONTRA CECILIO DOROJA Y OTROS, RECURRIDOS.

D E C I S I O N

DIOKNO, M.:

Resultando que el Juzgado de Primera Instancia recurrido, en 23 de diciembre de 1953, ha dictado sentencia ordenando a las juntas de inspectores de eleccion de los precintos Nos. 5B, 8, 12, 15 y 16 del municipio de Gandara, y No. 1 del distrito municipal de Matuguinao, todos de la provincia de Samar, que corrijan inmediatamente las respectivas actas de eleccion en la forma que especifica, y denego la peticion relativa a la correccion del acta del precinto 14 de Gandara; y

Considerando que el Juzgado recurrido ha obrado en virtud de la jurisdiccion que le confiere el articulo 154 delCodigo Electoral Revisado; que su resolucion rechazando como prueba de uno de los candidatos en el juicio sumario el testimonio de electores acerca de sus votos para el cargo de representante esta arreglada a derecho, y que su citada sentencia es final e inapelable (Aguilar y Casapao vs. Navarro, 55 Phil., 898; Clarin vs. Juez Alo, *supra*, p. 432.)

Se deniega el recurso, y se disuelve el interdicto prohibitorio expedido el 11 de diciembre de 1953, con efecto inmediato, con las costas. Asi se ordena.

Paras, Pres., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, y Concepcion, MM., estan conformes.

DISSENTING:

BAUTISTA ANGELO, J.,:

Tito V. Tizon and Marciano Lim, together with three others, were candidates for the office of Representatives for the second district of Samar. After elections, copies of all election returns coming from all precincts of said district were delivered to the Provincial Board of Canvassers. Before the Board could finish the canvass, seven cases were instituted in the Court of First Instance of Samar where the correctness of the election returns for six precincts in the municipality of Gandara and one precinct in the municipal district of Matuguinao was challenged with respect to the number of votes appearing therein.

It was alleged that the number of votes originally appearing in the returns for candidates Tizon and Lim was erased and a higher number of votes was written for Tizon and a lesser number for Lim. Not all the members of the board of inspectors asked for the correction of the returns, as in six of the precincts involved one inspector objected, and in one two inspectors, in sworn statements submitted by them to the court. Motions to dismiss were filed by respondents on the ground of lack of jurisdiction, but they were denied. Hence this petition for certiorari and mandamus.

The provision of law invoked by petitioning inspectors in favor of the correction in section 154 of the Revised Election Code which provides that "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 competent court." It is contended, and the majority opinion of this Court has so held, that this legal provision applies to the present case even if the nature of the error to be corrected is controversial in character. I dissent from this finding.

I agree with the majority that there need not be a unanimity on the

part of the inspectors in their desire to seek the correction of an election return from the court under section 154. The majority of them would suffice to bring the matter to court. What I contend is that when one at least of the inspectors disputes the fact that an error has been committed, the issue becomes controversial and it takes the case out of the jurisdiction of the court.

The reason is obvious. If the issue is controversial, there might need a long, tedious, and protracted hearing where considerable evidence has to be presented which of necessity will delay the proclamation of the winner to the prejudice of public interest. And the situation is aggravated by the fact that the controversy is made dependent upon secondary evidence. The court is powerless under the law invoked to resort to the ballots. To allow the court to act on such controversy merely on circumstantial evidence would be to set wide open the door to collusion and fraud. In my opinion, the subject which might be cognizable under section 154 merely refers to errors that are clerical and which do not involve any argument or dispute. To hold otherwise would be a flagrant encroachment on the functions of the House Electoral Tribunal.

We do not need to go far to look for precedents. Right in this jurisdiction we have one which is on all fours with the present controversy. I refer to the case of *Benitez vs. Paredes and Dizon*, 52 Phil., 10. In that case, where Tomas Dizon and Eulogio Benitez were candidates for governor for the Province of Laguna, Dizon brought an action No. 1 of Longos to correct the copies of the election returns of that precinct so as to show that 157 instead of 207 votes were erroneously counted and adjudicated to Eulogio Benitez. In view of lack of unanimity on the part of the inspectors in so far as the correction of the return is concerned, this Court ruled that the respondent Judge lacked jurisdiction to entertain the case. This Court, in a lucid language, said: "From the moment that the inspectors or any of them do not agree with the corrections of the returns, the case becomes contentious and, as such, requires the presentation of evidence in order that the court may determine on what ground to grant or not to grant authority to amend the returns in question. Such procedure must, of

necessity, be subject to contingencies which will prevent the prompt termination of elections, which must be avoided in the interest of public good.”

The law on this matter remains the same. This ruling is still a good law. The majority opinion has not advanced any plausible reason why it should be disregarded in the present case. I vote for granting the petition.

Se deniega el recurso.

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