100 Phil. 844

[G.R. No. L-10998. January 31, 1957]

BERNARDINO O. ALMEDA, PETITIONER, VS. FERNANDO SILVOSA AND HON. MODESTO R. RAMOLETE, JUDGE OF THE COURT OF FIRST INSTANCE OF SURIGAO, RESPONDENTS.

D E C I S I O N

FELIX, J.:

In the elections held on November 8, 1955, Bernardino O. Almeda and Fernando Silvosa were candidates for the office of Provincial Governor of Surigao. On *November 25, 1955* the Provincial Board of Canvassers proclaimed Bernardino O. Almeda as duly elected Provincial Governor and he qualified as such on January 1, 1956.

On *December 2, 1955*, Fernando Silvosa filed Election Protest No. 877 in the Court of First Instance of Surigao, presided by Hon. Modesto R. Ramolete, contesting the election of Bernardino O. Almeda. The latter answered the petition and on March 26, 1956 filed his second amended answer to the protest with a counter-protest.

It so happened that Artemio Laurente and Victor Risma, defeated candidates for municipal mayors of Tago and Loreto, respectively, had instituted in the same court Election Protests Nos. 872 and 873, and Fernando Silvosa deemed it fit to file his motions to intervene therein which, despite the opposition of Bernardino O. Almeda, the Court granted allowing Fernando Silvosa to be present in the revision of ballots in said Election Protests, which were dismissed on March 12, 1956.

On July 16, 1956, the first day of the trial on the merits of Election Protest No. 877, and as a result of his intervention in Election Protests Nos. 872 and 873, protestant Fernando Silvosa asked permission to amend his protest by adding six new precincts 19, 20, 22-23 and 23-A of Tago, and 9 of Loreto, and on July 18, 1956, submitted his motion for admission of an amended protest (Annex I), to which the protestee vigorously objected (Annex J), but the Court admitted the Amended Petition of Protest (Annex K) and ordered protestee

Bernardino O. Almeda to answer the same and to prepare for trial.

On July 19, 1956, the petitioner filed an urgent motion for reconsideration of the order admitting Amended Petition of Protest (Annex L), which was reiterated on July 24, 1956 (Annex M) after the order of the Court of July 21, 1956 (Annex N) admitting the amended protest was received by Almeda on July 24, 1956. The Court denied the motion for reconsideration on July 25, 1956 (Annex O), and the protestee announced his intention to file the present petition for certiorari, praying for a ten day period within which to accomplish the same (Annex P), but Judge Ramolete denied this in open court. Hence, the institution of the present proceedings in this Court, wherein the petitioner maintains that the Court *a quo* gravely abused its discretion and exceeded its jurisdiction:

> (1) In allowing respondent Fernando Silvosa to intervene in Election Protests Nos. 872 and 873, which are protests for municipal mayors, contrary to Section 174 and 176 *(g)* of the Revised Election Code;
>
> > (2) In legalizing the acts of the respondent as intervenor, by permitting respondent Fernando Silvosa to present the ballots in his favor from the six new precincts, which were revised and marked without the knowledge and presence of the latter, and in denying petitioner's right to a new revision and recounting of the (ballots in the) six new precincts, and to mark ballots in his favor; and(3) In allowing the amendment of the protest and in admitting the amended petition of protest, considering that the protest with respect to the six new precincts was filed out of time and constituted an unfair surprise to the herein petitioner, and in spite of the fact that the addition of the said six new precincts to the protest means the unwarranted extension of the Court's jurisdiction over said new six precincts constituting a fresh and new protest, thus substantially changing the cause of action that bars amendment.

As stated before Bernardino O. Almeda was proclaimed elected Provincial Governor of Surigao on *November 25, 1955*, and not satisfied with said proclamation Fernando Silvosa filed on *December 2, 1955*, that is, within the period prescribed by law, the corresponding

election protest which was docketed as Case No. 877 of the Court of First Instance of Surigao. The question, therefore, submitted to Our determination in this instance, on which the solution of the problem depends, is whether or not the amended petition of protest filed by Fernando Silvosa on or about July 19, 1956, changed the grounds of the protest, for if it did, it should have been filed with-within the two weeks' period after proclamation. Section 174 of the Revised Election Code (R. ,A. No. 180), provides the following:

> "SEC. 174. CONTESTED ELECTIONS FOR PROVINCIAL AND MUNICIPAL OFFICES.—A petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Instance of the province by any candidate voted for in said election and who has presented a certificate of candidacy, *within two weeks after the proclamation of the result of the election*. Each contest shall refer exclusively to one office, but contests for the offices of the vice-mayor and councilor may be consolidated in a single case."

We copy hereunder the following doctrines laid down in Our jurisprudence on the matter of amendments of petitions of election protests:

> "Amendments to the protest are allowed, which, *if they do not change the cause of action*, may be presented within a reasonable time before the commencement of the trial, and even aftrwards if there are special reasons therefor; and *if they do change the grounds of the protest, they must be made within the period fixed by law for the filing of protest.*—Orencia *vs.* Araneta Diaz, 47 Phil., 830; Valenzuela *vs.* Revilla and Carlos, 41 Phil., 4; Cailles *vs.* Gomez et al., 42 Phil., 496; Tengco *vs.* Jocson, 43 Phil., 715." (Gallares vs. Caseñas, 47 Phil., 363)."The rule established by the jurisprudence of this Court as to amendments to motion of protest is that amendments may be allowed when they do not essentially change the grounds of the protest and may be made within a reasonable period before the commencement of the trial, unless there are special reasons for allowing the amendments after said period. But when the amendments are of such nature as virtually to introduce *new grounds* not alleged in the original protest, said amendments must be filed within the period fixed by the law for filing protest.—Valenzuela *vs.* Carlos et al., 42 Phil. 428; Cailles *vs.* Gomez et al., 42 Phil. 496; Tengco *vs.* Jocson, 43 Phil., 615." (Orencia *vs.* Araneta, 47 Phil., 830).

With respect to the particular point of whether or not the inclusion in the amended petition of protest of new precincts not covered in the original petition, constitutes new grounds, introduces new matter or changes the cause of action, this Court has already held the following:

> "To allow an amendment to the motion of protest by inserting new precinct after the time prescribed by the statute for filing the original motion, would be productive of surprise to the contestee and of disadvantage to him, unless the trial be postponed to enable him to meet the issues thus newly raised. 'If the original contest, or a new one by an amended or supplemental pleading, could be commenced a month after the expiration of the time prescribed, it could be done at any later period, and the litigation in this way prolonged, in many instances until the term of office had expired.' (Fernando et al. *vs.* Constantino, G. K. No. 46099, August 30, 1933, 37 Off. Gaz., p. 107)."While the election law does not say so directly, it is clearly inferred from its relevant provisions that where the grounds of contest are that legal votes were rejected and illegal votes received, the motion of protest should state in what precincts such irregularities occurred. * * *. The specification in the motion of protest of the election precinct or precincts where the alleged irregularities occurred, is required in order to apprise the contestee of the issues which he has to meet; and to allow an amendment to the motion of protest by inserting new precincts after the time prescribed by the statute for filing the original motion, would be productive of surprise to the contestee and of disadvantage to him, unless the trial be postponed to enable him to meet the issues thus newly raised. 'If the original contest, or a new one by an amended or supplemental pleading, could be commenced a month after the expiration of the time prescribed, it could be done at any later period, and the litigation in this way prolonged, in many instances until the term of office had expired.' (Hammon *vs.* Tyler, 112 Tenn. 8, 28; 83 S.W., 1041).The prompt determination of election contests is a matter of public interest, and the purpose of the election law is to insure such a result. To allow a motion of protest to be amended so as to introduce *new matter* after the time prescribed for the filing of the original pleading, would prolong the litigation and thus defeat the very purpose of the law.*Held*: Petition for a writ of mandamus filed by protestant to compel the trial judge to admit the amended motion of protest denied." (Andres Fernando *vs.* Pastor M. Endencia et al., 66 Phil., 148).

In the case of Leon Velez vs. Hon. Vicente Varela, etc., and Vicente M. Florido, * respondents, promulgated on May 29, 1953, this Court, through Mr. Justice Alex Reyes, had the following to say:

> "It is the policy of the law to have an election contest speedily determined for the obvious reason that the term of the contested office grows shorter with the passing of each day. To insure this objective the law has limited the period for the filing of the motion of protest and has also limited the time for deciding it. It is easy to see that the purpose of the law would be defeated if the protestant could at any time be allowed to amend his motion of protest with the introduction of new matter or *new precincts*. Such amendment, if not made within the time allowed for the filing of the protest, would naturally prolong the proceeding since it would call for a new answer from the protestee. As was said in the case of Fernando *vs.* Endencia et al., 66 Phil. 148, where a similar question was decided, 'the prompt determination of election contests is a matter of public interest, and the purpose of the election law is to insure such a result. To allow a motion of protest to be amended so as to introduce new matter after the time prescribed for the filing of the original pleading, would prolong the litigation and thus defeat the very purpose of the law.'It being against the policy of the law to allow the amendment here in question beyond the period fixed for filing an electoral protest, the lower court exceeded its jurisdiction in permitting said amendment in its order of March 4, 1952. And as the order is not appealable, the petition for certiorari is granted and the order annulled, with costs against the respondent Vicente M. Florido."

In view of the foregoing, the petition for certiorari praying that the order of the respondent Judge admitting the amended petition of protest which contains six precincts newly protested (Precincts Nos. 19, 20, 22, 23 and 23-A of Tago and Precinct No. 9 of Loreto, Surigao), be set aside and annulled, is hereby granted and the preliminary injunction herein issued by this Court made permanent. With costs against respondent Fernando Silvosa. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J, B. L., and *Endencia, JJ.,* concur.

[1] 93 Phil., 282.

Date created: October 13, 2014