100 Phil. 886

[G. R. No. L-10918. February 15, 1957]

CLAEO R. ROBLES, PETITIONER, VS. HON. VICENTE DEL ROSARIO, ET AL., RESPONDENTS.

D E C I S I O N

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

Petitioner Claro Robles applies to this Court for a writ of certiorari to set aside an order (allegedly issued in abuse of discretion) by the Court of First Instance of Quezon, in its Electoral case No. 5822, permitting the protestee therein, Leon Guinto, Sr., to amend his counter-protest by inserting Precinct No. 1-A of Guinayangan, among those contested.

Claro Robles and Leon Guinto, Sr., were candidates for the post of Provincial Governor of Quezon in the elections held in November of 1955. Guinto was duly proclaimed elected on December 5, 1955, and one week later, on December 12, 1955, Claro Robles filed in the court below his petition contesting the election of Guinto. The latter filed on December 16 his answer and counter-protest, which he subsequently amended on December 27. Neither the original nor the amended counter-protest mentioned Precinct 1-A of Guinayangan.

Hearing of the protest began on January 20, when the trial court directed the production of the ballot boxes and election documents corresponding to the precincts enumerated in the protest and counter-protest. Revision of ballots in the protested precincts began on February 2, 1956.

On June 1, 1956, six months after the case was begun, respondent protestee, Leon Guinto, Sr., petitioned the trial court for permission to amend his counter-protest by including Precinct No. 1-A of Guinayangan. After denying the petition at first, in view of the objections of the protestant, the Court below subsequently reconsidered its stand, and on July 6, overruled the objections of Robles, authorized an amendment, and ordered the production of the corresponding ballot boxes of the precinct aforesaid, as well as the recount of the ballots contained therein.

His objections having proved unavailing, Claro Robles resorted to this Court. We issued injunction on July 16, 1956.

It is the established rule in this jurisdiction that a substantial amendment, introducing new grounds of protest (new matter or new precincts), is only allowed within the time granted by law for the filing of a protest or counter-protest (Orencia vs. Araneta, 47 Phil. 830; Fernando vs. Endencia, 66 Phil. 148; Velez vs. Varela, 93 Phil., 283; Almeda vs. Silvosa, *supra*, p, 844.) The rule not only aims at protecting the other party from unfair surprise, but primarily tends to implement the speedy determination of election contests, in consonance with the legislative policy prescribing that such contests be decided within one year. At the risk of occasional injustice and inconvenience, it is deemed more important that election contests be ended as soon as practicable, so that the results of the election be authoritatively determined once for all, and the people may turn their attention to their normal pursuits, for within two years the partisan turmoil is bound to be renewed by the next election. This salutary policy would be defeated if amendments were not confined within strict time limits.

In Velez vs. Varela (*cit. ante*) this Court, speaking through Mr. Justice Alex Reyes, ruled as follows:*"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 gTows 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. 14S, 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."*We find no reason to depart in the present case from the well-established rule. If the results in Precinct 1-A of Guinayangan were of such importance to the protestee, Leon Guinto, Sr., that he had from the very start the intention or plan to include that precinct in the counter-

protest (as is now alleged), it is difficult to understand why the absence of any mention of said precinct was not noticed in the original counter-protest nor in the amended counter-protest, nor even in the order of production of the ballot boxes and election documents issued on January 20, 1956. The lapse of six months before discovery of the alleged clerical error (on July 1, 1956), while in the meantime, the contents of the ballot boxes covered by the protest had been already examined, are ample proof that the carelessness or mistake in omitting Precinct 1-A of Guinayangan was inexcusable.

As to the excuse that the petition for opening the ballot boxes of the disputed precinct is not subject to the time limit set by section 176 of the Election Code for filing counter-protests, because the latter is required only—*"should the protestee desire to impugn the vote received by the protestant,"*while respondent is only claiming stray votes, the plain intent of the law is that all irregularities and defects in the election be submitted to the court and decided as promptly as possible, and this purpose should not be nullified by quibbling distinctions. Actually, the votes of the protestant are impugned not only by reducing their number, but also by increasing those for the protestee, since it is the ultimate result that becomes significant.

The trial court takes the position that its action was authorized by section 175 of the Election Code:

> "Sec. 175. *Judicial counting of votes in contested elections.*– Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but not more than fifteen pesos for every election precinct which they may completely revise and report upon."

The text, as held in De la Merced vs. Revilla, 40 Phil. 190, orders the court to be brought before it all ballots used at the election *in the precincts which are* questioned; but it does not authorize the court to order the production of any registry lists, ballot boxes, election statements, etc., whatsoever, regardless of the pleadings and the issues framed by them. We do not believe that section 175 (above quoted) should be taken as a letter of marque that

confers upon the court unconfined discretion to disregard the issues and examine any ballot boxes and recount any ballots that it may see fit, in total disregard of the rules of orderly procedure. The rule of *allegata et probata* applies to election contests as well as to ordinary actions, otherwise election contests could easily become interminable. And if a party may no longer ask for re-canvass in a given precinct, as in the case before us, his failure, which is jurisdictional,x is not indirectly curable by recourse to section 175 of the Election Law, if the time limitations on the parties' allegations, are to have any effect. ‘

The writ prayed for is granted, and the order of the court below, dated July 6, 3956, authorizing the insertion of Precinct 1-A of Guinayangan in the counter-protest, and ordering the recount of the ballots contained therein, is hereby revoked and set aside. Costs against the respondent, Leon Guinto, Sr. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Endencia, and *Felix, JJ.*, concur.

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