

ALEJANDRO REYES, PROTESTANT AND APPELLANT, VS. ANATALIO REYES, PROTESTEE AND APPELLEE.

G.R. No. L-29553. February 28, 1969

Ponente: DIZON, J.

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DIZON, J.:

Appeal from an order of the Court of First Instance of Cavite dismissing the protest filed by Alejandro Reyes against the election of Anatalio Reyes as Municipal Mayor of Magallanes, Cavite.

In the election of November 14, 1967 appellant and appellee were candidates for the office of Municipal Mayor of the abovementioned municipality.

On November 23, 1967 appellant filed a petition for judicial recount, with a prayer for preliminary injunction, in the Court of First Instance of Cavite, alleging that there were discrepancies in certain election returns. On November 27 of the same year the Court issued an order restraining the proclamation of the winning candidates in the meantime. It turned out, however, that on the strength of a certificate of canvass dated November 21, 1967, Anatalio Reyes was proclaimed Mayor-elect on December 2 of the same year. Claiming that the certificate of canvass just mentioned was falsified, appellant filed a petition with the Commission on Elections on December 2, 1967 praying for the nullification of appellee's proclamation.

On December 4, 1967, however, a petition was filed by appellant against appellee in the Court of First Instance of Cavite protesting the latter's election. Unaware of the filing of said petition, the Commission on Elections on December 6 of the same year nullified the proclamation of appellee, on the ground that his proclamation was irregular because it was made despite the presence of alterations and discrepancies in the election returns which materially affected the result of the election.

On December 11, 1967 appellee and the Municipals Board of Canvassers of Magallanes, Cavite, filed a motion for the reconsideration of the order of the Commission annulling the former's proclamation and that of other municipal officials of the municipality of Magallanes, relying in support thereof, inter alia, upon the claim that the Commission had no jurisdiction over the case before it because appellant had already filed an election protest in the Court of First Instance of Cavite. Resolving said motion for reconsideration, the Commission in its resolution of December 29, 1967 stated that "in view of the aforesaid circumstance that there is now pending an election protest with the Court of First Instance involving the same election' as in the case with the Commission, We are constrained to reconsider the Commission's resolution of December 6, 1967 annulling the proclamation of Anatalio Reyes as Mayor-elect of Magallanes, Cavite and leave the disposition of all questions involved in said election with the Court of First Instance in the election protest now pending with said Court". As a result, the Commission reinstated the proclamation of appellee. Appellant elevated the case to Us by certiorari, but his petition was dismissed upon the ground that the Commission on Elections' resolution of December 29, 1967 reconsidering its resolution of December 6 of the same year, far from having been issued with grave abuse of discretion, was precisely in accordance with the applicable and controlling legal principle.

It appears that, subsequently, in the petition filed by appellant protesting the election of appellee - which was docketed in the Court of First Instance of Cavite as Election Case No. TG-104 - the latter filed a motion to dismiss the same upon the ground firstly, of improper service of summons, and secondly, upon the further ground that the docket fees were paid more than two weeks after the date of the proclamation of the protestee. The lower court overruled the first ground but sustained the second because it found that appellant paid the docket fees only on February 9, 1968, admittedly after the expiration of the period for the filing of an election protest against appellee who, as stated here-tofore, was proclaimed on November 21, 1967.

Upon the facts set forth above, We are of the opinion and so hold that the order of dismissal of the protest filed by appellant against appellee's election must be set aside upon the ground that the latter is now barred from claiming that the election protest filed against him was not a valid and timely filed election pro-test. He stated in his motion for reconsideration filed with the Commission on Elections that appellant - petitioner in the case before that body - had already filed in the Court of First Instance of Cavite an election pro-test, and contended that, in view thereof, said Commission no longer had jurisdiction to consider the matter brought to it by appellant. Accepting this as true, the Commission felt constrained to reverse itself, as in fact it reversed itself, by setting aside its previous order annulling appellee's proclamation. It is clear to Us that had the Commission known or had it been informed that the election protest had not been filed in accordance with law, as appellee subsequently contended in the Court of First Instance and now contends in this appeal, the Commission would not have reconsidered its first resolution of December 6, 1967. Neither would this Court have dismissed the petition for certiorari filed by appellant (G.R. L-28476) had the questioned resolution of the Commission shown that appellee's allegation regarding the filing of a valid election protest was not true. To allow appellee's claim to prevail now would be utterly unfair not only to appellant who would thus be deprived of his right to contest the election of appellee after losing his opportunity to have the latter's proclamation annulled by the Commission, but also unfair to the Commission on Elections and to this Court who had been led to act on the strength of appellee's allegation that appellant had already filed an election protest in the Court of First Instance of Cavite. For this reason, he can not now be allowed to claim that said election pro-test is worthless because of the late payment of the corresponding docket fees.

IN VIEW OF ALL THE FOREGOING, the order of dismissal appealed from is hereby set aside and the record of this case is remanded below for further proceedings in accordance with law.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Sanchez, J., did not take part.

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