

**DIOSCORO V. ASTORGA, PETITIONER, VS. HON. FIDEL FERNANDEZ,
AS JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR AND
EDITA LIM, RESPONDENTS.**

G.R. No. L-22568. February 10, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an original action for certiorari and mandamus against Judge Fidel Fernandez, of the Court of First Instance of Samar, and Edita Lim.

The latter, as well as petitioner Dioscoro V. Astorga, were candidates for mayor of the municipality of Daram, Samar, during the elections held on November 12, 1963. Two (2) days later, Lim was proclaimed elected to said office with a plurality of forty (40) votes over her closest opponent, petitioner Astorga, who, on November 27, 1963, filed the corresponding election protest, which was docketed as Special Proceedings No. 4997 of said court, based upon "irregularities and frauds" allegedly committed in Precinct No. 12 of Daram where - in the language of the motion protest - "the board of inspectors illegally read and credited in favor of the protestee some eighty (80) ballots wherein the protestant was voted for as mayor." Astorga further averred that, "if the ballot box for Precinct No. 12 is opened and the votes contained therein recounted and recanvassed x x x the result of the elections in the whole municipality would be altered and the protestant will have the plurality of votes in said municipality."

On December 2, 1963, respondent Judge, who presided over said court, required Astorga to file a bond and make a cash deposit, as well as ordered the municipal treasurer of Daram to produce immediately, before the court, his copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits and the other documents used in the precinct aforementioned, in the 1963 elections. In her answer to the protest, respondent Lim denied the aforementioned irregularities "for having no knowledge or information as to the truth" of the allegations thereon, and set up a counter-protest, based upon irregularities allegedly committed in another precinct of Daram.

When the case was called for hearing on February 12, 1964, Astorga moved to open the ballot box in said Precinct No. 12, in order to examine the ballots contained therein and recount the votes cast in said precinct. Lim having objected thereto, respondent Judge ruled that the pertinent allegations in the protest are "sufficient" and that "the box referred to should be opened, but x x x only when the court is convinced that there really exists that irregularity alleged in the protest x x x not before that," and, hence, denied, in the meantime, said motion of Astorga. A reconsideration of this ruling having been denied, Astorga commenced the present original action for certiorari and mandamus, to annul the orders denying the motion to open said ballot box and the motion for reconsideration, and compel respondent Judge to forthwith proceed with the opening of said ballot box, for the examination of its contents, the recounting of the votes, and other appropriate proceedings.

In support of his petition herein, Astorga invokes previous decisions of this Court holding that "the law does not

require prima facie showing other than the allegations in the protest of fraud or irregularities in order to authorize the opening of the boxes;"[1] that "when in the motion protest certain irregularities committed by the election inspectors in the count of the votes are alleged, this constitutes sufficient ground for the opening of the ballot boxes and the examination of the questioned ballots;"[2] that "where the protestant alleges that certain ballots in certain precincts have been cast for him but had been counted for his opponent x x x the law affords him a remedy and has placed upon the court the mandatory duty to 'forthwith cause all ballots used at such election to be brought before it and examined'";[3] that since "the petitioner has raised in his protest the question relative to the legality or illegality of certain ballots in precinct No. x x x as well as the accuracy of the count thereof x x x he has the right to have the ballots examined" and "it constitutes a violation of the imperative duties of the judge to deny to the petitioner the opening of the ballot boxes in question";[4] and that

"The provisions of Section 175 of the Election Code contemplates two cases in which 'the court shall immediately order that the ballot boxes be produced before it and that the ballots be examined and votes recounted': First, 'upon the petition of any interested party', and second, 'or motu proprio, if the interests of justice so requires.' Under the first case, the mere petition of any interested party, of course, in accordance with the pleadings, is by itself enough. The limitations implicit in the pronouncements made by the Supreme Court as to the effect that the allegations of the protest must show the need of counting and examining the ballots have been eliminated by the drafters of the Election Code. Their evident purpose was to cut short all technicalities, and controversies on legal niceties standing in the way of a prompt examination and counting of the ballots and early disposal of protests, and to avoid the recurring petitions filed with the Supreme Court." [5]

Respondents maintain, however, the opposite view upon the theory that the decisions relied upon by petitioner were based upon the provisions of the old Election Law,[6] which - they claim - have been subsequently amended.[7] We do not find, however, any material difference between the old and the new law, pertinent to the issue under consideration, to justify the conclusion drawn therefrom by respondents herein.

Moreover, it is clear to us that the stand taken by the lower court was extremely technical and highly impractical, apart from tending to defeat one of the major objectives of the applicable law.

The main issue raised - adequately or sufficiently, according to respondent Judge - in Astorga's protest is whether or not "the board of election inspectors (had) read and credited in favor of the protestee some eighty (80) ballots wherein the protestant was voted for mayor." Obviously the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in *Cecilio vs. Belmonte* (supra), this "would be to sanction an easy way to defeat a protest."

Indeed, had the box in question been opened, the examination of its contents - particularly, that of no more than eighty (80) ballots for Astorga, allegedly read and credited in favor of Lim - could have been completed in one (1) or two (2) hours. Instead, the action taken by respondent Judge has delayed the disposition of the protest for over three (3) years, or 80% of the term of the office involved. Thus, the lower court had committed not only an error of judgment, but, also, a grave abuse of discretion.

WHEREFORE, the orders complained of are hereby set aside and respondent Judge is directed to immediately open the ballot box in question and proceed with the examination of its contents, in accordance with law. Costs against respondent Edita Lim.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Hontiveros vs. Altavas, 24 Phil. 632.

[2] Lopez vs. Diaz, G. R. No. 24604, unpublished.

[3] De la Merced vs. Revilla, 40 Phil. 190.

[4] Cecilio vs. Belmonte, 48 Phil. 243, reiterated in Cuevas vs. Lesaca, 56 Phil. 25.

[5] Pareja et al. vs. Narvasa, et al., 81 Phil. 22.

[6] "Upon petition of an interested party, or of its own accord if the interests of justice require, said court shall forthwith cause the registration lists, ballot boxes, ballots, and other documents used at such election to be brought before it and examined, x x x." (Sec. 479, Revised Administrative Code) (Un-derline ours.)

[7] "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." (Sec. 175, Revised Election Code of 1947.)

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