

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. IÑIGO PABLICO CORPIN, DEFENDANT AND APPELLEE.

G. R. No. L-11600. June 27, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The Republic of the Philippines is appealing the order of the Court of First Instance of Leyte, in Special Proceedings No. 294, of September 17, 1956, denying permission to commence the present action of quo warranto on the following grounds. We quote the last paragraph of said order;

"Considering that the present petition for leave to admit the complaint was filed long-after the lapse of the period of one week after the proclamation of the defendant as mayor elect of Biliran, Leyte as required by Section 173 of the Election Code; and considering further that there is pending resolution by the Court of Appeals Case No. 264, CA-G. R. 16375, another quo warranto case filed by Jose Napalit against the same defendant, and at whose instance and relation the present case is being filed, and that the decision in said quo warranto case is decisive on issues herein involved, the Court hereby DENIES permission to commence the present action, with costs against the indemnity filed by the relator."

The appellee is Iñigo Pablico Corpin, the Solicitor General in representation of the Republic of the Philippines, appellant, makes a succinct and correct statement of the facts invoked, and inasmuch as the appellee accepts the correctness of said statement of the case and of the facts, we reproduce the same below and make it our own:

"On June 20, 1956, the Provincial Fiscal of Tacloban, Leyte, in representation of the Republic of the Philippines, and upon relation of Jose Napalit, filed a complaint for quo warranto. The action seeks to exclude from the Office of the Municipal Mayor of the municipality of Biliran, Leyte, the herein defendant, Iñigo Pablico florpin, on the ground that he is not a Filipino citizen and is therefore, unlawfully holding the said position (pp. 2-3, rec). A motion to dismiss the complaint was filed by the defendant, alleging that the relator in this case Jose Napalit, a defeated candidate for the position of municipal mayor of Biliran, Leyte, had previously filed a similar petition for quo warranto against him seeking to impugn his election on the ground of ineligibility, and that said case has been decided by the Court of First Instance in favor of the defendant and is now on appeal before the Court of Appeals (pp. 10-12, rec.). The Provincial Fiscal filed an opposition to the motion to dismiss, alleging that the first case cannot be pleaded to bar the filing of the present proceedings at the instance of the Republic of the Philippines, because the latter was not a party in the first quo warranto case which was brought directly by Jose Napalit, without the intervention of the provincial fiscal or any official in representation of the Republic of the Philippines, (pp. 13-15, rec).

"On August 4, 1956, the Court on motion of the defendant, issued an order authorizing him to withdraw his motion to dismiss, considering that the complaint had up to then not yet been ordered docketed by the court, but reserving for the defendant the right to file an opposition against the admission of said complaint (pp. 17-18, rec). Pursuant to the order just mentioned, the defendant filed an opposition to the complaint therein embodying the same argument which he had adduced in his motion to dismiss, (pp. 21-24, rec).

"On September 17, 1956, the court issued an order denying, for the reasons therein stated, permission to

commence the present action, with costs against the indemnity bond filed by the relator (pp. 25-31, rec). A motion for reconsideration was filed by the provincial fiscal which was opposed by the defendant; and acting on said motion for reconsideration, the court denied the same (p. 41, rec). From the order of the court dated September 17, 1956 and its order dated November 3, 1956, the provincial fiscal interposed the present appeal."

The Solicitor General makes the following assignment of errors:

"I. The lower court erred in holding that the present petition for quo warranto requires permission of the court before same could be filed therein.

"II. The lower court erred in holding that the quo warranto case against the same defendant herein entitled 'Jose Napalit vs. Iñigo Pablico Corpin,' Case No. 264, may be pleaded in abatement of the petition for quo warranto under the principle of res judicata.

"III. The lower court erred in not giving due course to the present action for quo warranto."

Under the first assignment of error, the Government contends that it was not necessary to secure the permission of the trial court before filing the action, for the reason that the Provincial Fiscal who filed the complaint, alleged in his petition "that he has good reasons to believe that there is proper action for quo warranto against the herein defendant Iñigo Pablico Corpin." Consequently, it is argued, the petition falls under the provisions of Section 3, Rule 68 of the Rules of Court, which reads as follows:

"SEC. 3. When Solicitor General or fiscal must commence action.—The Solicitor General or a fiscal when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the last two preceding sections can be established by proof, must commence such action.",

whereas, the trial court allegedly through error, applied Section 4 of the same rule, which reads as follows:

"SEC. 4. When Solicitor General or fiscal may commence action with permission of court.—The Solicitor General or fiscal may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing: it may first require an indemnity for expenses and costs of the action to be given to him by the person at whose request and upon whose relation the same is brought."

The trouble with this argument of the Government and the position taken by it is that its very petition or complaint before the trial court invoked Section 4 of Rule 68. Not only this, but it asked for leave of court to file said petition or complaint. In other words, it made it known to the lower court that the law applicable was Section 4 of Rule 68 and that the permission of said court was necessary before the action could be filed. Now before this Tribunal, the same Government, through the Solicitor General, tells us exactly the opposite, namely, that it is Section 3 (not Section 4) of Rule 68, and that the permission of the lower court is absolutely unnecessary. The least that could be said is that appellant Republic of the Philippines is not now in a position, and may not charge the trial court with the supposedly erroneous action, if error it be, that it itself induced and persuaded said trial court to take. But regardless of this inconsistent and equivocal position of appellant, we are inclined to agree with the trial court and the appellee that the pendency of another case of quo warranto on the same subject matter which was previously decided by the same trial court, and now pending in the Court of Appeals, can be pleaded in abatement of the present action on the ground that a final decision on the said appeal, either by the Court of Appeals or, if taken to us on review, by this Tribunal, would definitely and finally resolve and settle the issue or issues involved in the present case, and thus serve as res adjudicata.

The issue in both cases is whether or not defendant-appellee is or is not a Filipino citizen now and at the time he was declared mayor-elect of the municipality of Biliran, Leyte, and whether or not he is at present illegally

occupying said post. When that issue is finally determined, it matters little and becomes of no importance whether the action against defendant-appellee was brought under Section 3 or under Section 4 of Rule 68, whether brought by a private party or by the Government itself. When the objective and goal is the same or identical, the procedure and the way followed to reach and achieve the end is of little or no import. True, in the first case now pending appeal in the Court of Appeals, the Government was not a party and was not given its day in court, but it should not be forgotten that the action therein was brought by a private individual in accordance with the provisions of a law which the Government itself, through its legislative department, had provided to test the right of a person to occupy a public and elective position. It is equally true that the Government is interested in such a question or issue, because it does not want to see and allow an intruder or impostor to occupy a public position. But when the law itself, Section 4 of Rule 68, allows a private party, alone and without the intervention of the Government and before a competent court, to test the right of a person to occupy a public position, it is apparent that the procedure so provided by law is deemed adequate, safe, and sufficient, without the intervention of the Government itself.

It is also true that the Government is also given by the law an opportunity to question in court the right of a person or corporation to occupy a public position or exercise public functions, but when as in the present case, said Government allowed a private individual to file the same action for the same purpose, without even any attempt on its part to intervene in the action, and then allowed several months to elapse before it finally awakened to bring its own action for the same purpose and objective, we fail to see any reason for said rather belated second action, because the first petition or suit by the individual would adequately and sufficiently decide the same issue and either affirm the position of the defendant if found legally occupying a public position, or oust him from the same if found not qualified and without any prerogative or authority. Besides, the Government could have asked for permission to intervene or to appear as *amicus curiae* in the first case instituted by now relator Jose Napalit.

Moreover, the trial court should be accorded discretion to grant or withhold permission to file the action contemplated in Section 4 of Rule 68, specially when as in the present case, the suit sought to be filed by the Government was upon relation of relator Jose Napalit.

"[Sec. 27] (b) Discretion of Court.—Granting or refusing leave to institute a quo warranto proceeding by filing an information or otherwise rests largely in the discretion of the court to which the application is made. * * * In exercising its discretion, the court may and should consider all the circumstances of the case, the motives of the relator in having the proceeding instituted, the time which has elapsed since the cause of complaint occurred, and whether the public interest will be served by allowing the information to be filed; and it may refuse leave or decline to entertain the proceeding upon considerations of public policy, interest, or convenience, or because of such conduct on the part of applicants as precludes them from making the inquiry, circumstances tending to throw suspicion on the motives of the relator, long, unexcused, and prejudicial delay or acquiescence on the part of the persons complaining or the public generally, or the prior institution of actions, proceedings, or contests involving the same questions, * * *. In a proceeding brought for the benefit of the relator primarily, the court's discretion is much greater than where purely public interests are involved." (51 C. J. 328-29).

In conclusion, we hold that where under the Revised Election Code, a defeated candidate for the office of mayor has filed quo warranto proceedings against the opposing candidate who had been declared elected and has assumed office, for the purpose of having him ousted from the said office on the ground that he was not eligible or qualified because he was not a Filipino citizen, and said quo warranto case has been finally decided by the Court of First Instance, and was pending appeal in the Court of Appeals, it is usually not necessary for the Government, through the Solicitor General, and at the request or instance of the same party who instituted the quo warranto proceedings, to bring another action of quo warranto to test the right of the same party respondent in the first quo warranto case to occupy the office. The reason is that a final decision in the first case either by the Court of

Appeals where it was pending appeal, or by the Supreme Court, should said case ever reach it, would definitely and finally determine the same issue involved in the second case, and constitute res adjudicata. The granting or denial or permission to file said second suit by the Government under Rule 68, Section 4, of the Rules of Court, rests largely in the discretion of the trial court, specially when said suit by the Government is being instituted upon the relation and at the instance of the same party relator who filed the first quo warranto proceedings.

In view of the foregoing, the order appealed from is hereby affirmed. No costs.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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