

LUIS C. TRINCHERA, PETITIONER-APPELLANT, VS. CESARIO R. COLASITO, RESPONDENT AND APPELLEE.

G.R. No. L-2143. October 12, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

On February 10, 1948, in obedience to an order of the Court of First Instance of Leyte, the Municipal Board of Canvassers of Tolosa, proclaimed Cesario R. Colasito as mayor elected in the elections of November 11, 1947, with one thousand thirty votes or a majority of thirty eight over his opponent, Luis C. Trinchera, who received nine hundred ninety two votes.

On February 23, 1948, Trinchera filed a protest alleging that sixty stray votes were unlawfully adjudicated to Colasito in Precinct No. 3, while thirty nine votes validly cast for Trinchera in Precincts Nos. 3, 6, and 7 were not counted in Ms favor, and that, otherwise, Trinchera would have won the election.

On February 28, 1948, Colasito filed a motion to dismiss the protest alleging that the question therein raised has been already decided in the mandamus proceedings No. 143 of the Court of First Instance of Leyte and the resolution of the Supreme Court in L-1887; that the motion of protest could have been properly presented as a counter protest in election protest No. 314 of the Court of First Instance of Leyte, and Trinchera's failure to do so constitutes a waiver of his right to raise the question at any other time; and that the motion of protest was filed out of time.

On March 19, 1948, the lower court issued an order dismissing the protest, with costs against Trinchera, upon the ground that the points at issue in the protest had been finally decided by the Supreme Court in its resolution in L-1887.

The order appears to be erroneous, and Trinchera appealed. The resolution of this Court dismissing the petition in L-1887, issued on January 28, 1948, reads as follows:

"Petitioners in The Board of Election Inspectors et al vs. Edmundo S. Piccio, Judge of the Court of First Instance of Leyte, et al., L-1887, prayed for the issuance of a writ of certiorari for the annulment of the orders of respondent judge of December 5 and 13, 1947, in mandamus case No. 143, Colasito vs. The Board of Election Inspectors, et al, of the Court of First Instance of Leyte, and that the petition for mandamus in said case be ordered dismissed.

"It is alleged that in the elections of November 11, 1947, Cesario R. Colasito and Luis C. Trinchera were candidates for mayor of Tolosa. On November 12, 1947, the municipal board of canvassers made a canvass and proclaimed Luis C. Trinchera as mayor-elect. On November 15, Cesario R. Colasito filed with the Court of First Instance a petition for mandamus with preliminary injunction (a) to prevent the board of election inspectors from making a final election return for precinct No. 8 of Tolosa, unless the same is in accordance with the true result of the election, (b) to prevent the municipal treasurer from submitting to the board of canvassers a false election return for precinct No. 8, and (c) to order the board of election inspectors to file an

election return in accordance with the true result of the election as regards the office of mayor, to order the municipal treasurer to submit the true election return to the municipal board of canvassers, and to order the latter to proclaim Cesario R. Colasito elected mayor in the election of November 11, 1947.

"The petition is based on the allegation that in a certificate issued by the election inspectors of precinct No. 8 appears that the votes cast for mayor were: 112 for Cesario R. Colasito and 92 for Luis C. Trinchera, but the board of inspectors issued a false return giving to Colasito only 62 votes. Instead of the 112 he received in the election, and gave Trinchera 142 votes instead of 92 which he received in the elections, and the changes made in the election returns had the effect of changing the result of the election.

"Motion to dismiss the petition for mandamus with injunction was denied. A motion to reconsider the order of denial met with the same fate. Judge Edmundo S. Piccio ordered, accordingly, the revision of the ballots contained in boxes from Precinct No. 8. Hence, the present petition for certiorari against Judge Piccio and candidate Colasito, which is the second one filed with the Supreme Court by the same petitioners, the first one filed in L-1852, dated December 6, 1947, seeking to restrain Judge Piccio from enforcing the order of November 26, 1947, commanding the opening of the ballot boxes of Precinct No. 8 of Tolosa.

"Attached to the record there are two telegrams from the clerk of the Court of First Instance of Leyte giving information to the effect that the ballot boxes were opened on December 31, 1947, and upon the revised ballots, it appears that they support the contention of Colasito as to the true result of the election. Petitioners allege that Colasito filed an election protest against Trinchera in case No. 51k of the Court of First Instance of Leyte.

"Considering that respondent judge has jurisdiction to take cognizance of the petition for mandamus that he did not abuse his discretion in refusing to dismiss the petition for mandamus was a proper remedy under the facts alleged therein, which happen to be justified by the result of the recounting of the ballots made by the court on December 31, 1947, and that the remedy by election protest can be resorted to only after a canvass and proclamation has been made by the municipal board of canvassers upon the authentic election returns of all the precincts of the municipality, the aggrieved party being entitled to remedy against an illegal canvass or proclamation or one based on one or more false election returns, petition dismissed."

The above resolution does not decide the questions of fact raised in the protest as to counting and adjudication of votes in Precincts Nos. 3, 6, and 7 of Tolosa. Neither does it decide the question as to whether or not the election of Colasito should be annulled and Trinchera should be declared elected to the office of mayor of Tolosa, as prayed for in the protest.

The appealed order of dismissal of the protest is set aside and the lower court is ordered to proceed with the protest on the merits with costs of this appeal against appellee.

Moran, C. J., Ozaeta, paras, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

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