

**LUZ BATIOCO AND VIRGILIO GEROLAGA, PETITIONERS, VS. THE HON. PEDRO JL. BAUTISTA, IN HIS CAPACITY AS EXE-CUTIVE JUDGE OF THE COURT OF FIRST INSTANCE OF PASAY CITY AND LORENZO STA...***G.R. No. L-34253. October 29, 1971*

Ponente: TEEHANKEE, J.

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Original action for a writ of mandamus directing respondent judge to order the docketing by respondent clerk of court of 193 verified petitions for exclusion of more than 6, 000 alleged-ly fictitious voters in Pasay City. The Court grants the petition and orders that said petitions be forthwith heard and resolved before election day, November 8, 1971.

214 verified exclusion petitions were concededly sought to be filed with respondent clerk during office hours of October 19, 1971, the last of the 10-day period from October 9, 1971 (the date fixed by the Commission on Elections under section 240 of the Election Code of 1971, Republic Act No. 6388, for registration of voters before the precinct boards of inspectors) within which to file inclusion/exclusion petitions under section 118 of the new Code.

The petitions were first presented for filing at 1:30 p. m. They were prepared and filed after a house-to-house canvass conducted by the Pasay Citizens League for Good Government and the Progresibong Kabataan ng Pasay, duly authorized, according to the petitions, by the Comelec for the purpose of ferreting out from the voters' lists "fictitious or non-existing persons." What transpired thereafter, even going by the allegations of respondents' answer, was that the receiving clerk of respondent court refused to accept the petitions for filing on the ground that they "were not accompanied by proof of notice of service of the petitions to the parties, as required by law." When petitioners' counsel brought the matter to the respondent clerk's attention, the latter "suggested to Atty. Dizon (petitioners' counsel) that while there was still time, it would be to their own advantage to attach the required proof of service of notice to the parties, as required by law, otherwise, even if accepted for filing, the Court may dismiss the petitions." [1]

According to respondent clerk, "(B)elieving in the sound-ness of this suggestions, Atty. Dizon agreed, left and returned at about 3:30 p. m. with an affidavit which he claimed was to serve as the proof of service for all the petitions numbering 214 separate petitions. Clerk of Court Sta. Ana opined that the said affidavit did not conform to the substantial requirements of the election law, and suggested to Atty. Dizon to prepare a separate affidavit for each of the petitions for exclusion, to conform to the substantial requirements of the Election Code, to which suggestion Atty. Dizon agreed." [2]

Thereafter, petitioners' counsel returned at 4:07 p. m. with affidavits of proof of service for each of the 214 petitions, which he feverishly sorted and stapled to each of the petitions. Respondent clerk then directed his receiving clerk to docket the petitions but only a total of 21 petitions could be received and stamped as of 4:45 p.

m. and 5:00 p. m. At 5:00 p.m., respondent clerk ordered the docketing of the petitions stopped and the closing of his office, since according to him, lawyers of the Nacionalista and Liberal parties enjoined him not to receive any further petitions in violation of section, 139-a of the new Code which enjoins that "(O)utside of the regular office hours, no application for inclusion or exclusion of voters shall be received."

Petitioners' representations with respondent judge, as ex-cutive judge of respondent court, (personally at the first hour of October 20, 1971 and formally in writing on October 22, 1971) to direct respondent clerk to docket the remaining 193 petitions which had been left undocketed, met with no success.

Hence, the filing of the present petition on October 23, 1971, hearing of which was held on October 28, 1971, due to the urgency thereof.

The Court finds that the writ of mandamus should issue as prayed for, by virtue of the following considerations:

1. The 214 verified petitions were duly and timely pre-sented for filing to respondent clerk of court during the regular office hours of October 19, 1971. Consequently, it was the minis-terial duty of respondent clerk of court to receive the petitions and to have them duly docketed as of then, even though the physical work of docketing the petitions and affixing the docket numbers thereon may extend beyond the close of office hours. The prohi-bition of the Code against receipt of exclusion/inclusion petitions "outside of the regular office hours"[3] was clearly inapplicable, for here, the petitions were duly presented for receipt and filing during regular office hours, and it was merely the physical work of docketing them - due to the great number of petitions - that had to extend after office hours. To so docket them is merely to comply with the clear intent and spirit of the cited legal provision.[4]
2. It was clearly officious on the part of respondent clerk to suggest or require that petitioners' counsel attach to the 214 petitions a separate affidavit of service of notice for each of the petitions, by way of proof of notice as mentioned in section 137 of the new Code[5], as "otherwise, even if accepted for filing, the Court may dismiss the petitions." [6] Prescinding from the fact that the verified petitions each carried in paragraph 5 thereof the equi-valent of proof of notice (although not in ideally precise and accurate terms), [7] and therefore the separate individual affidavits of service of notice required by respondent clerk of court might be deemed a surplusage, respondent clerk could not likewise officiously arro-gate unto himself the prerogative of passing upon the sufficiency and validity of the proof of notice incorporated in the petition. His was the ministerial function, particularly in election cases, of re-ceiving the petitions and docketing the same, instead of raising the alleged defects in form or substance which delayed and prevented the docketing during office hours of the petitions, to the prejudice of the public interest involved. The judicial power to rule upon such alleged defects of the petitions, specifically insufficiency of notice on the parties concerned, is vested in respondent court, which is called upon to rule thereon at the hearing, motu proprio or at the adverse party's instance.
3. Since respondent clerk of court failed to discharge his ministerial duty of receiving and docketing the petitions, it clearly devolved upon respondent judge as a ministerial function, upon his attention having been duly called thereto, to order respondent clerk to docket the petitions.

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As things stand now, only 21 exclusion petitions were docketed, leaving 193 petitions undocketed which could not be heard on October 25, 1971, at 9 A.M. in accordance with the notice of hearing therein given. The said petitions should now be docketed and raffled forthwith among the various branches of the Court of First Instance of Pasay City and notice of hearing caused to be given expeditiously only by personal delivery to the voters named as respondents in the petitions or by leaving the notice with copy of the petition in the possession of a person of sufficient discretion in the stated residence of the voters-respondents, [8] in order that the petitions may be promptly heard and resolved before election day, November 8, 1971, as ordained in the new

Code.[9]

ACCORDINGLY, the petition for a writ of mandamus is granted, as prayed for. In view of the urgency of the petitions which have to be heard and resolved before the November 8, 1971 elections, this decision is declared immediately executory. Respondent judge is directed forthwith (a) to order respondent clerk of court to enter in the docket book of respondent court, as of October 19, 1971, the 193 undocketed exclusion petitions that were presented on said date; and (b) to raffle the said petitions for assignment to the various branches of the Court of First Instance of Pasay City. All said branches of respondent Court of First Instance of Pasay City are directed in accordance with the preceding paragraph and the rules provided in section 139, R.A. No. 6388, particularly, paragraph (f) thereof,[10] to promptly hear and resolve the said exclusion petitions respectively assigned to them before election day, November 8, 1971.

**SO ORDERED.**

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

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[1] Answer, par. 8; note in parenthesis supplied.

[2] Answer, par. 9; emphasis supplied.

[3] Sec. 139 (a), R.A. No. 6388.

[4] A clearly analogous provision is that of sec. 170 of the new Code on voting hours, which permits voting beyond the closing hour of 3 p. m. by "voters present within thirty meters in front of the polling place who have not yet cast their votes."

[5] Sec. 137 provides that "(T)he application shall be sworn to and accompanied by proof of notice to a member of the board of inspectors, if the same is duly constituted, or election registrar ... and to the challenged voter."

[6] Respondents' Answer, par. 8.

[7] Paragraph 5 of the uniform verified petitions asserts that "5. That copies of this Petition have been served upon each Private Respondent by registered mail, by posting a copy of said petition in a public place in the City at least ten (10) days prior to date of hearing or leaving copies thereof to persons of sufficient discretion at the respective stated addresses of respondents."

[8] Pursuant to sec. 139(b), R.A. No. 6388.

[9] See sec. 139 (g), R.A. No. 6388, providing that "(T)he decision shall be rendered within six hours after the hearing and within ten days from the date of its filing or registration in court."

[10] "(f) The decision shall be based on the evidence pre-sented. If the question is whether or not the voter can read and write, such voter shall be personally examined before the court and if the question is whether or not the voter is real or fictitious, his non-appearance on the day set for hearing shall be prima facie evidence that the registered voter is fictitious. In no case shall a decision be rendered upon a stipulation of facts." (sec. 139, R.A. No. 6388)

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