

DOMINADOR LUCENA ET AL., PETITIONERS, VS. BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, ET AL., RESPONDENTS.

G.R. No. L-2296. September 14, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

Petitioners pray for mandamus to compel the respondent judge of first instance to approve their appeal in an election contest. The facts are not disputed:

In the elections held November 11, 1947, petitioner Dominador Lucena was candidate for vice-mayor and the other petitioners were candidates for councilor in the municipality of Las Piñas, Rizal. The respondent Benito Gonzales was another candidate for vice-mayor and the other respondents (except the judge) were other candidates for councilor of the same town.

On November 12, 1947, these respondents were proclaimed elected by the municipal board of canvassers.

On November 25, 1947, herein petitioners duly filed a motion of protest which was heard before the respondent Judge Bienvenido A. Tan, together with another protest regarding the office of mayor of the same town. One set of commissioners was selected, one trial was had and one judgment was rendered wherein respondents were found to have been duly elected.

After a motion to set aside had been denied, petitioners filed a notice of appeal. Upon objection by adverse counsel, the court turned down the appeal, explaining that section 178 of the Revised Election Code does not permit "an appeal in election contests for vice-mayor and municipal councilors".

Hence this special civil action, the petitioners contending that said section, if interpreted as suggested by the respondents, is unconstitutional because it denies petitioners the equal protection of the laws, deprives them of due process of law and unlawfully abridges the appellate jurisdiction conferred upon this Court by Article VIII, section 2 of the Constitution.

The papers submitted to us show:

(1) In a fifty-page typewritten opinion the trial court, after discussing the reports of commissioners in more than eight precincts and the testimony of many witnesses delivered at the trial, reached the conclusion that although petty irregularities had been committed, the result of the voting could not be held invalid, and that considering the valid ballots cast at the said election, the respondents should be and are declared elected.

(2) The petitioners asked later that the decision be set aside, firstly because, contrary to the constitution "most of its findings of fact are couched in vague and general terms"; secondly, because such findings as were specific contradicted the evidence; and thirdly, because the testimony of the handwriting expert had been misinterpreted and misunderstood.

(3) The judge denied the motion finding it to be without merit.

Prima facie the proposed appeal will involve legal and factual questions.

Now, is that appeal authorized by law? Section 178 of the present Election Code specifically allows appeals to the Supreme Court or the Court of Appeals (as the case may be) from decisions of courts of first instance in contests against the election of provincial governors, members of the provincial board, city councilors and mayors. Vicemayors and municipal councilors are not mentioned.

In *Tajanlañgit vs. Peñaranda* (1917), 37 Phil., 155, we declared that, in view of the provisions of the Administrative Code, decisions of the Courts of First Instance in municipal election contests were final and not appealable. The view was premised on the fact that the law directed that all election contests shall be filed with the corresponding Court of First Instance, which "shall have exclusive and final jurisdiction except as hereinafter provided * * *" and the further fact that while expressly providing for an appeal in contests of elections for provincial governors, the law contained no provision permitting an appeal in contests involving municipal officers.

Such ruling was applied in subsequent cases.[1]

The present Election Code, unlike the law at the time the above-mentioned cases were considered, does not contain a provision giving "exclusive and final jurisdiction to courts of first instance". But the difference should be immaterial, because this Court only mentioned such final jurisdiction as one of the reasons for holding that no appeal existed. There is the other reason which is still good: The law does not provide for appeal in contests for vice-mayor and councilor, although it expressly allows appeals in contests for other positions.

In *Aguilar and Casapao vs. Navarro* (55 Phil., 898), we held there was no appeal to this Court from the order of a Court of First Instance denying a petition for authority to correct the election returns, because section 480 of the Election Law (at that time) enumerating the cases appealable to the Supreme Court, did not include such controversial matter. We said, "a well-recognized principle of law" is "that an appeal to a higher court may only be taken when the law so provides".

On the other hand, the American authorities seem to be of the opinion that in the absence of statute "no appeal or error proceeding lies from the judgment of a court in an election contest". (18 American Jurisprudence, 384; see also 29 Corpus Juris Secundum, 429, et seq.) This is not a denial of equal protection of the laws because the principle applies to all persons similarly situated. And as to due process, this Court has held that the right of appeal is statutory and is not a necessary element of due process of law.[2]

We must, therefore, hold that no appeal to this Court lies from a decision of the court of first instance in contests for vice-mayor or municipal councilors.

The decision in *Marquez vs. Prodigalidad*, L-2098, (May 30, 1949[3]), may be deemed an exception to this holding. But herein petitioners do not fall within that exception, because unlike the *Marquez* case the appealed litigation involves questions of fact, and does not revolve around a question of jurisdiction. Of course it must be understood that those justices who dissented the *Marquez* case do not, upon signing this decision, repudiate the views announced in their dissent.

The petition for mandamus is denied. Without costs. So ordered.

Moran, C.J., Ozaeta, Paras, Feria, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] De Guzman vs. Cuenca, 40 Phil., 203; De la Cruz vs. Revilla and Bustos, 40 Phil., 234; Municipal Council of Las Piñas vs. Judge of the Court of First Instance of Rizal, 40 Phil., 279; Arevalo vs. Dalandan, 40 Phil., 475.

[2] U. S. vs. Gomez Jesus, 31 Phil., 218; Duarte vs. Dade, 32 Phil., 36.

[3] 83 Phil., 813.

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