

JOSE T. GONZALES, PETITIONER, VS. THE COURT OF APPEALS, AND JAIME M. FLORES, RESPONDENTS.

G.R. No. L-18255. November 21, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The petitioner, Jose T. Gonzales, applied to this Court for review on certiorari of the order of the Court of Appeals giving due course to the appeal taken thereto by respondent Jaime M. Flores from the decision of the Court of First Instance of Agusan in its Election Case No. 15.

It appears that Jose T. Gonzales and Jaime M. Flores were both candidates, with two others, for the position of vice-mayor of the City of Butuan in the November 10, 1959 elections. After votes were canvassed, Flores was proclaimed elected by a plurality of 222 votes over Gonzales. Within the statutory period, Gonzales filed with the Court of First Instance of Agusan an election protest contesting Flores' proclamation, alleging irregularity in the conduct of the election. After hearing, the court rendered judgment, as follows:

"Wherefore, the Court hereby declares the protestant Jose T. Gonzales duly elected vice-mayor of the City of Butuan in the election held in November 10, 1959, with costs and incidental expenses against the protestee. Let a copy of this decision be furnished the Commission on Elections."

From the decision, Flores appealed. The appellant's amended notice of appeal reads:

"Please be advised that the protestee herein gives amended notice of his intention to appeal to the Court of Appeals from the judgment entered in the above-entitled case on December 31, 1960, of which the protestee was notified on January 13, 1961, on the questions of facts and of law, except on the findings on tampering of ballots." (Italics supplied)

Gonzales filed with the Court of Appeals a motion to dismiss the appeal on the ground that section 178 of the Revised Election Code does not confer the right to appeal from a judgment of the Court of First Instance upon the parties to an election contest for the positions of vice-mayor and municipal councilor. Acting on this motion and on the opposition of protestee Flores, the appellate court promulgated a minute resolution denying the plea of dismissal. Gonzales resorted to this Court.

There is merit in this petition. The rule is that an appeal to a higher court, being merely a statutory right and not ordinarily a necessary part of due process, may only be taken when the law so provides (*Aguilar and Casapao vs. Navarro*, 55 Phil. 898; *Duarte vs. Dade*, 32 Phil. 36). In this case, the law applicable is section 178 of the Revised Election Code that reads:

"Appeal from the decision in election contests—From any final decision rendered by the Court of First Instance in protests against the eligibility or the election of provincial governors, members of the provincial board, city councilors, and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be, within five days after being notified of the decision, for its revision, correction, annulment or confirmation, and the appeal shall proceed as a criminal case. Such appeal shall be decided within three

months after the filing of the case in the office of the clerk of Court of which the appeal has been taken.'
(Italics supplied)

Construing the foregoing provisions, this Court, in the case of *Dominador Lucena, et al. vs. Hon. Bienvenido Tan, et al.*, (84 Phil., 548; 47 Off. Gaz., [3] 1121) has held:

"In *Tajanlañgit vs. Pefiaranda* (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 for provincial governors, the law contained no provision permitting an appeal in contests involving municipal officers.

* * * * *

"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.

* * * * *

"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 councilor." (Italics supplied).

The ruling was reiterated in *Evangelista vs. Castillo*, 87 Phil., 572; 48 Off. Gaz., [2] 633; (see also *Calano vs. Cruz*, 94 Phil., 230; 50 Off. Gaz., [2] 610).

Respondent Flores argues, however, that since section 178 of Republic Act 180, as amended, expressly allows the taking of an appeal in protests against the election of city councilors, it is apparent that the legislature did not intend to deny the same remedy when the contest involves the position of a higher official, like the city vice-mayor. But the question is not whether Congress intended to deprive the parties in the latter case from taking an appeal, but whether or not it conferred that right. The very argument of the respondent to the effect that when Republic Act No. 180 was enacted, the position of city vice-mayor was either non-existing or appointive, shows that the now evident hiatus in the law was not the result of a mere legislative oversight at the time the Election Code was passed, but a legislative inaction from the city vice-mayors became elective. The defect, it is clear, can be cured not by judicial pronouncement but only by legislative enactment.

Neither is there merit in the contention that because the city vice-mayors preside over the city councils and perform the same functions as the city councilors, they should be considered embraced within the term "city councilors" under section 178. It should be noted that besides his functions in the city council, the city vice-mayor has other duties and prerogatives not imposed on, or enjoyed by, the city councilors (see Republic Act No. 2259).

This Court has noted the possibility of a direct appeal to this Supreme Court even in election protests for the offices of vice-mayor and city councilor if the only issues involved are questions of law (Sec. 2, Art. VIII, Constitution of the Philippines; *Marquez vs. Prodigalidad*, 83 Phil., 813; 46 Off. Gaz., Supp., No. 11, 264; *Calano vs. Cruz*, supra. In this contest, however, it is undisputed that the issues are mixed questions of law and fact; indeed, respondent-appellant has so stated in his amended notice of appeal. Furthermore, if the findings of fact of the Court of First Instance of Agusan regarding the existence of fraud and irregularity in the conduct of the elections in sitio Maguinda of the city are correct, and we have no appellate power to review said findings, then we should concede that there was legal propriety in the annulment decreed by the trial court of the votes cast

therein (see 18 Am. Jur. 333- 336). Recourse to this Court, under the circumstances, would have been futile.

Finally, respondent Flores brings up the procedural question whether or not certiorari lies, considering that the petitioner failed to file a motion for reconsideration with the Court of Appeals from the denial of his motion to dismiss. In *Pajo, etc., et al. vs. Ago, et al.*, 108 Phil., 905, we held that it is only when questions are raised for the first time before the high court in a certiorari case that the writ shall not issue, unless the lower court had first been given an opportunity to pass upon the same. The records of this petition clearly disclose that the issues herein raised have already been presented to and passed upon by the court a quo. Moreover, when the respondent court entertained the appeal of Flores, it did so beyond its appellate jurisdiction, since the right of appeal did not exist by statutory authority, and not even the express agreement of the parties could have cured that jurisdictional defect (see *Moran, Comments on the Rules of Court*, Vol. I, 1957 Ed., pp. Ixii-lxiii).

Wherefore, the resolution of the Court of Appeals of March 17, 1961, denying petitioner's motion to dismiss the appeal in CA-G.R. No. 28966-R, is hereby set aside, and another one entered dismissing said appeal. Costs against respondent Jaime M. Flores.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, and De Leon, JJ., concur.

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