

JOSE SOL BALORIA, PETITIONER, VS. HONORABLE DOROTEO DE GUZMAN, PRESIDING JUDGE, BRANCH II, COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, JACOBO S. AMATONG AND MUNICIPAL BOARD ...

G.R. No. L-33097. September 30, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner Jose Sol Baloria filed on February 2, 1971 this petition dated January 25, 1971 for certiorari with preliminary mandatory injunction seeking to declare as null and void the order dated January 13, 1971 of the respondent Judge of the Court of First Instance of Zamboanga del Norte disallowing his appeal and the order dated January 14, 1971 considering the decision final and executory and granting the motion of protestant Jacobo S. Amatong for execution of judgment (Annexes "M" and "N", pp. 50-52, rec.).

By way of factual background, herein petitioner Jose Sol Baloria and herein private respondent Jacobo S. Amatong were candidates for municipal councilor of the municipality of Dipolog, Zamboanga del Norte in the election held on November 14, 1967. However, the municipal board of canvassers suspended the proclamation of herein petitioner as the elected councilor because the municipal treasurer's copy of the election returns from Precinct No. 18 showed a total of thirty-seven (37) votes cast for herein private respondent Amatong, while the Nacionalista Party and the Liberal Party copies of the same returns as well as the tally sheet gave herein private respondent Amatong forty-seven (47) votes, which difference materially affects the result of the election for the eighth councilor.

On November 23, 1967, herein private respondent Amatong petitioned the Court of First Instance of Zamboanga del Norte for a recount of the votes in Precinct No. 18 because of the aforesaid discrepancy. The Court of First Instance denied Baloria's motion to dismiss as well as the motion to introduce the provincial treasurer's copy of the return, constraining Baloria to file a petition for certiorari and mandamus to annul the aforesaid order of the Court of First Instance.

In Our decision dated April 30, 1970, We sustained the petition of Baloria on the ground that to justify a judicial recount under Section 163 of the Revised Election Code, the discrepancy must be between one copy of the election return and another authentic copy of the same return prepared in accordance with Section 150 of the Revised Election Code, as amended, and not a discrepancy between a copy, of the election return prepared in accordance with Section 150 and a copy furnished to the political parties; and We accordingly set aside the order of the Court of First Instance for the recount of the votes cast in Precinct No. 18 of the then municipality of Dipolog, Zamboanga del Norte and directed the municipal board of canvassers to reconvene and proceed without delay with the canvass of the votes on the basis of the municipal treasurer's copy of the election returns of Precinct No. 18 and thereafter to proclaim the winner.[1]

Pursuant to Our aforesaid decision, herein petitioner Jose Sol Baloria was proclaimed on June 17, 1970 as the

duly elected eighth councilor of Dipolog.

During the pendency of the first case of Baloria vs. Abalos, supra, the municipality of Dipolog was converted into a city when Republic Act No. 5520, the charter of the city of Dipolog approved on June 21, 1969, took effect on January 1, 1970.

After the proclamation of herein petitioner Baloria as the number eight city councilor of Dipolog City, herein private respondent Jacobo S. Amatong filed an election protest against herein petitioner Baloria with the Court of First Instance of Zamboanga del Norte which was docketed as Election Case No. 2058 (Annex A, pp. 12-15, rec.), to which herein petitioner filed on July 14, 1970 his Answer with specific defenses and a counter-protest covering Precincts Nos. 14, 39 and 48 of Dipolog (Annex B", pp. 16-20, rec.). On July 30, 1970, herein private respondent filed his reply and on August 10, 1970, herein petitioner filed an amended answer which was admitted by the trial court (Annex "C", pp. 21-25, rec.).

In his decision dated December 28, 1970, respondent Judge declared herein private respondent Jacobo S. Amatong as winner over Jose Sol Baloria with a majority of four (4) votes and declared said herein private respondent Amatong as the duly elected eighth councilor of Dipolog (Annex "G", pp. 33-37, rec.).

Herein petitioner received on January 4, 1971 the aforesaid decision and on January 6, 1971, he filed his notice of appeal to "make known that the protestee (herein petitioner) will appeal to the Court of Appeals" and depositing the amount of P120.00 as appeal bond (Annex "H", p. 38, rec.).

Herein private respondent Amatong filed his opposition dated January 7, 1971 to the said notice of appeal on the ground that Section 178 of the Revised Election Code does not authorize any appeal from the decision in an election protest involving municipal councilors; that Dipolog was still a municipality in the election of November 14, 1967; that as a matter of fact, it was still the municipal board of canvassers of Dipolog that proclaimed protestee Baloria as the eighth councilor; that the supervening fact of cityhood of Dipolog as of January 1, 1970 by reason of the approval of the city charter, Republic Act No. 5520, on June 21, 1969, does not affect nor amend Section 178 of the Revised Election Code; that the right to appeal of herein petitioner shall be determined by the status of the elective position involved as of the elections of November 14, 1967 and not after the conversion of the municipality of Dipolog into a city; and that the appeal of herein petitioner Baloria to the Court of Appeals is patently one of fact, which is prohibited or not allowed by Section 178 of the Revised Election Code as ruled in the case of Calano vs. Cruz[2] (Annex "I", pp. 39-41, rec.).

Herein petitioner Baloria filed his reply dated January 12, 1971 to the aforesaid opposition of herein private respondent Amatong, contending that the municipality of Dipolog was converted into a city as of January 1, 1970; that pursuant to Section 88 of Republic Act No. 5520, the charter of the city of Dipolog, "the incumbent Mayor, Vice-Mayor and Councilors of the Municipality of Dipolog shall automatically become the Mayor, Vice-Mayor and Councilors, respectively of the city of Dipolog and they shall continue to be such until their respective successors shall have been duly elected and shall have qualified in the next general election for provincial, city and municipal officials"; that he became automatically thereafter a city councilor of Dipolog City; that Section 178 of the Revised Election Code authorizes an appeal from a decision in an election contest involving city councilors, which appeal should be filed within five (5) days from notice of the decision as in this case; that he was proclaimed on June 17, 1970 by the municipal board of canvassers as the eighth duly elected councilor of Dipolog after the town was converted into a city on January 1, 1970; that thereafter, he took his oath of office and discharged his duties as city councilor, not as municipal councilor; that the claim that the notice of appeal raises only a question of fact is presumptuous, premature and without legal basis, because the notice of appeal does not expressly limit the same to a factual question and that the law does not allow such a conclusion (Annex "K", pp.

44-47, rec.).

In an order dated January 13, 1971, respondent Judge disallowed the appeal on the ground that herein petitioner was elected as a municipal councilor in the 1967 elections when Dipolog was still a municipality, that the appeal raises an issue of fact only "considering that protestant was declared winner after an examination and co(rr)ecting of the ballots cast (in) the question(ed) precin(c)t," and that Section 178 of the Revised Election Code allows municipal councilors to appeal only on questions of law, as ruled in the case of *Calano vs. Cruz*, supra (Annex "M", pp. 50-51, rec.).

Herein private respondent Amatong filed an urgent motion for execution of judgment dated January 11, 1971 (Annex "J", pp. 42-43, rec.), which was granted by the respondent Judge in an order dated January 14, 1971 directing the issuance of a writ of execution in favor of herein private respondent Amatong (Annex "N", p. 52, rec.), despite the opposition dated January 12, 1971 of herein petitioner (Annex "L", pp. 48-49, rec.).

Hence, this petition for review.

Because We are not persuaded by the arguments advanced by herein petitioner, the orders of the respondent Judge should be sustained.

The right to appeal in election contests over local elective positions is purely statutory. It cannot even be conferred by agreement of the parties. Hence, in the absence of a statute expressly authorizing such appeals, a dismissal of such an appeal does not constitute a denial of due process of law. Under Section 178 of Republic Act No. 180, otherwise known as the Revised election Code, as amended, no appeal on questions of fact lies from the decision of the Court of First Instance in an election contest involving the position of vice-mayor or municipal councilor. An appeal lies only when it raises purely a question of law, for under Section 2 of Article VIII of the Philippine Constitution, the Supreme Court cannot be deprived of its appellate jurisdiction to review all cases involving errors or questions of law.[3]

The character of the position involved in an election protest should be determined as of the time of the elections held for that particular elective position and not thereafter. When the local elections were held on November 14, 1967, Dipolog was still a municipality; hence, herein petitioner could only run for the position of municipal councilor, not city councilor. Accordingly, his right to appeal from an election contest involving said position under Section 178 of the Revised Election Code should be reckoned as of said date, November 14, 1967. The supervening fact that Dipolog was converted into a city on January 1, 1970 did not amend said Section 178 so as to grant him a right to appeal on questions of fact which was denied him prior to January 1, 1970 as interpreted by this Court in the aforesaid cases.

While it is true that herein petitioner's notice of appeal did not specify the issues he raises or will raise or appeal, the fact that he filed his notice of appeal to "make known that the protestee (herein petitioner) will appeal to the Court of Appeals" (p. 38, rec.), can only mean that he raises questions of fact, which the Court of Appeals alone can review. If he intended to raise merely questions of law on appeal, his notice of appeal should have expressly stated that he was appealing specifically to the Supreme Court to which such appeal on legal issues should be brought, as he did in this instant case after his aforesaid notice of appeal was disallowed by the respondent Judge.[4]

And even if he would raise in his appeal mixed questions of fact and of law, the same will not vary the result. Thus, in the *Gonzales* case, supra, where the protestee filed his intention to appeal on questions of fact and of law, We ruled:

"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*, 46 Off. Gaz., Supp., No. 11, 264; *Calano vs. Cruz*, G.R. No. L-6404, January 12, 1954). 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."^[5]

Because there remain only three months of the term, which ends on December 31, 1971, the immediate execution of the judgment should be decreed.

WHEREFORE, the petition is hereby dismissed, with costs against herein petitioner. This decision is hereby made immediately executory.

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

Teehankee, J., dissents in a separate opinion.

[1] *Baloria vs. Abalos*, L-28457, Apr. 30, 1970, 32 SCRA 368-373.

[2] L-6404, Jan. 12, 1954, 94 Phil. 230, 232-33.

[3] *Sarmiento vs. Quemado*, L-18027, June 29, 1962, 5 SCRA 438, 441; *Gonzales vs. Court of Appeals, et. al.*, L-18255, Nov. 21, 1961, 3 SCRA 465, 468-469; *Tumakay, et. al. vs. Orbiso, et. al.*, L-8354, Aug. 22, 1955, 97 Phil. 431, 432-33; *Calano vs. Cruz*, L-6404, Jan. 12, 1954, 94 Phil. 230, 232-33; *Lucena vs. Tan, et. al.*, 47 O.G. 1121; *Marquez vs. Prodigalidad*, L-2098, May 30, 1949, 83 Phil., 813, 815-818.

[4] *Gonzales vs. Court of Appeals, et. al.*, supra, 3 SCRA 465, 468; *Calano vs. Cruz*, supra; *Marquez vs. Prodigalidad*, supra.

[5] *Gonzales vs. Court of Appeals, et. al.*, supra, 3 SCRA 468-69.

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DISSENTING OPINION

TEEHANKEE, J.:

The overriding issue in the case at bar is whether or not the pertinent provision of section 178 of Republic Act 180 (the Revised Election Code) which permits no appeal on questions of fact from the court of first instance's decision in an election contest involving the position of municipal councilor is properly applicable, notwithstanding the subsequent conversion of the position to that of city councilor.

I respectfully submit that by virtue of the conversion of the municipality of Dipolog, Zamboanga del Norte into

Dipolog City with the enactment of Republic Act No. 5520, which granted Dipolog a city charter on June 21, 1969 and took effect on January 1, 1970, the cited provision became no longer applicable.

By express terms of section 88 of Republic Act No. 5520, the incumbent mayor, vice-mayor and councilors of the municipality of Dipolog automatically became officials in the same capacity of the new city of Dipolog, upon its coming into being on January 1, 1970 and the consequent cessation of existence of the defunct municipality. Accordingly, the pertinent provision of section 178 of the Revised Election Code expressly permitting appeals from the court of first instance decision in an election contest involving the position of city councilor, "to the Court of Appeals (on questions of fact) or to the Supreme Court (on questions of law), as the case may be", became the properly applicable provision.

This is specially so in the case at bar because petitioner Baloria, due to various pre-proclamation disputes, had been proclaimed by the board of canvassers as the eighth duly elected councilor of Dipolog only on June 17, 1970, after the town of Dipolog had already been converted into a city since January 1, 1970 and he took his oath of office as, and discharged the functions of, city councilor, not municipal councilor.

Since the municipality of Dipolog legally ceased to exist on January 1, 1970, the fact that the contending parties ran for the office of municipal councilor in the 1967 elections should no longer be controlling insofar as the right to appeal from the adverse decision of the court of first instance is concerned. The supervening fact of conversion of the town into a city since January 1, 1970 automatically made all the municipal offices city offices. The protest at bar indubitably involved the position of eighth city councilor, and the party adversely affected by the trial court's decision may properly invoke the statutory right to appeal provided by the Revised Election Code in cases involving the position of city councilor.

Moreover, assuming as the main opinion holds, that the Election Code provision for no appeal on questions of fact as regards municipal posts properly applies to the case at bar, despite the indisputable fact that what the parties are contending for is the position of eighth city councilor, still it is not disputed that appeals on questions of law may be invoked in such contests on municipal posts. Here, petitioner's attempt to appeal on questions of law has been summarily dismissed, without a showing that the questions intended to be raised by him were not properly so.

I therefore vote for the granting of the writ of certiorari as prayed for, since petitioner's right to appeal from the adverse decision of the court of first instance should be recognized and given due course.

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