

ENRIQUE PAREJA, CONRADO RAAGAS, JUAN ARACO, ROMAN PAREJA, HILARIO RENDAL AND VICENTE REMOTO, PETITIONERS, VS. GREGORIO S. NARVASA, JUDGE OF FIRST INSTANCE OF NEGROS ORIENTAL ET ...

G.R. No. L-2008. May 17, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Petitioners filed with the Court of First Instance of Negros Oriental a protest contesting the result of the elections for vice-mayor and councilor held in Ayuquitan on November 11, 1947.

The protest is dated on November 25, 1947. In answer dated December 13, 1947, protestees denied the facts alleged as grounds of protest.

On February 5, 1948, protestants moved through a written petition that the ballot boxes of the eleven precincts of Ayuquitan be ordered opened and the ballots thereof counted, as evidence in support of the following allegations made in the protest:

"V

"3. Terrorism, threats, intimidation and coercion were used, before and during the election, as follows:

"(a) A day before the election a leader of protestants was kidnapped with intention of scaring away from the electoral polls on election day followers of protestants as in fact many did not vote on this account.

"(b) Some leaders of protestants were attacked and bodily harmed by leaders of protestees with evident intention of preventing them and protestants' followers from coming to the electoral polls to vote for protestants, and this in fact scared them from voting on election day.

"(c) A well-plumed public disturbance by firing guns in strategic places on the eve of election day accompanied by malicious propagation of information that shooting would occur on election day, succeeded in planting fear in the hearts and minds of the protestants' electors, causing many of protestants' electors not to come to vote as was the evident intention of protestees' leaders in making the public disturbance.

"(d) Protestees armed with gun a freely went in and out of the polling places for precinct 1 to 8 located in the poblacion of the town, threatening the leaders and followers of the protestants and forcing and coercing them to vote for protestees and their candidates.

"(e) Leaders of protestees, Many of whom claim to be special agents of Governor Praxedes Villanueva with authority to make arrests and all armed with guns, freely entered the polling places for precincts Nos. 1 to 8 and their immediate vicinities, threatening and intimidating the electors, and forcing and coercing them to vote for protestees and their ticket, because of this and the irregularity specified in (d) at least fifty 50 electors in each of precincts Nos. 1 to 8, were forced to vote for protestees and their candidates.

"(f) That protestants and their watchers, and the watchers of protestants' provincial and national candidates were threatened and forced out of the polling places for precincts Nos. 1 to 8 by protestees and their leaders, so that protestees and their leaders could commit any or all irregularities they wished and desired in fact they succeeded in doing so without any to prevent them from committing the irregularities.

"(g) Protestees and their leaders, in open violation, of law, prepared the ballots of at least sixty 60 electors in every precinct of precinct No. 1 to 8, inclusive.

"(h) That during the counting and canvass of the votes for precincts Nos. 1 to 8, at least twenty 20 ballots in each of those precincts in which protestants appeared voted for the office of Municipal Vice-Mayor and Municipal Councilors were maliciously and illegally read and tallied as votes cast in favor of protestees.

"(i) That at least ten 10 ballots in each of the eleven 11 precincts of the municipality of Ayuquitan in which protestants were voted for the office of the Municipal Vice-Mayor and Municipal Councilors were illegally not counted in protestants' favor on the pretext that they were marked ballots, when a a matter of fact they were not.

"(j) That at least fifteen 15 ballots in each of the 11 precincts of the municipality of Ayuquitan in which protestees were voted for Municipal vice-Mayor were marked ballots but were nevertheless counted in favor of the protestees.

"VI

"That as alleged in the next preceding paragraph, at least 1,395 votes should be deducted from the votes credited in favor of protestees, and 200 votes should be added to the votes credited to the protestants."

On the same date, February 5, 1948,. respondent judge issued an order defying the petition. quoting the doctrine laid down by the Supreme Court in *Cecilio v. Belmonte* (48 Phil., 243) and *Mandac vs. Samonte* (49 Phil., 284), to the effect that to order the opening of ballot boxes is a ministerial duty of the court, the respondent qualified the doctrine to the effect that the allegations of the protest must be "clear, rational and convincing," adding that the allegations in petitioner's protest "are, on the face thereof, inaccurate and lacking in definiteness and sincerity."

Motion for reconsideration was filed on February 9, 1948, but was denied on February 11.

Petitioners pray for us to order respondent judge to order the opening of the ballot boxes in question and the counting of the ballots deposited therein, as a ministerial duty.

Time and again, this Supreme Court has declared in numerous cases that, when there is an allegation in an election protest that would require the perusal, examination, or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of the ballots deposited therein.

The doctrine has been laid down under legal provisions existing before the enactment of the Election Code. The latter embodied expressly the mandatory provision which was only implicit in former election laws.

Section 175 of the Election Code reads as follows:

"SEC. 175. Judicial counting of votes in contested elections. — Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but not more than fifteen pesos for every election precinct which they may completely

revise and report upon."

The above-quoted provision contemplates two cases in which "the court shall immediately order * * * that the ballot boxes * * * be produced before it and that the ballots be examined and the votes recounted"; first, "upon the petition of any interested party," and Second, "or motu proprio if the interests of justice so requires".

Under the first case, the mere "petition of any interested party" of course, in accordance with the pleadings, is by itself enough. The limitations implicit in the pronouncements made by the Supreme Court as to the effect that the allegations of the protest must show the need of counting and examining the ballots have been eliminated by the drafters of the Election Code. Their evident purpose was to cut short all technicalities and controversies on legal niceties standing in the way of a prompt examination and counting of the ballots and early disposal of protests, and to avoid the recurring petitions filed with the Supreme Court.

The opportunity for the opening of ballot boxes and the counting of ballots has been broadened by the Election Code to such an extent that the right to ask for it is not reserved exclusively to protestants, as had happened formerly, but has been extended to "any interested party", including protestees and third party litigants.

The qualification of "if the interests of justice so requires" is attached to the "motu proprio" case, as grammatically is indicated by the first separating comma in the provision.

As prayed for, respondent judge is ordered to immediately order the opening of the ballot boxes of the eleven precincts of Ayuquitan and the counting and examination of all the ballots deposited therein, and follow the procedure outlined by section 175 of the Election Code, with costs in favor of petitioners.

Parás, Actg. C.J., Feria, Bengzon, Briones, and Tuason, JJ., concur.

Padilla, J., I concur in the result.

Paras, Actg. C.J., I certify that Mr. Justice Pablo voted with the majority.

DISSENTING

HILADO, J.:

I am constrained to dissent from the determination made by the majority of the instant case. Section 175 of the Revised Election Code provides as follows:

"SEC. 175. Judicial counting of votes in contested elections.—Upon the petition of any Interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voter's affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but not more than fifteen pesos for every election precinct which they may completely revise and report upon. (C. A., 357-169)" (Italics supplied.)

The source of this provision was Commonwealth Act No. 357, Section 169, which also contained the all-important modifying phrase "if the interests of justice so require". This phrase, coming as it does after two previous phrases separated from each other with a "comma" and the second of which is also separated with a "comma" from the modifying phrase, must be interpreted to modify both phrases. The result is, that what the law here ordains is that whether the opening of the ballot boxes and the examination of the ballots and recounting of the votes is sought "upon the petition of any interested party", or is contemplated to be ordered by the court motu

proprio. such opening and such examination and such recounting can only be ordered if the interests of justice so require. Now it is plain that this legal provision confers discretion upon the court before which the contest is pending to determine whether the interests of justice require them. If the lawmaker intended that it shall be the court's mandatory duty to so order upon the mere petition of any interested party regardless of whether or not the interests of justice require it, he would not have placed a "comma" after the word "party" in the first phrase. Neither can I agree with the construction which would say that this modifying phrase applies only to a motu proprio order of the court, for if the interests of justice are to control the motu proprio action of the court, it would be absurd to hold that they shall not control the action of the court if such action is requested by an interested party. It seems to me to be self-evident that the interests of justice are supreme in the two cases, and must control the action of the court in one or the other. The legality of the election being presumed, I am of the considered opinion that where a prima facie case is not made that it was tainted with illegality sufficient to alter the result of the election, and that the opening of the ballot boxes and examination or recounting of the ballots, are material to establish such prima facie case, the interests of justice do not require such opening, examination and recounting. Paragraph V, 3 (e)-(j) of the motion of protest dated November 25, 1947, is pointed to as justifying such reopening, examination and recounting. But said motion is not so much as verified, and no evidence is of record to support it.

It will be noted that the cases cited by petitioners were decided under the election law in force prior to the present Revised Election Code, and even prior to the election code immediately preceding, namely, Commonwealth Act No. 357. For instance, in *Cecilio vs. Belmonte*, 48 Phil., 243, 249-250, this Court quoted the pertinent provision of section 479 of the then existing Election Law, as then drafted, and as it was successively amended by section 44 of Act No. 3030, and by Section 25 of Act No. 3210. As originally drafted and as thus amended by Act No. 3030, said Election Law imposed upon the Court of First Instance with which the election protest was filed this mandatory duty: "and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined." And, as amended by section 25 of Act No. 3210, the provision was changed to read:

"* * * Upon petition of an interested party, or of its own accord if the interests of justice require it * * *".

It should be noted that in the last quoted amended provision of that former Election Law the qualifying phrase "if the interests of justice require it" was for the first time employed. It will likewise be observed that in that provision said phrase followed the phrase "of its own accord" without any punctuation between them, while the preceding phrase "upon petition of an interested party" was separated by a "comma" from the phrase "of its own accord". As the provision was thus drafted, it is clear that the phrase "if the interests of justice require it" modified only the phrase "of its own accord".

Undoubtedly realizing that there was no sound reason for requiring the action of the court to be controlled by the demands of the interests of justice if it acted "of its own accord", and not when it acted "upon petition of an interested party", the legislature saw fit to apply the requirement to both cases, drafting the corresponding provision, both in section 169 of Commonwealth Act No. 357, the Election Code, and in section 175 of Republic Act No. 180, the Revised Election Code, in the following terms:

"Upon the petition of any interested party, or motu proprio. if the interests of justice so require, * * *".

In the first part of this dissent I have already tried to analyze the effect of the above-quoted phraseology with particular reference to its punctuation, and the consequent interpretation thereof that I believe should be given.

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