

FRANCISCO M. PAJAO, PETITIONER AND APPELLEE VS. THE PROVINCIAL BOARD OF CANVASSERS OF LEYTE COMPOSED OF MEMBER RAGA RUFO ET AL., RESPONDENTS AND APPELLANTS.*G. R. No. L-3626. April 27, 1951*

Ponente: REYES, A., J.

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In the general elections of November 8, 1949, Francisco M. Pajao and Filemon Saavedra were rival candidates for the office of Congressman for the third district of the province of Leyte. The elections over, the provincial board of canvassers of Leyte proceeded to canvass the returns, and on November 25 signed a proclamation, declaring Saavedra Congressman-elect, with a majority of 302 votes over his rival. But in arriving at this result the board had to annul and exclude from the canvass the election returns from certain precincts of the municipalities of Bilosan, Malibog, and Cabalian upon Saavedra's representation that irregularities had been committed there. Inclusion of the returns from those precincts would have made Pajao the winner, with a majority of nearly 2,000 votes over Saavedra.

Without knowledge of the above proclamation but aware of the imminent danger confronting his election in the hands of the respondent Provincial Board of Canvassers," Pajao filed, in the afternoon of that same day, a petition for mandamus in the Court of First Instance of Leyte to compel that board to proclaim him Congressman-elect and at the same time enjoin it from proclaiming Saavedra. Acting on this petition, the court issued a writ of preliminary injunction, ordering the board "to refrain from proclaiming any candidate as, Congressman-elect for the Third District of the Province of Leyte, until further order." With the proclamation thus frozen, Pajao wired the Commission on Elections, denouncing the action of the board in annulling and excluding from the canvass the election returns from the precincts above referred to, and the Commission, believing said action illegal, set aside the proclamation of Saavedra and directed the board to make a new canvass with instructions to include therein all the election returns from the three municipalities above-mentioned. The board met anew, but the majority thereof, far from acting as instructed, reaffirmed the proclamation of Saavedra. Threatened with disciplinary action for disobedience but given another chance to comply with the Commission's instructions; the board reconvened on December 2, and after a recanvass with the inclusion of the election returns from the disputed precincts proclaimed Pajao Congressmanelect for the third congressional district of Leyte.

Three days thereafter, Saavedra filed a motion in the mandamus case, asking that the proclamation of Pajao be annulled and the members of the board of canvassers held in contempt of court until they should revoke the said proclamation. Later he also filed his protest with the Electoral Tribunal of the House. Pajao on his part countered with a motion to have his petition for mandamus dismissed on the ground that, with his proclamation as Congressman-elect, the petition had already outlived its purpose. After hearing, the court rendered a "decision", denying Saavedra's motion for contempt and granting Pajao's motion for dismissal. From this decision Saavedra has appealed to this Court.

We see no reason for disturbing the decision or order appealed from in so far as it dismisses appellee's motion for mandamus and denies appellant's motion for contempt.

It is obvious that appellee's action for mandamus has become purposeless and devoid of cause with his subsequent proclamation as Congressman-elect for the third district of Leyte by the provincial board of canvassers. This in itself would have been a sufficient ground for dismissal. But prosecution of the action in court has also been made unnecessary by the fact that appellant has, through his motion of protest, tossed the whole controversy into the lap of the House Electoral Tribunal as the agency designated by the Constitution (Art. VI, section 11) to be "the sole judge of all contests relating to election, returns and qualifications" of the members of the House of Representatives. In the circumstances, further court intervention in the election contest between herein appellant and appellee would only lead to conflict of authority and create confusion. This the courts should not sanction.

On the other hand, if it be appellant's purpose to have the mandamus case kept alive so that he could prosecute his action to have the respondents therein punished for contempt, his appeal would equally be untenable because contempt proceedings are in their nature penal, and denial of the motion for contempt after trial amounts to a virtual acquittal from which an appeal would not lie. (II Moran's Comments on the Rules of Court, 3rd ed. 125).

In view of the foregoing, the order dismissing the petition for mandamus and denying appellant's motion for contempt must be, as it is hereby, allowed to stand, with costs in this instance against the appellant.

Paras, C, J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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