

PEDRO ABENDANTE, PROTESTANT AND APPELLANT, VS. BALDOMERO RELATO, PROTESTEE AND APPELLEE.

G.R. No. L-6813. November 05, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This case concerns an election contest instituted by Pedro Abendante, protestant, against Baldomero Relato, protestee, in the Court of First Instance of Camarines Sur.

In the elections of November 13, 1951, Pedro Abendante, a Liberal, ran for Mayor of Cabusao, Camarines Sur, against Baldomero Relato, a Nacionalista. Between Libmanan and Cabusao there is a leper colony, known as Bicol Treatment Station, and in this colony precinct No. 11 was created in connection with the elections held on November 13, 1951.

On November 28, 1951, the Board of Canvassers of Cabusao canvassed the result of the election for mayor of the municipality, but excluding therefrom the votes cast in precinct No. 11 which were declared illegal by said Board, and proclaimed Pedro Abendante as mayor-elect with a majority of 56 votes. On November 29, 1951, another Board of Canvassers was constituted at the instance of the Assistant Provincial Fiscal of Camarines Sur, and said Board, after canvassing the election returns, including the votes cast in precinct No. 11, proclaimed the protestee as mayor-elect with a majority of 82 votes.

On December 17, 1951, the Commission on Elections revoked the two certificates of canvass and the two proclamations made by the Boards of Canvassers already referred to and directed the Board of Canvassers originally constituted to reconvene and make a new canvass of the election returns, including therein the votes cast in precinct No. 11.

On December 27, 1951, the original Board of Canvassers reconvened and made a new canvass as directed by the Commission on Elections but refrained from making any proclamation contending that the votes cast in said precinct were illegal and void. And on December 29, 1951, upon insistence of the Commission on Elections and its representatives, the Board of Canvassers proclaimed the protestee as the duly elected mayor with 935 votes as against protestant's 853.

Main basis of the protest is the inclusion of the votes cast in precinct No. 11 which was created within the Bicol Leprosarium, on the ground that the electors who cast the votes in said precinct are all lepers or inmates of the leprosarium who are not entitled to vote in view of the repeal of Sections 14 and 15 of Republic Act No. 180 by Section 4 of the Republic Act No. 599.

Issues having been joined, the lower court rendered decision holding in substance that the lepers who voted in precinct No. 11 are qualified voters, and, as a result, it declared the protestee legally elected and dismissed the protest with costs. From this decision the protestant has appealed.

The main issue to be determined in this appeal refers to the validity of the votes cast in precinct No. 11 located

within the Bicol leprosarium, known as Bicol Treatment Station, which is comprised within the municipality of Cabusao. In the case of *Simeon Macolor vs. Carlos Amores*, supra, p. 1, we said that the Culion Leper Colony is a national reservation created by an executive order of the then Civil Governor of the Philippines and as such should be considered as an administrative organization separate and distinct from the municipality of Coron because by express provision of law it was placed under the exclusive administrative control of the Department of Health. The establishment of the Culion Leper Colony is a class by itself, which should be distinguished from other leprosaria. While the administration of the Culion Leper Colony is expressly provided for in the Revised Administrative Code (Sections 1066-1068), the Bicol Treatment Station was established by virtue merely of an administrative order issued by the Department of Health segregating a portion of the municipality of Cabusao for the treatment of lepers in the Bicol region. This segregation cannot have the affect of separating the leprosarium from the political territory of the municipality comprising it. It still continues to be part and parcel of it and under its municipal government. This has to be so unless there is an express law to the contrary. Here there is none. This being so, it follows that the lepers who voted in precinct No. 11 who are all residents of said municipality should be declared as having the requisite residence to vote in said precinct if their intention is to vote in that municipality. And as regards their qualification to vote, we can invoke in their favor the ruling laid down in the case of *Alcantara vs. Secretary of Interior*, 61 Phil. 459, wherein this court held:

"There are a large number of people confined in the Culion Leper Colony. They are not permitted to return to their former homes to vote. They are not allowed to visit their former homes even though they have been separated from near and dear relatives who are not afflicted as they are. Why split hairs over the meaning of residence for voting purposes under such circumstances? Assuming that the petitioners intend to return to their former homes if at some future time they are cured, this intention does not necessarily defeat their residence before they actually do return if they have been residents 'of the Philippine Islands for one year and of the municipality in which they offer to vote for six months, next preceding the day of voting.' Surely a mere intention to return to their former homes, a consummation every humane person desires for them, not realized and which may never be realized should not prevent them, under the circumstances, from acquiring a residence for voting purposes."

There is a claim that the lepers who cast their votes in precinct No. 11 do not have the residence qualification because they are allegedly residents of the municipality of Libmanan, for which reason, it is claimed, they have no right to be registered in the list of voters of said precinct and, consequently, the list of voters as finally corrected by the Board of Inspectors is not final and conclusive as to their right to vote in said precinct. This claim involves a question of fact which should be established by sufficient evidence and in this case this evidence, is wanting. This matter can not be taken judicial notice of because it is a fact that should be proven. The Board of Inspectors is presumed to have passed upon the qualifications of said voters when they presented themselves for registration and when the Board entered their names in the list, it must be because they were qualified. Even supposing that said voters are disqualified for lack of residence qualification this matter should have been brought up before the Board of Inspectors during the period provided for by law for the exclusion of voters. Having failed to do so, it is now too late to raise this question in these proceedings. Moreover, the law is clear that "in an election contest proceedings, the registry list, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election." (Section 176, paragraph (f), Revised Election Code.) This injunction is mandatory. (*Dizon vs. Cailles*, 56 Phil. 695.)

The other issue raised by appellant refers to the action of the Commission on Elections in cancelling the canvass of the election returns made by the legally constituted Board of Canvassers which proclaimed the protestant as mayor-elect after the period for filing a protest had expired. It is contended that the Commission on Elections has no such power and therefore the proclamation made by the Board of Canvassers after said period upon the instruction of the Commission on Elections has no valid effect.

Under the Constitution, the Commission on Elections is charged with the exclusive duty of enforcing and administering all laws relative to the conduct of elections (Section 2, Article X, Constitution of the Philippines). In addition to the powers and functions conferred upon it by the Constitution, the Commission on Elections has direct and immediate supervision over the provincial, municipal, and city officials designated by law to perform the duties relative to the conduct of elections (Section 3, Revised Election Code).

The duties of the municipal Board of Canvassers are ministerial in character, and extend only to the counting of votes as they appear in the statements of election received from the municipal treasurer and to the issuance of the necessary statement of the result of their canvass. (*Galang vs. Miranda, et al.*, 36 Phil., 316, 319-320.) Its duty being ministerial, it follows that the Board of Canvassers can not pass on the validity of an election return, and much less exclude it from the canvass on the ground that the votes cast in the precinct where the returns came from are illegal. The Board of Canvassers of Cabusao failed to do its duty when it excluded from the canvass the returns coming from precinct No. 11. The Commission on Elections was therefore justified in ordering said Board to reconvene and make a new canvass by including the returns in said precinct. Even supposing that the Commission on Elections has exceeded its authority because the period for filing a protest has already elapsed when it acted on the matter, appellant is deemed to have waived his right to question such irregularity when he failed to take the matter to the Supreme Court by way of certiorari as required by law. (Section 5, Revised Election Code.)

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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