

MACARIO E. CAESAR, CONTESTANT AND APPELLEE, VS. FILOMENO GARRIDO, CONTESTEE AND APPELLANT.*G.R. No. L-30705. March 25, 1929*

Ponente: STREET, J.

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This proceeding is a contest over the office of president in the municipality of Cabalian, Province of Leyte,—a sequel to the general election held on June 5, 1928. As a result of said election the contestee, Filomeno Garrido, was proclaimed elected with a plurality of 27 votes over the contestant, Macario E. Caesar. A third candidate for the same office, one Julian Cordobes, is named as a contestee in the motion, but he has not participated in the contest. Upon hearing the case the trial court reversed the result reached by the board of canvassers and found that the contestant had been elected over Garrido by a plurality of 71 votes. Judicial declaration was accordingly made to the effect that Macario E. Caesar had been elected to the office and judgment was given against the contestee Garrido for costs and expenses, including the fees of the commissioners. From this judgment Garrido appealed.

The contest was instituted by a motion beginning with the statement that the contestant was a duly qualified elector in the municipality of Cabalian and was a registered candidate who had received votes for the office of municipal president in the election mentioned. Upon the filing of this motion the contestee moved to dismiss on the ground that it was not alleged in the contestant's motion that the contestant was, at the time of the election, eligible to the office for which he was a candidate. This motion to dismiss was overruled by the trial court on the two grounds that the allegation that the protestant was a duly qualified elector and registered candidate should be taken as implying that he was eligible to the office, and that, at any rate, the ineligibility of a candidate is not proper matter of exception or defense in a contest over an election. To this ruling the contestee excepted, and error is here assigned thereto.

To dispose of this preliminary matter at once, we may say that we concur in the conclusion of the trial court that it was unnecessary for the contestant to allege in his motion that he was eligible to the office of president. The allegations of the motion in this case are in a form approved by the majority of the court in *Viola vs. Court of First Instance of Camarines Sur*, and *Adolfo* (47 Phil., 849), and *Tabada vs. Zanduetta and Vergara* (47 Phil., 859); and we are of the opinion that no more is necessary to give the court jurisdiction over the matter. The case of *Verceles vs. Araneta Diaz* (47 Phil., 843), contains nothing in support of the contention of the appellant to the contrary. The point decided in that case was merely to the effect that it is not necessary for the contestant to allege in his motion that the contestee was a registered candidate who had been voted for in the election. It is enough to make this allegation with respect to the contestant only. Furthermore, as the trial court observed, the question of the eligibility of a candidate for office is not properly involved in a proceeding of contest. But of this more will be said in our discussion of the defenses set forth in the contestee's answer.

We now proceed to inquire into the number of votes received by the two respective opponents who are concerned in this litigation. In this connection we note that the contestant challenges the returns from one precinct only, namely, the first precinct of Cabalian. It is proved that, when the votes were counted in this precinct, the

inspectors counted 135 votes for the contestant, Macario E. Caesar, and these were duly noted on the tally sheets. Nevertheless, when the official returns were made out, two of the three inspectors, constituting a majority of the board, ruled that these votes could not be returned for the contestant, for the reason that his name did not appear in the official list of enrolled voters in any precinct in the municipality, it being supposed that this fact rendered him ineligible to the office and disqualified him from being considered a candidate. The 135 votes received by him in this precinct were therefore treated as scattering votes cast for persons not registered as candidates.

When the contest with respect to this precinct came on to be tried in the Court of First Instance, commissioners were appointed by the court to open the boxes from the first precinct and count the votes found therein. When the votes were thus recounted by the commissioners, it was ^Hcovered that the contestant had received 139 votes, and though exception was taken to twelve of these by the contestee on some ground or other, there remained in favor of the contestant 127 unexceptional votes. When confronted with this report, the trial judge correctly held that these 127 votes should be counted for the contestant; and after adjusting¹ the votes cast for the contestee in the same precinct, his Honor found that in the entire municipality the contestant had gained the election over the contestee by a plurality of 71 votes.

In this ruling the trial judge was correct. While it is admitted that the name of the contestant was not entered as that of a qualified voter in the registration list of any precinct of the municipality of Cabalian, for the election in question, this circumstance did not justify the election inspectors of the first precinct in discarding the votes obtained by the contestant in that precinct. In *Yra vs. Abano* (52 Phil., 380), this court held that while a candidate, in order to be eligible for municipal office, must have the general qualifications pertaining to voters, he need not be actually enrolled in the list of voters. It clearly appears from Exhibit A that the contestant was duly registered as a candidate to the office of municipal president in the election in question, and the inspectors had no right to go behind that certificate. The certificate of registration of a candidate for municipal office must be considered conclusive on the inspectors as regards the right of such candidate to be credited with the votes which he in fact receives in the different precincts of the municipality. The general question of the eligibility of a candidate for office is one with which the inspectors have no concern, their duties being confined to the conduct of the election, the counting of the votes, and the certification of the results in so far as relates to the certified candidates.

In the answer filed by the contestee after his motion to dismiss had been overruled it is alleged, by way of special defense, that, prior to the election, the contestant had not been a resident of the municipality of Cabalian either for the period of one year necessary to make him eligible for municipal office or even for the six months necessary to entitle him to be enrolled among the qualified voters of the municipality. The trial judge, however, held that the issue, or issues, thus tendered were irrelevant to the contest, and he ignored the testimony submitted by the contestee tending to establish the fact that the contestant had not been a resident of Cabalian for the time requisite to make him eligible to office. In this there was no error. The ineligibility of the mover of an election contest, supposing him to have been a duly registered candidate, is not available as a defense in the contest proceeding. The reason is that the contest raises merely a question as to the number of votes received by the opposing candidates. Eligibility is a matter wholly apart from the question of the number of votes received by a candidate, and its solution depends upon considerations quite different from those involved in a contest. As the law formerly stood, under section 12 of Act No. 1582 and section 2 of Act No. 1726, the ineligible official, being a provincial officer, was removed by the Governor-General; while in the case of municipal officers, removal was effected by the provincial board or summary order of the Governor-General. As long as the law remained in this state, it was a rule that the eligibility of a candidate could not be considered in an election contest (*Topacio vs. Paredes*, 23 Phil., 238). The law concerning the removal of ineligible officials has, however, been changed; and it is now provided that when a person, alleged to be ineligible, is elected to a provincial or municipal office, his right thereto is to be tried, upon the relation of any elector of the province or municipality concerned, in a special proceeding in the

nature of an action of quo warranto; and this proceeding must be instituted within the two weeks after the proclamation of the election of the person whose right to office is questioned (Election Law, sec. 408, as amended by Act No. 3387). The result is that, as the law now stands, the question of eligibility may be tried in a judicial proceeding. But the proceeding in which it may be tried is not a contest; and the defense based on the alleged ineligibility of the contestant is completely incongruous with the issue of an election contest.

Moreover, it is to be observed that the proceeding in the nature of quo warranto to try the question of the eligibility of a candidate is to be instituted within the two weeks after the proclamation of the person whose right to office is challenged. In the proceeding now before us the contestant has never been proclaimed at all and will not be proclaimed, in the sense of the law, until the decision of this court is published. The issue of ineligibility which is attempted to be raised in the answer is premature.

Another reason readily suggests itself why the ineligibility of the contestant is not available as a defense in this contest. This consists in the fact that, if the person who has received a majority or plurality of votes in any election is found to be ineligible, the result is that the office is declared vacant and a new election has to be held to fill the vacancy. In the case before us, if we should accept the defense of the ineligibility of the contestant and adopt the course of dismissing the contest for that reason, the result would be that the contestee would be in office though he in fact received fewer votes than the contestant.

But it is said that the court should admit the defense in this proceeding for the purpose of avoiding circuity of action. The suggestion is worthy of consideration, because it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. But this rule cannot be applied in a case where the suggested defense is incongruous and premature. The eligibility of the contestant must, we think, be made the subject of a separate proceeding at the proper juncture.

In the appealed decision we find an observation to the effect that the contestant's certificate of candidacy (Exhibit A) is conclusive of the question of the eligibility of the contestant. His Honor no doubt intended that observation to be understood in connection with this contest, and in that sense the statement is true. But of course said exhibit would not be conclusive in any proper proceeding, in the nature of quo warranto, instituted, under section 408 of the Election Law, for the purpose of testing the eligibility of the contestant to office.

From what has been said it follows that the judgment appealed from must be affirmed, and it is so ordered, with costs against the appellant.

Johnson, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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