

HERMENEGILDO VELASCO, PETITIONER, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF THE PROVINCE OF PANGASINAN AND MOISES MALONG, RESPONDENTS.

G.R. No. 12190, November 17, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an original petition for the writ of prohibition presented in the Supreme Court. The only question presented by the petition and answer is whether or not, under the facts stated, the Court of First Instance has jurisdiction to continue to hear and decide a certain election contest therein pending.

From an examination of the record, the following facts appear to be undisputed:

First. That on the 6th of June, 1916, an election was held in the municipality of Asingan, for the purpose of electing a president and other municipal officers.

Second. That on the 10th of June, 1916, the municipal board of inspectors of said municipality proclaimed that the petitioner herein, Hermenegildo Velasco, had been duly elected as president of said municipality.

Third. That the certificate made by said municipal board of inspectors, in accordance with the provisions of law, shows that the following persons had received the following number of votes; for the office of president: Hermenegildo Velasco, 624 votes; Moises Malong, 582 votes; Zacarias Cardinez, 4 votes; Hermengildo Apellido, 1 vote; Francisco Astudillo 1 vote; Hermenegildo Vebaco, 1 vote; Amadeo Millan, 1 vote; Mengildo Velasco, 1 vote; Hermenpledo Velasco, 1 vote; Zermenegildo Velasco, 1 vote.

Fourth. That on the 20th of June, 1916, the said Moises Malong filed a protest in the Court of First Instance against the election of the said Hermenegildo Velasco, alleging that certain frauds had been committed during said election sufficient to declare that Hermenegildo Velasco had not been duly elected president of said municipality.

Fifth. That by the statement of the said Moises Malong, protestant, it appears that on the 20th of June, 1916, a copy of said protest was delivered to the said Hermenegildo Velasco, as well as to all of the other persons who had received votes for the office of president.

Sixth. That the hearing on said protest was set for the 24th of July, 1916, at eight o'clock a. m.; that notice of said trial was sent to Moises Malong, Hermenegildo Velasco, Zacarias Cardinez, Hermenegildo Apellido, Francisco Astudillo, and Amadeo Millan; that notice was also given to the respective attorneys for the protestants and the protestee of said hearing.

That on the 17th of August, 1916, one of the protestees, Hermenegildo Velasco, the petitioner herein, presented a motion in the Court of First Instance praying that said protest be dismissed. Said motion alleged:

"1. That neither the respondent nor Zacarias Cardinez were notified of the motion of protest as required by law.

"2. That, in connection with this case, up to the present time they have only received from the petitioner or his representatives, a copy of the motion of protest, nothing more.

"3. That they have received no notification fixing the date and place of hearing on said motion of protest, within twenty days from the filing of said motion.

"Wherefore they pray that the said protest be dismissed on the ground that the court has no jurisdiction to try the same."

Seventh. That on the 22d of August, 1916, the Honorable Julio Llorente, judge, one of the respondents herein, denied said motion to dismiss, in the following language:

"Counsel for both parties have been heard and, as the law does not provide for any special form of notification, and as all the candidates voted for, according to the record, were actually notified of the protest within the period of twenty days, the court is of the opinion that the law was complied with. The motion to dismiss is therefore denied. So ordered."

Upon the refusal of the lower court to dismiss said protest, the present petition was presented in this court, for the purpose of obtaining the writ of prohibition to inhibit the lower court from continuing the hearing upon its merits, of said protest.

Upon the presentation of the petition in this court, the respondents were ordered to show cause why said petition should not be granted.

On the 18th of October, 1916, the respondents answered the petition. The answer alleged:

"1. That they admit the facts alleged in paragraphs 1, 2, 3, 5, and 6 with the exception of the word 'candidate' used in reference to Zacarias Cardinez because that word was not employed in the protest of Moises Malong in civil case No. 2099, in the Court of First Instance of Pangasinan.

"2. That they deny all and every allegation of the complaint not admitted in this answer. "3. As a special defense they allege :

"(a) That on June 20 of the present year a copy of Moises Malong's protest in said civil case No. 2099 was furnished to Hermenegildo Velasco and on July 1 of this year another copy was furnished Zacarias Cardinez.

"(b) That a protest is not an ordinary complaint and for that reason the notification of the protestee should not be made by service of summons.

"(c) That the notice referred to in article 11 of the Rules of the Court of First Instance is not applicable to a motion of protest because it is not a question of an incidental motion.

"(d) That the Election Law does not provide for any form of notice of election protests and the Cyclopedia of Law and Procedure, vol. XV, p. 398, par. 2, says: 'No particular form of notice or citation is required in a contested election case' and as there is no special form of notice required in election cases a delivery of a copy of the protest, the object of which is to notify the other candidates of the contents of the protest, is the best notification which can be made.

"(e) That Hermenegildo Velasco, respondent in civil case No. 2099, before raising the question with regard to the form of notice, answered the protest filed by Moises Malong and therefore renounced his right to raise that question and submitted himself to the jurisdiction of the Court of First Instance of Pangasinan.

"(f) That evidence was submitted regarding notice to Hermenegildo Velasco and Zacarias Cardinez and the court determined and resolved that Velasco and Cardinez were notified of the protest of Moises Malong.

"(g) That when the jurisdiction of the court depends upon some particular fact, such as the notice, and the court

that considers and decides the question of jurisdiction holds that the necessary thing (that of notice) to give jurisdiction exists, the judgment is conclusive and, therefore, the decision of the court of Pangasinan on the question of the notification is not subject to any attack of any sort.

"(h) That the date for hearing of an election contest is not fixed by the protestant but by the Court of First Instance, and the clerk of the said court of Pangasinan notified Velasco and Cardinez of the hearing fixed for the 24th of July of this year.

"For all of which they pray the Supreme Court of the Philippine Islands to overrule the complaint and to absolve the respondents with costs against the petitioner."

Upon the issue presented by the petition and answer, the cause was duly submitted to the court upon argument. By reference to said motion to dismiss the protest above noted, it will be seen that the basis of said motion was—

(a) That the protestee (the petitioner herein) and Zacarias Cardinez had not been notified of the motion or protest, in accordance with the provisions of the law; (b) That they had only received a copy of the "motion" or protest, and nothing more; and (c) That they had received no notice of said "motion" or protest, in accordance with the provisions of law.

No question was raised in the court below with reference to the notice required by law to the other persons who had received votes at said election for the office of president.

From all of the foregoing, it will be seen that the contention of the petitioner herein (protestee in the court below) is that the protestant had not given the proper notice of his protest; that a mere delivery of the copy of the "motion" or protest was not the "notice" required by law and that the protestant should be required to give a formal notice of said protest.

An examination of section 576 of the Administrative Code (section 21 of Act No. 1582, as amended by section 2 of Act No. 2170 [sec. 11, Act No. 2045]), in relation with section 578 of said Administrative Code (section 27 of Act No. 1582, as amended by section 2 of Act No. 2170) shows that no particular form of notice is required by law.

Section 576 provides: (a) That the contest shall be filed with the court within two weeks after the election; and (b) Shall be decided by the court as soon as possible after the hearing of the contest.

Section 578 provides for the procedure in case of a contest. It provides: (a) That the judicial contest shall be upon "motion;" (b) with notice, not to exceed twenty days, to all candidates voted for; and (c) not upon pleadings or by action.

While said election law requires no particular form of notice or citation, it does require that notice, in some form, must be given. It is clear that notice, setting forth one or more of the statutory grounds of contest, must be given to the protestees and is absolutely essential to the jurisdiction of the court and to the validity of the proceedings. (15 Cyc, 398; State vs. Billings, 23 La. Ann., 798; State vs. Smith, 104 Mo., 661; Norwood vs. Kenfield, 30 Cal., 393; Crisler vs. Morrison, 57 Miss., 791.)

In the present case it is admitted by the petitioner herein (protestee in the court below) that he received a copy of the "motion" or protest. An examination of the protest (Exhibit A) shows that it had been presented in the Court of First Instance of the Province of Pangasinan, with the names of the parties, a statement of the grounds upon which the protest was based, and a prayer for the relief which the protestant was seeking. The protest (Exhibit A) further shows that it had been sworn to by the protestant and that a copy of the same had been delivered to the protestee. Was a delivery of the copy of the protest to the protestee a "notice" as required by section 578?

In the case of *Whitney vs. Blackburn* (17 Ore., 564; 11 Am. St. Rep., 857) the Supreme Court said that a notice was sufficient when the document delivered to the protestee contained a statement of the court in which said document had been presented, the names of the parties to the protest, the demand for relief which the protestant claimed, and showed that the same had been presented in a court of competent jurisdiction, under oath. In the absence of a specific statutory provision as to the form of the notice, we are inclined to the belief that the notice given by delivering to the protestee a copy of the protest which contained the facts above indicated, was sufficient in law and complied with the provision requiring notice found in section 578.

Our conclusion is, therefore, that the protestee had received notice of the pendency of the protest. The protest having been filed within the time prescribed by law and notice thereof having been given to the protestee, we are of the opinion and so hold that the Court of First Instance of the Province of Pangasinan had full jurisdiction to hear and determine the question presented by said protest and therefore the petition for the writ of prohibition is hereby denied, with costs against the petitioner.

No question is raised in the record with reference to notice to all candidates voted for. We therefore make no pronouncement upon that question. So ordered.

Torres, Carson, Trent, and Araullo, JJ., concur.

Moreland, J., see concurring opinion.

CONCURRING OPINION

MORELAND, J.:

I agree to the result reached by the court in this case. I believe that, in order to determine the steps which should be taken by the contestant in contested election cases, the procedure in ordinary actions should be looked to as a guide where, as is the case in the Philippine Islands, that part of the Election Law dealing with contests is altogether indefinite and uncertain as to the steps which should be taken. The statute provides that the contest shall be filed with the court within two weeks after the election. This contest constitutes the contestant's pleading. It is in effect his complaint. It should state, with sufficient certainty to notify and inform the other parties to the contest, the substance of the facts upon which he relies to defeat the title of the successful candidate and to authorize the court to make the inquiry provided by law.

The statute is silent on the subject of the service of the contestant's pleading. Notwithstanding this, it is undoubted that it should be duly served in accordance with the provisions of the Code of Civil Procedure on each of the respondents. It takes the place of the complaint in the ordinary action. Such service is necessary in order that the respondents may be informed of the substance of the facts upon which the contestant relies to secure a judgment in his favor. It is very likely that the contestant would still be within the law if he did not serve a copy of his pleading upon the respondent but, in place thereof, served them with some other paper which contained the substance of the facts upon which he relied. It is sufficient if the respondents are duly notified of the grounds upon which the contestant relies, provided the respondents are sufficiently informed to permit them to prepare their defense. The better practice, however, would be to serve the pleading on all the respondents.

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