

**GREGORIO BASA, PETITIONER, VS. HILARION SENATIN ET AL.,
RESPONDENTS.***G.R. No.12293. January 25, 1917*

Ponente: TRENT, J.

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This is an original action instituted in this court wherein the petitioner prays that a writ of prohibition issue to the provincial board of the Province of Mindoro, ordering it to abstain from proceeding further with a certain election contest pending before it.

The petition for a preliminary injunction during the pendency of the case was denied by this court on October 12, 1916. The case was submitted on November 4, 1916. After the institution of this action and before its final submission, the respondent board decided the contest in favor of the therein contestant (the herein respondent), Hilarion Senatin, and the case now partakes of the nature of certiorari, and the only question involved is whether or not the respondent board had jurisdiction to hear and determine the contest. Notwithstanding the fact that the pleadings have not been formally amended, we will proceed to determine that question in order to avoid further delay and costs to the parties incident thereto.

The facts are these: At the election held on June 6, 1916, for township officials for Pola, Province of Mindoro, Gregorio Basa received, according to the certified returns of the election inspectors, fifty votes, Hilarion Senatin forty-eight, Diego Fortu twenty-one, Hilario Senatin thirteen, Anastasio Gaba nine, and Francisco Umali one for president of the township. The returns were received by the provincial board at Calapan on June 8, 1916, without any protest. The provincial governor received, however, on the same date a written statement from Hilarion Senatin protesting against the returns of the inspectors. A question then arose as to whether the contest should be heard and determined by the provincial board or the Court of First Instance. In the meantime, Hilarion Senatin presented, on June 12, 1916, a motion contesting the election. Immediately thereafter the court certified the case to the provincial board upon the ground that the latter had exclusive jurisdiction to hear and decide township election contests. When the case was called for hearing before the provincial board, Gregorio Basa presented a motion, praying the board to dismiss the contest for the reason that the same had not been presented to the board of election inspectors of Pola within the three days fixed by subsection b of section 9 of Act No. 1397. Hilarion Senatin in answer to this motion, alleged that the protest had been delivered to the board of election inspectors within the three days. After examining the testimony, both oral and documentary, the provincial board found that the protestant presented his protest in due form to the board of election inspectors of Pola on the morning of June 7, 1916; that the board of election inspectors refused to accept the protest; and that the board informed the contestant that he must forward his protest to the provincial board, and denied the motion to dismiss the case. The provincial board then proceeded to hear the case upon the merits and "after hearing considerable evidence for and against," and after examining the ballots, found that Hilarion Senatin had received sixty-two votes and that the protestee, Gregorio Basa, had received only fifty votes. The board thereupon declared Hilarion Senatin duly elected president of the township of Pola and directed him to assume that office on the date fixed by law.

It is now urged on behalf of the petitioner that the protest having been presented three days late, the provincial board did not have jurisdiction in the premises and that it should have dismissed the protest. It is further alleged that if the provincial board did acquire jurisdiction, it lost jurisdiction because the contestant abandoned his case before the board by instituting another in the Court of First Instance and that the return of the case by the Court of First Instance to the provincial board did not confer upon the latter jurisdiction to hear the contest.

Section 9 (b and c) of Act No. 1397 reads as follows:

"(b) Immediately after the close of the election the result of the voting shall be canvassed by the board of election judges, a certificate of the result of the election shall be prepared in duplicate and signed by the members of the board, and this certificate shall be a sufficient warrant for those elected to assume their offices unless objections are filed as follows: A duplicate containing the additional statement that a term of three days is granted in which any resident of the township can present to the board, or to the chairman thereof, in writing, such objections as he may deem just and legal against those declared elected, shall be prepared by the board and posted at the main entrance of the township building.

"(c) On the day following the said term of three days a duplicate of the election certificate and the objections made, if any, shall be sent by the chairman of the board of judges to the provincial board. Should the provincial board, upon investigation and after hearing of evidence, if necessary, find the election legal, they shall, within seven days after the receipt of said documents, direct the newly elected officers to qualify and enter upon their duties on the day fixed by this Act; but if the provincial board determines that there has been an illegality committed in the election of any officer, or that any candidate returned is not eligible, they shall so declare in writing, with the reason therefor, and shall order a special election to fill the vacancy thus occasioned, and shall certify their finding and order to the township secretary, who shall spread the same upon the records of the council. In determining the legality of the election the provincial board shall ignore irregularities or informalities which do not prevent the declared result from being the actual will of the electors."

Act No. 1397 was repealed in its entirety by Act No. 2657, known as the Administrative Code, but subsections (b) and (c), supra, were reenacted without any changes whatever, except the words "this Act" (c) were changed to "by law" and now compose section 2303 of Act No. 2657. Section 12 of Act No. 1397 provides that "a plurality of votes shall be sufficient to elect." This provision was reenacted without change and is now found in section 2305 of Act No. 2657.

Counsel for the petitioner, in support of this first contention to the effect that the first protest was not presented within time, insisted that the true date of its presentation was June 12th, when the contestant instituted the proceedings in the Court of First Instance. If this contention be well founded, it is quite clear that the protest was not presented within three days. But June 12th is not the date when the protest, which the provincial board determined, was presented. That protest was offered to the board of election inspectors within the three days and on the board's declining to receive it and advising the contestant to present the same to the provincial board, the contestant, following the advice of the board of election inspectors, filed his protest with the provincial governor, who is, by law, the president of the provincial board, on the 8th of June, which was within the time required by law.

The petitioner's second contention is without foundation for the reason that the contestant, in filing a motion in the Court of First Instance, did not withdraw his protest which he had filed with the provincial board. He took that course for the sole purpose of making sure that his protest would be heard by either the court or the provincial board and when he filed his motion in the Court of First Instance, the question as to who should determine the contest had not yet been settled.

For the foregoing reasons, judgment will be entered dismissing the petition, with costs against the petitioner, Gregorio Basa. So ordered.

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

MORELAND, J., dissenting:

The contest which is the basis of this action of prohibition was begun by the contestant by presenting a petition directly to the provincial board of Mindoro bringing in question the election of the plaintiff Basa to the office of president of the township of Pola, Mindoro. The said provincial board took cognizance of the contest, heard it, decided it, and found that Senatin and not Basa was elected. It so declared and seated Senatin. The hearing and resolution of the contest took place after this action was begun.

The jurisdiction of the provincial board is challenged on the ground (1) that under Act No. 1397 the provincial board acquires jurisdiction of election contests only by virtue of their being certified to it, along with other matter, by the board of election judges of the township, and that no such certification was made; (2) that there is no authority for the presentation of a contest directly to the provincial board; (3) that the provincial board acts secondarily and not primarily on election contest; (4) and that, even if the provincial board could act upon such a petition, such petition was presented out of time.

Not one of the provisions of the statute relating to election contests in the township of Pola, Mindoro, has been complied with by the contestant, Hilario Senatin, or by anybody else throughout this case. Notwithstanding this, the court holds all the proceedings regular, sustains the contest, confirms the action of the provincial board and seats the contestant.

Let us see if this is not so. Section 9 of Act No. 1397, which is the statute applicable to the case, provides, as appears in the prevailing opinion where the section referred to is partly quoted, that a contestant may file with the "board of election judges" within three days after the declaration by said board of election judges of the result of the township election "such objections as he may deem just and legal against those declared elected." The first paragraph of section 9, which is omitted by the court from the quotation, provides—I quote it in full—that "(a) The Provincial board shall formulate rules for the holding of elections, and shall appoint for each township a board of five election judges to preside over the election and report its result." This is the board which declares the result of the election and with which a contestant must lodge his "objections." To afford a full opportunity for the formulation and filing of objections, the board of election judges is required by the statute to make, along with its "report" of the result of the election, a "statement that a term of three days is granted in which any resident of the township can present to the board (the board of election judges), or to the chairman thereof, in writing, such objections as he may deem just and legal against those declared elected." Objections having been presented in conformity with the foregoing notice and requirement, the next step to be taken is clearly stated by the statute. "On the day following the said term of three days," says the statute, "a duplicate of the election certificate and the objections made, if any, shall be sent by the chairman of the board of judges to the provincial board." On receipt of the objections the provincial board shall determine whether the election was "legal" or whether "there has been an illegality committed in the election by any officer, or that any candidate returned is not eligible," and, if the latter, "they shall so declare in writing, with the reason therefor, and shall order a special election to fill the vacancy thus occasioned."

Now, did the contestant take the steps required by the statute? Not one of them. The statement of facts made by the court is not quite accurate, as I read the record. The court states, or, at least, accepts as true, that "the protestant presented his protest in due form to the board of election inspectors (I assume board of election judges

is meant) of Pola on the morning of June 7, 1916;" and "that the board of election inspectors refused to accept the protest; and that the board informed the contestant that he must forward his protest to the provincial board." The record does not support this statement of facts, in my judgment. What happened was this: The contestant offered to file a petition with the board of election judges; but the petition was not addressed to the board of election judges nor did it ask for any act of or remedy or relief from that board. On the contrary, the petition was addressed to the provincial board and asked that board to act and to give the relief prayed for. Evidently it was for this reason that the board of election judges refused to receive the petition and told the contestant that it should be presented to the provincial board to which it was addressed and from which he prayed relief. The board of election judges evidently felt that they had nothing to do with a petition addressed to the provincial board, and, moreover, that they had no jurisdiction to grant the relief demanded in the petition of the provincial board.

Let us examine this petition a moment. It is as follows (I translate) :

"I, Hilario Senatin, of full age, married, farmer, a resident in the village of Pola, Mindoro, P. I., appear before the provincial board and set forth:

"That at the recent general election the undersigned received 61 votes for the office of president of the township of Pola as against 50 votes cast for Gregorio Basa, the other candidate for said office. The majority of the board of election inspectors (Mr. Maximo Samonte, the inspector belonging to my party, dissenting) declared that Mr. Basa was duly elected president of the said township although he received less votes than I did, as is shown by the resolution of the board taken after the votes were canvassed. The declaration of the election of my opponent resulted from the rejection by the board of 13 ballots which had the name of Hilarion Senatin written on them, thus reducing the number of ballots cast for me to 48 and giving a majority to Mr. Basa. In so doing the majority of the inspectors ignored the law and the decision of the Supreme Court of the Islands touching contests of this nature.

"Wherefore I pray the honorable provincial board to annul the decision of the majority of the inspectors of election of this township and at the same time declare that I received a majority of all votes for the said office of president of the township of Pola, for the reason herein set forth."

This is the "objection" which the contestant desired to file with the board of election judges and which they advised him to present to the provincial board and for the so-called refusal to accept which this court construes—well, I do not know how.

With reference to the so-called protest, we note first, that it is addressed and directed to the provincial board of the Province of Mindoro, and not to the board of election judges of the township of Pola, with which the contestant offered to file it. Second, the contestant prays relief at the hands of the provincial board of the province of Mindoro and not the board of election judges of the township of Pola. Third, the relief demanded by the contestant is not that which the board of election judges is authorized by law to grant; and a part of the relief prayed for is the annulment of the act of the board of election judges of Pola, the very body with which the contestant offered to file his contest. And fourth, not a fact or allegation required by the statute is found in the protest.

Having these things in mind is it to be wondered at that the board of election judges of Pola did not think that the protest ought to be filed with it but should be presented to the provincial board of Mindoro; and that the board so advised contestant? What had that board to do with a petition directed to the provincial board? The petition prayed nothing at its hands. It asked the provincial board for relief. Indeed, it prayed the provincial board for relief against the acts of the very body with which contestant desired to file it. Can any inference or conclusion prejudicial to the board of election judges be drawn from its desire not to interfere in a matter addressed to its

superior? Or can any inference or conclusion favorable to the contestant be drawn from the expression of such a desire?

I have discussed this point at length for the reason that the opinion of the court during the discussion of the case seemed to turn upon the proposition that the contestant could not be prejudiced by a refusal of the board of election judges to receive his contest or objections; and that, if the contestant actually offered to file objections and the board unlawfully refused to receive them, the offer would be considered for all purposes the same as if they had actually been filed with the board. Such a proposition cannot be sustained under the admitted facts of this case. The board of election judges properly advised the contestant that a petition which was directed to the provincial board and which asked relief exclusively at the hands of that board should be presented to that board and not to the board of election judges. Moreover, the contestant, after thinking it over, thought so too, and voluntarily, and without any effort to carry out or enforce his desire to file the petition with the board of election judges, presented the petition to the provincial board, or, more accurately speaking, to the chairman thereof, the provincial governor. The governor properly advised him that the provincial board had no jurisdiction of the matter which the contestant desired to present to that board and suggested that he present his protest to the Court of First Instance. This the contestant did.

It appears from these facts that the contestant has no one to blame but himself for the plight in which he found himself; and he cannot now urge his own failures as a reason for abrogating the statute and dispensing with the procedure which it lays down and thereby give him an opportunity to begin all over again.

It follows that the contestant has not taken even the first step required by the statute in beginning a contest. He did not file objections with the board of election judges within the three days fixed by the statute.

Nor was the second step required by the statute taken. The statute, as we have seen, requires that the chairman of the board of election judges shall, on the day following the term of three days, send to the provincial board a "duplicate of the election certificate and the objections made." This was not done, because it could not be done.

Now, what is it that gives the provincial board jurisdiction to act in election contests of this character? Assuredly the act of the chairman of the board of election judges certifying to the provincial board the "duplicate of the election certificate and the objections made." This act is that which gives the provincial board authority to proceed to a review of the acts of the board of election judges. Without this the provincial board is helpless and powerless. Indeed, under the statute it has absolutely nothing to act upon. A petition presented to the provincial board directly confers no jurisdiction on that board to act. The statute does not authorize or sanction such procedure. Objections must first be filed with the board of election judges. That board then not only certifies the objections but executes and sends to the provincial board a duplicate election certificate. Without the certified objections or without the duplicate election certificate signed by the members of the board of election judges, what has the provincial board to act upon? The word "duplicate" means executed, i. e., signed by the board in the same manner as the original. The election contest is begun, under the statute, in the board of election judges, by the filing of objections, and not before the provincial board by a petition. If a contest is not begun it cannot be continued; and it can be begun only in the manner provided by the statute. It is the uniform holding of this court that the provisions of the Election Law relating to contests must be strictly followed or the court or body authorized to act does not acquire jurisdiction of the contest. (*Topacio vs. Paredes*, 23 Phil. Rep., 238.)[1] In the case before us not a single step required by the statute has been taken; and yet the court holds that the contest was properly begun; that everything was done in accordance with the statute; and that the provincial board has authority to proceed and remove the incumbent from office on the bare petition of the protestant. I recur to the court's own words to show that not a single step required by the Election Law relating to contests was taken. The court says:

"The returns were received by the provincial board at Calapan on June 8, 1916, without any protest. The provincial governor received, however, on the same date a written statement from Hilarion Senatin protesting against the returns of the inspectors. A question then arose as to whether the contest should be heard and determined by the provincial board or the Court of First Instance. In the meantime, Hilarion Senatin presented, on June 12, 1916, a motion contesting the election. Immediately thereafter the court certified the case to the provincial board upon the ground that the latter had exclusive jurisdiction to hear and decide township election contests. When the case was called for hearing before the provincial board, Gregorio Basa presented a motion, praying the board to dismiss the contest for the reason that the same had not been presented to the board of election inspectors of Pola within the three days fixed by subsection b of section 9 of Act No. 1397."

This statement shows clearly that the contestant knew absolutely nothing about what he ought to do and ran here and there at the suggestion of this one and that one. He tried to file a petition to the provincial board with the board of election judges. When the board told him to take his petition to the body to which it was addressed and of which he prayed relief he, without objection or protest, did so. Arriving at the provincial board, its chairman, the provincial governor, told him to go to the Court of First Instance; and, without protest, he went. Arriving at the court he was told to go back to the provincial board; and, without protest, he went. He did everything but the very thing he should have done, that is, present objections to the board of election judges. This he never did and never attempted to do. This being the first act in beginning a contest, and this act not having been performed, no contest was ever begun. The proceedings before the provincial board were without authority of any kind. The board itself admits that no objections were filed with the board of election judges as required by the statute; that no objections were certified to it by the board of the election judges as required by the statute; and that no duplicate election certificate was sent to it by the board of election judges as required by the statute in case of contest. The provincial board admits that it acted and is acting wholly and exclusively on the naked petition of the contestant above quoted, presented to it as the commencement of an original proceeding before that body. Now, it is evident from the statute that the election contest is not begun in the provincial board. That board has no original jurisdiction. It acts exclusively and solely upon proceedings already begun in the board of election judges. It acts secondarily only. It acts not on petitions but upon certified official proceedings in the board of election judges. No one can begin an election contest in the provincial board, as this contestant has done. It goes to that board only in second instance.

It being admitted that the election contest was begun first in the Court of First Instance and afterwards begun again before the provincial board, and never begun before the board of election judges where the statute requires it to be begun, it necessarily follows that no contest was ever begun and that the provincial board has no jurisdiction or authority of any kind with relation to the office to which the board of election judges declared the plaintiff in this case elected.

The provincial board having no authority in law to act it should be restrained and all acts hitherto performed should be vacated and annulled.

Petition dismissed.

[1] The court in this case, discussing this question, said through Mr. Justice Trent:

"These facts clearly show that the court is made a special tribunal to try contested election cases. The jurisdiction of such tribunals, although courts of general jurisdiction in all other matters, is strictly confined within the provisions of the statute creating them for this purpose.

" "The court can take no additional power from its general jurisdiction. In the exercise of such special powers it is

precisely limited to those plainly delegated. Nothing is to be presumed which is not expressly given/ (Sutherland, Stat. Const., par, 391.)

" 'Whatever may be the rule with regard to courts of general powers, when acting within the scope of those powers, it is well settled that when they do not, and exercise a special and statutory authority, their proceedings stand on the same footing with those of courts of limited and inferior jurisdiction and will be invalid unless the authority on which they are founded has been strictly pursued.' (1 Smith's Lead. Cas., 832, citing Denning vs. Corwin, 11 Wend., 647; Williamson vs. Berry, 8 How., 495; Thacher vs. Powell, 6 Wheat., 119; Embury vs. Connor, 3 N. Y., 511, 53 Am. Dec, 525, and others.) (66 Am. Dec, 56.)

"In Galpin vs. Page (85 U. S., 350, 21 L. Ed., 959), the court said:

"'The extent of the special jurisdiction and the conditions of its exercise over subjects or persons necessarily depend upon the terms in which the jurisdiction is granted, and not upon the rank of the court upon which it is conferred.'

"Section 27, with its amendment, was evidently intended to afford a new and summary remedy in cases of contested elections, and it is a cardinal rule that in summary proceedings the law must be strictly pursued. (Dorsey vs. Barry, 24 Cal., 449.)

"That the proceedings authorized by those provisions were intended by the legislature to be summary in the highest degree cannot be doubted. The requirements that the hearing, as we have said, is to be had on motion and not upon pleadings or by action; that the motion must be made within a very limited time; that notice of the motion shall not exceed twenty days; and that the court shall decide the contest as soon as possible, and issue its mandamus forthwith to the canvassers; all show the summary, expeditious, and informal character of the proceedings. It is a special authorization to the court to do certain things in a particular way, and it is not to be construed as conferring power to do anything not expressly authorized. The fact that the person selected to inquire into such contests happens to be a judge is a mere incident, and does not authorize the inference that the power possessed with reference to actions is possessed with respect to these proceedings, which are expressly declared not to be actions. In these summary proceedings, the court is given extraordinary powers in that its jurisdiction is exclusive and final.

" 'Statutes authorizing summary proceedings must be construed with strictness, and must be exactly followed by those who act under or in pursuance of them. (Black on Interpretation of Laws, 305, citing Robinson vs. Schmid, 48 Tex., 13.)

" 'It is a well settled and wholesome rule, that statutes authorizing summary proceedings, and by which extraordinary powers are given to courts or officers of justice, are to be strictly construed; and that the powers conferred must be strictly pursued, so far as regards all the steps and proceedings necessary to give jurisdiction, or the whole proceedings will be void.' (Sedgewick on Stat. Const. [2d ed.], 299.)"

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