

MANUEL AQUINO ET AL., PETITIONERS, VS. JUDGE OF FIRST INSTANCE OF CAGAYAN ET AL., RESPONDENTS.

G.R. No. 12504. February 13, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition presented in this court for the writ of mandamus to compel said judge to reinstate and to proceed to hear and determine a certain protest growing out of the municipal election of the municipality of Amulung of the Province of Cagayan. The facts are undisputed and are as follows:

1. An election was held in the municipality of Amulung of the Province of Cagayan on the 6th day of June, 1916, for the purpose of electing a president, a vice-president, and councilmen for said municipality.
2. That at the close of the election a canvass of the votes cast was made, and certain of the defendants were declared elected as officers of said municipality by the municipal board of inspectors.
3. That on the 19th day of June, 1916, a joint protest was presented against said election by some of the candidates for president, vice-president, and councilmen of said municipality.
4. That notice of said protest was given to each of the opposing candidates who had been voted for for the respective offices at said election, except two of the candidates for the office of councilman.
5. That a motion was made to dismiss the said protest upon the ground that the court did not have jurisdiction to hear it, for the reason that the said two candidates for councilman had not been given notice of the said protest.
6. That upon a consideration of said motion, and for the reasons upon which it was based, the protest was dismissed; and the present petition is presented for the purpose of requiring the court to reinstate the same and to proceed to hear and determine said protest upon its merits.

The respondents in this court, in addition to the allegation that the lower court was without jurisdiction to hear said protest until all of the candidates Voted for at said election had been duly notified of said protest, allege that the protest should have been dismissed upon the ground that there was an improper joinder of parties; that the candidates for president, vice-president, and councilmen should not have been joined in one protect; that separate protests should have been presented by the candidates for each of the respective offices.

With reference to the first objection, to wit, that all of the candidates voted for had not been given notice of the protest, it may be said:

First That the failure to give notice to the candidates voted for, for the office of councilman, should not have affected the protest with reference to the office of president nor that of vice-president, and, therefore, the dismissal of their protest was a violation of their rights; and it is hereby ordered and decreed that the writ of mandamus be issued directing and requiring the Court of First Instance of the Province of Cagayan to reinstate the protest with reference to the said offices; and,

Second. That whether or not all of the candidates voted for for the office of councilman had received notice of the protest is a question of fact upon which the lower court should have heard proof before the protest was dismissed; and, therefore, it is hereby ordered and decreed that the record be returned to the lower court, with direction that it hear proof upon the question of notice for the purpose of determining whether or not notice of the protest was given to all of the candidates for councilman of said municipality in accordance with the provisions of law, and that the protest be reinstated for that purpose. If, however, it appears from the proof that all of the candidates voted for were not duly notified, then the court will be without jurisdiction to hear the protest and is authorized to dismiss the same with reference to said councilmen.

Without a further discussion of the facts and the law applicable to the present case, it is so ordered without any finding as to costs.

Arellano, C. J., Torres, Carson, Araulio, Street, Malcolm, and Fisher, JJ., concur.

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