

LUCAS ANCHETA AND FLORENCIO A. AGUILAR, PETITIONERS, VS. THE JUDGE OP THE COURT OF FIRST INSTANCE OP LA UNION AND MARCOS VERCELES, RESPONDENTS.

G.R. No. 15759. September 05, 1919

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PER CURIAM:

The present is an original action commenced in the Supreme Court for the writ of mandamus to require the respondent Judge to reinstate a municipal election protest case which he heretofore dismissed. The petition is based upon the following facts:

- That an election was held on the 3d day of June, 1919, in the municipality of Luna, Province of La Union, for the purpose of electing a municipal president.
- At said election the said Lucas Ancheta, Florencio A. Aguilar, Marcos Verceles, and others were candidates for the office of president in said municipality.
- At the close of the election the municipal council of said municipality, acting as the municipal board of canvassers, proceeded to count the votes cast at said election, and reached the conclusion that Marcos Verceles had received a majority of the same and on the 7th day of June, 1919, declared him to be duly elected to the office of president of said municipality.
- That on the 17th day of June, 1919, the said Florencio A. Aguilar presented a protest against said election, of which Marcos Verceles and the other candidates were duly notified. (Exhibit A.)
- That on the 19th day of June, 1919, the said Lucas Ancheta presented a protest against said election, of which due notice was given to all of the other candidates. (Exhibit B.)
- That at the time of the presentation of said protest each of said protestants offered to give a bond for the payment of any costs or incidental expenses which might accrue. (Par. 7, petition of Florencio A. Aguilar; par. 8, petition of Lucas Ancheta.)
- That at the time of the presentation of said protest (June 17th and 19th) the respondent judge was absent from his post of duty, on his vacation, and for that reason the amount of the bond required under section 482 of the Administrative Code (Act No. 2711) was not fixed and the bond was not given.
- That on the first day of July, 1919, the respondent judge, having returned from his vacation, fixed the amount of the bond required by said section (sec. 482) in each of said protest cases at P500.
- That on the 5th day of July, 1919, and the 11th day of July, 1919, notice was duly given to the protestants of said order of July 1, 1919, and immediately the protestants gave the bond required. (Exhibits C and D.)
- That on the 8th day of July, 1919, the respondent Marcos Verceles appeared and answered said protest of Florencio A. Aguilar by a general and special defense. In his special defense he alleged that he had not been notified of the presentation of the protest as is required by section 481 of the Administrative Code, and prayed that the protest be dismissed with costs. (Exhibit E.)

- That on the 11th day of August, 1919, upon the issue presented by the petitions and answer, and both the petitioners and respondents having announced that they were ready to proceed with the trial, the court appointed Miguel Rilloraza, Placido Singson, and Gregorio Garcia as commissioners to examine the ballots and the registration list which had been brought before the court in accordance with its order. Said commissioners were duly sworn and duly instructed by the court concerning their duties, and at once proceeded to open, in the presence of the court, the parties and their lawyers, the ballot boxes and to examine the ballots therein. Said commissioners continued to examine said ballots on the 11th, 12th, and 14th days of August, and submitted their report to the judge at about 4:30 p. m. on the 14th day of August. On the presentation of said report the commissioners were duly discharged.

- On the 15th day of August, at the opening of the court, the parties respectively with their attorneys began the examination of the report of the commissioners. The respective parties spent the entire day of August 15th examining said report.

- That on the 16th day of August, at the opening of the court, the respondent Marcos Verceles, through his attorney, presented a motion asking that the court dismiss the said protest upon the ground that it had no jurisdiction for the reason that the bond which the contestants were required to give under the law had not been given within the time required.

- That on the 31st day of August, 1919, the respondent judge, upon a consideration of said motion, dismissed said protest upon the ground that the bond required by section 482 of the Administrative Code had not been given in time. The court further fixed as compensation for said commissioners P5 per day for each day they had been occupied in examining the ballots and in making their report.

The questions presented by the foregoing facts are: (a) Was the bond in question given in time?; (b) Was the court authorized under the law to dismiss the said protest?; and (c) whether a mandamus should issue for the purpose of requiring the judge to reinstate said protest and to proceed to the determination of the questions presented?

Section 479 of the Administrative Code provides among other things that contests in all elections, for which provision has not otherwise been made, shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate at such election. Said section further provides that the contest shall be filed with the court within two weeks after the election.

Section 481 of the Administrative Code provides that the proceedings for the judicial contest of an election shall be upon motion with notice of not to exceed twenty days to all candidates voted for and shall be heard and determined by the court in the judicial district in which the election was held.

Section 482 of the Administrative Code provides that before the court shall entertain such motion the party making the same shall give a bond in an amount to be fixed by the court, with two sureties satisfactory to it, conditioned for the payment of all expenses and costs incident to such motion or shall deposit cash in court in lieu of such bond.

An examination of said sections will show that, while they provide that the contest (motion) must be filed within a definite time; that a bond must be given, and that the court shall not entertain said contest (motion) until a bond is given, they do not fix the time within which the bond required shall be given. The filing of the contest (motion) and the giving of the bond are not necessarily simultaneous acts. Said sections provide that the contest is commenced by the filing of a motion. The election protest is, therefore, begun by the filing of the motion.

Said sections, however, prohibit the court from considering the contest until a bond is given, and they impose upon the judge the necessity of fixing the amount of the bond.

The protest can be filed in the absence of the judge but the giving of the bond must necessarily await the fixing of

the amount thereof by the court. After the amount of the bond is fixed, reason and justice demand that the protestant should have a reasonable time within which to give the bond. We have held in numerous cases that the presentation of the contest (motion) within the time prescribed by the law gives the court jurisdiction to hear and determine the same.

While the court has jurisdiction of the action by the presentation of the motion, the law prohibits it from continuing the action until the protestant gives a bond, the amount of which must be fixed by the court. The contest cannot be heard until a bond is given and the protestant is helpless until he complies with the provisions of said section 482 in that respect.

In the present case the protestants gave the bond required within a very reasonable time. The court, having been given jurisdiction of the action by the presentation of the motion within the time prescribed by law, was without authority to dismiss the same upon the grounds above stated, and, in dismissing the same, deprived the protestants of their rights and their day in court.

Without a further discussion of the questions involved, and without waiting for additional arguments on the part of the respective parties, it is hereby ordered and decreed, to the end that the election contest in question may be concluded as speedily as possible for the purpose of protecting the rights of all the parties concerned, that the prayer of the petition be granted and that the writ of mandamus be issued, directed against the respondent judge, requiring and commanding him to reinstate said election protest and to continue and decide the questions presented as speedily as possible; and, without any finding as to costs, it is so ordered.

Arellano, C.J., Torres, Johnson, Amullo, Street, Malcolm, Avanceña, and Moir, JJ.

Writ granted.

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