

GUILLERMO DE LA MERCED, PETITIONER, VS, BARTOLOME REVILLA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, AND PABLO CAMACHO, RESPONDENTS.*G.R. No. 15796. September 23, 1919*

Ponente: JOHNSON, J.

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This is an original action praying (a) for a preliminary injunction to prevent the respondent judge from dismissing an election protest and to require him to hear and determine said protest upon its merits, and (&) for the writ of mandamus to require said judge to open certain ballot boxes used at the election on the 3rd day of June, 1919, and to permit the protestant to examine the ballots.

The important question presented is, whether or not, in an election protest, when the protestant alleges that certain ballots have been fraudulently and maliciously marked or excluded from the count, he has a right to have the court examine and pass upon the validity of such ballots.

When this petition was presented on the 10th day of September, 1919, the court then, after a consideration of the facts stated in the petition, ordered (a) that a preliminary injunction be issued as prayed for, upon the giving of a bond of P500, and (6) that a mandate be issued requiring the judge to permit the petitioner to examine the alleged marked and spoiled ballots.

Later, the respondent Pablo Camacho expressing a desire to present a demurrer or answer, the court granted the same. The answer was presented and the cause was submitted for decision upon the 15th day of September, 1919. The respondent judge neither demurred to nor answered the original petition. In fact the respondent judge, on the 11th day of September, issued an order, ordering that said ballots be examined by the petitioner.

After hearing the argument for the respective parties, we find the following facts, upon which the petition for mandamus is based, to be true:

- (1) That an election was held in the municipality of Baliwag on the 3rd day of June, 1919, for the purpose of electing a municipal president and other municipal officers.
- (2) That after an examination of the ballots cast at said election, the municipal board of canvassers found that Pablo Camacho had received a majority of the votes cast, and proclaimed him elected president of said municipality.
- (3) That on the 14th day of June, 1919, the petitioner herein, Guillermo de la Merced, presented a motion of protest in the Court of First Instance of the Province of Bulacan, and gave the bond required by law.
- (4) That said motion of protest alleged (a) that in four of the precincts of said municipality certain ballots had been deliberately and fraudulently marked and were, therefore, excluded; (b) that during the examination of said ballots in six of the precincts of said municipality, the inspectors "habian tergiversado" [had misrepresented] the reading

of the ballots in such a manner that they had fraudulently and illegally counted, in favor of Pablo Camacho, votes which had been cast in favor of the petitioner, Guillermo de la Merced; and (c) that in none of the said precincts did the inspectors permit the watchers of the petitioner "to freely witness the counting and to hear the proceedings of the board" (sec. 461, Act No. 2711) and to thus prevent said board to practise a subterfuge in the reading of said ballots, and thus said board was able to count many ballots for Pablo Camacho which were in fact for Guillermo de la Merced.

(5) That said alleged marked and spoiled ballots were, at the conclusion of the examination, put into one ballot box, and the ballots which were accepted by the inspectors were placed in another ballot box.

(6) That at the time fixed for the trial of the said protest, the court ordered that the ballot box containing the ballots accepted by the municipal board of canvassers be opened and that the ballots be counted. In accordance with said order, said ballot box was opened and the court found, upon an examination of said ballots, that many of the same liad, in fact, been cast for Guillermo de la Merced but which in fact had been counted for Pablo Camacho.

(7) At the conclusion of the counting of the ballots, found in the ballot box, which had been accepted by the municipal board of canvassers, the protestant, Guillermo de la Merced, requested that the box containing the alleged marked and spoiled ballots, be opened also for the purpose of ascertaining whether or not they should be counted as valid.

The petition of the protestant to have the ballot box containing the alleged marked and spoiled ballots opened, was denied by the court, whereupon the present petition was presented in this court.

While the respondent judge failed to answer the petition, thereby consenting to the order of this court issued on the 10th day of September, 1919, the protestee, Pablo Camacho, appeared and answered. The protestee contends that the protestant had no right to examine said alleged marked and spoiled ballots until he had presented some proof showing in effect that said alleged marked, and spoiled ballots had been fraudulently and maliciously excluded from the count. The effect of his argument is, that, until the protestant has shown by some competent evidence that the alleged marked and spoiled ballots should be counted for him, he is not entitled to see nor examine them.

Section 479 of Act No. 2711 provides among other things that when an election protest is presented the court "shall forthwith cause the registration list and all ballots used at such election to be brought before it and examined." That provision of the law seems to be mandatory. It is difficult to understand upon what theory the protestee insists upon denying to the protestant the right to examine some of the ballots, in view of said quoted provision, and not to examine "all ballots used at the election." The theory of the protestee, if followed to its logical conclusion, would prevent the protestant from examining any of the ballots used at the election. The mere fact that the marked and spoiled ballots were placed in one box and the accepted ballots in another cannot of course, change the mandatory requirements of the law. And, moreover, it may be observed that there is no requirement that the marked ballots should be separated in that manner. (Sec. 467, Act No. 2711.)

Of course, there may be election protests which may be disposed of without a recount of the ballots cast. There may be cases where, by reason of the fraudulent manner in which the entire election was conducted, the court would be justified in annulling and setting the election aside without an examination of the ballots. There may be cases, also, where "all the ballots used at the election" need not be examined. For example, the protestant as well as the protestee might be perfectly satisfied with the result of the election and count in one or more precincts of the municipality. In that case there would be no necessity of examining the ballots cast in such precincts. (*Hontiveros vs. Altavas*, 24 Phil., 632, 650.) But in a case where the protestant alleges that certain ballots in

certain precincts had been cast for him but had been counted for his opponent, or that certain ballots had been fraudulently and maliciously excluded for some unjustifiable reason, then, and in such a case, the law affords him a remedy and has placed upon the court the mandatory duty to "forthwith cause all ballots used at such election to be brought before it and examined."

The law does not require a prima facie showing, other than the allegations in the protest, of fraud or irregularities in order to authorize the opening of the ballot boxes. (*Hontiveros vs. Altavas*, 24 Phil., 632, 648.) If, however, the parties, by agreement accept the returns from any precinct or precincts the necessity for the opening of the boxes would cease to exist as to them. A protest under oath, alleging facts sufficient to establish that illegal votes were cast and counted for the opponent, which are sufficient to change the election, makes a prima facie case for the opening of the ballot boxes and the recounting of the ballots. (*Manalo vs. Sevilla*, 24 Phil., 609.)

In our opinion, it is an error and in violation of the mandatory duties of the court to deny the interested party, under proper allegations, the right to examine all of the ballots used at the election and to present evidence with reference to the legality of the questioned ballots. Under an issue properly presented in a motion of protest, raising the question of the legality or illegality of ballots cast and the counting of the same, the law orders the court to have brought before it all ballots used at the election in the precincts which are questioned. It is a right, under an issue properly framed, on the part of the protestant, and the court has no right or authority to deny it. The law is mandatory.

The whole question presented to the court in the present case was whether or not legal ballots cast for the protestant had been counted for him. He alleges that they had not been so counted. He asserts that, if the legal ballots cast for him had been counted as they had been cast, he would receive a majority of the votes cast. That being the only question presented, and he having been prevented by the inspectors of the various precincts from becoming thoroughly informed at the time of the counting of the ballots as to the specific alleged fraud practised, he is entitled, under said section 479, to have all of the votes cast "examined by the court or by the officers appointed by the court," for the purpose of making such examination.

For all of the foregoing reasons, we are fully persuaded that the mandate heretofore issued on the 10th day of September, 1919, should not be amended, altered, or modified ; and, with costs against the respondent, it is so ordered.

Arellano, C.J., Torres, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

Writ granted.

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