

FRANCISCO CORDERO ET AL., PETITIONERS, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF THE PROVINCE OF RIZAL ET AL., RESPONDENTS.

G.R. No. 15827. October 10, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an original action commenced in the Supreme Court. Its purpose was to obtain an order to prohibit the respondent judge from continuing with the trial of a municipal election protest and to require him to dismiss the same. Upon the presentation of the petition an order was issued to require the respondent judge to answer.

The facts out of which the present action grew may be stated as follows:

That an election was held in the municipality of Caloocan for the purpose of electing councilmen; that at the close of the election the municipal board of canvassers counted the votes and proclaimed that certain persons had been elected as councilmen; that thereupon a protest was presented by some of the defeated candidates for the office of councilmen; that at the hearing of said protest a motion was made to dismiss the same for the reason that three of the candidates, Vicente Sevilla, Diego Justo and Mariano Laborero, who had received votes for the office of councilmen at said election, had not been given notice of said motion of protest.

Upon the presentation of said motion the respondent judge required the respective parties to present proof pro and con. At the conclusion of said hearing the lower court denied the motion to dismiss the protest. Whereupon the present petition was presented.

The record shows that the lower court found as a matter of fact: (a) That Vicente Sevilla and Diego Justo had been duly notified of said protest; (6) that inasmuch as the name of Mariano Laborero had not appeared in the proclamation of the result of the election by the municipal board of canvassers until and after the presentation of the motion of protest, that the failure to give him notice before the hearing did not oust the court of its jurisdiction.

We have held in numerous decisions that, whether or not a person is a candidate voted for and entitled to notice of the motion of protest is a question of fact; and that the Court of First Instance having once decided that question of fact upon evidence presented to it, the Supreme Court will not interfere to control its decision based upon such evidence. The Supreme Court has no authority to substitute its judgment for the judgment of the lower court upon a question of fact, however much it might differ from the conclusions of the lower court, upon a consideration of the same fact, until it is shown that the lower court has abused its power or discretion conferred upon it by law. The Supreme Court will not intervene for the purpose of changing or modifying its conclusion upon questions of fact. Santos vs. Miranda and Clemente, 35 Phil., 643; Mayo vs. Court of First Instance of Tayabas and Magbiray, 35 Phil., 630; Tamondong vs. Llorente and Palisoc, 35 Phil., 635; Campos vs. Wislizenus and Aldanese, 35 Phil., 373; Bustos vs. Moir and Fajardo, 35 Phil., 415; Alvendia vs. Moir and Dinio, 35 Phil., 356; Poblete vs. Court of First Instance of Cavite, 36 Phil., 558; Navarro vs. Jimenez, 23 Phil., 557; Sibal vs. Court of First Instance of Tarlac and Punsalan, 36 Phil., 81; Javier vs. Nadres, 36 Phil., 226; Bermudez vs. Court of First Instance of

Tayabas, 36 Phil., 360; Orendain vs. Court of First Instance of Tayabas and Diasanta, R. G. No. 12591 decided March 30, 1917, not published; Biagtan vs. Llorente and Garcia, R. G. No. 15736[1] not published; Bautista vs. Gloria R. G. ' No. 15805,[2] Tongson vs. Villareal and Itchon, p. 237, ante; De la Cruz vs. Revilla and Bustos, p. 234, ante.

We have also held that when the protestant gives notice to all persons voted for in a municipal election, whose names appear upon the proclamation of the municipal board of canvassers, he has complied with the requirement that "all candidates voted for must be notified;" and that a discovery later that persons, other than those named in the proclamation of the municipal board of canvassers, received votes for the office contested, does not deprive the court of authority or jurisdiction to proceed, but that the court may order the contestant to bring such persons in as parties, or the court may order such parties brought in on its own motion. (Poblete vs. Court of First Instance of Cavite, 36 Phil., 558.)

It is the duty of the municipal board of canvassers to include in their proclamation the names of all persons voted for. (Sec. 465, Act No. 2711.) The certificate of the municipal board of canvassers must show the date of the election, the name of the municipality, the number of the precinct in which the election was held, and the whole number of ballots cast for each person for each office. The protestant, therefore, has a right to rely, in the first instance, upon the certificate of the municipal board of canvassers. He certainly should not be deprived of his right in court because of the fault of said board of canvassers. (Poblete vs. Court of First Instance of Cavite, 36 Phil. 558.)

In the present case the municipal board of canvassers issued their proclamation on the 6th day of June, 1919. The said proclamation contained a list of the candidates voted for for the office of councilmen in the municipality of Caloocan. On the 23rd day of June, after the protest had been presented, and seventeen days after their proclamation had been issued, the municipal board of canvassers held another meeting and amended their first proclamation by adding thereto the names of several persons who had received votes, among others, the said Mariano Laborero, who had received at said election 274 votes. The record contains no explanation for the failure to include the name of Mariano Laborero in the first proclamation.

The respondents contend that the municipal board of canvassers were without authority to recount the ballots and make the amendment to their original proclamation. Section 477 of Act No. 2711 provides that immediately after the election the municipal council shall meet in special session and shall proceed to act as a municipal board of canvassers; and shall canvass the votes cast for each municipal office in the same manner as is provided in section 469 for the provincial (board of canvassers. Said section (477) further provides that the municipal board of canvassers shall not have the power to recount the votes or to inspect any of them, but shall proceed upon the statements rendered, as corrected, if corrections are necessary. The determination of said board shall be reduced to writing, in triplicate, signed by the members, or a majority of them. When the duties provided for the municipal board of canvassers are thus completed and it makes its certificate as required by law, its work as such board is ended, and there is no provision made for its continuance as a board of canvassers. There is no provision of law by which it can hold another meeting for the purpose of acting as a municipal board of canvassers, unless by some proper authority it is ordered so to do. In case of a protest filed in the court of first instance, the court may, by a proper order. direct said board of canvassers to hold another meeting for the purpose of correcting its canvass in accordance with the facts found by the judge. The work of the municipal board of canvassers is completed when it has finished the canvass of the votes in accordance with section 477, and it ceases to exist as a board until an order of the court of first instance is issued directing it to reconvene and correct its canvass.

The purpose of the law is to definitely terminate, so far as the municipal board of canvassers is concerned, the canvass of the votes cast for each municipal office. While the municipal board of canvassers is made up of the

members of the municipal council, it does not act in the capacity of councilmen but as an entirely different and distinct entity organized for a specific purpose, and when that purpose is complied with its existence as such board of canvassers is ended and terminated.

Therefore, the municipal board of canvassers was without authority to make the recanvass and the new proclamation without having been authorized so to do by an order of the court in accordance with the provisions of section 479 of Act No. 2711.

We have held in numerous cases that the protestant has a right to assume, in the first instance, that the persons whose names are included in the proclamation of the municipal board of canvassers were the only persons voted for, and that, when notice of the protest is given to each of them, the court thereby acquires jurisdiction to hear and decide the protest. (Santos vs. Miranda and Clemente, 35 Phil., 643; Poblete vs. Court of First Instance of Cavite, 36 Phil., 558.)

For the foregoing reasons the petition is denied, with costs to the petitioners. So ordered.

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

Malcolm, J., concurs in the result.

Writ denied.

[1] Resolution of August 23, 1919.

[2] Resolution of September 16, 1919.

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