

JOSE F. TONGSON, PETITIONER, VS. C. M. VILLAREAL, JUDGE, AND ALEJANDRO ITCHON, RESPONDENTS.

G.R. No. 15844. October 03, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action presented in the Supreme Court for the writ of prohibition to prohibit the respondent judge from hearing and deciding a certain municipal election protest. The facts upon which the petition is based maybe stated as follows:

- (1) That on the 3d day of June, 1919, an election was held for the purpose of electing municipal officers for the municipality of Vigan, Province of Ilocos Sur;
- (2) That at said election, Jose F. Tongson, Alejandro Itchon, Justo Kabayan and Rosendo Farales, were candidates for the office of president; that Manuel Encarnacion and seven others were candidates for the office of vice-president; that Antonio Reyes and fifty others were candidates for the office of councilmen in various precincts of the said municipality; that each and all of said candidates for the respective offices—president, vice-president and councilmen—had each received votes for the respective office;
- (3) That on the 14th day of June, 1919, the municipal board of canvassers proclaimed that the said Jose F. Tongson had been elected president; that Serapio Aberia had been elected vice-president; that Manuel Singson, Valentin Alcain, Segimdo Alviedo, Tomas Fetalvero, Mariano Rosario, Marcos Ferales, Marcelino Pichay, Angel Filart, Rufo Figuerres and Sixto Ablog had been elected councilmen for the various precincts of said municipality;
- (4) That on the 28th day of June, 1919, the said Alejandro Itchon, Manuel Encarnacion, and seven of the defeated candidates for the office of councilmen presented a motion of protest in the Court of First Instance of the Province of Ilocos Sur;
- (5) That on the 6th day of August, 1919, the protestee, Jose F. Tongson, appeared in court and presented a motion asking that the protest be dismissed for the reason that the court had no jurisdiction to try the same. Said motion was based upon two grounds: (1) that the notice of protest had not been served upon him (Jose F. Tongson) within the time prescribed by the law, and (2) that the notice of protest had not been served upon all the candidates voted, for for the various offices mentioned in the protest;
- (6) That upon the presentation of said motion the respondent judge heard proof upon the questions presented: (a) whether or not the notice of protest had been served within the time prescribed by the law, and (b) whether all of the candidates voted for had been served with notice. The respondent judge, after hearing the evidence adduced upon said questions, reached the following conclusions:
 - (a) That all of the candidates for councilnen who had been voted for were not notified of the protest in accordance with the provision of the law. He, therefore, dismissed the protest so far as it affected the election of the councilmen; and

(b) That one of the candidates for president, Rosendo Farales, had not been, given notice of the protest in accordance with the provisions of the law. But, in view of the fact that the said Rosendo Farales had appeared in open court and stated under oath that he had no interest in the protest, that he did not desire to intervene in the cause and had no interest in the result, thereby personally renouncing his right to notice, the respondent judge denied the said motion to dismiss so far as it affected the protest of the election of president of said municipality.

The said Jose F. Tongson (one of the protestees in the court below) now presents his petition in this court, praying that the writ of prohibition be issued prohibiting the lower court from continuing said protest for the reasons (1) that he had not been notified of the motion of protest within the time prescribed by the law, and (2) that Rosendo Farales, one of the candidates for president, had not been notified of said protest.

With regard to the first question, the lower court, after hearing proof upon the question of notice, having decided that Jose F. Tongson had been notified of said motion of protest within the time prescribed by the law, its decision is final upon that question of fact and cannot be attacked in a collateral proceeding unless some abuse of authority is shown. (*Biagtan vs. Llorente and Garcia*, R. G. No. 15736 ;[1] *Bautista vs. Gloria*, R. G. No. 15805,[2] *Navarro vs. Jimenez*, 23 Phil., 557; *Campos vs. Wislizenus and Aldanese*, 35 Phil., 373; *Mayo vs. Court of First Instance of Tayabas and Magbiray*, 35 Phil., 630.)

Where the jurisdiction of the Court of First Instance in election protests depends upon the determination of a question of fact and that question has been determined by the court after a hearing, such determination is conclusive and cannot be controverted in a collateral proceeding. (*Sibal vs. Court of First Instance of Tarlac and Punsalan*, 36 Phil., 81; *Galang vs. Miranda and De Leon*, 36 Phil., 316; *Bermudez vs. Court of First Instance of Tayabas*, 36 Phil., 360.)

The second question—whether the Court of First Instance has jurisdiction to hear and determine a municipal election protest for the office of president, when it is admitted that one of the candidates voted for for said office has not been notified but who, in open court, under oath, renounces his right to notice, stating that he has no interest whatever in the results of said protest—is a question which presents some difficulty. The law requires that notice of the motion of protest must be given to all candidates voted for. We have decided in numerous cases that the Court of First Instance has no jurisdiction to hear the protest until that requirement of the law has been complied with. (*Navarro vs. Veloso*, 23 Phil., 625; *Mayo vs. Court of First Instance of Tayabas and Magbiray*, 35 Phil., 630; *Santos vs. Miranda and Clemente*, 35 Phil., 643; *Tamondong vs. Llorente and Palisoc*, 35 Phil., 635; *Javier vs. Nadres*, 36 Phil, 226.)

When the legislature provided that notice of the motion of protest must be given to all of the candidates who had been voted for for that particular office, it was the evident intention of the legislature to bring into court every person who was interested in the result of the election for the particular office and to give him an opportunity to be present at the hearing of the protest and to be heard. If that was the intention of the legislature, it would seem that the law had been complied with as soon as it was made to appear to the court that "every person who was interested in the result of the election had been given an opportunity to be present at the hearing of the protest and to be heard." As soon as it was made to appear to the satisfaction of the court that one of the candidates voted for had renounced his interest in the protest and had stated in open court that he did not desire to be a party to the protest nor to be present at the hearing of the same, it would seem to be unjust to the protestant to have his protest dismissed upon the ground that such a candidate had not been notified.

While the protestant must give notice to all the candidates voted for, and while all candidates voted for have a right to notice of the protest, it is a right which they may renounce, and when once renounced in open court, as was done in the present case, we are not of the opinion, under such circumstances, that the court has lost its

jurisdiction to hear and determine the protest with reference to the other candidates who were duly notified. While the law requires the protestant to give notice to all the candidates voted for, considering the purpose of the notice, he is relieved from that requirement when it expressly appears that one or more of the candidates voted for have renounced their right to the notice and their interest in the result thereof.

No question is presented in the present petition relating to or affecting the rights of the protestants and protestees for the office of vice-president and councilmen.

Considering that the petition and exhibits presented in the present case present all the questions of fact which can be presented, and that they present a question of law only, and considering the summary character of election proceedings, we see no good reason for delaying a decision of the question presented for a demurrer or an answer.

Therefore, considering the evident purpose of the requirement that all candidates voted for must be given notice of the protest, and considering that the only candidate not notified has renounced in open court his right to said notice, we are of the opinion and so decide that the failure to give said candidate notice is not sufficient to oust the court of its jurisdiction.

For the foregoing reasons the prayer of the petition herein is denied; and without any finding as to costs, it is so ordered.

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

Writ denied.

[1] Resolution of August 23, 1919.

[2] Resolution of September 16, 1919.

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