

THE MUNICIPAL COUNCIL OF LAS PIÑAS, PROVINCE OF RIZAL, AND CLEMENTE DALANDAN, PETITIONERS, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF THE PROVINCE OF RIZAL, MANUEL AREVALO ...

G.R. No. 15887. October 16, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action commenced in the Supreme Court for the writ of certiorari. The facts upon which the petition is based may be stated as follows;

That an election was held in the municipality of Las Pinas on the 3d day of June, 1919, for the purpose of electing a municipal president; that at said election Clemente Dalandan, Manuel Arevalo and Rufino de Leon each received votes for said office; that at the close of the election the municipal board of canvassers proclaimed that the said Clemente Dalandan had been elected president of said municipality; that on the 26th day of June, 1919, the said Manuel Arevalo presented a petition in the Court of First Instance of the Province of Rizal, alleging that he had received a majority of the votes cast for president in said municipality, as would appear from the "acta electoral" [election returns], and prayed that a writ of mandamus be issued, directed to the municipal board of canvassers, ordering and directing said board to immediately hold a session and to proceed to compute again the votes cast for each one of the candidates for president in accordance with "las actas electorales," to declare that Manuel Arevalo had received 305 votes and Clemente Dalandan 302 votes and, in accordance with said declaration, to proclaim Manuel Arevalo elected president.

To said petition for mandamus the said municipal council, in its capacity as a board of canvassers, demurred, alleging that the court was without jurisdiction to consider said petition. The demurrer was overruled by the lower court, whereupon the respondents presented an answer in which a general denial and a special defense were interposed. Upon a consideration of the petition and the answer, and after hearing the respective parties, the Hon. Manuel Camus rendered a decision in which he said:

"A revision of the election returns filed shows that Clemente Dalandan received in the first precinct 182 votes and Manuel Arevalo 143 votes (Exhibit B), whereas in the second precinct Manuel Arevalo received 162 votes and Clemente Dalandan 120 votes, making a total for Manuel Arevalo of 305 votes and 302 votes for Clemente Dalandan (Exhibit C)."

Upon that conclusion he issued the writ of mandamus prayed for to the board of canvassers of the municipality of Las Pinas, ordering and directing said board to correct their certificate in, accordance with the above conclusions.

From that decision the respondents appealed and presented a bill of exceptions. Upon the presentation of the bill of exceptions in the Supreme Court, the attention of the court was called to the fact that the right of appeal did not exist in municipal election contests, and the appeal was dismissed. Immediately, the respondents in the mandamus case, together with Clemente Dalandan, presented the present petition for certiorari against the Judge of the Court

of First Instance of the Province of Rizal, Manuel Arevalo and Rufino de Leon. The petition, after setting out the above facts, in effect, alleges that the lower court in the mandamus proceeding was without jurisdiction to hear and determine the questions presented for the reasons (a) that all of the candidates voted for had not been notified of said proceeding, and (6) that the bond required by the law had not been given.

Upon the presentation of the petition the respondents were ordered to show cause why the writ prayed for should not be issued. At the time of the hearing the respondents appeared and presented their arguments, attempting to show why the writ of certiorari should not be issued; and, in addition thereto, alleged that the attorney who had presented the petition on behalf of the municipal council of Las Pinas had not been authorized so to do.

From an examination of the certificate issued by the municipal board of canvassers (Exhibit A) in relation with the "acta electoral" (Exhibit B) of the first-precinct of said municipality, it will be found that Clemente Dalandan received 182 votes and Manuel Arevalo 139 votes, and, in addition thereto, a declaration by a majority of the board of canvassers that Manuel Arevalo had received four votes in addition to the 139 votes which the acting president, Guillermo Santos, put in the ballot box of spoiled ballots; that said four votes were not spoiled ballots and should be counted for Manuel Arevalo. Inasmuch, therefore, as the result showed that Manuel Arevalo had received 143 votes instead of 139 votes, did the Court of First Instance have jurisdiction to issue the writ of mandamus to compel said board to correct its certificate in accordance with the facts as they appear in the "acta electoral"?

After a municipal board of canvassers makes a canvass of the votes as provided by law, the issuance of a certificate declaring the result of such canvass becomes purely a ministerial duty. If its certificate is not in accordance with the facts as they appear from the "acta electoral," may not the writ of mandamus be directed to it for the purpose of compelling it to correct its certificate? In the present case, whether the error was clerical or intentional, the "acta electoral" shows upon its face that Manuel Arevalo received 143 votes instead of 139 votes as the certificate states. For the purpose of reaching the conclusion that Manuel Arevalo had received 143 votes" it was not necessary to reexamine the ballots, and the court was assured during the argument in the present case that the ballots were not reexamined by the lower court.

As was said above, after the board of canvassers has canvassed the votes cast and has reached a conclusion, the making of the certificate in accordance with such result is purely a ministerial act which is directed by the law. The board has exercised all of the discretion conferred upon it in the examination of the ballots, in the counting, and in the canvass of the same. And it must follow that a certificate which it issues must conform with its canvass. Certainly the board of canvassers should not be permitted to certify that A had received a majority of the votes cast when its own canvass showed that B had received a majority. In such a case what is the remedy of B? Considering that the issuance of the certificate is purely a ministerial act, and considering that the certificate must be in accordance with the result of the canvass, certainly B is entitled to the writ of mandamus to compel the board to make the certificate in accordance with the result of its canvass as it appears upon the face of its return.

That mandamus will issue to compel a board of election canvassers to declare in its certificate the result of its canvass, is a doctrine now fully established, especially where it appears upon the face of its return that its certificate is not in conformance with the facts set out therein. The doctrine is settled by abundant of authorities that, where the board of canvassers refuses to canvass any of the votes, it may be compelled so to do by mandamus. There can be no difference in principle between refusal to canvass any of the votes and a refusal to canvass a part only of the returns. Mandamus is the proper remedy to require a municipal board of canvassers to correct its certificate in accordance with its own return. (15 Cyc, 383; *People vs. Nordham*, 90 111., 553; *State vs. Hardin County Judge*, 13 Iowa, 139; *Rich vs. Board of State Canvassers*, 100 Mich.. 453; *People vs. Onondaga County*, 129 N. Y., 335.)

While mandamus will not lie to compel admission to a disputed office or to determine disputed questions of title to an office, it is the proper remedy for the failure of election officers to perform ministerial duties in connection with the election. Mandamus will lie to compel the board of canvassers to make and complete accurate returns. (*Steward vs. Peyton*, 77 Ga., 668; *McCreary on Elections*, p. 301; *Paine on Elections*, pp. 755, 756.)

Until the board of canvassers had performed the exact duty imposed upon it by law it must be considered as in default, and, in a case like that it would be a legal anomaly to allow the examining board to rely upon the fact that it had issued one certificate of election to a party, who had not received the largest number of votes, contrary to the express provision of the law, as a sufficient reason why it should not be compelled to perform an imperative duty. (*Paine on Elections*, pp. 756, 757.)

While the petition in the mandamus proceeding was in effect a protest against the result of the election, it was not in fact a motion of protest. It was not the purpose of the petition for mandamus to determine a contested election. Mandamus cannot be used for that purpose. When it becomes necessary to go behind the returns and to consider questions touching the legality or irregularities of the election, or of fraud, illegal voting, etc., then mandamus is not the proper remedy. Those questions must be raised either by a motion of protest or by quo warranto, depending upon the particular facts in each case. But when it appears that the board of canvassers has failed or refused to perform a purely ministerial duty, then mandamus is the proper remedy. If the board of canvassers should, for example, in its return, show that A had received a majority of the votes cast and, in the face of that fact, declare that B had been elected, certainly it should be required to make its certificate conform with the facts stated in its return. Under such circumstances, and in the face of such facts, A cannot be considered the person elected to the office in question. Mandamus is the most effective and expeditious remedy for such error.

We have held in cases where the election law was deficient that resort might be had to the procedure provided for in Act 190 for a remedy. (*Arnedo vs. Llorente and Liongson*, 18 Phil., 257; *Campos vs. Wislizenus and Aldanese*, 35 Phil., 373; *Deogracias vs. Abreu and De la Santa*, 36 Phil., 492.)

With reference to the necessity of notice to "all candidates voted for" in the mandamus proceeding, it may be said (a) that the action is against the municipal board of canvassers alone, and (b) that said board is the only necessary party to that action. Certainly the holder of a false certificate can not base any infringement of his rights by the action and the failure to receive notice on his part. He has no rights. The falsity of his certificate viciates his right. Even though he were made a party, no order could be directed or issued against him. He has nothing whatever to do in the premises.

With reference to the necessity of the bond, it may be said that there is no requirement in the law which compels the petitioner in mandamus proceedings to give a bond as a prerequisite to his right to commence the action.

Upon a full consideration of all the facts, including the proceeding for mandamus which was made a part of the present petition for certiorari, we have arrived at the following conclusions:.

- (1) That mandamus was the proper action to secure a correction of the manifest error appearing upon the face of the return of the board of canvassers;
- (2) That while the action was in the nature of a protest against the declared result of the election, it was not a motion of protest;
- (3) That in mandamus proceedings like the present, "notice to all the candidates voted for" is not a prerequisite to give the court jurisdiction to hear and determine the questions presented;
- (4) That the giving of a bond in such proceedings is not a prerequisite; and

(5) That the judgment of the lower court in mandamus proceedings, like any other judgment in municipal election cases, is final and not appealable.

For all of the foregoing reasons we are of the opinion that the lower court had jurisdiction to decide the question presented in the mandamus proceedings, and the petition herein for the writ of certiorari is hereby denied, without any finding as to costs. So ordered.

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

Writ denied.

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