

**GETULIO PALOMATA, PETITIONER, VS. ANTONIO VILLAREAL,
AUXILIARY JUDGE OF FIRST INSTANCE, SIXTH GROUP OF JUDICIAL
DISTRICTS, MATEO BRIONES AND ERMITO TORRES, RESPONDENTS.**

G.R. No. 15964. January 12, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action commenced in the Supreme Court for the writ of certiorari. Its purpose is to obtain an order setting aside and annulling a decision of the Court of First Instance rendered in a municipal election protest.

The undisputed facts upon which the petition is based may be stated as follows:

That an election was held in the municipality of Nabas, of the Province of Capiz, on the 3rd day of June, 1919; that a proclamation of the result of said election was duly made; that a motion of protest was presented in the Court of First Instance; that after trial of said protest the judge, on the 30th day of July, rendered a decision, annulling and setting aside the election in the second precinct of said municipality, and recommended a new election to be held for the reason, that, after the votes of said second precinct had been eliminated no candidate had obtained "el mayor numero de votos" [the greatest number of votes] (sec. 471 in relation with sec. 477 of the Administrative Code).

The theory of the lower court in that decision (July 30, 1919) was, that no candidate could be declared elected who had not received at least more than one-half of all the legal votes cast in the municipality for the office of president. Later, however, after a reconsideration of the law, with special reference to the English text of said sections 471 and 477 of the Administrative Code, the judge reached the conclusion that he had misinterpreted the law, and that any candidate who had obtained "a plurality of legal votes" only in a municipal election should be declared elected to the particular office for which he was a candidate. Upon that theory of the law, and the result of the trial having demonstrated that one of the candidates had obtained a "plurality of votes" notwithstanding the elimination of the votes of the second precinct, the judge became convinced that this decision of July 30th was "against the law," and, therefore, on the 9th day of August, revised and modified the same and declared that one of the candidates, who had obtained "a plurality of votes," was duly elected, and issued a mandamus to the municipal board of canvassers to correct its canvass in accordance with the facts as found (sec. 479 Administrative Code).

The petitioner now contends that the lower court was without jurisdiction or authority to change, alter or modify its decision of the 30th of July for the reason that said decision was final and not subject to change, alteration or modification.

Under the law the decision of the Court of First Instance in municipal election contests is final and not appealable. (Sec. 479, Administrative Code.) The Election Law contains no provision defining or stating when or within what time the decision shall become final. The law defines the time within which the motion of protest must be presented, and requires the judge to decide the same as soon as possible after the hearing. (Sec. 479.) But the law

does not define when his decision may be executed or when he must issue the mandamus to the municipal board of canvassers.

After the pronouncement of a decision in a municipal election contest, has not the defeated party some time in which to examine the same for the purpose of ascertaining whether or not some error has been committed, either in fact or law and to call the attention of the court to such error? Or, suppose the judge himself recognizes or discovers that he has committed an error of law and that his decision is entirely erroneous and contrary to law, may he not correct such error? And if so, within what time?

While the Election Law requires that notice of the motion of protest must be given to all candidates voted for, it contains no method of giving such notice. With reference to the method of notice, we have held that the protestant may adopt the method provided by section 396 of Act No. 190. (*Campos vs. Wislizenus and Aldanese*, 35 Phil. 373; *Velasco vs. Judge of First Instance of Pangasinan*, and *Malong*, 35 Phil., 320; *Flores vs. Zurbito*, 37 Phil., 746, 750.)

Certainly it was not the intention of the Legislature that the decision of the court should become final immediately upon publication. The Legislature certainly intended that the defeated parties should have notice, at least of the decision before it should become final. We do not believe that the Legislature intended that the decision in a municipal election contest case should become final immediately upon pronouncement, without notice to the parties and without giving them some time to examine it and to question its correctness. If we are right, then how much time have the parties, after decision, to question the correctness of such decision?

The Election Law contains no answer to that question. It being a question of procedure, may not the provisions of Act No. 190 be invoked to supply the deficiency? If the provisions of Act No. 190 may be invoked for the purpose of giving notice of the motion of protest, there seems to be no legal objection to applying other provisions of Act No. 190 for the purpose of supplying other defects in the procedure under the Election Law.

Section 145 of Act No. 190 provides among other things that the judge may, within thirty days after notice of a decision, on his own motion, set aside his judgment and grant a new trial, when he has become satisfied for example, that his judgment "is against the law." Under that provision the judge, in ordinary actions, may correct errors in his decision within a period of thirty days. In the absence of other provisions in the Election Law, we can see no legal objection, notwithstanding the summary character of election protests, to applying the above-quoted provision of section 145 of Act No. 190 to cases like the present.

In the present case the judge pronounced his first decision on the 30th day of July and sometime before the 9th day of August he discovered that he had misinterpreted the law—that he had committed an error in law—and corrected the same by modifying and changing it. We cannot bring ourselves to believe that the Legislature intended that the judges of the Court of First Instance, who have final jurisdiction in municipal election contest cases, should not have some time to examine, modify, and change, if necessary, a decision in which a manifest error in law had been committed. We are of the opinion that section 145 of Act No. 190 should be applied, and especially so in view of the fact that the decision of the Court of First Instance is final and not appealable. In reaching this conclusion we have not overlooked the decision of this court of *Arnedo vs. Llorente and Liongson* (18 Phil., 257) nor that of *Navarro vs. Veloso* (23 Phil., 626).

Our conclusion upon the facts in the record, therefore, is, that the judge in the present case, having corrected an error of law in his first decision, within a period of ten days after its promulgation; did not thereby exceed the jurisdiction conferred upon him by law; that he was fully justified, within a period of thirty days from the notice of his decision, to set aside his judgment for the reason that he became satisfied that it was "against the law."

Therefore, the petition for the writ of certiorari is denied, with costs to the petitioner. So ordered.

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

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