

JULIAN OCAMPO, PETITIONER, VS. MAXIMINO MINA, JUDGE, AND TOMAS AREJOLA, RESPONDENTS.

G. R. No. 16332. September 23, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition, presented in the Supreme Court, to obtain an order prohibiting the respondent judge from considering, hearing, and deciding a certain election protest presented in the Court of First Instance of the Province of Ambos Camarines by Tomas Arejola against Julian Ocampo, Severo Cea, Agaton Ortiz, and Francisco Botor, upon the ground that the said judge had not acquired jurisdiction over the person of the protestee Julian Ocampo, the petitioner herein.

The only important question presented by the record is, May the Courts of First Instance acquire jurisdiction over the person of a protestee in an election protest case by means of publication?

The facts out of which that question grew may be stated as follows:

- That an election for the office of provincial governor was held in the Province of Ambos Camarines on the 3d day of June, 1919;
- That at said election the following persons received the following number of votes for the office of governor of said province: Julian Ocampo, 6,476; Tomas Arejola, 5,351; Severo Cea, 4,670; Agaton Ortiz, 1,668; and Francisco Botor, 295;
- That at the conclusion of the canvass of the votes cast in the various precincts of said province by the provincial board of canvassers, it announced on the 13th day of June, 1919, that the candidates above-mentioned had each received the number of votes stated above;
- That on the 27th day of June, 1919, the said Tomas Arejola presented a protest in the Court of First Instance of Ambos Camarines against the election of Julian Ocampo, Severo Cea, Agaton Ortiz, and Francisco Botor;
- That on the 10th day of July, 1919, the said protestant, Tomas Arejola, presented a motion in the Court of First Instance, alleging that Julian Ocampo, one of the protestees, could not be found in said province; that his whereabouts was unknown, and prayed that an order be issued by said court that he (Julian Ocampo) be notified of the existence of said election protest by means of a publication in some newspapers of general circulation in said province (Exhibit B);
- That on the 15th day of July, 1919, the respondent judge, after a consideration of said motion (of July 10th) granted the same and ordered the publication of said notice in the *El Bicolano* and *La Vanguardia*, once a week for a period of three weeks (Exhibits C and D);
- That on the 11th day of August, 1919, the attorneys for Julian Ocampo made a special appearance in said cause for the sole and only purpose of objecting to the jurisdiction of the court over his person, for the reason that he

had not been notified of the existence of said election protest in accordance with the requirements of the law (Exhibit E), and asked that said protest be dismissed for failure of notice to all of the candidates voted for;

- That on the 11th day of August, 1919, the respondent judge refused the attorneys for Julian Ocampo the right to appear and represent him in support of the said special motion, in the following order: "Si Vds. niegan la jurisdiccion del Juzgado, el Juzgado niega que Vds. tengan autorizacion para comparecer en nombre del Sr. Julian Ocampo." (If you deny the jurisdiction of the court, the court denies that you have authority to appear on behalf of Julian Ocampo.) After dictating that order, the respondent judge proceeded to hear proof adduced by the protestant relating to said election protest;

- That on the 19th day of August, 1919, the said attorneys for Julian Ocampo, who made a special appearance for the sole and only purpose of objecting to the jurisdiction of the court over the person of their client, duly excepted to the order of the court of August 11th denying them the right to appear for said special purpose (Exhibit G);

- That on the 26th day of February, 1920, the respondent judge promulgated an order, which was signed by him on the 12th day of February, 1920, declaring that he had acquired jurisdiction over the persons of the protestees in said election protest, including Julian Ocampo, and ordered that the trial of said election protest should continue;

- That the present petition was presented in this court upon the 16th day of March, 1920, praying that the respondent judge be prohibited from continuing the hearing of said election protest in so far as it affected the rights of Julian Ocampo for the reason that he (Julian Ocampo) had not been notified of said protest in accordance with the provisions of the law.

A copy of the original protest presented by Tomas Arejola is made a part of the record in the present case and is marked Exhibit A. An examination of said protest shows that it contains no allegation that any person had been proclaimed elected governor of the Province of Ambos Camarines as a result of said election of June 3, 1919. The protest not having alleged that some person had been proclaimed elected governor of said province as a result of said election, his action was premature and should have been dismissed on that account. A protest filed prior to the proclamation of the provincial board of canvassers is premature and must be dismissed if an objection thereto is made opportunely. (*Manalo vs. Sevilla*, 24 Phil., 609.) In the present case no objection was made in the court below upon that ground.

Section 479 of Act No. 2711 provides that "the contest (election protest) shall be filed with the court within two weeks after the election." In the present case the protest was perhaps filed in time, assuming that the proclamation, if any, was made on the 13th day of June, 1919.

Section 481 of Act No. 2711 provides that "the proceedings for the judicial contest of an election shall be upon motion with notice of not to exceed twenty days to all candidates voted for."

The provisions of said sections are mandatory. If the protest is not presented within two weeks and the notice is not given to all candidates voted for within twenty days, the protestant must fail in his protest, and his protest must be dismissed. The court acquires no jurisdiction if said protest and notice are not given within the time specified by the law. The provisions of said sections relating to the time within which election protest must be filed with the court and time within which the notice must be given to all the candidates voted for, are in the nature of limitations upon the time within which election protest must be commenced. Said sections limit the time within which the protest must be filed in court as well as the time within which the notice of said protest must be given. The law, in both of said requirements, must be strictly complied with. If the protestant fails in either, he must necessarily fail in both, because a compliance with both is necessary. (*Bermudez vs. Court of First Instance of Tayabas*, 36 Phil., 360; *Deogracias vs. Abreu and De la Santa*, 36 Phil., 492.)

How are said requirements complied with? First, by filing with the court, within two weeks after the election, a motion of protest, which motion shall constitute the pleadings on the part of the protestant; and, second, by giving notice of said motion of protest to all of the candidates voted for within a period not to exceed twenty days from the filing of the motion of protest. But, in the absence of any provision in the Election Law prescribing the method by which notice may be given, how may the notice be given? In answer to that question, we have decided (a) that the protestant may adopt any method which he may desire, so long as he gives actual notice to all the candidates voted for within twenty days from the filing of his protest, and (b) that he may, if he pleases, adopt the method provided for by section 396 of Act No. 190. (Navarro vs. Jimenez, 23 Phil., 557; Navarro vs. Veloso, 23 Phil., 625; Hontiveros vs. Altavas; 24 Phil., 632; Campos vs. Wislizenus and Aldanese, 35 Phil., 373; Deogracias vs. Abreu and De la Santa, 36 Phil., 492; Flores vs. Zurbito, 37 Phil., 746.)

Section 396 of Act No. 190 gives the method how persons may be served with notice or summons. Subparagraph 6 of said section provides that, "in all other cases, to the defendant personally, or by leaving a copy at his usual place of residence, in the hands of some person resident therein of sufficient discretion to receive the same." Said subparagraph 6 is the only provision of said section 396 which can be applied to cases like the present.

Instead of attempting to give personal notice, or to follow the provisions of said section 396 above quoted, the respondent invoked the provisions of section 398 of said Act No. 190. Is said section applicable to cases like the present? Said section (398) provides how service of summons upon absent or unknown defendants may be made by publication or by the method which is generally known as "substituted service." Said section (398) specifies the conditions which must exist, however, before its provision may be invoked for the purpose of obtaining substituted service. The conditions required by said section are:

- (a) That it appears by affidavit that the person upon whom service is to be made resides out of the Philippine Islands, or has departed therefrom, or conceals himself to avoid service, etc., etc., etc.;
- (b) That it appears by affidavit that a cause of action exists against the person summoned; and
- (c) That said action relates to, or its subject is, real or personal property within the Philippine Islands, in which said person has or claims a lien or interest, actual or contingent, etc., etc.

After all of the foregoing prerequisites have been established by affidavit, the court may, under section 399 of Act No. 190, make an order for "service by publication," which order must be published "at least once a week for three consecutive weeks," which would require at least twenty-one days before the notice in that manner could, by any possibility, be complied with.

When the legislature provides that notice must be given within twenty days, we cannot bring ourselves to believe that a law which requires notice of at least twenty-one days be given can be invoked for the purpose of giving the notice required by section 481 of Act No. 2711.

From all of the foregoing, we are forced to the conclusion (a) that Julian Ocampo was not given notice of the protest within the time prescribed by the law, and (b) that a notice by publication is not authorized by law in cases like the present.

Inasmuch as the notice required by section 481 of Act No. 2711 was not given to Julian Ocampo in the manner permitted by the law, he was without notice of said election protest and the court was, for that reason, without jurisdiction to hear and determine the same. Therefore, it is hereby ordered and decreed that the writ of prohibition be issued, directed to the respondents, in accordance with the prayer of the petition, with costs. So ordered.

Araullo, Malcolm, Avanceña, Moir and Villamor, JJ., concur.

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