

PACIANO M. MIRALLES, ET AL., PETITIONERS AND APPELLANTS, VS. FRANCISCO C. GARIANDO, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 16584. May 23, 1961*

Ponente: BAUTISTA ANGELO, J.

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Miralles, et al. were candidates for the offices of mayor, vice-mayor, and councilors, respectively, of Alang-alang, Leyte in the elections held on November 10, 1959. Francisco C. Gariando, et al. were also candidates for the same municipal offices in the same elections who allegedly failed to file their certificates of candidacy as required by law. They allegedly filed with the municipal secretary merely unsigned mimeographed copies of their supposed certificates of candidacy. Hence, on November 19, 1959, Miralles, et al. filed with the Court of First Instance of Leyte a petition for prohibition and mandamus praying that the municipal board of canvassers of Alangalang be prohibited from making a canvass of the election held in connection with the municipal officials while at the same time praying that said board be ordered to proclaim petitioners as the duly elected officials of said municipality being the only unopposed candidates for the offices specified in their certificates of candidacy and that, pending action on the merits, a writ of preliminary injunction be issued restraining the municipal board of canvassers from making the canvass of the election for said offices as required by law.

Gariando, et al. were ordered to answer the petition within 10 days from receipt thereof, but instead of complying with the injunction, they filed a motion to dismiss and an opposition to the motion for the issuance of a writ of preliminary injunction. The trial court set the motion for the issuance of a writ of preliminary injunction, as well as the motion to dismiss, for hearing, at which the parties presented their evidence.

Petitioners presented as their witness Catalino Tante, municipal secretary of Alangalang during the election of November 10, 1959. In answer to the direct examination made by petitioners' counsel, said witness produced copies of the certificates of candidacy of respondents for the position of mayor, vice-mayor and councilors; copies of the written acknowledgment made by him certifying to the receipt of said certificates of candidacy; copy of the letter he sent to the Commission on Elections informing the latter of the filing of said certificates of candidacy; copy of the communication sent by the secretary of the provincial board acknowledging receipt of the copy sent by the municipal secretary of the same certificates of candidacy; copies of all the receipts issued by the chairmen and poll clerks of all the precincts used in the municipality of Alangalang wherein they acknowledged having received four copies of the certificates of candidacy of all candidates for municipal positions. Besides said documents, witness Tante also produced before the court the original carbon copies of the certificates of candidacy of respondents for the offices for which they were candidates, but after examining said exhibits, counsel for petitioners decided not to mark them as their own, whereupon the court in the interest of justice ordered that they be marked as exhibits X, X-1 to X-9.

The hearing was postponed to give petitioners an opportunity to present further evidence in support of their petition, and at the continuation of said hearing their counsel presented several witnesses in an attempt to show that the certificates of candidacy marked as Exhibits X, X-1 to X-9 produced by Catalino Tante were only

surreptitiously entered in the records of the municipality of Alangalang to substitute the unsigned copies actually filed by respondents and which were later produced by witness Tante in court, but all his attempt to ask questions to said witness relative to that matter was blocked by opposing counsel on the ground of immateriality referring as they do to matters that had happened after the elections, which objections were all sustained by the trial court. And when counsel moved to postpone the hearing to give him time to bring the matter on certiorari to the Supreme Court, the trial court refused, considering the urgency of the case and the little time left for its disposal. Thereafter, the case was submitted for decision. On December 8, 1959, the trial court rendered decision denying the motion for preliminary injunction but dismissing the petition in chief for having found that respondents have duly filed their certificates of candidacy as required by law. Petitioners have appealed.

While the trial court has been somewhat harsh towards counsel for petitioners insofar as the examination of the several witnesses he presented is concerned in an attempt to prove that the certificates of candidacy presented by witness Catalino Tante which on their face appear to be duly signed had been surreptitiously inserted into the records of his office and brought to court as evidence, and that its ruling that he could not examine said witnesses with regard to that irregularity is erroneous because that is the main theme of his petition for mandamus, we find, however, that the dismissal of the petition is correct not only because the trial court has no power to prevent a municipal board of canvassers from complying with its ministerial duty of canvassing the election within its jurisdiction but also because the remedy sought by petitioners is not the one warranted by the circumstances.

Thus, under Section 168 of the Revised Election Code, it is the duty of the municipal board of canvassers to meet immediately after the election and to count the votes cast for the candidates of the different municipal offices from the statement of elections that may be submitted to it by the municipal treasurer and thereafter to proclaim as elected those who have pooled the largest number of votes for said offices. Said board is considered merely as ministerial body which is empowered only to accept as correct those returns submitted to it which are in due form and to ascertain and declare the result as it appears therefrom. Its duty is purely mechanical and extends only to the counting up of the votes and awarding the certificate to those who may have received the highest number. It cannot open the ballot boxes or recount the votes. It has no judicial power. It must depend exclusively upon the statements of returns made by the various precinct election inspectors.[1] It being the imperative duty of the board of canvassers to meet immediately after the election, the courts cannot intervene to prevent that board from fulfilling such duty, except only in those cases that are expressly provided for by law (Section 163, Revised Election Code). The instant case is not one of them.

On the other hand, we take note that one of the main grounds on which the motion to dismiss filed by respondents is predicated is the fact that petitioners had already filed before the Commission on Elections prior to the canvass of the elections a similar petition praying that the board of canvassers be prevented from carrying out the canvass on the ground that the certificates of candidacy filed by respondents were not filed in accordance with law and that said Commission denied the petition ruling that the matter submitted to it was not within its competence because it involves the ineligibility of a candidate for lack of proper certificate of candidacy. Petitioners, however, did not appeal from said ruling thereby rendering the same final and binding upon petitioners (Section 5, Revised Election Code).

It is our opinion that the remedy sought by petitioners is not the proper one but to file a petition for quo warranto as provided for in Section 173 of the Revised Election Code. If petitioners contend that respondents are not eligible to be candidates because they failed to file properly their certificates of candidacy as required by law, then the remedy is to contest their election after they have been duly proclaimed. But such remedy can only be availed of within one (1) week after the proclamation of the winning candidates. Apparently, this remedy is now too late.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] Galang vs. Miranda and De Leon, 36 Phil., 316; Dizon vs. Provincial Board of Canvassers of Laguna, 52 Phil., 47.

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