

GREGORIO M. MATAS, PETITIONER, VS. THE HON. HONORIO ROMERO, JUDGE OF THE COURT OF FIRST INSTANCE, BRANCH III, DAVAO AND ISIDRO ORDANEZA, RESPONDENTS.

G.R. No. 16897. January 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Has the protestee in an election contest the right to demand the opening of ballot boxes in precincts included in the petition of protest, if he (the protestee) did not include the said precincts in his counter-protest, nor make express allegations in his answer of irregularities prejudicial to him in the precincts subject of the petition of protest, and the protestant, before the hearing, informed the court that he wanted to have the ballot boxes in first eight precincts only brought to court, and may probably desist from presenting the boxes in the other twelve precincts, and after the termination of the revision in the first eight precincts, expressly waives his right to present the remaining twelve ballot boxes on the ground that he has no more funds to pay for getting the ballot boxes, considering the revision in the first eight precincts sufficient for his protest? This is the question presented in the above entitled case.

In the elections for municipal and provincial officials held in the municipality of Padada, Davao, on November 10, 1959, Gregorio M. Matas was declared elected as municipal mayor over the other candidate Isidro M. Ordaneza. On November 27, 1959, Ordaneza filed a petition of protest contesting the election of Matas, alleging frauds, abuses and irregularities in Precincts Nos. 2, 7, 7-A, 9, 13, 14, 16, 17 and 38 (9 precincts). On November 28, 1959, he filed an amended petition wherein he included for revision, in addition to the precincts already mentioned in his original petition, Precincts Nos. 1, 8, 10, 11, 12, 14-A, 18, 35, 35-A, 36 and 39 (11 precincts). Matas filed an answer to the amended petition of protest denying the allegations of supposed frauds, irregularities, etc., in the conduct of the elections in the precincts mentioned. He made no specific allegation or averment, in the various paragraphs of denial in his answer, that frauds and irregularities in the counting and appreciation of the ballots were committed to his prejudice, thus limiting himself to a denial of the alleged irregularities in the counting of the ballots in favor of the protestant. In the last paragraph of his denial, he made specific allegation that in all the precincts, names that sounded similar or equal to his (protestee's) name or surname were counted in his favor and on the other hand, names in ballots that did not sound equal or similar to protestant were counted in protestant's favor, although these did not change the result of the election.

The answer also contains a counter-protest alleging frauds and irregularities committed in Precinct No. 15. The prayer demands the dismissal of the protestant, the bringing in of the ballot box in Precinct No. 15, together with the registry list and a recount of said ballots in said precinct No. 15, and a request for the payment of costs and expenses by protestant, with a general prayer for relief.

Before proceeding with the bringing in of the ballot boxes, the protestant filed a motion dated January 9, 1960, alleging that—

"2. That in all probability, protestant will only request for the actual counting of 8 precincts whereas with respect to the other remaining precincts, protestant will probably only seek for the comparison of the registry lists;

"3. That in case necessity arises for the reopening of the entire ballot boxes under protest, the protestant may from time to time, increase his bond to answer therefor, pursuant to the pertinent provisions of the Revised Election Law;

"4. That protestant, therefore, is constrained to seek for reduction of the cash bond to the sum of P500.00 and to the Surety Bond in the sum of P2,500.00." (Motion to Reduce Bond, Annex '1', Answer to Petition; Memo for respondents)." (p. 3, Memo for Respondents)

Protestee Matas did not object to the motion but apparently agreed thereto as the court in the order dated January 14, 1960 indicates. The said order is as follows—

"On petition and recommendation of the parties when this case was called for hearing this morning, the following are hereby appointed Commissioners: Atty. Eriberto A. Unson, representing the Court; Atty. Gregorio Palabrica, representing the protestant; and Atty. Primitivo C. Buagas, representing the protestee, for the re-opening, recounting and classification of the ballots boxes corresponding to Precincts Nos. 2, 7, 7-A, 13, 14, 17, 38 and 39 of the Municipality of Padada, Dayao, and for this purpose said Commissioners are hereby authorized to conduct the re-opening of the ballot boxes corresponding to the above-named precincts starting tomorrow, January 15, 1960, at 8:00 a.m. in the office of the Clerk of Court, and to continue everyday thereafter from 8:00 a.m. to 12:00 noon and from 2:00 to 5:00 pm. until the same is finished." (pp. 3-4, Memo for Respondents.)

When the commissioners were about to complete the recounting and classification of the ballots in the first 8 precincts already brought before the court, protestee Matas filed an urgent motion dated January 21, 1960 praying that an the other 12 ballot boxes be opened also and the ballots therein revised. Opposition thereto was filed by the protestant on January 26, 1960. Shortly thereafter, i.e., on February 8, 1960, the protestant moved that since he had previously filed a petition to reduce the bond and said reduction was approved by the court and he believes that he has already sufficient number of votes to off-set the majority obtained by the protestee, he declared that he "waives and renounces his right to proceed with the opening and recounting of the ballots contained in the other 12 precincts, namely, Nos. 9, 16, 1, 8, 10, 11, 12, 14-A, 18, 35, 35-A and 36, but demanding comparison of the Voter's Registry lists for the election years 1955, 1957 and 1959 of the aforementioned precincts, and praying for the dismissal of the protest as to said 12 remaining precincts. (Annex "G" of Petition).

The court promulgated two separate orders, one dated February 20, 1960 granting the protestant's motion dated February 3, 1960, and another dated February 22, 1960, dismissing the protest as regards the twelve unrevised Precincts Nos. 9, 16, 1, 8, 10, 11, 12, 14-A, 18, 35, 35-A and 36. The protestee moved to reconsider the order of the court but the court denied the motion for reconsideration. Whereupon this petition for certiorari with preliminary injunction was filed before Us.

The petitioner has not filed any memorandum before Us evidently because the petition and the arguments which he adduced before the court below, in support of his petition regarding the ballot boxes which the protestant declined to have opened, were reproduced in his petition in this case, and he believed evidently that they are complete and sufficient, for the purposes of his petition before Us. The said arguments may be summarized as follows: The right of protestee to ask for the opening of the ballot boxes in question is recognized by Section 175 of the Revised Election Code which provides that

"Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters'

affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but not more than fifteen pesos for every election precinct which they may completely revise and report upon."

Further that it is not necessary for the protestee to include in his counter-protest precincts already covered by the protest, in accordance with section 176 of the Revised Election Code, which provides—

"* * * (c) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff."

Section 175 of the Revised Election Code refers to the right of any party in an election to file the corresponding petition of protest. The provision that the court may "motu, proprio, if the interest of justice so requires," immediately order that documents be produced and ballots examined and votes recounted evidently refers to a case, where an election contest has already been presented and the court desires to make further examination in the interest of justice. In the case at bar, the court did not order but actually refused the revision in the 12 precincts which the protestant waived to present; so, the provision in question is not applicable.

It has been suggested that the result of an election is a matter of public concern, so that the right of a protestee, to demand revision in precincts not included in his counterprotest should not be denied. Our answer to this suggestion is that in this jurisdiction the rule has invariably been to deny revision in precincts that are not contested either in the petition of protest or in a counter-protest. To permit revision in precincts not subject of petition of protest or counter-protest would mean allowing any party to conduct a fishing expedition and unduly prolong the contest resulting in cutting down the term of the winner. The decisions of this Court and those of the House Electoral Tribunal are to the effect that a protestant must specify in his answer the precincts in which he desires or demands revision, and that he may not demand the revision in precincts which he did not include in his protest. If the protestant is not permitted to demand revision in precincts not included in his petition of protest, neither should the defendant or protestee be allowed to do so; to permit otherwise would encourage unscrupulous litigants to frustrate prompt termination of protests, delay proceedings and even frustrate the will of the electorate, and would give protestee more rights than the protestant. They should be treated equally.

Paragraph (c) of section 176 quoted above limits the right of the protestee to the filing of a counter-protest within the same period for the answer and the latest decision of this Court is to the effect that the right of the protestee is to demand revision only in those precincts in which he demanded revision in his counter-protest.

"The main theme of petitioner is that the trial court committed an abuse of discretion in granting the motion of respondent that he be authorized to withdraw 36 out of the 92 precincts covered by his protest on the ground that after the recanvass of the first 29 precincts he found that his protest with regard to said 36 precincts was unnecessary. Petitioner contends that to allow such withdrawal at that stage would be tantamount to amending the protest which can no longer be done because the period fixed for doing so had already expired. And this contention is apparently predicated upon the fact that at the time the motion for withdrawal was filed the recanvass of the votes had already started and the period for filing the pleadings has expired.

"There is no merit in this contention. While it is true that the period for filing the pleading has already expired and the recanvass of the ballots covered by the protest has already started when the motion for withdrawal was filed and protestee had traversed the allegation of the motion insofar as the 36 precincts are concerned, it can not be said that the trial court erred in allowing the withdrawal considering that the move of protestant in asking for such withdrawal is not to amend his protest but merely to inform the court that he was desisting from it with regard to said 36 precincts. We have no quarrel with the theory that an election protest is impressed with public interest in the sense that the public is interested in knowing what has actually happened

in the elections, but that issue is not involved herein. This is a matter that wholly depends upon protestant even if the withdrawal of the protest is not effected if the protestant desists from acting thereon or from presenting evidence to substantiate it that will be the end of tile ease. The most that can happen is that the protest should be dismissed for lack of action or proof and to such eventuality protestee can not object nor complain because the precincts concerned are not involved in his counter protest. In other words he can not allege prejudice if the withdrawal is allowed. This is the exclusive prerogative of protestant." (*Dimaporo vs. Estipoña, et al.*, 112 Phil., 220).

The following circumstances also indicate the conformity of the protestee that revision be limited to the. first eight precincts. Before the hearing started the protestant announced his intention to limit revision only to the 8 precincts mentioned in his original petition. The protestee did not file any objection or opposition thereto; he actually consented to the revision only of such 8 precincts. The reservation by the protestant (to present the other 12 precincts if said is necessary for his protest) was made also without objection on the part of the protestee. There are reasons why a protestant should have the right to withdraw from his protest some precincts included in his original protest, even without the consent of the protestee. The protestant is required by the election law to file a protest within two weeks after the proclamation of the results of the election (in case of provincial or municipal officials). The rule enforced in this jurisdiction is not to permit the protestant or the protester to demand revision of the ballots in precincts which one or the other has not protested in the petition of protest or counter-protest. Inclusion of additional precincts after the expiration of the period for filing the protest is not permitted. (*Fernando vs. Constantino*, 37 Off. Gaz., 107; *Almeda vs. Silvosa, et al.*, 100 Phil., 844; *Araneta vs. Araneta*, 47 Phil. 850.) Consequently, the proteatant has a very limited time to investigate where the frauds or irregularities have taken place, so that the precincts wherein the same occurred may be included in his petition of protest. Naturally, he should be allowed a leeway to include in his petition of protest as many precincts as he has been informed or believes that irregularities have been committed; at the same time he should be given the choice of the precincts in which he desires revision, after he had had the opportunity to determine, what evidence of such irregularities, he may be able to muster in support of his petition of protest. There is no valid reason why he should not be permitted to withdraw his petition as to precincts where he has subsequently found no evidence of irregularities or frauds. Not only is this conducive to simplification and limitation of the issues but it will ultimately result in a prompt dispatch or termination of the election contest. Because of the fact that the revision of ballots involves a very long and tedious process and the corresponding shortness of the term of office, withdrawal of the petition as to precincts already included in the original protest should be encouraged instead of discouraged.

The above view is also supported by the fact that the choice of precincts in which the ballots are to be revised is a choice of the evidence that the protestant desires to submit to the court for the purpose of proving that he had actually received a greater number of votes than his opponents. As indicated above, while the rule that the court may, in the invest of justice, order the revision in other precincts is justified by the fact that the question of election is a public question, the need of prompt termination of the contest demands limitation of revision to those precincts which the protestant deems sufficient to establish the allegations of his petition of protest. This practice of admitting evidence of facts not alleged is not allowed in ordinary cases; neither should it be permitted in election contests, especially because in this case the protestee demanded that the other 12 precincts be brought to court for revision only after he found out that the results of the revision would perhaps be adverse. To permit such change would mean allowing any party to change the issues at any time of the trial as his conveniences demands. To cap it all, he made the demand subject to the obligation of the protestant; to deposit the expenses necessary to the revision.

We hold that in view of the foregoing reasons and circumstances above indicated, the protestee voluntarily acquiesced to limiting the revision to the eight precincts already, examined, and may not, at this stage, demand

revision of all the other 12 precincts.

Wherefore for all the foregoing considerations the petition, for certiorari is hereby denied, with costs against the petitioner.

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

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