

COSME BIAGTAN, PETITIONER, VS. PEDRO ESTAYO AND VICENTE NEPOMUCENO, AS JUDGE OF FIRST INSTANCE, RESPONDENTS.

G. R. No. 17026. December 18, 1920

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The object of the present petition is to suspend the course of the proceedings in the motion of protest, the review of which is asked, or, in case the decision of the respondent judge had already been executed, to ask that the case be placed in the same stage in which it was before said decision was rendered.

The following are alleged as the basis of this petition: (1) That on June 20, 1919, Andres Garcia presented a motion of protest in the Court of First Instance of Pangasinan against the present respondent, Cosme Biagtan, who was declared elected to the office of municipal president of Mangaldan, Pangasinan; (2) that during the proceedings had in connection with that protest, the respondent, Pedro Estayo, presented to the court a pleading of intervention, alleging all the facts stated in the motion of protest of Andres Garcia, which facts were by reference incorporated by him in his pleading; and, (3) that the respondent judge, Honorable Vicente Nepomuceno, committing an abuse of his judicial powers and an excess of his jurisdiction, decided said protest in favor of the respondent Pedro Estayo, and ordered the municipal council of Mangaldan, Pangasinan, compelling it to correct, in its capacity as municipal board of canvassers, its canvass in accordance with the facts which the judge found as proved.

The respondent, Pedro Estayo, demurred to the petition on the ground that the complaint does not state sufficient facts to constitute a cause of action.

The question raised in this case is whether a candidate who received votes in an election and who was neither the protestant nor the protestee in an election protest may be declared elected to the disputed office.

The cases decided by this court hardly contains a precedent which may assist us in solving this question. Nevertheless, we believe that the solution may be found in the last paragraph of section 479 of the Administrative Code, which says:

"SEC. 479. Contested election to office in general.-Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election. The contests shall be filed with the court within two weeks after the election and shall be decided by the same as soon as possible after the hearing of the contest. Such court shall have exclusive and final jurisdiction, except as hereinafter provided, and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined, and to appoint the necessary officers therefor and to fix their compensation, which shall be payable in the first instance out of the provincial treasury, and to issue its mandamus directed to the board of canvassers to correct its canvass in accordance with the facts as found."

According to this legal provision, the judge has exclusive jurisdiction to try and decide election protests, and to

order the board of canvassers to correct their canvass in conformity with the count made by the court. The respondent, Pedro Estayo, after having been notified of the protest, filed a pleading of intervention, alleging the same facts that are alleged in the protest of Andres Garcia against Cosme Biagtan, now petitioner.

The object of a notice, as declared by this court in the case of *Tongson vs. Villareal and Itchon* (40 Phil., 237), is to bring to the court all the persons interested in the result of an election to a particular office and give them the opportunity to be present at the trial of the protest and be heard. The petitioner argues that the respondent Pedro Estayo was not a protestee, and that his pleading of intervention is not a motion of protest required by law to give the court jurisdiction. Such contention cannot be sustained. In the case of *Manalo vs. Sevilla* (24 Phil., 609, 624), this court said:

"We experience no difficulty with this question. The Election Law provides that an election contest 'shall be upon motion with notice of not to exceed twenty days to all candidates voted for Melendres was duly notified. Upon the service of that notice he at once became a party to the proceeding with all the rights which pertained to any other party. His application for intervention was unnecessary. Being already a party he could exercise any right, present any affirmative demand, allege any kind of a defense which any other party to the contest could present or allege."

The respondent being an interested party, as he was one of the candidates who received votes in that election and was notified of the filing of the protest, was not under the necessity of filing a separate protest; it was enough for him to be present, as an interested party, at the proceedings and submit to the result of the protest. Nevertheless, in the case at bar the respondent Pedro Estayo filed a pleading of intervention, alleging the facts alleged in the protest. Supposing that he had not filed any pleading and that the result of the counting made by the court had given him a greater number of votes than those given the protestant and protestee could the court fail to order the correction of the canvass made by the board of canvassers to make it conform to the result of the protest, merely because he had not filed a pleading of intervention? It is evident that it cannot. What is alleged in the petition as an abuse of the powers and an excess of the jurisdiction of the court is what the law orders the court to do, namely, to issue a mandamus to the municipal board of canvassers to correct its canvass in conformity to the decision of the court. According to law, of the candidates voted for in an election who are interested parties in an election protest, he, who is given the greater number of votes by the judicial decision, should be declared elected to said office by the board of canvassers, the latter acting in this case in conformity to the order of the court. For the reasons above stated the petition is denied, with costs against the petitioner. So ordered.

Mapa, C. J., Araullo, Street, Malcolm and Avanceña, JJ., concur.

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