

DOMINADOR S. ASIS, PETITIONER, VS. HON. MELQUIADES G. ILAO, ETC., BASILIO ZANTUA, ETC., AND FERNANDO V. PAJARILLO, RESPONDENTS.*G.R. No. 17451. January 31, 1962*

Ponente: DE LEON, J.

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On November 25, 1959, as the result of the general elections held on November 10, 1959, the Provincial Board of Canvassers of Camarines Norte proclaimed herein petitioner Dominador S. Asis as the Provincial Governor-elect of Camarines Norte with a plurality of 59 votes over his closest rival, Fernando V. Pajarillo, one of the respondents herein. On December 4, 1959, Pajarillo filed an election protest, contesting the election of petitioner. On December 21, 1959, petitioner Asis filed his answer and counter-protest. The respondent Judge set the case for hearing on July 6, 1960. On said date, and thereafter, up to July 27, 1960, the respondent Judge actually presided at the hearings. On July 29, 1960, the respondent court issued an order appointing the respondent Deputy Clerk of Court, Basilio Zantua, as commissioner. That order reads as follows:

"In order that the Court may proceed with the hearing of ordinary civil and criminal cases, upon agreement of the parties, Deputy Clerk of Court Basilio Zantua is hereby appointed as Commissioner to receive the evidence in the above entitled case. The hearing shall proceed everyday beginning August 15, 1960, at 2:00 o'clock in the afternoon." (Annex "C" of petition).

Resolving a petition for reconsideration filed by the petitioner, who advanced the view, among others, that the Election Law and Rules of Court do not authorize the court to appoint a commissioner to receive the evidence of the parties, the respondent Court issued another order, dated August 18, 1960, the pertinent portions of which read as follows:

"There are four election protests pending trial before this court. They are case No. 1151, entitled Concepcion F. Abano vs. Rafael de la Cruz, Case No. 1159, entitled Nicolas V. Pardo vs. Edmundo Narra, Case No. 1148, entitled Jose Pascual vs. Claro Ibasco, and the above-entitled case. In the case of Concepcion F. Abano vs. Rafael de la Cruz, there are 180 boxes involved; in the case of Nicolas V. Pardo vs. Edmundo Narra, there are 120 boxes involved; in the case of Jose Pascual vs. Claro Ibasco, there are 14 boxes involved; and in the present case, there are 199 boxes involved. The ballots involved may reach the staggering number of 4,000. Judging from the attitude of the attorneys for both parties in objecting almost to every ballot, it will take about a year for the presiding Judge to receive the evidence in this case. For about a year, therefore, it would be physically impossible for him to hear and decide ordinary civil and criminal case, without mentioning the special actions.

"The commissioner herein appointed is not authorized to receive parol evidence and to appreciate the ballots. He is only authorized to receive the evidence consisting of ballots objected to by the parties. Trial, therefore, before him will not in anyway affect adversely the rights of parties.

"In the election protest of Parayno vs. Primicias, Jr., the Electoral Tribunal appointed Judge Morfe of

Pangasinan as Commissioner to receive the evidence. In the election law, there is no provision prohibiting the appointment of a Commissioner. On the contrary, under the Rules of Court, a Commissioner can be appointed by the court to hear evidence of the parties in ordinary civil action. And Ride 182 provides that the Rules of Court shall apply to election cases in 'a suppletory character and whenever practicable and convenient.' (Annex "D")

Unable to agree with the court's conclusion, petitioner has brought this petition for certiorari and prohibition with preliminary injunction for the setting aside of the order of July 29, 1960, claiming:

"That the Rules of Court, although it expressly states in Rule 132 that its provisions can be applied to election cases by analogy or in a suppletory character and whenever practical and convenient, provides that a Commissioner can only be appointed or the case can be referred only to a Commissioner when the parties give their consent to such reference, or in the absence of the consent parties, the same could be done by the court in the following cases: (a) when the trial of an issue of fact requires the examination of a long account on either side, (b) when the taking of an account is necessary for the information of the court before judgment, and (c) when a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of a case in accordance with Sec. 2, Rule 34 of the Rules of Court which says:

"Reference ordered on motion: When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference to a commissioner in the following cases:

A—When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue, or any specific question involved therein;

B—When the taking of an account is necessary for the information of the Court before judgment, or for carrying a judgment or order into effect;

C—When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of a case, or carrying a judgment or order into effect."

"That the issues or questions involved in the instant case are not among those mentioned in the aforesaid section of the Rules of Court, and are not proper for reference to a commissioner; and besides it will not be practical and convenient if the provision of the Rules of Court is applied in a suppletory manner in the instant case for the reason that it will open a way for the commission of more anomalies to the prejudice of the herein petitioner;

"That the respondent Judge is bent on carrying out its order of July 29, 1960 in having the case at bar be heard by a commissioner, for which cause petitioner herein will suffer grave and irreparable prejudice, and injuries have been suffered during the hearing of July 21, 1960 when the counsel of the respondent Fernando Pajarillo who has no respect for the respondent Judge erased the name of the petitioner on two ballots as alleged in paragraph 5 of this petition when the respondent Judge went out of the courtroom for a while, and if counsel for respondent Pajarillo did not even respect the respondent Judge, how much more can he respect a Commissioner appointed by said respondent Judge;

"That the petitioner has no other plain, speedy and adequate remedy in the ordinary course of law."

On September 20, 1960, this Court issued a writ of preliminary injunction restraining the respondent court from enforcing its order of July 29, 1960 as well as a resolution requiring all the respondents to file an answer within 10 days from notice. Respondent Fernando V. Pajarillo filed his answer on October 7, 1960, paragraph 6 of which reads as follows:

"6. That while he denies the allegations in paragraphs 10, 11 and 12, he wishes it known by the Court that it was not at his instance nor upon his petition that the hearing of the election case be referred to a commissioner,

and in fact, he would much prefer it that the said hearing be made before the Judge himself. Hence, he should not have been cited as respondent in the case at bar. However, as to the question of appointing Deputy Clerk of Court Basilio Zantua as commissioner to receive the evidence in the election case, it is respectfully submitted that it may be done for the following reasons:

"a) that the authority of the commissioner is limited to the act of marking the questioned ballots as exhibits and receiving them as submitted by the parties. The commissioner is not authorized to receive parol evidence nor to appreciate the ballots.

"b) that the rights of the parties will not in any way be affected as the proceedings will be conducted in the usual manner in the presence of the parties, their respective counsel and watchers.

"c) that the election law does not contain provision prohibiting the appointment of a commissioner. On the contrary, under the Rules of Court whose provisions may be applied to election cases by analogy or in a suppletory character and whenever practicable and convenient. (Rule 132), trial before commissioner is allowed (Rule 32).

"d) that the hearing of an electoral protest, more particularly the examination of the questioned ballots by the parties, their marking as exhibits and their submission to the court, is closely similar and analogous to a trial in ordinary civil cases which requires the examination of a long account on either side and wherein, under Sec. 2, Rule 32 of the Rules of Court, the court may direct a reference to a commissioner.

"e) that the procedure, if allowed, will be practicable, convenient, and will result to a speedy disposition of the electoral protest; and

"f) that in the electoral protest of Parayno vs. Primicias Jr., the Electoral Tribunal appointed Judge Morfe of Pangasinan as commissioner to receive the evidence, notwithstanding the fact that under the rules of said body, hearings of cases should be made before it or its members."

No answer was filed by the other respondents.

The issue here is the propriety of the appointment of respondent Basilio Zantua as commissioner. It should be noted that while the order of July 29, 1960, stated that the appointment of Zantua was made upon agreement of the parties, the petition alleges that the respondent court issued said order "on its own motion", and this allegation is not directly denied in the answer of Pajarillo which instead avers "that it was not at his (Pajarillo's) instance nor upon his petition that the hearing of the election case be referred to a commissioner, and in fact, he would much prefer it that the said hearing be made before the Judge himself."

In the case of *Reforma vs. de Luna*, (104 Phil., 278; 56 Off. Gaz., [23] 4015), this Court, after quoting Sections 175, 176 and 177 of the Revised Election Code, concluded:

"As may be seen, the Revised Election Code does not provide for any particular procedure for the disposition of an election case once the issues are joined. On the other hand, Rule 132, of our Rules of Court, provides that the rules of court shall not apply to election cases 'except by analogy or in a suppletory character and whenever practicable and convenient.' It would therefore appear that by legislative fiat the trial of an election case shall be conducted in a summary manner without the cumbersome procedure prescribed for ordinary litigations in order that its result may be determined in the shortest time possible. The reason is obvious: an election case, unlike an ordinary action, involves public interests, time element being of the essence in its disposition so that the uncertainty as to who is the real choice of the people may at once be dispelled. Moreover, it is neither fair nor just that we keep in office for an uncertain period one whose right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action. As this Court has aptly said: 'The purpose of the legislature in declaring that contest should

not be conducted upon pleadings or by action was to free the courts as far as possible from the technicalities incident to ordinary proceeding by action and to enable the courts to administer justice speedily and without complications.' (Lucero vs. De Guzman, 45 Phil. 852). It also said that 'An election contest is a special summary proceeding, the object of which is to expedite the settlement of the controversy of the candidates as to who received the majority of the legal ballots.'

"Of course, in enunciating that the trial of an election case should be devoid of technicalities of procedure or conducted in a summary manner we do not mean that there should not be any reception of evidence as required in an ordinary trial. Cases there are when this may be needed as when it may be necessary to present evidence aliunde, or such evidence other than those documents which the law requires to be produced in court for its examination (Section 175, Revised Election Code). It is in this sense that the court may apply the Rules of Court by analogy or in a suppletory character as ordained in Rule 132. In every other respect, the trial is summary and the court may consider not only what has been presented formally as evidence but also whatever may have been submitted to it by virtue of the express provision of the law."

Section 175 of the Code provides:

"Sec. 175. Judicial counting of votes in contested elections.—Upon 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 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."

Evidence in an election case are generally of two kinds:

(1) the documents which Section 175 requires to be produced in court for its examination, and (2) the evidence aliunde, if any, which the parties may deem necessary to present. In the production of the first, consisting of election paraphernalia, their examination may be conducted in a summary manner. In the presentation of the second, it may be done, as in an ordinary trial, in view of the fact that no particular procedure is outlined in the Code and Rule 132 of the Rules of Court provides that the Judicial Rules shall not apply to election cases except by analogy or in a suppletory character and whenever practicable and convenient.

As explained by the respondent court in its order of August 18, 1960:

"The Commissioner herein appointed is not authorized to receive parol evidence and to appreciate the ballots. He is only authorized to receive the evidence consisting of ballots objected to by the parties. * * *."

It appears that the commissioner's job is confined to the marking, for purposes of identification, of the ballots objected to by the litigants, in preparation for their examination by the court and for the trial to receive parol evidence in support of the parties' objections. This being the case, there is no occasion for the application of Rule 34 of the Rules of Court, particularly Section 2 thereof. The court's authority to appoint a commissioner is derived from the Code itself. It is significant to note that under Section 175 the court is not only authorized, upon petition of any interested party or motu proprio, if the interests of justice so require, to order the production of election paraphernalia for the examination of the ballots and the recounting of votes, but also, and for the purpose of such examination and recounting, to appoint such officers as it may deem necessary. The court may make the appointment upon petition of the parties or motu proprio, if the interests of justice so require. The court's explanations contained in its order of August 18, 1960, show positively that the appointment of a commissioner was done to subserve the interests of justice.

Wherefore, the instant petition for certiorari and prohibition is hereby dismissed. The preliminary injunction

heretofore issued is hereby set aside. With costs against the petitioner.

Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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