

NICOLAS RAFOLS, PETITIONER, VS. THE COURT OF FIRST INSTANCE AND THE PROVINCIAL FISCAL OF CEBU, RESPONDENTS.*G.R. No. 24395. August 03, 1925*

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an action for prohibition brought originally in this court wherein it is prayed: (a) That upon the giving of a proper bond by the petitioner a writ of preliminary injunction be issued enjoining the respondents, their attorneys, agents and representatives, deputies and other persons acting in their behalf and under their directions, pending the disposition of this proceeding, to refrain from opening or causing to be opened the ballot boxes of Pinamungahan, and from making any canvassing of the votes cast in said municipality for the offices of senator and representative in the general elections held June 2, 1925; (b) that said writ of preliminary injunction be communicated by telegraph to the respondents, without prejudice of sending them later on the writ by mail, in view of the fact that it is probable that if it is not communicated by telegraph the respondents may not be notified before the next Monday, June 22, 1925, the date fixed for the opening of the ballot boxes; and (c) that after due hearing, a final order be entered by this Honorable Court enjoining the respondents, their attorneys, deputies, representatives, agents and other persons acting under their direction absolutely to refrain from opening the ballot boxes of Pinamungahan for the purpose of making an examination of the votes cast for the offices of senator and representative in the said municipality in the general elections held June 2, 1925.

As prayed for in this petition, the Justice of this court, who was acting in vacation, issued, on June 19, 1925, a writ of preliminary injunction enjoining the respondents. pending the decision of this action, from opening or permitting to be opened the ballot boxes of the municipality of Pinamungahan for the purpose of making a new canvass of the votes cast in said municipality for the offices of senator and representative in the last general elections held June 2, 1925.

In the complaint it is alleged: (1) That the respondent provincial fiscal of Cebu having received information about serious violations of the Election Law committed by the election inspectors of the municipality of Pinamungahan, applied to the Court of First Instance of said province for the opening of the ballot boxes of the electoral precincts of Pinamungahan for the purpose of canvassing carefully and determining the true number of votes received by the candidates for senator and representative, Messrs. Rodriguez and Noel; (2) that the Court of First Instance of Cebu of June 6, 1925, granted the petition of the Fiscal and ordered the opening of said ballot boxes of the precincts of Pinamungahan and of all the papers and documents relative thereto for the purpose of making an examination of, and ascertaining, the true votes obtained by the candidates Rodriguez and Noel and for the purpose of investigating other acts connected with said supposed violations; and (3) that the new canvassing that the respondents are attempting to make for the purpose of ascertaining the true number of votes cast in favor of the candidates for senator and representative, Messrs. Rodriguez and Noel, is not authorized by the law and tends to submit to a judicial controversy the election of the petitioner and the inspectors' return proclaiming him as candidate reelected for the office of Representative for the Sixth District of Cebu, which constitutes an invasion of

the constitutional privilege granted by the Jones Law exclusively to the House of Representatives to take cognizance of, hold proceeding upon, and decide protests against the election and certificate of election of a representative elect.

The respondent judge of First Instance of Cebu admits in his answer having ordered the opening of the ballot boxes in question, but denies that the same was issued unlawfully and alleges that said order was issued only in order that the respondent fiscal might determine, through an examination of said boxes and their contents, whether or not the fiscal should institute criminal actions. And that neither the respondent fiscal nor the respondent judge has any intention or desire to make a new canvass of the votes cast in favor of the petitioner, Rafols, as candidate for Representative for the Sixth District of Cebu or in favor of any other candidate for said office.

The respondent provincial fiscal of Cebu after denying the facts set forth in the complaint, alleges as a defense: (a) That from the investigations conducted by him regarding the supposed violations committed by the election inspectors of the four electoral precincts of the municipality of Pinamungahan it appeared, in his opinion, that the election inspectors of said municipality had committed violations of the Election Law; (b) that for the purpose of verifying the truth and correctness of the evidence obtained by him it was necessary to open the ballot boxes of Pinamungahan; and (c) that while the deputy fiscal, Ramon A. Noel, has not made an accurate statement in his petition to the court under date of June 6, 1925, which is cited in the complaint, yet the true object of the fiscal of Cebu in applying to the court for the opening of the aforesaid ballot boxes is simply to examine, under the supervision of the court, the ballots deposited in said boxes for the purpose of verifying the result of the investigation made by the fiscal in order to determine the proper criminal action against the persons responsible for the fraud and not for the purpose of making a special canvass of the votes of any candidate. And as another defense the respondent fiscal alleges that section 479 of the Election Law, as amended by section 25 of Act No. 3210, clearly and expressly authorizes the opening of the boxes by order of the Court of First Instance *motu proprio*, or upon the petition of a party if the interests of justice so require.

It appears from the complaint and answer that the deputy fiscal of Cebu filed with the Court of First Instance of the same province on June 6, 1925, the following motion:

"HON. ADOLPH WISLIZENUS,

"Judge of First Instance,

"Cebu, Cebu.

"SIR: According to reliable information, a serious violation of the Election Law was committed in the municipality of Pinamungahan in that the inspectors of the three precincts of said municipality voluntarily and unlawfully refused to count the votes in favor of Messrs. Pedro Rodriguez and Pastor Noel, candidates for senator and representative respectively of this province, said inspectors having certified in their election returns that none of said candidates had received any vote.

"This office is intending to prosecute the authors of said violation and the undersigned respectfully prays your Honor that the ballot boxes of said precincts be opened for the purpose of making a minute examination, and ascertaining the true number of votes obtained by Messrs. Rodriguez and Noel.

"We pray that the court set the tenth day instant for the opening of the boxes and the making of the examination and that the court itself be present at the opening and the examination.

"Very respectfully,

(Sgd.) "RAMON A. NOEL

"Deputy, Provincial Fiscal"

On the same date the court entered the following order:

"A written petition having been presented in this court by the prosecuting attorney, alleging that certain violations of the Election Law had been committed in the last elections in the municipality of Pinamungahan, Cebu, the court orders the opening of all the ballot boxes of the precincts of Pinamungahan and of all the papers and other documents connected therewith, for the purpose of making another examination of, and ascertaining, the true votes obtained by the candidates Rodriguez and Noel and investigating all the other acts connected with said supposed violations.

"Said opening will be made before this court with the attendance of the prosecuting attorney and in the presence, upon due notice, of the aforesaid Messrs. Rodriguez and Noel.

"The presiding judge in Branch I of this court having the right to enjoy vacation in the month of June, this case is transferred to Hon. Guillermo F. Pablo, auxiliary judge of this district, for its hearing and decision and other necessary proceedings.

"It is understood that upon the return of the presiding judge of Branch I of this court for the holding of ordinary sessions, this case shall be returned to him unless by acts done and decrees issued by the Hon. Guillermo F. Pablo it is made more proper that he should continue to hear and decide said case.

"Cebu, Cebu, June 6, 1925.

(Sgd.)

"ADOLPH WISLIZENUS

"Judge, Twentieth Judicial District"

The authenticity of the petition of the Deputy Fiscal of Cebu, as well as of the order of the court dated June 6, 1925, having been admitted, although the respondents explain in their answer the intention with which said petition and order were written, the legal question at issue in this proceeding is whether or not a Court of First Instance upon the petition of the provincial fiscal may order the opening of the ballot boxes for the purpose of making a careful canvass and determination of the true number of votes obtained by the candidates for senator and representative in a specific electoral district.

Section 479 of the Election Law, as lastly amended by section 25 of Act No. 3210, provides:

"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 registered candidates voted for at such election. The contests shall be filed with the court within two weeks after the proclamation.

"Such court shall have exclusive and final jurisdiction, except as hereinafter provided. Upon petition of an

interested party, or of its own accord if the interests of justice require it, said court shall forthwith cause the registration lists, ballot boxes, ballots, and other documents used at such election to be brought before it and examined, and to appoint the necessary officers therefore and to fix their compensation, which shall not exceed five pesos per diem each and shall be payable in the first instance out of the provincial treasury."

* * * * *

This legal provision granting the courts of first instance jurisdiction over election contests has been construed by this court on several occasions, especially in the cases of *Hontiveros vs. Altavas* (24 Phil., 632); *Manalo vs. Sevilla* (24 Phil., 609); *Valenzuela vs. Judge of First Instance of Bulacan* (40 Phil., 163); and it was uniformly held that said jurisdiction presupposes the filing in court of an election protest.

From a reading of the above quoted legal provision, it will be observed that the jurisdiction granted by law to the courts of first instance refers only to contested elections to which there is no other legal provision applicable. And it is a well-known fact that section 18 of the Jones Law confers exclusive jurisdiction upon the Senate and the House of Representatives to hear and determine election protests against the members elect of each respective house. (*Veloso vs. Boards of Canvassers of Leyte and Samar*, 39 Phil., 886.)

It is true that the very same provision of law conferring jurisdiction upon Courts of First Instance to try election protests, among other things, provided that "Upon petition of an interested party, or of its own accord if the interests of justice require it, said court shall forthwith cause the registration lists, ballot boxes, ballots, and other documents used at such election to be brought before it and examined, * * * ." In our opinion, however, this must be understood as referring to an election falling within the jurisdiction of the court of first instance, which is not the case here.

Section 38 of Act No. 3030, amending section 468 of the Election Law provides:

"The municipal treasurer shall retain the boxes unopened in his possession in a safe place and under his responsibility, until the final decision of any election contest, and in any event for six months, subject to the order of the court of competent jurisdiction or other officer specially authorized by law to open the same."

This provision of the Election Law clearly indicates that the ballot boxes, which must be kept by the municipal treasurer after the elections, are subject to the order of the courts of competent jurisdiction until the final determination of any protest, or at any event, if no protest is presented, for the period of six months. Without determining now who is this "other officer specially authorized by law to open the same," we believe that even after the expiration of the time for filing protests, a court of competent jurisdiction in criminal cases may order the opening of the said ballot boxes if same are presented in evidence either by the prosecution or by the defense.

Limiting ourselves, then, to the issue joined in this action, we are of the opinion and so hold that the lack of jurisdiction is a ground for the granting of the writ prayed for (22 R. G. L., 20, and cases cited). And courts of first instance, being without jurisdiction to hear and determine protests against the election of members of the House of Representatives, cannot legally order the opening of the ballot boxes for the purpose of making a canvass and determining the true number of votes cast for senator and representative in the last general elections held on June 2, 1925. Wherefore, the remedy as prayed for in the complaint must issue, thus making absolute the preliminary injunction issued by the Justice, acting in vacation, on June 19, 1925. It must be understood, however, that this prohibition does not affect the power of the Court of First Instance of Cebu to order the opening of the ballot boxes of the municipality of Pinamungahan in the case of the municipal election protest, which according to the answer of the respondent judge, is now pending in the said court.

In reaching this conclusion, we desire to state that we have carefully weighed the arguments set forth by the

respondent provincial fiscal, that he should be given all the facilities for the prosecution of violators of the Election Law. There can be no question that a provincial fiscal should be given all the necessary means in order to prosecute violators of the law. We believe, however, that when the law specifies the cases when the ballot boxes may be opened, it is our duty to exact compliance with the provisions of the law. The law, after ordering that the voting shall be held secretly, ordains that the ballots be kept in boxes solidly constructed and sealed with three different locks and keys; and the jurisprudence, on the other hand, has laid down rules of precaution for the opening of the election boxes, all of which show that the election boxes must not be opened by guess work or merely for the sake of discovering possible violators of the law; that the box containing the evidence of popular sovereignty, that is, the will of the electors, must not be exposed to examination without a justifiable motive and when permitted, only in those cases mentioned by the law, so as not to jeopardize the secret which is one of the fundamental principles underlying the right of suffrage. After all, with the evidence secured by the respondent fiscal in his investigation, as appears in his answer, he had enough basis for filing a complaint against the alleged violators of the law and he had the right to introduce as a part of his evidence the contents of the ballot boxes here in question and the court with jurisdiction over the case may validly order the opening of said boxes.

The order prayed for is granted without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Johns, and Villa-Real, JJ., concur.

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