

ARSENIO VIOLA, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF CAMARINES SUR AND CLARENCIO ADOLFO, RESPONDENTS.

G.R. No. 24489. September 21, 1925

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On June 8, 1925, Clarencio Adolfo filed a protest against Arsenio Viola for the annulment of the latter's election for the office of municipal president of Magarao, Province of Camarines Sur, and the issuance of a decree declaring him elected, instead of the protestee.

On June 19, 1925, the protestee Arsenio Viola filed a demurrer in the form of special appearance, on the ground that the court had no jurisdiction to entertain the protest for the reason that in the motion of protest it was not alleged that the protestant, as well as the protestee, was a candidate registered and voted, and prayed that the contest be dismissed.

On July 10, 1925, the Court of First Instance of Camarines Sur ruled that the facts alleged in the protest were sufficient to confer jurisdiction on the court to take cognizance of, and decide, the protest, and overruled the demurrer, ordering the protest to be set for trial on July 22, 1925.

On July 25, 1925, the protestee Arsenio Viola came to this court and instituted an original proceeding against the Court of First Instance of Camarines Sur and the protestant Clarencio Adolfo, to obtain a decree adjudging the said Court of First Instance to have acquired no jurisdiction to take cognizance of said protest, and issuing an order prohibiting said Court of First Instance from continuing to take cognizance thereof. He also prayed that in the meantime a preliminary injunction be issued against the respondents.

On July 31, 1925, the respondents, through their attorneys, filed a demurrer to the petition on the ground that the facts alleged therein do not constitute a cause of action, and they prayed for the dismissal thereof.

The legal questions raised in this proceeding are several. Logical order requires us to take up first the question whether in taking cognizance of election contest a Court of First Instance exercises general or special and limited jurisdiction. This question has already been decided by this court in a clear and precise manner in the cases of *Tengco vs. Jocson* (43 Phil., 715); *Palisoc vs. Tamondong and Medina Cue* (43 Phil., 789), and we need not deal with it again, except to say that the mere fact that in section 27 of Act No. 3210 was omitted the provision contained in section 481 of the Administrative Code, as amended, to the effect that motions of protest shall be heard "not upon pleadings or by action," does not change the jurisdiction of the Court of First Instance over these cases from special and limited into a general one; because it is not the procedure to be followed in the handling of judicial cases, whether ordinary or election contest, that determines the nature of the jurisdiction of a court, but the law conferring the same. While the courts of first instance are higher courts of general jurisdiction, yet in taking cognizance of election contests they exercise special jurisdiction conferred by a special law (section 479, Administrative Code, as amended by section 44 of Act No. 3030, and section 25 of Act No. 3210), under certain and specific conditions, among which are the following, to wit: (1) That the protest be presented "upon motion by

any registered candidate voted for;" (2) "that the contest shall be filed with the court within two weeks after the proclamation." Upon the fulfillment of these conditions depends the exercise of the special power conferred by the Election Law on the courts of first instance to take cognizance of election contests.

It is also contended by the respondents that it is not absolutely necessary that the facts upon which the jurisdiction of a court is based be stated in the motion of protest, but it is enough if they appear in the record. This question has already been decided also by this court in the case above cited, and others subsequent thereto, and to reinforce the decisions rendered therein, we have to add only that "Where the jurisdiction of a court depends upon the existence of facts, it has no right or power to proceed or act upon a pleading which does not substantially set forth such facts * * *." (City of Charleston vs. Littlepage, 51 L. R. A; [N. S.], 353.) And it cannot be otherwise, because if jurisdiction is not presumed where a court of general jurisdiction exercises a special legal power and in a manner which is also a special legal one, and if under these circumstances said courts are, with regard to the power exercised, on the same footing as the courts of inferior and limited jurisdiction (15 C. J., 831), it is necessary that in the motion of protest the facts, upon the existence of which depends the exercise of the jurisdiction of the courts of first instance over election contests, be substantially alleged, otherwise these courts cannot determine whether or not they have acquired jurisdiction to try and decide the case.

It is also maintained by the respondents that the doctrine laid down in the Tengco-Jocson case is untenable for the reason that the word "registered" does not mean but "the candidate having presented his certificate of candidacy or that he is eligible to the office in dispute," and not precisely that his name was registered in any book or registry, which on the other hand is not provided by the law.

The law requires that the certificates of candidacy for municipal offices be filed with the municipal secretary, who must issue a receipt to the party in interest and furnish certified copies thereof to the election precincts of the municipality and the Executive Bureau (section 405 of the Administrative Code, as amended by section 1 of Act No. 3210), and as the person in charge of the custody of the municipal archives, it is the ministerial duty of said municipal secretary to file said certificates of candidacy (section 2212 [a] of the Administrative Code). For official purposes, the filing is equivalent to registration, and that is undoubtedly what the legislator meant to say in using the word "registered" in various sections of the Election Law.

As to the proposition that the word "registered" denotes "eligibility," the respondents are quite right, because in order that a candidate may be eligible it is an indispensable requisite that he be registered, except that there is a difference in that when the word "registered" is employed, a conclusion of fact is expressed, and when the word "eligible" is used, a conclusion of law is stated, and it is well known that in any pleading conclusions of fact, and not of law, must be alleged.

With respect to the word "registered" as meaning only that "the candidate has filed his certificate of candidacy," the theory does not seem to us correct. The Election Law itself, in dealing with the eligibility for any municipal office, says that no person shall be eligible unless within the period fixed by the law he files a duly verified certificate of candidacy (section 404 of the Administrative Code, as amended by section 3 of Act No. 3030); in providing for the case of death or inability of a candidate, it says that the deceased or incapacitated must be a candidate with certificate of candidacy duly filed (section 405 of the Administrative Code, as amended by section 1 of Act No. 3030); and in speaking of the person to be certified as elected, it says that only those who have obtained the highest number of votes and filed their certificate of candidacy in accordance with the provision of section 404 of the Election Law shall be certified elected (section 471 of the Administrative Code, as amended by section 41 of Act No. 3030).

The phrases "duly verified," "duly filed," and "filed in accordance with the provisions of the law," employed in

the Election Law in connection with the phrase "certificate of candidacy" clearly show that to the mind of the legislator this phrase without said qualifications is not sufficient to indicate that a candidate is "eligible" or that he is "registered." The word "acreditar" (verify), according to the new dictionary of the Spanish language, means * * * To prove in a positive manner, to show, to evidence clearly and beyond doubt, to establish by evidence, circumstances, and so forth * * *. Therefore in the eyes of the law, in order that a person may be eligible, it is not enough that he should hold a certificate of candidacy, but it is necessary that it be shown in an evident manner that said certificate of candidacy meets all the requirements as to form, time, filing, and recording, that is to say, that it is "registered," which is the word employed by the legislator to mean that all said requirements have been complied with. The other qualifying phrases employed by the law in speaking of the certificate of candidacy have the same scope and meaning. The fact that in various sections of the Election Law it uses simply the words "certificate of candidacy" does not show that the legislator has deemed said words to be sufficient to mean that a candidate is "registered" or that he meets all the legal requirements in order to be eligible, but it does so undoubtedly for the purpose of avoiding repetitions. The mere filing of a certificate of candidacy is not sufficient in order that a candidate may be eligible, because the municipal secretary or the Executive Bureau, who must know the law, may reject it if they find that it does not meet all the requirements prescribed by the law, and only when the corresponding receipt has been issued and the certificate filed can it be presumed that it has, been duly verified and filed.

Furthermore the facts alleged in the motion of protest now before us are almost identical with those alleged in the protest in the case of *Tengco vs. Jocson*, supra, wherein the words "candidates who have filed their respective certificates of candidacy and obtained votes," are used, and the law with regard to the essential requisites for the exercise of the special jurisdiction of the courts of first instance in election contest, has not changed; consequently, there is no reason of a juridical nature for altering the doctrine laid down in said case of *Tengco vs. Jocson*, supra, and followed in other subsequent cases.

For all of the foregoing we are of the opinion that the use of the word "registered" in the Election Law, as amended by Act No. 3210, is proper, and that the words "voted candidate, with his corresponding certificate of candidacy," used in the motion of protest now before us are not equivalent to said word "registered," and consequently they do not meet one of the essential requisites prescribed by the law in order that the Court of First Instance of Camarines Sur might acquire jurisdiction to try and decide said protest.

In view of the broadness of the questions discussed at the hearing upon the demurrer, we regard said demurrer as an answer and decide the case on the merits.

For the foregoing the respondent Court of First Instance of Camarines Sur is ordered to refrain and abstain absolutely from any further proceeding in the election contest of *Clarence Adolfo vs. Arsenio Viola*, without special pronouncement as to costs. So ordered.

Johnson, Malcolm, Johns, and Romualdez, JJ., concur.

DISSENTING

VILLAMOR, J., with whom concur Avanceña, C. J., Street and Ostrand, JJ.:

The petitioner brought this action for prohibition (*certiorari*, says the petitioner) in order to have the respondent judge abstain from taking cognizance of the municipal election contest filed by the other respondent, *Clarence*

Adolfo, in the Court of First Instance of Camarines Sur against the election of the petitioner, as municipal president of Magarao of the same province.

The petitioner alleges: (a) That on June 19, 1925, he filed with the court a special appearance for the sole and exclusive purpose of assailing the jurisdiction of the respondent judge over the motion of protest on the ground that it did not allege that the contestant and the contestee were candidates registered and voted in the election in dispute; (b) that while it is true that in the motion of protest there appeared a phrase which says "with their corresponding certificate of candidacy," yet this mere statement did not confer jurisdiction upon the respondent judge, for it was necessary that it be alleged that said certificate of candidacy was registered; (c) that the respondent judge overruled the objection to his jurisdiction, and was attempting to try and decide said election contest; and (d) that the petitioner cannot appeal from the ruling of the respondent judge, and has no other adequate and speedy remedy in the ordinary course of law.

The respondents filed a demurrer to the petition on the ground that the allegations therein contained were not sufficient to constitute a cause of action for the institution of this proceeding.

The attorneys for both parties have made extensive arguments before the court, and submitted printed and typewritten briefs prepared with indisputable skill. All their arguments, however, hinge around this question: Whether or not the case that gave rise to the present proceeding must be decided according to the doctrine established in the case of *Tengco vs. Jocson* (43 Phil., 715). And this is the decisive point submitted to the consideration of the court.

The court decided that the doctrine laid down in *Tengco vs. Jocson*, supra, must rule in the case now before us, and therefore the writ of prohibition applied for must issue. With due respect to the opinion of the majority I registered my vote against it on the ground which I am now briefly to state.

There is no doubt that it is necessary to follow the doctrine of stare decisis to maintain certainty and uniformity in the jurisprudence. But it must be taken into account that stare decisis is the phrase employed to announce the doctrine that "when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same * * *." (*Moore vs. City of Albany*, 98 N. Y., 396, 410; *Hart vs. Metropolitan St. Ry. Co.*, 72 N. Y. Supp., 797, 798; 65 App. Div., 493.)

In order to see whether the facts alleged in the protest which is the subject-matter of this proceeding, with respect to the personal qualifications of the protestant, now respondent, are analogous to those alleged in the case of *Tengco vs. Jocson*, supra, it is convenient to have before us the allegations in both cases. In the case of *Tengco* it was alleged:

"1. That the contestant and the contestee are of age, and residents of the municipality of Malolos, Bulacan.

"2. That in the election held in the municipality of Malolos, Bulacan, about the 6th of June, 1922, the municipal board of canvassers of said municipality of Malolos, illegally proclaimed the contestee, Mariano Tengco, elected for the office of Municipal President of Malolos, which illegality is as follows." (Here comes the statement of the facts showing the illegality.)

The allegations in the instant case are:

"1. That the contestant is a qualified elector and one of the candidates voted in the general elections held in the municipality of Magarao, Province of Camarines Sur, on June 2, 1925, within the jurisdiction of this court for the office of municipal president of said municipality.

"2. That according to the election return made by the municipal board as a board of canvassers, attached hereto

and made a part hereof, the protestee, the contestant and Tomas Bonit were voted for the office of municipal president of Magarao, the protestee with 270 votes, the protestant with 268 and Tomas Bonit with 236, all of whom were candidates for said office with their corresponding certificate of candidacy." (Here follows a specification of the grounds of the protest.)

A mere comparison of the allegations in the one and the other case will show that in the protest against Tengco there was really no allegation that the protestant was a candidate registered and voted, as required by Act No. 3030 which has in effect amended the Election Law, and for this reason it was held in that case that on account of the absence of the allegation of the jurisdictional fact as to the qualifications of the protestant of having been a candidate registered and voted, the court below had no jurisdiction to entertain said contest and consequently the writ of prohibition applied for must issue.

In the instant case, however, it is alleged that the contestant is one of the candidates voted and that all of the persons who received votes in said election, that is to say, the contestant and the protestee and one Tomas Bonit, were candidates for said office with their corresponding certificate of candidacy. This difference is essential and distinguishes completely the case involved in this proceeding from that of Tengco vs. Jocson, *supra*, and this same difference of allegations suggests, in my opinion, a different solution.

There can be no doubt that the respondent Clarencio Adolfo in drawing his protest against the protestant has not employed with technical precision the sacramental words of the law "registered candidate voted for;" but analyzing with liberal criterion the two paragraphs of his protest above quoted, as we have done in studying the case of Ferrer vs. Gutierrez David and Lucot (43 Phil., 795), I am forced to conclude that the protestant, now respondent Clarencio Adolfo, has alleged the jurisdictional fact that said protestant was a registered candidate voted in the general election held June 2, 1925. Otherwise, how can it be conceived that the protestant and the protestee and one Tomas Bonit had received 268, 270, and 236 votes, respectively, without having been registered candidates voted for the office of municipal president of Magarao, if the Election Law provides that "Votes for persons who have not filed certificates of candidacy for any municipal office shall be counted in the count of votes as scattering votes"? (Section 35, Election Law, Act No. 3030.) There is, therefore, the presumption arising from the fact of having received votes in that election that a candidate who has thus received votes had previously registered his candidacy in accordance with the law, and the allegation that the protestant Clarencio Adolfo was a candidate voted for the office of municipal president with his corresponding certificate of candidacy is equivalent, in my judgment, to the allegation that said protestant now respondent was a registered candidate voted as aforementioned.

I am, therefore, of opinion that the present proceeding must be dismissed in order that the respondent judge may proceed with the trial of the election protest of Adolfo vs. Viola, and decide it afterwards upon its own merits.

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